

(2016) 02 DEL CK 0297
In the Delhi High Court
Case No : W.P. (C) 4476/2007

B.L. Bishnoi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Protection Force Act, 1957 — Section 15, Section 2, Section 2 (ea), Section 2(ba)

Citation : (2016) 227 DLT 726 : (2016) 2 SCT 208

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Jyoti Singh, Sr. Advocate, Tinu Bajwa and Amandeep Joshi, Advocates, for the Appellant; Rajan Sabharwal, Raghav Sabharwal and Kaanan Gupta, Advocates, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—1. The petitioners' grievance, in these proceedings under Article 226 of the Constitution, is that some newly promoted Inspectors from different Railway zones sought and were granted Inter-Zonal Railway transfer to the Northern Railway, and are filing up promotional vacancies in the post of Inspector in that Railway Zone which would have fallen to their share. It is contended that such transfers hamper the chances of the petitioners who are otherwise duly eligible for promotion to the post of Inspector. The transferred Inspectors were originally not joined as parties; the writ petition was allowed by judgment dated 22.10.2008. However, the aggrieved third parties, after an unsuccessful review petition, approached the Supreme Court through special leave petitions. The Supreme Court by order dated 02.12.2014, set aside the previous judgement and remanded the matter back to this Court with a direction to implead the transferees as party respondents in the writ petition. The Supreme Court also directed any other subsequent development which occurred after the previous judgments i.e. the writ petition and the review petition would

await the outcome of orders to be passed in this writ petition. Initially, Respondent Nos. 6-10 (hereafter "transferred inspectors") were impleaded in the amended memo of parties dated 03.01.2015 (in CM 474/2015) All those respondents were served; however counter affidavits have been filed by Respondent Nos. 7,8 and 9.

2. Briefly, the facts of this case are that the petitioners were recruited as Sub-Inspectors in the Railway Protection Force, the main party respondent in these proceedings ("hereafter RPF"), and after successful completion of their cadet training (Petitioner Nos. 1-8 belong to 42nd Batch, Petitioner No. 9 belongs to the 43rd batch and Petitioner Nos. 10 belongs to the 44th Batch), were given the option of choosing the Northern Railway cadre (on merit- cum-choice basis). Recruitment to the post of Sub-Inspector, takes place on an "All India" basis. Selected Sub-Inspectors are allocated different zones on the basis of result of the final examination held after completion of training. The post of Inspector is the promotional post to the post of Sub-Inspector and is filled up zone wise.

3. This procedure of allocation of personnel based on their choice and merit ranking procedure sometimes results, in situations where Sub- Inspectors who may be junior in an "All India" ranking becoming Inspectors in their respective zones, at an earlier stage of time than those senior in the All India ranking, as the promotion to the post of Inspector takes place according to the respective zones. The petitioners complain that the newly promoted Inspectors from different Railway zones (impleaded as private respondents) sought Inter-Zonal Railway transfer to the Northern Railway, and are hence filling up vacancies for the post of Inspector in the Northern Railway. Such transfers are hampering the chances of the petitioners who are otherwise duly eligible for promotion to the post of Inspector. The private respondent/transferees (hereafter "transferee Inspectors") were promoted earlier as Inspector in their respective parent zones, and thus on transfer, maintain the same post of Inspector in the Northern Railway zone, even though persons senior to them in "All India" seniority continue to be Sub-Inspectors in the Northern Zone.

4. The petitioners contend that they aired their grievance to CSC/RPF, Northern Railway by letter dated 17.01.07 which was acknowledged by the CSC/RPF, and recommended to the D.G, RPF by its letter dated 14.02.07. On 06.02.2007, the respondents advertised for the selection of 18 Sub- Inspectors for promotion to the rank of Inspector in the Northern Railways, in the unreserved category. The petitioners, who were aspiring promotion, learnt that a number of these vacancies are going to be filled by transfer of Inspectors from other zones. It is argued that the petitioners, pursuant to the order of the RPF, were asked to appear for a departmental test on 30.04.2005 and 01.05.2007, which was cleared by them. In the interregnum (between the vacancies being notified and departmental test being conducted, four Inspectors from different Railway zones namely Ajay Kumar Tiwari, Anil Kumar, Kulwant Singh and Anand Prakash Mathur) were posted to the Northern Railway and some more were given the

permission to do the same. From 2005-2008, 14 such transfers were made to the Northern Zone out of which four Inspectors were junior to some of the petitioners (as per the affidavit of CSC, Northern Railways). The present petition challenges the legality of such transfers.

5. The petitioners rely on Standing Order No. 70 ("SO-70") to say that for the post of an Inspector there cannot be inter-zone transfers and the transfers alleged on compassionate grounds are contrary to SO-70 and therefore, illegal. They also rely on Rule 45(1) of the RPF Rules, to argue that Inspector is not a direct recruitment grade post but a promotion post. The court held that the inter-zone transfers effected by the respondents contrary to the standing order is prejudicing the petitioners. It is contended that in the previous judgment, the mistake realized by the RPF was taken note of, inasmuch as in another Petition (W.P(C) 6749/2008 titled ASI Bhanu Pratap v. Union of India &Ors) where transferred employee was given seniority in the lower grade to which he was directly recruited.

6. Learned Senior Counsel for the writ petitioners, Ms. Jyoti Singh argued that all the inter-zonal transfers are in violation of Para 17(B) (c) of the SO-70 dated 27.9.2004 which clearly stipulates that transfers shall be made only to direct recruitment posts. It is pointed out by the petitioners that the post of Inspector is filled completely by promotion and hence, such transfers are illegal. The said Para is reproduced below -

"17A All RPF personnel shall be eligible for inter-zonal transfer after completion of 10 years of service in a particular zone. However, RPSF personnel shall be eligible for transfer to RPF after completion of 20 years in RPSF. The following guidelines shall be followed in cases of inter-zonal transfers-

- a) The total length of service in the RPSF or the Zone will be the criteria for considering the applications of personnel for inter- zonal transfers (including transfers from RPSF to RPF)
- b) Once an individual is transferred from the RPSF to the Zonal Railway of his choice, he will not be allowed to seek further inter-zonal transfer. Similarly, once an individual is transferred from one Zone to another, he will not be allowed to seek further inter-zonal transfer.
- c) Inter-zonal transfers (including transfers from RPSF to RPF) will be effected keeping in view the vacancy position of RPSF/Zonal Railways

B1. Only in very exceptional cases and in cases of extreme compassion, inter-zonal transfers will be considered before the employee completes the above stipulated tenure. The following guidelines shall be followed in dealing with such requests:

- a) RPF/RPSF personnel wanting transfer must have probation in the rank
- b) He should be ready to go on bottom seniority in the same rank,

c) Transfers shall be made only to direct recruitment grades,

18. Conditions stipulated in para 17 above shall not be applicable in the case of transfers in the administrative interest."

7. Counsel also argued that the impugned transfers are said to have been made on compassionate grounds as shown by the affidavits placed by the respondents. This case was not one of administrative interest. Learned Senior Counsel for the petitioners relied on a copy of Standing Order No. 102 dated 29th March 2010, which superseded SO-70. This Standing Order No. 102 paragraph 3(C) (iv) prohibits transfers in the intermediary grades like that of Head Constables, Assistant Sub-Inspector & Inspector, save due to administrative reasons by competent authority. However, Standing Order No. 102 will not apply to the present writ petition since it was filed in 2007. Counsel further relies on Para 21 of SR-70 which reads as follows:

"Inter-zonal transfers of enrolled members of the force shall be considered on receipt of applications from the individuals. On receipt of an application, the concerned CSC may, if he thinks that the transfer is admissible/viable, take up with the CSC of the destination railway and find out whether the official is acceptable to that Railway. If the Official is acceptable to the destination Railway, the proposal for formal approval may be sent to Board's office. It shall be desirable that such requests/ agreed lists (in Case more number of cases are available) may be forwarded to Board's office once in a month. In the event, a request is rejected, the same may be advised to the employee.

8. It is further contended by the petitioner that in terms of Rule 45.1 of the Railway Protection Force Rules ("RPF Rules"), direct recruitment to the force shall be made at the level of Constable, Sub-Inspector and Asst. Commandants, and all other posts are to be filled by promotion or through a limited departmental competition from amongst the eligible enrolled members of the force or by taking persons on deputation in accordance with these rules. Thus, there is no direct recruitment to the post of Inspector and the said transfers are against the rules. The above rule is extracted below-

"45. Recruitment 1. Direct recruitment to the Force shall be made at the level of Constables, Sub-Inspectors and Assistant Commandants and all other posts shall be filled in by promotion or through a limited departmental compensation from amongst the eligible enrolled members of the Force or by taking personnel on deputation in accordance with these rules"

9. It is further submitted by the petitioner that in terms of Rule 99.2 of the RPF Rules, even when the transfers are to be made inter-Railways, the persons who are brought on transfers in the Direct Recruitment posts, have to join at the bottom seniority and cannot claim seniority over and above the personnel who are working in the borrowing railway. Rule 99.2 of the RPF Rules, reads as follows:

"99.2 Transfer on own request or on mutual exchange:

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 Special Force irrespective of the date of confirmation or length of officiating service of the transferred member of the Force.

10. The petitioners further state that in terms of Paragraph 312 of the Indian Railway Establishment Manual Volume I (hereafter "IREM"), the seniority of a railway servant transferred at their own request from one railway to another should be allotted below that of the existing, confirmed, temporary and officiating railway servant in the "relevant grade" in the promotion group. Note (ii) states that the expression "relevant grade" applies to grade where there is an element of direct recruitment. The above mentioned paragraph reads-

"312 TRANSFER ON REQUEST

The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note: (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

[Rly. Bd. No. E(NG) 1-85 SR 6/14 of 21-1-1986].

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted provided they fulfil the educational qualifications laid down for direct recruitment to the post. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.

(Railway Board's letter NO. E(NG) I/99/TR/15 dated 08.02.2000) "

11. The Petitioners rely on K.C. Divakaran v. Union Of India a judgment of the Madras High Court dated, 14th May, 2009 (in W.P. No. 9642 of 2006), which has explained the purpose of the above rule -

"25. The very purpose of the Railway Board's letter and IREM (Indian Railway Establishment Manual) is that a person seeking transfer should not eat up the promotional opportunities of the persons who are waiting for their turn. Therefore, the IREM and the Railway Board's letters are categorical in terms that if the intermediary grade to which transfer is sought provides for direct recruitment, the transfer is permissible."

12. The facts of the above case in brief are that the petitioner in this case entered Railway Service as Clerk Grade II in 1990 through Railway Recruitment Board and he was promoted as Clerk Grade I(CG-I) in 1994. Later he sought a inter departmental transfer to the accounts department in the same "ICF" (Integral Coach Factory, Chennai). On 15.20.1996, he was posted as an Accounts clerk by the Senior Accounts officer of the ICF, placing him at a lower salary grade than CG-I. His request to post him to Junior Accounts Assistant, which is the equivalent grade to CG-1 was rejected in 1998. He later appeared for an accounts departmental test and in these circumstances was promoted to the post of Junior Accounts Assistant. He approached the concerned Tribunal praying for a direction to the respondents to place him in place of Junior Accounts Assistant from 01.02.1996. The tribunal disposed his application at the stage of admission twice, which led to the filing of the above writ petition in the Madras High Court. The Madras High Court ruled in favour of the petitioner and directed the following

"We therefore direct the respondents to post the petitioner as Junior Accounts Assistant with effect from 01.02.1996 on his transfer to Accounts Department and also to grant consequential promotions without affecting/altering the seniority of others and accordingly refix his pay notionally."

13. The petitioners state in this context that Rule 117 of the RPF Rules, stipulates that as regards to conditions of service in matters not prescribed by these rules, all the members of the force, shall be governed by the "Extant Railway Rules", which is defined by Rule 2(k) of the Railway protection Force Rules, 1987. Therefore, IREM governs the field of service when the rule provided therein is not there in the RPF Rules. Similarly, the Standing orders have been issued to supplement the provisions of RPF Rules on those aspects where the rules are silent. Rule 117 provides as follows:

"117. Other conditions of service

"In all other matters not prescribed in these rules all member of the force irrespective of their ranks, shall be governed by the provisions contained in the extant Railway Rules as applicable to railway Servants of corresponding grades."

Rule 2(k) is as follows-

"extent Railway Rules" means the rules contained in the Indian Railway General Code, Indian Railway establishment Code, Indian Railway Establishment Manual, Indian Railway Code for Accoutrement, Indian Railway Code for Accounts Department, Indian Railway Code for Engineering Department and includes any rules made under the Indian Railways Act, 1980 for railway servants"

14. The petitioner has relied on a communication dated July 2002, and also placed reliance on letter dated 03.07.2008, where the Chief Security Commissioner, RPF has expressed that aforementioned transfers will lead to discontent among Sub-Inspectors of Northern Zone and will block vacancies.

15. In the original counter-affidavit to the writ petition, submitted by Senior Divisional Security Commissioner, RPF, it was stated that the members of the RPF are appointed in the cadre of transferable post within India in terms of Section 15 of the RPF Act and Rule 91.2 of the Railway Protection Force Rules 1987. They read as follows -

"Section 15 of The Railway Protection Force Act 1957

"Every member of the force shall, for the purpose of this Act, be considered to be always on duty, and shall at anytime be liable to be employed at any place within India"

Rule 91.2 of the Railway Protection Force Rules, 1987

"91.2 Enrolled members of the Force: All inter-zonal railway transfers of the enrolled members of the Force shall be ordered by the Chief Security Commissioner concerned after obtaining the concurrence of the Director-General.

16. The respondents had also stated that the petitioners are working under the command of Chief Security Commissioner of the respective zonal railway. The DG, RPF, is the competent authority to accord necessary concurrence in accordance with law for inter-zonal transfers initiated by Zonal Railways through the Chief Security Commissioner. It was stated that SO-70 supplements provisions of the RPF Act and Rules 90 to 93 read with Rule 27 & 55 and Schedule II of the RPF Rules, 1987 was formulated by the DG to account for the various problems encountered by personnel owing to which they seek "transfer on request".

17. The contesting respondents relied on Section 15 of the Railway Protection Force Act 1957 to submit that this section provides for such transfers. They also point out by that the seniority of the Inspectors is maintained on an All India basis and zonal lists do not determine seniority and further promotions, a fact not brought to the notice of this court in the writ petition. They state that the writ petitioners" stand that seniority of Sub- Inspectors in RPF is always maintained on Zonal basis and not on All India basis is incorrect. According to the contesting respondents, Inter-Zonal transfers were always permitted and cite Rule 99.1 to say that inter se seniority as between transferees (who have served in another zone) and those in the transferred cadre, is based on entry into the relevant grade. This clearly implies that transfer was always and is, permissible. These according to the private/contesting respondents, illustrate that the transfers from one zone to another can only be carried out with specific approval of the Chief Security Commissioner and the Director General in respect of such officers; such transfers ensure that no member remains entrenched in one posting for long. The private respondents also place reliance on provisions of the Railway Protection Force Act, particularly Section 2(ba) which reads as follows:

"Enrolled member of the Force" means any subordinate officer, under officer or any other member of the Force of a rank lower than that of an under officer;"

They also rely on Section 2 (ea) which states as follows:

"Subordinate officer means a person appointed to the force as an Inspector, a Sub-inspector or an Assistant Sub- Inspector;

18. Counsel for the contesting respondents argued Clause 28 of SO-70 provided for relaxation powers. It reads as follows:

"POWERS TO RELAX

The power to relax all or any of the above instructions or guidelines shall vest only with the Director General or with the authority to whom the powers have been expressly delegated to by the Director General. The Director General, shall if he deems fit, relax the above instructions/guidelines in respect of any individual/class of officers depending on the administrative requirement and the exigency of work/railway security requirement. "

According to the above rule, it is submitted, that the Director General in question has the power to relax instructions that are contained in SO- 70. It is submitted that the orders of transfers were made by the Director General on recommendation of the Chief Security Commissioner.

19. On 05.05.2005- it is contended, in a letter, Ministry of Railways, Railway Board, New Delhi, clearly mentioned that:

"There are a large number of vacancies of Inspectors/ Executive in RPSF.DG RPF has desired to examine the feasibility of filling up of these vacancies by transferring Willing Sub Inspectors/Executive with Five years of regular service in the grade from RPF to RPSF for a period of 3-4 years Willing SI/Executive pm such transfer to RPSF will be promoted as IPF/Exe on ad-hoc basis subject to their seniority cum suitability. These Sub-Inspectors shall retain their lien on their parent Railway and will be repatriated if promoted to the rank of Inspectors on their parent Railway even before expiry of their tenure in RPSF"

20. This letter clearly mentioned that the Petitioners were being offered "out of turn promotion "to the post of Inspectors in RPSF, with the advantage that their lien shall be maintained on their parent Railway. The respondents further contend that the grievance is based only on the future chance of promotion, and it is a settled principle of service that future chance of promotion is not the condition of service and hence, no vested rights accrue. Petitioners today stand promoted in their parents zone i.e. Northern Railway Zone. It is stated by the respondents that there was no pertinent reason for the petitioners to let the promotion opportunity lapse as the seniority of Inspectors from Railway Protection Force ("RPF") and Railway Protection Special Force("RPSF") is combined and the next promotion is to the post of Assistant Security Commissioner.

21. The contesting respondents also rely on Rule 90 of the Railway Protection Rules 1987, which reads as follows:

"Transfer of members of the Force may be ordered from one place to any other

place in India in the exigencies of service or for administrative reasons or to avoid local entanglements of such members or for any such consideration."

22. It is averred by the said respondents that the post of Inspector requires that the Sub-Inspector should have his service record clear from adverse entries, should possess good ACRs for at least 8 years and further requires the candidate to take and clear outdoor and written tests. As per the applicable policies, if a Sub-Inspector qualifies and gets promoted to the post of Inspector, he would be senior even among his own batch mates who have not been promoted as seniority list of Inspector is maintained by the Railway Board at an All India level in terms of Rule 27 1(e). Therefore, in some zones, Sub-Inspectors of a junior batch have been both promoted and confirmed as Inspectors earlier and are now senior as compared to Sub- Inspectors of their senior batch. It is on record that in the seniority list of Inspectors, Sub-Inspectors of a junior batch got early promotion in some zones and were confirmed as Inspectors; they now stand at a senior position in the All India level. Rule 27 (1) reads as follows:

"Rule 27 1(e) -

"27.1 The Director General shall-

(e) Compile on an all India basis, a seniority list of all Inspectors and superior officers and maintain it up-to-date at his headquarters;"

23. The writ petitioners rely on Para 21 of SO-70 and counter that the contesting respondent's transfers were ordered by the DG, without the consent of the Chief Security Commissioner and are hence, untenable in view of Rule 91.2 of the Railway Protection Rules. It is submitted that they did not accept the out of turn promotion because such vacancies were in "RPSF" and not in "RPF" and were on deputation basis only for a period of 3-4 years, on ad-hoc basis. Hence, it is factually incorrect to state that the transfer of respondents is blocking promotion opportunities for the petitioners. They also rely on Master Circular No. 24, Clause 10 which states that:

"Transfer of Railway Servants, who are members of the Railway Protection Force AND Railway Protection Special Force is governed by the provisions of R.P.F Rules, 1987."

Analysis and Conclusions

24. The factual discussion reveals that the essential question which this Court has to decide is the power of the RPF to sanction inter-zonal transfers at the level of Inspectors (a promotional cadre, to be wholly filled up from amongst eligible Sub-Inspectors). The record also reveals the following:

(1) Direct recruitment is resorted to at the level of Sub-Inspectors.

(2) Sub-Inspectors are in the level of subordinate officers who are "enrolled" members of RPF, by virtue of Section 2(ba) of the Act.

(3) Sub-Inspectors after recruitment undergo training and are, depending upon their ranking, assigned different zones.

(4) Section 15 of the RPF Act talks of "deployment of the force at the convenience of the administration"

(5) Every member of the Force can be transferred from one place to another, in India "in the exigencies of service or for administrative reasons or to avoid local entanglements".

(6) The consequence of exercising power of transfer of personnel on Inter-Zonal basis is spelt out in Rules 99.1 and 99.2.

25. The question, therefore, which arises for consideration is the combined effect of various provisions of the Act read along with the Rules, SR-70 and Para 312 of IREM. By virtue of Section 2 of the Act, "extent Railway Rules" are defined as "the rules contained in the Indian Railway General Code, Indian Railway establishment Code, Indian Railway Establishment Manual" Thus, provisions of IREM have statutory force.

26. It is quite evident that the general power to transfer members of the RPF exists by reason of Section 15 of the Act, read with Rule 90. However, the latter clearly envisions transfer for administrative reasons or to avoid local entanglement of its personnel. By reason of Rule 27 (c), the Director General (of RPF) can "order posting transfer including inter-zonal railway transfers and training of all superior officers and enrolled members of the Force." It is here, that Paras 17(A) and 17(B) of SO-70 (which is avowedly supplemental to the Act and Rules) and Para 21 become crucial.

27. The initial position of RPF when it preferred the original counter affidavit was to justify the transfers (of the contesting respondents) by reference to Section 15. Later, in the review proceedings based on re- thinking, it filed another affidavit. The following extracts of the said counter affidavit (to the review petition) are relevant:

"In fact, the orders of DG/RPF Northern Railway were contrary to RPF Rules as well as Railway Establishment Rules and adversely affecting the promotional prospects of the Sub- Inspectors who were appointed in Northern Railway and were much senior as Sub Inspector to those being transferred and are still Sub Inspectors though some junior persons in Sub Inspectors list of RPF Academy who were allotted other zones after completion of initial training have been promoted as Inspectors in their zones before the Sub Inspectors of Northern Railway. It is further denied that order dated 22.10.2008 has substantially affected and altered the right of the applicants. It is submitted that the applicants by filing this review application are misleading this Hon"ble Court by mentioning irrelevant contentions and by misrepresenting the rules and facts. It may be seen by perusing the list showing seniority of the Sub Inspectors based on the RPF Academy record that the petitioners are senior to some of the

applicants and belong to the Northern Railway. That in reply to para 3 of the review petition, answering respondent submits that bare perusal of Rule 91.2 of RPF Rules 1987 shows that all the transfers have been ordered by the DG /RPF without obtaining the consent of CSC/RPF concerned. Thus all the transfers ordered by the DG/RPF are null and void being contrary to the rules.

5. That in reply to para 5 of the review petition, answering respondent submits and states that the applicants are trying to mislead this Hon"ble High Court by quoting Rule 99 of RPF Rules, 1987 which deals with the subject of seniority while in the instant case, the question of seniority does not arise. The transfers of Inspectors RPF (Promotee) has never been allowed in the Railways as per para 312, Chapter III of Indian Railway Establishment Manual Volume I vide which "no such transfers should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grades and there is no element of direct recruitment". It is not out of place to mention here that the post of inspector in RPF (Executive) is not direct recruitment post and it is filled only by promotions from the Sub Inspectors RPF of said zonal Railway. Therefore, it is amply clear that the applicants are trying to divert the issue and also trying to mislead this Hon"ble High Court by quoting irrelevant rules in this review petition. Hence this review application / petition is liable to be dismissed on this count also."

28. The RPF has stated that firstly, the contesting respondents were never in the Northern Railways and more importantly, they are junior to the writ petitioners at the All India level with respect to the Sub-Inspector cadre. The record also establishes a point not contested by the private/contesting respondents - that seniority to the rank of Inspectors is on zonal basis. If so, once a Sub-Inspector level employee is assigned to a particular zone, his seniority position is maintained on All India basis. However, by reason of exigencies of service, depending on the need for Sub-Inspectors (or others in different cadres) and having regard to availability of vacancies, personnel are assigned to one zone or the other, by reason of Section 15. Their inter se ranking at the initial stage depends on their performance in the selection/recruitment process and the training exams or tests attempted by them. This inter se ranking however, continues on All India basis.

29. In this case, the contesting respondents sought for the transfer on their own accord, (on compassionate basis). The reasons for such transfer are undisclosed till date. The argument, that SO-70 has two parts (in para 17 i.e 17(A), and 17(B) which are to be read separately, in the opinion of this court, is insubstantial and has to be rejected. These are to be read together, given that neither the Act, nor Rules contain any guidelines which indicate how the power of Inter-Zonal transfer is to be exercised. The facts of this case itself establish that contesting respondents are junior to the Petitioners in All India seniority in the lower cadre of Sub-Inspector. Yet, they were, entirely fortuitously promoted as

Inspectors in their home zones, before the Petitioners because of the availability of vacancies. However, unfortunately the Petitioners remained Sub-Inspectors and remained in that cadre for a longer time. That the power to transfer personnel on inter-zonal basis is to be exercised cautiously, is evident from Para 17(A) (c). Para 17(A) prescribes the minimum eligibility period for a personnel to be transferred on Inter-Zonal basis; in RPF- it is 10 years. Para 17(A) (c) states that inter- zonal transfers are to be made only after taking into account the vacancy position. The safeguard against whimsical use of this power is further found in Para 21 (of SO-70) which states that inter-zonal transfers of enrolled members of the force shall be considered on receipt of applications from the individuals. The procedure on receipt of such applications is outlined as follows:

"On receipt of an application, the concerned CSC may, if he thinks that the transfer is admissible/viable, take up with the CSC of the destination railway and find out whether the official is acceptable to that Railway. If the Official is acceptable to the destination Railway, the proposal for formal approval may be sent to Board's office. It shall be desirable that such requests/agreed lists (in Case more number of cases are available) may be forwarded to Board's office once in a month.."

30. Para 17(B) of SO-70 carves out an exception, i.e where employees seek Inter-Zonal transfers, on extreme compassionate basis, before the qualifying period [specified in Para 17(A)] is completed by the applicant. Various sub-clauses of Para 17(B) have to be read in conjunction with Paragraph 17(A).

31. The position occupied by IREM is crucial. As noticed earlier, by reason of Rule 117, as regards conditions of service in matters not prescribed by these rules, "all the members of the force, shall be governed by the "Extant Railway Rules". According to Rule 2(k) of the RPF Rules, such "extant Railway Rules" include provisions of the IREM. Rule 99.2 of the RPF stipulates guidelines for determination of seniority on inter-zonal transferees, on request. The petitioners' argument, to the extent it places reliance on Indian Railway Establishment Manual provisions is central to the issue.

32. Now, Rule 312 of the IREM firstly talks of inter se seniority of "at their request" inter-zonal transferees. It states that such transferees should be "allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants." The note clarifies that this principle would also apply to "request transferees" from one cadre/division in the same railway zone. Then comes the crucial provision:

"(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted provided they fulfil the educational qualifications laid down for direct recruitment to the post. No such transfers should be allowed

in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment."

33. If this provision is kept in mind and one also recollects that there is no express provision in the Rules, governing the regulation of the power of inter-zonal transfer (as opposed to the existence of such power- which is clear by reason of Rule 27 (c) and Rule 90), it is obvious that Para 312 of IREM [which is a rule and binding, by reason of Rule 117 read with Rule 2 (k)] covers the field. As to the eligibility of such personnel who can apply for Inter-Zonal transfer [Paras 17(A) and 17(B)] and the procedure to be adopted, i.e after considering the vacancy, at Railway Board level (Para 21) the general powers of the RPF are clear. Therefore, whenever Inter-Zonal transfers are to be resorted to, the power of RPF is constricted, in the sense that it can be only in posts which can be filled by direct recruitment. Even in that category, the normal guidelines are that the employee would fulfil the minimum eligibility criteria and his application would be processed firstly by the Board, which would consider the vacancies and also ascertain views of the concerned zone. If approved, the transferee would take his seniority at the end of the list, in the case of request transfers (by virtue of Rule 99.2 itself). Furthermore, it is also evident that Para 17 as a whole applies to request transfers only, because Para 18 states "Conditions stipulated in para 17 above shall not be applicable in the case of transfers in the administrative interest."

34. For the above reasons, it is held that the bar against Inter-Zonal transfers - created by Rule 312(ii) of the IREM cannot be brushed aside. Provisions of Para 17(B), SO-70 or any other such circular/letter cannot prevail over Rule 312, since it has statutory effect. As observed earlier, the RPF has not justified the reason for the contesting respondents' transfer on any basis- importantly even the contesting respondents do not attempt it, despite arguing that they could be transferred on Inter-Zonal basis, otherwise than in public interest or administrative exigency.

35. It would be relevant now to deal with two contentions urged by the contesting respondents. First, that the petitioners cannot be granted any relief, because they turned down an out of turn promotion chance. This argument is unpersuasive, because the petitioners have stated that what was offered was an ad-hoc deputation position, for 3-4 years and not a regular promotion. Such an opportunity in the opinion of this Court cannot be one, the denial of which should result in the negation of the petitioners' claim. The second submission is that in any case the contesting respondents would be placed at junior positions in the Inspector cadre, given the nature of Rule 99.2. This argument provides no solace to the petitioners, who would still have to earn promotion first. By then the contesting respondents' rights vis- a-vis the promotional post of Inspector would have crystallized. This position was summed up in *K.P. Sudhakaran v. State of Kerala*, 2006 (5) SCC 386, as follows:

"In service jurisprudence, the general rule is that if a Government servant

holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service Rules."

36. In the result, the writ petition has to succeed; the orders of inter-se zonal transfer of the contesting respondents are quashed. A direction is given to the first five respondents to issue an order, indicating the fresh posting of the said contesting respondents. A review of the petitioners' case for promotion to the post of Inspectors, in the zone to which the contesting respondents were transferred and from such dates, shall be undertaken and the results of considering their names from the dates the said contesting respondents actually joined on inter-zonal transfers, shall be completed, within 10 weeks from today.

37. The writ petition is allowed in these terms; there shall be no order on costs.

1 17 B rule has been amended with respect to personnel seeking transfer from RPSF to RPF vide amendment dated 3/6/2005 Paragraph 23 of the Standing Order no. 70 has also been amended via circular dated 28/7/2005 "23. If a premature transfer is considered necessary, in the case of Members of Force upto the rank of Inspectors, due to any reason, officers empowered to transfer the Member of the Force may order such transfer stating the reasons for doing so."