

(2001) 03 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1357 of 2000 and 108 of 2001 and WP No's. 24972 of 2000 and 1434 of 2001

Chief Security Commissioner, SCR, RPF, Rail Nilayam,
Sec"bad and Another

APPELLANT

Vs

H. Srinivasa Rao and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Railway Protection Force Act, 1957 — Section 15, 2, 21, 6
Railway Protection Force Rules, 1987 — Rule 16.3, 16.4, 17, 18, 19

Citation : (2001) 2 ALD 678 : (2001) 3 ALT 180

Hon'ble Judges : S.B. Sinha, C.J.; S.R. Nayak, J

Bench : Division Bench

Advocate : M/s. Gourishanker Sanghi, SC for Railways, D.V. Sitaramamurthy, Nooty Ramamohan Rao and K. Rajendran, for the Appellant;

Judgement

S.B. Sinha, CJ

1. The writ appeals and the writ petitions being inter-related were taken up for hearing together and are being disposed of by this common judgment.

2. Writ Appeal No.1357 of 2000 and Writ Appeal No. 108 of 2001 are directed against the judgment of the learned single Judge in WP No.20664 of 1997. The said writ petition was filed by 27 persons who are working as Inspectors and Constables in the Fire Service Branch of Railway Protection Force at various divisions under South Central Railway, Secunderabad, for a declaration that the action of the appellants in promoting the staff in the Executive Branch of Railway Protection Force without fixing the inter se seniority of Fire Service and Executive Branches and also promoting/selecting the juniors in the original Fire Services on their transfer to the Executive Branch as illegal and arbitrary and for other and further consequential directions.

It appears that during the pendency of the WP No.20664 of 1997, some of the

petitioners therein were sought to be transferred to Railway Special Protection Force, altogether a different wing having distinct and separate service conditions. Though initially such transfer was stayed by this Court, but, later on the same was vacated subject to the result of the writ petition. It also appears from the judgment under appeal, eight petitioners are continuing in Railway Protection Special Force.

3. The learned single Judge by the order under appeal dated 28-6-2000 disposed of the writ petition in the following terms:

"That the respondents shall review the cases of all the staff members who have been absorbed in the fire service with reference to the seniority which was maintained in the Fire Branch and to protect the same in the Executive Branch giving the benefits as per Clause 2 of the decision taken on 11-1-1993 and also to review the promotions given to the Juniors ignoring the claims of the seniors and take appropriate action to promote the seniors on the basis of the seniority which was maintained at the fire service branch subject to promotion rules. If necessary notices should be given to the junior employees who were given promotions in preference to petitioners and hear them and then pass appropriate orders. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. However, it is made clear that the absorption shall be made only in Executive Branch except the employees who voluntarily opted to remain in the Special Force."

4. Aggrieved by the above directions, while the Chief Security Commissioner, South Central Railway, RPF, Secunderabad has preferred WA No.1357 of 2000, WA No.108 of 2001 was preferred by nine persons who are originally recruited in Executive Branch of RPF, SCR, as Inspectors, Sub-Inspectors and Head Constables, with leave to prefer the appeal.

5. WP No.24972 of 2000 is filed by some constables working at various places in Railway Protection Force recruited in 31st batch and posted to 4th Battalion, RPSF, New Jalpaiguri. Their case is that pursuant to the orders of the Commanding Officer, RPSF, New Jalpaiguri, dated 13-11-2000 they have been transferred to RPF, SCR, Secunderabad. Their grievance is that at Secunderabad, they have not been permitted to resume duty nor were permitted to sign in the muster roll and they are languishing on Railway platforms. Therefore, they sought for a direction to the 1st respondent viz., Chief Security Commissioner, RPF to permit them to resume and discharge their duties and to pay their salaries etc.

6. WP No. 1434 of 2001 is similar to WP No.24972 of 2000. 11 Constables who have been working in 8th Battalion, RPSF/ Chittaranjan, Maharashtra and who have been transferred to RPF, SCR, Secunderabad by the orders of the Commanding Officer, RPSF, Chittaranjan dated 18-11-2000 filed the said writ petition seeking similar directions as were sought for in WP No.24972 of 2000.

7. Few facts leading to the controversy may be noted: There was a Fire Service

Branch of Railway Protection Force constituted under Railway Protection. Force Act, 1957. The Railway stations were maintained by the said Fire Service Branch of RPF to protect the Railway property from the fire hazards. As the local authorities have sufficiently developed their fire services, the Director-General, RPF issued circular on 18-9-1992 for closing down the static fire stations and mobile fire stations in a phased manner and the staff rendered surplus on account of the closure of such fire stations were directed to be adjusted in the Executive Branch of RPF in appropriate positions and modalities have also been worked out for absorption of surplus staff.

8. The grievance of the petitioners in WP No.20664 of 1997 is that junior most persons in Fire Branch Service were transferred to the Executive Branch keeping the seniors like them in Fire Service Branch in the guise of phased absorption and consequently, they were deprived of their legitimate promotion to higher category in the Executive Branch. This controversy, it appears, has resulted in the petitioners in WP Nos.24972 of 2000 and 1434 of 2001 not being allowed to join duty.

9. Mr. Gouri Shankar Sanghi, learned Counsel appearing for the appellant-Railways, inter alia, submitted that there being three wings in RPF - Prosecution Branch, Executive Branch and Fire Branch, the decision to close down the static fire units was taken on 18-9-1992 cannot be said to be invalid. It was pointed out that the units were closed down on 11-5-1992 and surplus staff of Fire Branch merged with Executive Branch. Transfer to RPSF is to be made as per Rule 17 of Railway Protection Force Rules, 1987 and attention has also been drawn to the fact that some of the persons who have been transferred to Railway Protection Special Force gave letters on 11-11-1999 to the effect that they would be retransferred after three years to their parent wing in the vacancies available. The personnel who were transferred to the Fire Wing, their promotional chances would be in the parent Branch. It was contended that a policy decision in the matter has been taken by the competent authority. He referred to Rule 4 of the RPF Rules (Chapter II) and Section 15 of RPF Act. Mr. Sanghi, in this connection, has drawn our attention to Rules 16.3, 16.4, 22, 17, 18, 19, 27(1)(c), 25. The learned Counsel in support of his arguments also relied upon the decision of the Supreme Court in *Hydro-Electric Employees Union, U.P. and others v. Sudhir Kumar Sharma and others* 1998 (7) Supreme 1.

10. Mr. Nooty Ram Mohan Rao, the learned Counsel appearing for the appellants in WA No.108 of 2001 submitted that there were restrictions of such transfers. Although merger of cadre is permissible, contends Mr. Rao any action beyond the scheme is impermissible. It was urged that in a situation of this nature, the principle of "last come first go" should have been applied. According to the learned Counsel, there are many employees who were juniors to his client have been promoted. Mr. Rao would urge that as policy of transfer is under challenge, the same is justiciable. Reliance in this connection has been placed on the decision of the Supreme Court in *S.P. Shivprasad Pipal Vs. Union of India* and

Others, and a decision of this Court in WP No.1295 of 2000 dated 17-12-2000.

11. Mr. Sitaramamurthy the learned Counsel appearing for the contesting respondents or Fire Branch Service who are 27 in number, Inter alia, submitted that there exists vacancies in the Executive Branch and as such it cannot be said that for want of vacancy they have to be transferred to some other branch.

12. Before proceeding to consider the rival contentions as noticed hereinbefore, we may note the statutory provisions relevant for the purpose of disposal of these matters.

13. The Parliament enacted Railway Protection Force Act, 1957 (for short "the said Act") with a view to provide for the constitution and regulation of an armed force viz., Railway Protection Force for better protection and security of Railway property. In terms of Section 15 of the Act, every member of the force shall for the purpose of the said Act be considered to be always on duty and shall at any time be required to be employed at any place within India.

"Director-General" has been defined in Section 2(a) of the said Act to mean the Director-General of the Force appointed under sub-section (1) of Section 4.

Section 2(ba) defines "enrolled member of the force" to mean any subordinate officer, under officer or any other member of the force of a rank lower than that of under officer.

Section 2(c) defines "member of the Force" to mean a person appointed to the Force under the Act. Section 3 provides for the constitution of the force which is in the following terms:

"3. Constitution of the Force:--(1) There shall be constituted and maintained by the Central Government an armed Force of the union to be called the Railway Protection Force for the better protection and security of Railway property.

(2) The Force shall be constituted in such manner, shall consist of such number of superior officers, subordinate officers, under officers and other enrolled members of the Force and shall receive such pay and other remuneration as may be prescribed".

Section 4 of the Act relates to the powers of superior officers and it reads thus:

"4. Appointment and powers of superior officers :--(1) The Central Government may appoint a person to be the Director-General of the Force and may appoint other persons to be Inspector-General, Additional Inspectors-General, Deputy Inspectors-General, Assistant Inspectors-General, Senior Commandants, Commandants or Assistant Commandants of the Force.

(2) The Director-General and every other superior officer so appointed shall possess and exercise such powers and authority over the members of the Force under the respective commands as is provided by or under this Act."

14. As per Section 6 of the Act, the Inspector-General, Additional Inspector-

General or Deputy Inspector-General are the appointing authorities of enrolled members and they are also vested with powers specified in the rules made under the Act.

Section 21 of the said Act empowers the Central Government to make rules, inter alia, for the purpose of the said Act.

The Central Government in exercise of the powers conferred upon it u/s 21 of the Act, made rules which came into force on and from 3rd December, 1987, known as the "Railway Protection Force Rules, 1987" (for short "the Rules").

Rule 2(h) of the Rules defines "directives" to mean the directions issued by the Director General under Rule 28. As per sub-rule (q) of Rule 2, "schedule" means a schedule annexed to the Rules.

Chapter II of the said Rules provides for the organisation and structure of the Force. Rule 7.1 and Rule 16 relevant for our purpose reads thus:

"7. Railway Protection Special Force:

7.1 The Force shall have a specially trained unit called the Railway Protection Special Force, to be raised as a reserve Force on the battalion pattern.

16. Branches of the Force on a zonal Railway:

16.1 Force deployed on each zonal Railway shall consist of the following three branches, namely :--

(i) Executive Branch,

(ii) Prosecution Branch, and

(iii) Fire Service Branch".

16.2 These branches shall consist of such number of superior officers and other enrolled members of the Force as may be determined by the Chief Security Commissioner with the approval of the Director-General.

16.3 The enrolled members in the respective branches of the Force, who are under the administrative control of the Chief Security Commissioner shall form a separate cadre in each such branch for the purposes of fixation of seniority.

16.4 No enrolled members of the Force shall be eligible for transfer from one branch to another except for filling up of vacancies of and below the rank of Assistant Sub-Inspector in the Prosecution Branch :

Provided that if it is intended to transfer an enrolled member permanently from one branch to another, the approval of the Director-General shall invariably be obtained."

15. Therefore, in terms of Rule 16 there is a force deployed at each zonal Railway which consists of three branches, namely, Executive Branch, Prosecution Branch

and Fire Service Branch. Rule 17 deals with the Executive Branch. Rules 18 and 19 deals with the Prosecution Branch and Fire Service Branch respectively. Rule 22 provides for command, supervision etc., at the Union level. Rule 22.2 empowers the Director-General as head of the force to take all possible steps for the co-ordinated and integrated growth of infrastructural facilities for the development and welfare of the Force. Rule 22.3 reads thus:

"22.3 The Director-General shall scrutinise the various proposals in the budget estimates of the Force, as submitted by the General Managers of the Railways to the Central Government, and make his own assessment and recommendations in respect of allotment of funds and issue such directions in this behalf to Chief Security Commissioner concerned as he may consider necessary."

16. The administration of the Force in zonal Railway vests in Chief Security Commissioner in terms of Rule 23.1 which is subject to any directions issued by the Central Government or Director-General in this behalf. Chapter IV the said Rules deals with powers and responsibilities. Rule 27 provides for the administrative powers of the Director-General. Rule 27(a) provides that the Director-General shall exercise all executive and administrative powers in relation to the Force and its deployment and by virtue of Rule 27(1)(c) the Director-General was vested with the power to order posting, transfer including inter-zonal Railway transfer and training of all superior officers and enrolled members of the Force. Rule 28 of the Rules empowers the Director-General to issue directives. In terms of Clause 5.4 of the Schedule appended to the rules all enrolled members of the Force can be transferred from one Railway to another Railway or from Railway Protection Special Force to Zonal Railways and vice-versa after obtaining the concurrence of the Director-General in conformity with the rules on the subject.

17. It is not in dispute that a policy decision had been taken to close down the static units of fire wing in a phased manner within a span of six years. It is not disputed that the closure of the static units of fire wing started on or about 18-9-1992 and the process completed in 1999. Admittedly, a policy decision was taken for absorption of the staff of the Fire Service Branch in the Executive Branch. The decisions taken in the meeting held on 11-1-1993 for working out the modalities of absorption and which are relevant for the instant case are as under:

"1. That the surplus staff of fire branch may be absorbed and merged with the Executive Branch after imparting them orientation training etc., and be made eligible for promotion etc., in the Executive Branch itself.

2. Since the grades of Constable/Fire up to Inspector Grade-I and Constable/Executive up to Inspector Grade-1 are identical, staff of fire branch of RPF can be absorbed in the corresponding rank in the Executive Branch. For fixation of seniority the date of appointment/promotion on ad hoc basis in grade may be taken into account subject to the existing inter se seniority not being affected. If

the date of appointment/promotion of any one is the same, the date of appointment/promotion on regular basis in the lower grade may be taken into account. Even if the date of appointment/promotion in the lower grade are also the same, then the date of birth may be taken into account, order being senior".

18. There cannot be any doubt that in service jurisprudence, transfer of an officer must be confined to the cadre itself subject to any statutory rule operating in the field. This aspect of the matter has been dealt with by a Division Bench of this Court in WA Nos. 1295 and 1341 of 2000 dated 27-12-2000 (M/s. Anand v. P. Ravindra).

However, in the instant case, a policy decision had been taken to close down one wing of the force i.e., Fire Branch and merge the same with the other. No exception to the exercise of such power by the competent authority can be taken.

19. All the Branches of the RPF must make a coordinated effort to discharge onerous duties and for the said purpose, as noticed hereinbefore, Section 15 provides for transfer of an employee from one place to another throughout India.

20. The Courts have been noticing the difficulties arising in the matter of seniority, promotion etc., whenever merger of any service takes place, but having regard to the exigencies of service, the same cannot altogether be avoided. Whenever such a scheme comes into being, dissatisfaction is caused to one section of the employees.

Each case, must, therefore, be judged having regard to the policy decision adopted in that regard. The Court, normally, is not inclined to interfere with such policy decisions unless the same is found to be patently arbitrary or illegal. There cannot be any doubt that by merger of such cadres, the chances of promotion of some persons may be accelerated and some others may be diminished, but the same, by itself may not be a ground for questioning the validity thereof.

In *Hydro-Electric Employees Union U.P. and others v. Sudhir Kumari Shartna* (supra) the Supreme Court while dealing with the merger of three categories of workmen in U.P. State Electricity Board, inter alia, held:

"....The power of the Board as employer to constitute a cadre by amalgamating different posts under the Board is undoubtedly very wide. But, in exercise of such power if it is established that the Board has not applied its mind to the relevant criterias and thereby grossly dissimilar posts have been brought together and constituted into one cadre, it may be possible for a Court to interfere with such amalgamation and formation of unified cadre".

The Apex Court also referred to its earlier decision in *Reserve Bank of India Vs. N.C. Paliwal and Others*, wherein it was held:

"that Articles 14 and 16 do not forbid the creation of different cadres for Government service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a

matter for the State to decide whether to have several different cadres or one integrated cadre in its service. This is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by a combined seniority scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality."

21. Yet again in *S.P. Shivprasad Pipal Vs. Union of India and Others*, , the Apex Court held that a decision to merge the cadres is essentially a matter of policy.

22. As regards the adverse effect on the chances of promotions of one cadre and despite a contention made to the effect that by reason of the merger the appellant therein had not suffered any prejudice, it was held:

"However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But, this cannot be a ground for setting aside the merger which is essential a policy decision. This Court in *State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others*, , examined this contention. In *S.L Dutta* case a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the *State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others*, , this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service."

23. The Court has to bear in mind that nobody has a right of promotion. He has merely a right to be considered in terms of Article 16 of the Constitution of India. Only in a given case where a policy decision has not been given effect to, the Court may interfere in such matters. From the judgment of the learned single Judge it does not appear that any specific instance was brought to the notice of the learned Judge to show that any arbitrary action had been taken by the authority.

24. From what level of employees the process of merger should take place is entirely a matter of policy. As it had been done in a phased manner, if and when any deviation takes place from the policy decision, the same could be questioned.

25. In this case, the writ petition was filed long after the merger of the Fire Branch with the Executive Branch, inter alia, for the following reliefs:

"to issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus to declare as arbitrary, illegal and in violation of the provisions of Articles 14, 16 and 311 of the Constitution of India the action of the respondents in promoting the staff in the Executive Branch of RPF without fixing the inter se seniority of Fire Services and Executive Branches as also promoting/ selecting juniors in the original Fire Services cadre without completing the 3rd and final phase of RPF Fire Stations and for further direction:

(i) to consider promotion/selection of staff in the Executive Branch of RPF, South Central Railway Division to be made on the basis of inter se seniority finalised after the merger of all such surplus staff of Fire Services Branch of RPF with Executive Branch of RPF.

(ii) to restore seniority to all such surplus staff of Fire Services Branch of RPF merged with Executive Branch of RPF over their juniors who were promoted earlier by assigning national dates of promotion;

(iii) to forthwith complete the 3rd and final phase of closure of RPF Fire Stations and consequentially merge the surplus staff of Fire Services

Branch with Executive Branch of RPF in terms of Lr.No.91/Sec(Spl.)/200/8/ 1 dated 18-9-1992".

26. Although the learned single Judge held that juniors were transferred first and they had been given promotion, it has not been found as to how the rights of those who are in the Executive Branch were taken away.

We are of the view that in a case of this nature, the application of principle of "last come first go" cannot be applied.

27. If the persons affected can show that there had been a flagrant violation of the policy decision itself, we are of the opinion that, then only the same can be subject-matter of judicial review. A policy decision which is in the exclusive domain of the State can be struck down only when the same is ultra vires or unconstitutional. Bereft of violation of Articles 14 and 16 of the Constitution of India, no policy decision can be done away with.

We, therefore, are of the opinion that merger of the Fire Wing with the Executive Wing and absorption of the employees of Fire Wing in the Executive Wing in a phased manner cannot be held to be bad in law.

28. However, so far as to the orders of transfer of some of the petitioners in WP No.20664 of 1997 to Railway Special Protection Force during the pendency of the writ petition and the transfer of personnel from RSPF to RPF is concerned, the same must be held to be illegal. The provisions of Railway Protection Force Rules do not contemplate that there can be a transfer from one cadre to another cadre. Rule 16.4, as noticed hereinbefore, must be given effect to as it is a well settled law that in absence of any statutory rule, nobody can be transferred from one cadre to another cadre without his consent. The general power of transfer which has been referred to in the Act or the Rules made thereunder must necessarily mean that such powers are to be exercised keeping in view the fact transfers must be made in the same wing itself subject of course to the special powers conferred therein. The orders of transfer of such personnel to RPSF must, therefore, held to be bad in law. Having regard to the fact that various persons have been transferred to Hyderabad from different states, it is necessary that the order of this Court be implemented forthwith and wrong wherever done must be undone.

29. With the aforementioned directions and observations, the writ appeals and the writ petitions are disposed of. No order as to costs.