

(2017) 03 DEL CK 0038
In the Delhi High Court
Case No : WP (C) 5657 of 2010

Dipak Das

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Protection Force (Amendment) Rules, 2007 — Section 21
Railway Protection Force Rules, 1987 — Rule 28, Rule 70

Citation : (2017) 162 DRJ 472

Hon'ble Judges : Ms. Indira Banerjee and Mr. Anil Kumar Chawla, JJ.

Bench : Division Bench

Advocate : Ms. Madhu Tewatia, Mr. Adhirath Singh and Mr. Sachin Saini, Advocates, for the Petitioner; Mr. Rajan Sabharwal and Mr. Abhishek Kumar Abhinav, Advocates, for the Respondent Nos. 1 to 3; Ms. Anjana Gosain, Mr. Rahul Singhal and Mr. Ankur Chhibber, Advocates, for the Respondent Nos. 4 to 7

Final Decision : Disposed Off

Judgement

A. K. Chawla, J.—By the petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus directing the respondents to regularise their ad-hoc promotions as Head Constables (Band) RPSF in terms of the policy directive No.18 dated 27.02.1997 framed under Rule 28 of the RPF Rules 1987 in short "the subject rules" read with Section 8 of the Railway Protection Force Act, 1957 in short "the subject Act" simultaneously, seeking directions that the notification dated 21.07.2010 issued for the selection of Head Constable/Band in RPSF, was not applicable to the petitioners. Consequentially, the petitioners seek to be placed in the seniority of the regular Head Constables (Band) from the date of accrual of regular vacancies.

2. Succinctly, the petitioners plead that the ranks held by the personnel in the categories/units of Armourers, Dog Squad and Band were declared ex-cadre in the RPSF by the respondents/DG-RPF and that, under the subject Act and the rules framed thereunder, there was no provision for induction and promotion in

such said ex-cadre ranks. That, in exercise of the power conferred under the subject Act and the rules, the DG, RPF had issued directive No.18 dated 27.02.1997 containing the provisions for governing/regulating the induction and promotion in such ex-cadre ranks of Armourers, Dog Squad and Band. In the year 2000 (April/July/August), the petitioners along with others were recruited as Constable (Band) in RPSF and posted in the respective battalion of the RPSF. It is the case of the petitioners that they were recruited as Constable (Band) in RPSF against regular sanctioned vacancies in accordance with the procedure prescribed under Directive 18 dated 27.02.1997 and had also undergone the prescribed mandatory training of 15 months for being appointed as Constable (Band) and therefore, their appointment was regular in nature. In the next promotional post of Head Constable (Band), though, it was not so provided in the directives, the Railway Board has been granting promotion to the post of Head Constable (Band) after they completed a period of 8 years as Constable (Band), subject to fulfilment of other eligibility criteria stipulated in Directive 18 i.e. Trade Test, viva voce and record, which is the selection process by DPC. According to the petitioners, for their promotion as Head Constable (Band), a regular selection process was undertaken by the respondents on 02.07.2008 at 6BN/RPSF/BBS/Delhi against regular substantive vacant posts of 24 Head Constables (Band) (including 3 anticipated vacancies) and for the purpose, a regular DPC was constituted in terms of Directive 18 as was then applicable and the DPC had so conducted, the Trade Test and viva voce under Rule 70 and the Directive 18 for their such selection. It is pleaded that on the conclusion of such selection process, only 22 candidates i.e. the petitioners qualified to be promoted as Head Constables (Band). Vide Office Order dated 20.10.2008, the competent authority granted approval for the ad-hoc promotion of the petitioners as Head Constables (Band), RPSF. It is the case of the petitioners that vide order dated 20.10.2008, the respondents had also promoted and approved regularisation of two (2) Sub-Inspectors (Band) and three (3) ASI (Band) on ad-hoc basis after conducting similar selection process as was conducted viz-a-viz the petitioners. In this background, the petitioners assail office order dated 21.7.2010 directing all the Constables (Band), who have rendered 8 years of regular service in the grade and have successfully completed young bandsmen's post (or equivalent) to attend the selection for promotion as Head Constables (Band) in terms of Rule 71.1 and 71.2 of the subject rules. According to the petitioners, the office order dated 21.07.2010 was not applicable to the petitioners in as much as they had already appeared for the regular selection process and stood qualified. Petitioners have thus prayed for being regularised in terms of the directive No.18 dated 27.2.1997 framed under the subject Act and the Rules. According to the respondents however, directive No. 18 dated 27.2.1997 whereby the ranks held by the personnel in the categories of armourers, dog-squad and band in RPF/RPSF were made ex-cadres, was superseded with the issue of another directive 18 on 18.7.2006 modified/amended vide notification dated 13.9.2006 and 4.12.2007, and, thereby, only the personnel working in armourer and dog-squad were to be ex-cadres. According to the respondents, the band was made a

separate cadre vide Gazette notification issued vide GSR No. 527 (E) dated 1.8.2007 amending RPF Rules, which, inter-alia laid down the years of service put in different ranks for promotion to the higher rank of band cadre and that prior to the said notification, there were no such stipulations. It is also the case of the respondents that the regular selection in band cadre was to be held as per the guidelines provided in directive 27 dated 21.7.2010 read with Gazette notification dated 1.8.2007. These guidelines provided for selection as per rule 70 i.e. on the basis of seniority-cum-suitability. Thus, according to the respondents, the selection for promotional posts of Head Constable (Band) was to be conducted in consonance with the amended rules dated 1.8.2007 and directive 27 and in pursuance thereof only, the selection process was initiated vide notification dated 21.7.2010. As for the regularisation of promotion of five personnel (two SIs and three ASIs), respondents plead that they were Ex-servicemen having physical and professional training and were so exempted from initial training after recruitment but that was not the case for the petitioners and therefore, the petitioners could not be treated at par with them.

3. In the submissions of the Id. counsel for the petitioners, the petitioners were promoted as Head Constables (Band) in July, 2008 having undergone a regular selection against regular vacant posts by DPC, as per the then applicable rules and the guidelines i.e. directive 18 dated 27.2.1997, and therefore, the promotions of the petitioners were required to be regularised and did not attract the petitioners to undergo a selection process afresh as envisaged in the notification dated 21.7.2010. In the other limb of the submissions, it was contended that the appointments having been made through a regularly constituted DPC, the amended rules of 2007 could not be enforced inasmuch as such, the amended rules could not be applied to the vacancies that had occurred prior to its being and against which, the petitioners had already been promoted. Also in the submissions of the Id. counsel, the selection process for the petitioners having been concluded earlier, as per the then applicable rules and the guidelines, such process could not be over-reached and altered with the issuance of the notification dated 21.7.2010, which lays down new guidelines for the selection. It was also contended that the petitioners at the time of appointment as Constable (Band) had undergone training of 15 months and, therefore, such training period was required to be reckoned for qualifying for promotion as Head Constable (Band) RPSF and the petitioners therefore, qualified the stipulation of 8 years of service as Constable (Band) in the required grade. It was also strenuously contended that the petitioners were promoted through a regular selection process as per the then applicable rules and the guidelines and that their promotion as Head Constable (Band) was not a stop gap arrangement or on temporary basis on account of some exigency and therefore, the promotion so made, though titled ad-hoc, should necessarily be construed to be on regular basis. In support of such submissions, Id. counsel for petitioners placed reliance on (2006) 4 SCC 1 Secretary, State of Karnataka and Others v. Umadevi and Others, (2011) 2 SCC 429 State of Rajasthan and Others v. Daya

Lal and Others, (1998) 9 SCC 223 B.L.Gupta and Another v. M.C.D. and (1997) 6 SCC 406 L.K.Sukhija and Others v. Union of India and Others.

4. In the submissions of the Id.counsel for the respondents, however, the directive 18 dated 27.2.1997 was superseded with directive 18 issued on 18.7.2006 and thereby, the category of Band was taken out from the post of Ex-cadre and therefore, the promotion to such post were to be governed by the rules notified vide Gazette notification dated 1.8.2007 only. It was submitted that while as per the said notification dated 1.8.2007, the rule for promotion was specified to be governed under Rule 70 of the subject Rules, which is a procedure for promotion of enrolled members of the Force, the guidelines for DPC for holding selection under Rule 70 is stipulated in Rule 71 of the Subject Rules and according to Rule 71.3, a panel is to be drawn from amongst the candidates securing 60% or more marks in the order of their respective seniority in the rank and that, a Constable for the promotion of Head Constable can be considered only if, he has completed 8 years regular service in the grade. As for the petitioners, it was submitted that the petitioners were given ad hoc promotion to the post of Head Constable vide order dated 20.10.2008 as the guidelines for promotion were not finalised though the rules for promotion were notified and that, in the communication dated 20.10.2008, it was clearly stated that the promotions were ordered purely on ad-hoc basis till a regular selection is held and it did not confer any right on the staff to claim seniority or other benefit of regular promotion. Also, in his submissions, the initial training of the petitioners was a condition precedent to their appointment as Constables (Band) and therefore, their appointments have to be reckoned from the date from which they have been working against the post. In support of his submissions Id. counsel for respondent equally adverted to State of Rajasthan and Secretary, State of Kerela cases (supra) relied upon by the Id. counsel for the petitioners.

5. Vide directive No.18 dated 27.02.1997 issued under rule 28 of "the subject rules" read with Section 8 of "the subject Act", the Director General issued the directions for the ranks held by the personnel in the categories/units of armourers, dog squad and band to be ex-cadre ranks and also issued instructions for regulating the induction and promotion in such ex-cadre ranks, within the lawful authority vested in him, is not in question. In pursuance of this directive No.18 dated 27.02.1997, the petitioners joined as Constables in RPF/RPSF (Band) during April/May/July 2000 is equally not in question. It is a matter of record that in exercise of power conferred under Section 21 of "the subject Act", the Central Government notified rules to be called Railway Protection Force (Amendment) Rules, 2007 in short "the Rules 2007" to amend the Railway Protection Force (Band) (Recruitment and Promotion) Rules 1987. The purported Railway Protection Force (Band) (Recruitment and Promotion) Rules 1987 did not surface before this Court nor any explanation for its non-availability has come to be given on behalf of the respondents in spite of the fact that the petitioners pointed out for their absence. It appears that there are no Railway Protection Force (Band) (Recruitment and Promotion) Rules 1987 but for the Railway

Protection Force Rules 1987 i.e. "the subject rules" and that, by the said amendments, "the subject Rules" only were amended. A constructive reading of notification dated 1.8.2007 would also necessarily imply so, in as much as, it reads as under :

"Ministry of Railways (Railway Board)

Notification

New Delhi, the 1st August, 2007

G.S.R. 527(E).—In exercise of the powers conferred by Section 21 of the Railway Protection Force Act 1957 (23 of 1957), the Central Government hereby makes the following rules further to amend the Railway Protection Force (Band) (recruitment and promotion) Rules 1987, namely :-

1. (1) These rules may be called the Railway Protection Force (Amendment) Rules 2007.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Railway Protection Force Rules, 1987, after rule 45.1, the following rule 45.1A shall be inserted, namely:-

"45.1A. The qualifications, method of recruitments, classification and scale of pay etc., for the posts of Inspector (Band Master), Sub-Inspector (Band Master), (Assistant Sub-Inspector (Band), Head Constable (Band), Constable (Band) shall be as specified in Schedule-VI annexed to these Rules."

The fact thus remains that with the said notification, "the subject Rules" came to be amended to incorporate Rule 45.1A which provided for the qualifications, method of recruitment, classification and scale of pay etc. for the post of Inspector (Band Master), Sub-Inspector (Band Master), Assistant Sub-Inspector (Band), Head Constable (Band) and Constable (Band). Relevant to the subject, it is to be noted that with the notification dated 1.8.2007, rule 45.1A came to be inserted providing for the qualifications, method of recruitments, classification and scale of pay etc. for the post of Inspector (Band Master), Sub-Inspector (Band Master), Assistant Sub-Inspector (Band), Head Constable (Band) and Constable (Band) inter-alia as regards the promotion from the rank of Constable (Band) to Head Constable (Band). During the currency of the amended rules, the petitioners came to be promoted as Head Constable (Band) on ad-hoc basis following directive no. 18 dated 27.2.97. Though, the petitioners were so selected and promoted through the process of a DPC following directive no. 18 dated 27.2.97, the fact remains that at the relevant point of time of their such selection and appointment as Head Constable (Band) on ad-hoc basis, the inserted rule 45.1A, which had the statutory effect, was in operation. During the currency of such inserted rules only, the directive no. 27 dated 21.4.2010 for the selection for promotion to the rank of Head Constable (Band) in RPSFA on regular

basis came to be issued. Notification dated 21.7.2010 is the outcome of directive no. 27 dated 21.4.2010, which is not shown to be in violation of the newly inserted rule 45.1A nor any contention assailing it on any ground of any illegality or infirmity has come to be made.

6. In the given factual conspectus, does the selection and promotion on ad-hoc basis through a DPC, invest the petitioners with a right to be regularized in the rank of Head Constable (Band), is the moot question for consideration. To assert so, Id. counsel for the petitioners strenuously contend that in the absence of any provision in the subject rules as regards the induction, appointment and promotion in the ex-cadre rank of band etc. statutory directive no.18 had come to be issued and it was sacrosanct for the purposes of the eligibility criteria/ qualifications/selection procedure for the ex-cadre ranks/post of band in RPSF/ RPF and would ipso fact also apply for the purposes of promotion to the higher ranks. Of course, directive no. 18 dated 27.2.97 by itself states that there was no provision in the RPF Rule 1987 regarding the induction and promotion in the ex-cadre posts of Armourers, Dog Squad and Band and for meeting such requirement only, the instructions, thereby, had come to be issued for regulating the induction and promotion in such ex-cadre ranks. It is however to be noted that this directive no.18 while providing for such instructions, equally stipulated as under :

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2(c) These ex-cadre RPF/RPSF staff will be required to attend the selection/ screening tests in the Executive Branch also for their promotion in the Executive cadre. Their lien in the Executive cadre of the Zonal Railways/RPSF will be maintained and the eligible staff will be considered/called for promotion tests/ selections at the appropriate time.

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(i) The Constables of these ex-cadres posts who are promoted as Naiks in the Executive cadre will be entitled to the rank and pay applicable to Naiks and will be deemed to be senior to the other Constables working in the ex-cadre posts. The CSCs will issue orders adjusting the ex-cadre strength with the Executive Cadre accordingly.

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(I) Re-employment of such personnel with the requisite qualifications and experience and from the same trade will be considered whenever these ex-cadre posts need strengthening with pre-qualified personnel. These personnel will serve in the ex-cadre posts for which they are appointed and will seek promotion

only within the ex-cadre category to which they were appointed. They will, in no case, exceed 10% of the ex-cadre strength for the particular trade. For this category of induction, the rank, qualification etc. will be as shown in Schedules I, II and III of this Directive.

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(m) The ex-cadre staff, when promoted in the executive cadre, will undergo the pre-promotion courses/trainings prescribed for the Executive Cadre. During the said training, the badges of rank worn, if any, will be the same as those for the Executive Cadre trainees. However, the pay of the ex-cadre officials will not be reduced during the period of the training."

A constructive reading of the above-said instructions contained in directive no.18 dated 27.2.97 leaves no doubt that the staff appointed to the ex-cadre posts inter alia Band, were to hold lien in the executive cadre of the Zonal Railways/RPSF. This necessarily implies that the staff taken in the ex-cadre ranks of RPF/RPSF under the said directive no. 18 dated 27.2.97 was strictly on ad-hoc basis. It can therefore, be safely said that the petitioners were not taken in the ex-cadre ranks of Constable (Band) on regular basis. Be that as it may, it is the own case of the petitioners that they were promoted as Head Constable (Band) on ad-hoc basis. Their such ad-hoc promotion was made after the issuance of notification dated 1.8.2007, when the subject rules came to be amended and the qualifications, method of recruitment, classification and scale of pay etc. for the posts inter alia Head Constable (Band) came to be stipulated thereby. Undisputedly, the petitioners promotion as Head Constable (Band) was not in conformity with the newly inserted rule 45.1A in the subject rules and therefore, their such promotion cannot be said to be in consonance with the then applicable rules, which had the statutory force. Though, they came to be selected as Head Constable (Band) through a DPC, their promotion was ad-hoc and not on regular basis. Even otherwise, admittedly, the then applicable rules inserted vide notification dated 1.8.2007 inter alia prescribed the eligibility criteria for selection to be 8 years of regular service as Constable (Band). None of the petitioners is shown to be meeting the eligibility criteria of being in regular service of Constable (Band) for 8 years. An ad-hoc promotion per se cannot be treated to be regular. Ad-hoc promotion even though made through a process of DPC, cannot be said to be for the purposes of regular promotion especially, when it was not in consonance with the then applicable rules. It has therefore, to be a stop gap arrangement till the time the regular promotions come to be made as per the then applicable rules. Ad-hoc promotions therefore, do not invest any right in the petitioners to claim regularization, as prayed for. Notification dated 21.7.2010 which came to be issued for selection of Head Constable (Band) which is not shown to be in contravention with the then applicable rules, therefore, cannot be faulted with. Here, it is worth noting that this notification is not a directive issued under rule 28 of the subject rules and the subject Act.

It only provided for an intimation and the basis for selection inviting the eligible candidates to join the selection process. For the reasons unexplained, the petitioners have not assailed the directive 27 dated 21.4.2010, which had come to be issued on the formation of separate cadre of Band with the insertion of rule 45.1A and notified on 1.8.2007. Petitioners did not choose to assail directive 27 dated 21.4.2010, we, assume, petitioners refrained, because it did not suffer from any illegality. Be that as it may, directive 27 dated 21.4.2010 having been not assailed by the petitioners, in our view, challenge to notification dated 21.7.2010 is meaningless. Suffice to say, by the said notification, which is in consonance with directive 27, all eligible Constables (Band) were invited for being selected and promoted as Head Constable (Band) on regular basis. Merely, the directive 27 or the notification dated 21.7.2010 came to be issued subsequent to the promotion of the petitioners on ad-hoc basis, can the statutory provisions, be overlooked" To our mind, certainly not. At the relevant time of their ad-hoc promotion, the ex-cadre rank was governed in and by virtue of notification no. G.S.R. 527 (E) dated 1.8.2007, whereby, rule 45.1A had come to be inserted in the subject rules. In the face of such inserted rule 45.1A, the promotion of the petitioners as Head Constable (Band) on ad-hoc basis than being on regular basis, we do not find to be suffering from any illegality or arbitrariness.

7. As regards the candidates for two (2) SI (Band) and three (3) ASI (Band) on ad-hoc basis having been regularized in the similar circumstances as were the petitioners placed, the respondents contend that they were the ex-servicemen and therefore, the petitioners could not draw parity with them. We do not deem it necessary to look into this aspect of parity for the simple reason that on the date of the appointment of the petitioners as Head Constable (Band) on ad-hoc basis, the newly inserted rule 45.1A, which had the statutory force, was in operation and any appointment made on regular basis in contravention thereof, would be a violation thereof.

8. None of the judgments relied upon by the Id. counsel for the petitioners is of any avail to the petitioners in the given facts and circumstances of the case. Secretary, State of Karnataka & Ors. (supra) case by itself clarifies that there cannot be any legitimate expectation for being absorbed, regularized or granted permanent continuation in public employment unless it violates their rights under Article 14 & 16. In view of the insertion of rule 45.1A in the subject rules, any expectation there-against, would be contrary to the constitutional scheme. In judgment (supra), the Hon''ble Supreme Court observed as under :

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment.

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..... In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State..... "

In view of the foregoing, the reliance placed upon judgment (supra) is misplaced. L.K. Sukhija's case (supra) is equally of no avail inasmuch, it was a case, where the promotions were described ad-hoc in the absence of recruitment rules having been finalised. In the case in hand, as observed to earlier, the separate cadre of Band had come to be formed and the newly inserted rule 45.1A was already in force. State of Rajasthan & Ors. case (supra) is equally of no avail to the petitioners inasmuch as, the ad-hoc promotion of the petitioners was not in consonance with the then applicable rules. Merely, the petitioners came to be promoted on ad-hoc basis through a DPC, it cannot be implied therefrom that their promotion was on regular basis. Contention raised to the contrary is therefore, rejected.

9. For the foregoing reasons, the petition fails. Interim order dated 19.8.2010 stands vacated. Keeping in view however, the peculiar facts and circumstances of the case, it is directed that any of the financial benefits availed of by the petitioners in the ex-cadre post of Head Constable (Band) on ad-hoc basis, which may be higher than their original cadre (executive cadre), till the time of their reversion, shall not be recoverable from the petitioners. Writ petition stands disposed off accordingly.