
(2019) 12 CAL CK 0142

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 20374 (W) Of 2018

Atul Kumar Sarkar & Ors

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 70, 71, 71.1, 71.2, 71.3, 99.2
Indian Railway Board Act, 1905 — Section 2, 3

Citation : (2019) 12 CAL CK 0142

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Achin Kr. Majumder, S. N. Dutta

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The petitioners are serving as Sub-Inspectors of the Railway Protection Force of Eastern Railway and posted at various divisions under the Eastern Railway. The date of enlistment of all the petitioners are 20th April, 2009 and after completion of initial training they were finally appointed on 20th April, 2010 and posted in different battalions.

The petitioners exercised their options for request transfer from one zonal railway to the other and on the basis of their option the petitioners were transferred to the various divisions under Eastern Railway and they were serving in their divisions on and from 2015.

The Railway Board by a circular dated 9th August, 2006 amended the standing order no. 70 relating to transfer of RPF/RPSF personnel and the amended Para 17 B (b) read as "he should be ready to come on bottom seniority of his batch mates in the same rank".

By virtue of the aforesaid amendment the petitioner's names were enlisted at the

bottom of the seniority list.

By a further circular of the Railway Board dated 29th March, 2010 the Standing Order no. 102 was issued. By virtue of the said Standing Order certain modifications were brought in the transfer policy of the respondent. According to the said Standing Order the enrolled member of the Force transferred in RPF from one zonal railway to another on own request or on mutual transfer shall go to the bottom seniority of their rank in terms of Rule 99.2 of RPF Rules, 1987.

A notification was published on 16th November, 2017 for promotion of Sub-Inspectors to the rank of Inspectors in RPF in administrative interest. The Sub-Inspectors who had completed eight years of service were eligible for promotion. As the case of the petitioners were not considered for promotion even though they had completed the prescribed period of eight years in regular service in the rank of Sub-Inspector, RPF the petitioners approached this court by filing a writ petition being WP no. 322 (W) of 2018 where, by an order dated 20th May, 2018 the court passed an interim order that any steps taken by the respondent in the meantime shall abide by the result of the writ petition and the respondents were directed to file their affidavit in the matter.

During the pendency of the aforesaid writ petition a further notification was published on 23rd August, 2018 for filling up of 53 vacancies of Inspectors/RPF (Executive). The selection was to be conducted by the Central Selection Committee under Rule 70, Schedule IV of the RPF Rules and the Rules specified in the Railway Board Standing Order no. 87 dated 15th May, 2019. A list of eligible Sub-Inspectors, who in order of seniority, completed eight years of service as Sub-Inspector as on 13th June, 2018 in terms of the Railway Board notification was published. The names of the petitioners were not included in the list of eligible candidates.

The grievance of the petitioners is that even after completion of eight years of regular service both in the Railway Protection Force and Railway Protection Special Force and even though they are senior to the Sub-Inspectors whose names were enlisted as eligible for promotion the petitioners have been left behind on the sole ground that they did not complete eight years of service at their place of posting.

The petitioners submit that they have already acquired permanent status in the post of Sub-Inspector and their place of posting or their position in the seniority list should not be the determining factor for consideration of their case for promotion. According to the petitioners, they have acquired their eligibility to appear in the selection test for promotion as they have completed eight years of regular service. The petitioners submit that their past service, even though at a different zone, should be taken into consideration for the purpose of determination of their eligibility for promotion.

The petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of Scientific Advisor to Raksha Mantri & Anr. -vs- V. M. Joseph

reported in AIR 1998 SC 2318 (paragraph 6). The petitioners also rely upon the judgment of the Hon'ble Supreme Court delivered in the case of M. M. Thomas & Ors. -vs- Union of India & Ors. reported in (2017)13 SCC 722 (paragraphs 7 & 9) and the decision delivered by the Supreme Court in the matter of Coal India Ltd. & Anr. -vs- Navin Kumar Singh reported in AIR 2018 SC 4753 (paragraphs 15 & 16) in support of their case.

The petitioners pray for a direction upon the respondent authorities to permit them to appear in the selection process for promotion from the rank of Sub-Inspector to Inspector.

The learned advocate appearing for the respondents opposes the prayer of the petitioners and submits that according to Section 3 of the Indian Railway Board Act, 1905 any direction given by the Railway Board notified under Section 2 of the said Act is binding in nature and the respondents are bound to act in accordance with the said direction.

The respondents rely upon the Directive issued by the Railway Board relating to request transfers wherein it has been clearly stated that in respect of transfers on request basis the terms and conditions applicable to request transfer will apply. The Standing Orders of the Railway Board categorically mention that Force personnel on being transferred on request shall be put on the bottom seniority of his batch mates in terms of Rule 99.2 of the RPF Rules, 1987.

According to the respondents, as the petitioners did not complete eight years of regular service at their present place of posting they are not entitled to be considered for promotion in accordance with the various Circulars and Directives of the Railway Board.

The respondents rely upon the decision delivered by the Hon'ble Supreme Court in the matter of Raghunath Rai Bareja & Anr. -vs- Punjab National Bank & Ors. reported in (2007)2 SCC 320 (paragraph 29), the decision delivered by the Hon'ble Supreme Court in the matter of Shiv Kr. Sharma -vs- Santosh Kumari reported in AIR 2008 SC 171 (paragraph 21) and an unreported order dated 31st January, 2019 passed by the High Court of Delhi in WP(C) 11293 of 2016 in support of their case.

I have heard the submissions made on behalf of both the parties.

Rule 99.2 of the Railway Protection Force Rule, 1987 deals with transfer on own request or on mutual exchange. The said Rule mentions that seniority of an enrolled member of the Force transferred on his own request or on mutual exchange from one zonal railway to another or to the Railway Protection Special Force and vice-versa shall be fixed below that of all existing confirmed and officiating enrolled member of the Force in the relevant rank of that railway or Railway Protection Force, irrespective of the date of confirmation of length of officiating service of the transferred member of the Force.

Schedule IV of the Railway Protection Force Rules, 1987 caters to appointments

and promotions. The said provision mentions that promotion from the post of Sub-Inspector (Executive) to the post of Inspector shall be by selection and the method of recruitment will be in accordance with the Promotion Rule 70 of the aforesaid Rules and Sub-Inspector with "eight years of regular service as Sub-Inspector" will be eligible for promotion.

Rule 71 of the said Rules lays down the guidelines for the Departmental Promotion Committee for holding selection under Rule 70 and in Rule 71.1 the allocation of marks for the written examination and practical test are mentioned. The candidates qualifying in the aforesaid test is subjected to a viva-voce test and the mark to be allocated is specified in Rule 71.2. According to Rule 71.3 the Departmental Promotion Committee prepares a list of candidates securing 60% or more marks in the order of their respective seniority in their rank.

Only those candidates who obtain 60% or more marks in the merit test are considered for promotion in accordance with their seniority. It is only when a candidate obtains the requisite marks in the written, practical test and also in the viva-voce then only the position in the seniority list comes into play.

The Schedule specifically mentions that the criterion for promotion to the post of Inspector is that the candidate should be a Sub-Inspector with eight years of regular service as Sub-Inspector. The period of eight years regular service does not mention that the service has to be at a particular place or zone. It merely means that the candidate should have worked and served as Sub-Inspector for eight years, irrespective of his place or zone of posting.

The Railway Board communication dated 1st January, 2018, relied upon by the respondent to disallow the claim of the petitioners, mention that the enrolled members of the Force who have come on transfer from another zone on request or mutual ground and they have not completed their eight years of service in the new zone shall not be considered for promotion till the completion of requisite period of eligibility in that zone as they are placed on bottom seniority of their rank.

By a corrigendum dated 10th January 2018 the aforesaid direction was changed and the same read as; "An enrolled member of the Force who has come to a zone on transfer from another zone on request or mutual ground shall be considered for promotion in the zone only after all the candidates placed above him in Zonal seniority are considered for promotion, subject to his completion of residency period as prescribed in RPF Rules, 1987."

The aforesaid Directive of the Railway Board appears to be inconsistent with the Rules which speak of only eight years of "regular service" as Sub-Inspector to be the eligible criterion for promotion to the post of Inspector. The post in question is to be filled up by the Departmental Promotion Committee and the allotment of marks is based on merit. There is no reasonable justification to restrict the number of eligible candidates based on their length of posting at a particular place or zone. Indian Railways is an all India organisation where members are

selected on the basis of all India examination. The members are posted and subsequently transferred, usually, on the basis of administrative exigencies. The mode of functioning throughout the country is the same. The experience which a member gains by putting in a fixed period of service is relevant and not the place or the zone where the member has served. The Railway Board circular has included an unreasonable and unnecessary fetter which is not mentioned in the Rule. Many meritorious candidates may fall out of the zone of consideration because of the restriction. The idea of promotion is to give impetus and encourage the deserving employees to better in their field, and in the process the employer gets the services of the best candidates.

It is settled law, that whenever there is a conflict between a Statute and a Directive, it is the Statute which prevails over the Directive. The Directive is always issued and meant to run parallel with the Statute and not contrary to the same. When the Statute is silent with regard to the period of posting at a particular place, the same ought not to be supplemented by way of a Directive. There being no ambiguity in the Statute the same ought not to be supplemented by another Directive which is not in agreement with the Statute.

The organisation will always be benefitted by the experience that a member has earned by dint of the period of service he has spent in the organisation, irrespective of his place of posting. It is always better for the organisation to select the best possible candidate. A healthy competition between the members of the same rank will give an opportunity to the employer to select the best candidate who may turn out to be the asset of the organisation. The employer will always bank upon the experience that an employee has gained by virtue of his length of service.

In *V. M. Joseph (supra)* the court held that even if an employee is transferred at his own request, from one place to another, in the same post, the period of service rendered by him at the earlier place where he held a permanent post and acquired permanent status cannot be excluded from consideration for determining his eligibility for promotion though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.

In *M. M. Thomas (supra)* the court held that if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the Rule does not require that the candidate must have acquired experience in the region where he seeks promotion, for being considered eligible. What is necessary is the total experience. The purpose of the Rule is that the officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another. While delivering the said judgment the court took note of the decision delivered by the Supreme Court in the matter of *Union of India -vs-S. N. Ponnappan* reported in (1996)¹ SCC 524 where the court held that an employee who is transferred from one unit to another on compassionate ground, though placed at the bottom of the seniority is entitled to

have the service rendered at an earlier unit counted for the purpose of eligibility for promotion in the unit in which he is transferred. As a result of transfer he is placed at the bottom of the seniority list at the transferred place but the same does not wipe out his service at the place from where he was transferred. The said service being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was rendered at the place where he was transferred.

In *Shiv Kr. Sharma (supra)* the Supreme Court held that the courts in India exercised jurisdiction both in equity as well as law but exercise of equity jurisdiction is always subject to the provisions of law. If exercise of equity jurisdiction would violate the expressed provisions contained in law, the same cannot be done. Equity jurisdiction can be exercised only when no law operates in the field.

In the instant case, both law and equity lies in favour of the petitioners. The Rule mentions about eight years' regular service. As the petitioners performed regular service in the post of Sub-Inspector for a continuous period of eight years they are eligible for being considered for promotion. In equity also the petitioners are eligible for consideration of promotion by the Departmental Promotion Committee as they have put in eight years of regular service in the post in question. It will be iniquitous to leave out the petitioners from the zone of consideration by ignoring their service at a different zone.

The Supreme Court in the matter of *Ragunath Rai Bareja (supra)* categorically held that when there is a conflict between law and equity it is the law which has to prevail. The court held that equity can supplement the law but it cannot sub-plant or overwrite it.

In the case at hand, the law is in favour of the petitioners but the Directive issued by the Railway Board has the effect of sub-planting the Rule by adding clauses which run contrary to the Rule. The Directive under no circumstances can overwrite the Rule. The same has to go hand in hand. As the law is in favour of the petitioners the Directive cannot be invoked to restrict the petitioners from the zone of consideration, for promotion.

The order passed in the case of *Gurpratap Singh & Ors. (supra)* deals with seniority and the same is not relevant for arriving at a decision in the instant case.

In view of the discussions made hereinabove the action on the part of the respondents in excluding the petitioners from the zone of promotion cannot be supported in law. The respondents are directed to consider the petitioners for selection for promotion to the rank of Inspectors, if they are otherwise eligible in accordance with the notification dated 23th August, 2018, ignoring their place of posting and their position in the seniority list.

W.P No. 20374 (W) of 2018 is disposed of.

Urgent photostat certified copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.