

(2014) 01 CAL CK 0079
In the Calcutta High Court
Case No : Writ Petition No. 31548 (W) of 2013

Debasis Bandopadhyay

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Constitution of India, 1950 — Article 12
Railway Protection Force Act, 1957 — Section 10

Citation : (2014) 3 CHN 40

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Achin Majumdar, for the Appellant; Ashim Kumar Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—The petitioner is a member of the Railway Protection Force (hereafter RPF), presently posted at RPF Post, Bolpur under Howrah-II Division as an inspector-in-charge. It is claimed by him that he was considered for promotion to the rank of Assistant Security Commissioner (Junior Scale); that based on the recommendation of the departmental promotion committee, a select list was prepared wherein his name figured; and that such list on receiving the approval of the Ministry of Railways and clearance from the vigilance cell, a posting order dated August 12, 2013 was issued by the Director, RPF posting the promotees at various places. Insofar as the petitioner is concerned, he was posted as Assistant Security Commissioner at Alipurduar junction under North Frontier Railway against an existing vacancy vide such order. It is also claimed that although the other promotees were allowed to join the respective posts, the petitioner was disallowed joining on the ground of a contemplated disciplinary proceeding against him for which he was placed under suspension vide order dated August 5, 2013 passed by the Senior Divisional Security Commissioner, RPF. This was followed by charge-sheet dated September 2, 2013 issued by the same officer. The petitioner complains that the disciplinary proceeding against

him has been initiated mala fide to deprive him the fruits of his devoted and sincere service resulting in he being found fit for promotion by the departmental promotion committee and the approval of its recommendation by the Ministry of Railways (Railway Board).

2. Mr. Majumdar, learned advocate appearing for the petitioner vehemently contended that as on date the Ministry of Railways (Railway Board) approved the recommendation of the departmental promotion committee, no disciplinary proceeding was pending against the petitioner and merely on the ground of issuance of an order of suspension the respondents acted illegally in not allowing him to join the promotional post. He has, accordingly, prayed for an order on the respondents to allow the petitioner to join on the basis of the posting order on promotion, notwithstanding that the disciplinary proceeding is pending.

3. In course of hearing, I called upon Mr. Ganguly, learned advocate for the respondents to place before me the policy regulating promotion of the members of the RPF. The policy has since been produced, to which reference shall be made at a later part of this judgment.

4. I have considered it unnecessary to call upon the respondents to counter the allegations levelled in the writ petition by filing an affidavit since the posting order dated August 12, 2013 issued by the Director, RPF, on which the petitioner has placed reliance, seals his fate.

5. The posting order dated August 12, 2013 makes the position clear that relief claimed by the petitioner, at least at this stage, ought not to follow. It is found on perusal thereof that 60 (sixty) Inspectors of the RPF were sought to be promoted as Assistant Security Commissioner/Assistant Commandant purely on ad hoc basis. The penultimate paragraph of the said order is of significance and as such quoted below:

Appointments of the above officers are subject to DAR/Vigilance/Criminal case clearance by the Railways. The officers should be advised that the above officiating arrangement is purely on ad hoc basis and this promotion would not confer on them any claim for promotion on regular basis or for seniority.

(bold in original)

6. Ordinarily, an employee of any organization which is comprehended to be a State within the meaning of Article 12 of the Constitution does not forfeit his right of being considered for promotion merely because a disciplinary proceeding is pending against him or he is an accused in a criminal case on the date of such consideration. In view of the presumption in law that an accused is innocent unless proved guilty, the promotion policy or rules usually provide for adoption of the "sealed cover procedure". The recommendation of the departmental promotion committee in respect of such an incumbent is kept in a sealed cover for being opened after the conclusion of the disciplinary proceeding/criminal case, as the case may be. If the incumbent is either exonerated or acquitted, the

seal is broken and if there be a positive recommendation for promotion, the same is given effect and the promotion is ordered retrospectively to ensure conferment of benefit which was legally due to him from the date promotion is given to others based on such recommendation. However, a finding that the incumbent is guilty (arrived at either in the disciplinary proceeding or in the criminal case) normally results in forfeiture of the right to be promoted even if the Committee is found to have given a positive recommendation for promotion.

7. Admittedly, in the present case, the "sealed cover procedure" was not resorted to since no disciplinary proceeding was pending on the date the petitioner was considered by the departmental promotion committee. The assertion of the petitioner that the order dated August 12, 2013 was issued after obtaining vigilance clearance is belied by the penultimate paragraph thereof, which has been quoted supra. Before the order dated August 12, 2013 was issued, the petitioner had been suspended with effect from August 5, 2013. The effect of the order placing the petitioner under suspension on August 5, 2013 has, therefore, to be examined in the light of the promotion policy governing the members of the RPF.

8. A circular letter dated January 21, 1993, of the Ministry of Railways (Railway Board) on the subject of "Promotion of Railway servants who are under suspension or against whom departmental proceedings/prosecutions have been initiated - Procedure and guidelines to be followed - Cases of promotion of Group "D" & Group "C" Railway servants" has been placed before me. It contains instructions on the procedure required to be followed in the matter of promotion of Group D and Group C railway servants against whom disciplinary/court proceedings are pending. Paragraph 2 provides the classes of railway servants to whom the instructions would be applicable, and "railway servants under suspension" finds place in item (I) thereof. Paragraph 3.1 of the circular letter provides that a Railway servant shall not be promoted even if already borne on a selection panel/suitability list till after the results of the proceeding against him are known. In terms of Section 10 of the Railway Protection Force Act, 1957, every member of the RPF shall, for all purposes, be deemed to be railway servants. There is, therefore, no dispute that the circular letter dated January 21, 1993 applies to the petitioner. Paragraph 3.3 further lays down that on the basis of the position assigned in the selection panel/suitability list a list of qualified person should be prepared, inter alia, excluding the names of those mentioned in items (I) to (III) of paragraph 2 and including the names of those who are not under suspension and against whom disciplinary proceedings for the imposition of only a minor penalty have been initiated. It appears from the circular letter that in respect of an incumbent who finds place in the selection panel/suitability list, a vacancy has to be reserved and he shall be promoted in his turn depending upon the outcome of the proceedings. Viewed in the light of the circular letter as well as the order dated August 12, 2013, it is difficult to hold that the petitioner acquired a right of being promoted immediately on the issuance of the order dated August 12, 2013. Apart from paragraphs 2(I), 3.1 and 3.3 standing in the

way, the order dated August 12, 2013 clearly indicated that the promotions were ad hoc and the same were not intended to confer on the promotees any claim for promotion on regular basis or seniority, so long vigilance clearance is not given. Since the petitioner had already been suspended by the time the order of posting was issued in contemplation of major penalty proceedings and obviously no clearance had been given in his case, the respondents did not act illegally or in an arbitrary manner in not allowing him to join the promotional post. The petitioner, therefore, has no legal right, which can be judicially enforced.

9. I find no reason to interfere. The writ petition is dismissed, without costs. The respondents shall, however, promote the petitioner should the disciplinary proceeding terminate with an order of exoneration.

Urgent certified copy of this judgment and order, if applied for, be furnished to the applicant at an early date.