
(2019) 09 DEL CK 0187

In the Delhi High Court

Case No : Civil Writ Petition No. 1382, 8446, 8761 Of 2018, 2101 Of 2019, Civil Miscellaneous No. 15204, 39955 Of 2019

Gaurav And Ors

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 7, 28, 70, 87, 99.2
Railway Protection Force Act, 1957 — Section 8, 8(1), 15(1), 21

Citation : (2019) 9 AD(Delhi) 133

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Amit Dubey, Rajeev Ahuja, Jagjit Singh, Rashmi Malhotra, Preet Singh, Vipin Chaudhary, Soin Khan, Shailendra Singh, Arush Kumar, H.S. Tiwari

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

Introduction

1. The common question in all these writ petitions concerns the lateral transfer of persons working with the Railway Protection Special Force ("RPSF") to the Railway Protection Force ("RPF").

2. At the outset, it requires to be noticed that by an order dated 3rd April, 2019, in W.P.(C) No. 3380/2019 (Dharmendra Kumar Yadav v. Union of India), this Court had rejected a similar prayer for a direction to the Respondents to transfer the Petitioners who were working in the RPSF to the RPF. The Court had in that case further declined to quash an order promoting the Petitioners therein to the post of Head Constable ("HC") in the RPSF. The Court had in that process also discussed Directive 32 dated 18th September, 2014, which was issued under Rule 28 of the Railway Protection Force Rules, 1987 ("RPF Rules") read with Section 8 of the Railway Protection Force Act, 1957 ("RPF Act"), and the Revised

Directive dated 28th December, 2017.

3. Learned counsel for the Petitioners have sought to distinguish the above decision and, therefore, have been heard at length in the present petitions.

Orders in W.P.(C) 1382/2018

4. In W.P.(C) No.1382/2018, there are 492 Petitioners, all of whom were appointed as Constables in the RPSF. There are two Respondents in the writ petition i.e. the Union of India through the Chairman, Railway Board (Respondent No.1) and the Director General ("DG") of the RPF (Respondent No.2). The prayers in this petition are for quashing the Directive 32 dated 18th September, 2014, as revised on 28th December, 2017. The second prayer is for quashing an order dated 8th January, 2018, whereby the DG called for the service records of the Petitioners for the purposes of making promotions to the rank of HC under Rule 70 of the RPF Rules. A third prayer in this writ petition is for a mandamus to the Respondents to consider the Petitioners for lateral transfer from RPSF to the RPF.

5. In W.P.(C) No. 1382/2018, on 13th February, 2018, the following order was passed:

"1. After addressing arguments for some time, learned counsel for the petitioners seeks time to file an additional affidavit stating inter alia the nature of value attached to a posting in, the RPF, if the petitioner was permitted to seek a lateral transfer from RPSF to RPF, in terms of the option that was available to him at the time of his initial appointment vide Employment Notice No. 0172011.

2. Needful shall be done within four weeks, with a copy to the other side.

3. List on 20.03.2018.

4. Any orders that may be passed promoting the petitioners to the post of Head Constables, shall be subject to the final outcome of this petition."

6. Consequent upon the said order, an additional affidavit has been filed by the Petitioner No. 1 on 12th March, 2018.

7. When the case came up for hearing on 20th March, 2018, the following order was passed:

"1. The present petition has been filed by 492 petitioners. However, on a perusal of the paper book, it transpires that only the petitioner No.1 has sworn an affidavit in support of the averments made in the writ petition and he alone has signed the last-page of the writ petition. In the affidavit, petitioner no. 1 has stated in so many words that he is competent to sign, verify and affirm the facts on behalf of all the remaining petitioners, whereas, no letter of authority/power of attorney executed by remaining petitioners in favour of the petitioner No. 1, has been filed.

2. Learned counsel for the petitioners is directed to make good the deficiency

within four weeks. An additional affidavit has been filed by the petitioner No. 1 in terms of the order dated 13.02.2018 with a copy furnished to the learned counsel for the respondents.

3. Learned counsel for the respondents states that paper book furnished to her is deficient and she shall indicate the missing pages to the counsel for the petitioners. Learned counsel shall supply her a complete set of the paper book.

4. List on 27.08.2018."

8. Thereafter, CM No. 23679/2018 was filed for directions to the Respondents to issue a corrigendum reserving 491 posts of constables in the recruitment initiated in the RPF by Employment Notice No. 1 of 2018. On this application, notice was issued on 30th May, 2018.

9. Thereafter, CM No. 30250/2018 was filed, seeking impleadment of an additional 273 persons as co-Petitioners. Notice was issued on this application also on 30th July, 2018.

10. On 7th December, 2018, the applications CM Nos. 5378/2018 and 23679/2018 were disposed of, making the interim order dated 13th February, 2018 absolute, and further directing that any order issued by the Respondents pursuant to the Employment Notice No. 1 of 2018 would be subject to the outcome of the writ petition. The application for impleadment was allowed, without prejudice to the rights and contentions of the parties.

11. It must be noticed that there was yet another impleadment application being CM No. 11290/2019 in W.P.(C) No. 1382/2018, which sought the impleadment of another two persons as co-Petitioners. This was allowed by an order dated 11th March, 2019.

12. Finally, CM No. 9955/2019 was filed, seeking impleadment of 15 other persons as co-Petitioners. This application was heard finally along with the main writ petition.

Orders in W.P.(C) 8846/2018

13. W.P. (C) No.8446/2018 has been filed by 140 Petitioners. Of these, Petitioner Nos. 1 to 126 belong to the 7th Battalion of the RPSF, Hyderabad; Petitioner Nos. 127 to 134 to the 5th Battalion of the RPSF; Petitioner Nos. 136 to 137 to the 1st Battalion, RPSF; Petitioner Nos. 139 to 140 to the 7th Battalion, RPSF; Petitioner Nos. 141 to 144 to the 5th Battalion; and 145 to 159 to the 7th Battalion. There are three prayers in this petition, which are identical to the prayers in W.P.(C) No.1382/2018.

14. On 7th December, 2018, while directing notice to be issued in the petition, in CM No. 32430/2019 seeking interim directions, it was directed by the Court that the orders passed by the Respondents would be subject to the final outcome of the writ petition.

15. In this writ petition also, CM No. 15204/2019 was filed, seeking impleadment of 52 more persons as co-Petitioners. This application was allowed by an order dated 25th April, 2019, without prejudice to the rights and contentions of the parties.

Orders in W.P. (C) 8761/2018

16. W.P.(C) No. 8761/2018 has been filed by 494 Petitioners, all of whom are working as Constables in the 12th Battalion of the RPSF, Thakurli, Mumbai. The prayers in this petition are similar to the prayers in W.P.(C) No. 1382/2018.

17. Notice in this petition was first issued on 7th December, 2018.

Orders in W.P. (C) 2101/2019

18. The fourth petition in the batch is W.P.(C) No. 2101/2019, which is by 12 Petitioners, all posted as Constables with the 2nd, 3rd, 4th, 6th and 9th Battalion of the RPSF. The prayers in this petition are identical to the prayers in W.P.(C) No.1382/2018.

19. Notice was issued in this petition on 6th March, 2019.

Relevant provisions

20. Before proceeding to examine the facts in these petitions, the relevant provisions and orders may be noticed.

21. Section 8 (1) of the Railway Protection Force Act ("RPF Act") states that the command, supervision and administration of RPF shall vest in the Director General ("DG") and he is empowered to issue Directives. Section 15 (1) of the RPF Act reads as under:

"Every member of the Force shall, for the purposes of this Act, be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India."

22. Section 21 of the RPF Act empowers the Central Government to make rules for carrying out the purposes of the Act. In exercise of said power, the Central Government has framed the Railway Protection Force Rules, 1987 ("RPF Rules"). Rule 28 of the RPF Rules empowers the DG of the RPF to issue "directives" relating to the enforcement and furtherance of the provisions of the RPF Act and the RPF Rules as he may think necessary. It further states that superior officers and enrolled members of the RPF shall be governed by such directives in the discharge of their duties. It is not in dispute that members of the RPSF are also governed by the RPF Act and Rules.

23. Rule 7 specifically deals with the RPSF, which is described as a "specially trained unit" to be raised as a reserve force on the battalion pattern. Rule 87, which deals with the distribution and transfer of members of the RPSF and RPF, reads as under:

"87. Distribution:

The enrolled members of the Force shall ordinarily be employed throughout service on the zonal railway or the Railway Protection Special Force to which they are distributed on first appointment under these rules and shall have no claim as of right for transfer to another zonal railway or to the Railway Protection Special Force formations and vice versa."

24. Rule 99.2 deals with "transfer on own request or on mutual exchange" and reads thus:

"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.

25. In exercise of the power under Rule 28, Standing Orders (SO) have been issued. Relevant to the present case is SO 102, followed by SO 110 and Directive 30, all of which were superseded by Directive 32 issued on 18th September 2014, which was to cover transfer policies. Whereas SO102 had provided that Sub-Inspectors and Constables who have been posted in the RPSF after initial training "shall be eligible for transfer to RPF on completion of five years" service including training period"; Directive 32 envisages transfer from RPF to RPSF and not vice-versa. The relevant portion of Directive 32 reads thus:

"Definitions:

a) Transfer:

RPF: Any regular posting from one RPF Post / Outpost / coy / Unit of Office to another RPF Post / Outpost / Coy / unit of Office in the same Division or in another division of the same Zonal railway or of another Zonal Railway or to RPSF.

RPSF: Regular posting from one Battalion to another. Rotation of staff from one company to another in the same Battalion of RPSF shall not be treated as transfer.

b) Tenure: The period of posting for various ranks in various places prescribed by DG.

c) Intermediary Grade: A promotional grade where there is no direct recruitment.

d) Initial Tenure: Tenure at first place of posting on appointment to the Force.

e) Working Couple: Both spouses employed under the Central/State Government or in Autonomous Bodies/Public sector organization under Central/State Govts.

f) Difficult areas: Stations or places identified by CSCs and approved by DG RPF as difficult areas In view of bad climate, poor connectivity, lack of educational or medical facilities etc.

g) Home Division: As provided in Rule 93.3 of the RPF Rules.

h) Pre-mature Transfer: Transfer before completion of tenure as prescribed by this Directive.

i) Competent Authority: DG RPF, CSC RPF, IG RPSF, Sr.DSC/ DSC RPF as the case may be."

26. A larger number of RPSF personnel who were appointed during the period when SO 102, 110 and Directive 30 were in force and had applied for transfer to RPF, were given a one-time opportunity to exercise an option for transfer to the RPF under Directive-32. Para 9 of Directive 32 provided for this one-time option thus:

"9) The provisions of the superseded Standing Order No.102, in so far as they related to the transfer of RPSF personnel to RPF, shall continue to apply to those direct recruit Sub-Inspectors and Constables of RPSF who are in service, and have submitted their option for transfer to RPF, on the date of issue of this Directive.

27. Directive 32 contained no provision for transfer from RPSF to RPF.

Case of the Respondents

28. It is pointed out by the Respondents that all of the Petitioners in the present case were appointed as Constables in the RPSF on 1st August, 2015 i.e. almost one year after the date on which Directive 32 was issued. At the time of their appointment they were governed by Directive 32 which did not envisage transfer from RPSF to RPF. A reference is made to Section 8 (1) of the RPF Act which states that the command, supervision and administration of the Force shall vest in the DG and he is empowered to issue directives.

29. It is submitted that the RPSF is a striking force which supplements the efforts of RPF in crisis situations like strikes, "Rail Roko", terrorist acts, etc. and that this is also reflected in Rule 87, which has been extracted hereinbefore. It is stated that vacancies in the intermediary grades of HC, ASI and Inspector have to be filled by promoting eligible Constables and SIs. However, since a large number of Constables were transferred, on their request, from RPSF to RPF, there were no eligible Constables in the RPSF left for filling up the said intermediary ranks in the RPSF and this created a vacuum leading to the breakdown of the chain of command. HCs and ASIs being of a higher rank play an important role in the efficient functioning of the RPSF.

30. The Respondents point out that as of date, of the 2455 posts of HCs only 80 have been filled up and that out of 904 posts of ASI only 250 posts have been filled up. This has resulted in a 96.8% vacancy at the level of HC and 72.4%

vacancy at the level of ASI. This explained the policy decision to discontinue transfers from RPSF to RPF. The revised Directive 32 issued on 28th December, 2017, therefore, continued the policy of prohibiting transfers from RPSF to RPF.

Case of the Petitioners

31. Turning now to the main submissions of learned counsel for the Petitioners, it is first contended out that the Employment Notice No. 1/2011 dated 23rd February, 2011 was a combined advertisement for recruitment both to the RPSF and RPF and did not indicate that the candidates would be selected to a particular force. No separate training was in fact imparted to members of both RPF and RPSF.

32. In all these petitions there is a challenge to the validity of the Directive 32 dated 18th September, 2014 as well as Directive 32 (Revised) dated 28th December, 2017 inasmuch as it "jeopardises right of Petitioners to get transfer to RPF on completion of their tenures in RPSF".

33. The above submission is based on a misreading of the relevant provisions of the applicable directives. As was noticed earlier, there was no provision in the RPF Act which states that on the completion of a number of years in the RPSF, a Constable or HC as the case may be, would as a matter of right be eligible for transfer to the RPF. The earlier SO 102 which had a provision to that effect stood superseded by the impugned Directive 32 dated 18th September, 2014.

34. The Petitioners cannot claim any legitimate expectation of transfer from RPSF to RPF, as there did not in fact exist such a provision on the date of their appointment. On such date, the earlier SO 102 was no longer in existence. Moreover, the Petitioners clearly applied on the understanding that they would be appointed either to the RPSF or to the RPF. Having accepted the appointment as such, they cannot avoid the applicability of the RPF Rules and the above Directives.

35. As far as Directive 32 itself is concerned, it has been issued by the DG pursuant to the powers conferred on him by Rule 28 of the RPF Rules read with Section 8 (1) of the RPF Act. The said Directive cannot, therefore, be said to be ultra vires the powers of the DG under the RPF Act. Inasmuch as Directive 32 protects the rights of those who had already been appointed to the RPSF at the time that the earlier SOs were in place, it cannot be said to be arbitrary or discriminatory. The case of the Petitioners who were all appointed on 1st August, 2015 stands on an entirely different footing and they could not have harboured any reasonable expectation of transfer to the RPF on completion of tenure of service in the RPSF. The Court therefore negates the challenge to the constitutional validity of Directive No. 32.

36. Directive 32 (Revised) dated 28th December, 2017, which has also been challenged, merely continues the policy as expressed in Directive 32 as far as transfers are concerned. Inasmuch as there is no inherent right of a member of

the RPSF to ask to be transferred to RPF, Directive 32 (Revised) cannot be said to be ultra vires the RPF Act or the RPF Rules. The challenge to said Directive 32 (Revised) also, therefore, fails.

37. In the written submissions on behalf of the Petitioners in W.P.(C) No. 1382/2018 it is contended that at the time they applied, the Petitioners were given an option to choose different zones. RPSF was one of the zones but not "a different service". It is contended that the Petitioners were not informed of their respective scores in the examination and that the Respondents arbitrarily appointed candidates to different zones as per their whims and fancies. It is prayed that the Respondents should be asked to place the mark sheets of all successful candidates in the recruitment under Advertisement No. 1/2011 and to show how the candidates were allocated to RPSF and RPF.

38. The Court finds the above submission not to be reasonable. In the first place, there is no such prayer in the main writ petition. Secondly, it is too late for the Petitioners to now demand to be shown the basis on which they were allocated to the RPSF.

39. It is then contended that the Directives are beyond the scope of Rule 87. The Court is unable to agree that Rule 87 assures a member of the RPSF that he can demand to be transferred to the RPF as a matter of right. In fact, the said Rule says that members of the force "shall have no claim as of right for transfer" to the RPSF or vice versa. Clearly, therefore, the Directives cannot be said to be ultra vires Rule 87.

40. The Petitioners then complain that the Respondents by an order dated 8th January, 2018 stated that "there is no provision for RPSF personnel to be transferred to RPF Zonal Railways" and, therefore, were not even forwarding the applications for transfer. While the above formulation may not be entirely right inasmuch as Rule 87 of the RPF Rules does envisage transfer from RPF to RPSF and vice versa, in the cases of the present Petitioners they could not have demanded such transfer as a matter of right. The Court accordingly clarifies that when applications for transfers are made, they should be considered by the Respondents in terms of the extant Rules and Directives. In other words, while members of the RPSF may not demand to be transferred to the RPF as a matter of right, their applications should be considered on merits and they should be informed by the Respondents of the decision on such applications for transfer.

41. The Petitioners contend that since SO 102 was applicable at the time of Advertisement No. 1/2011, Directive 32, which superseded it, would not apply to the Petitioners' appointments. This submission overlooks the fact that the Petitioners have in fact been appointed only on 1st August, 2015, by which time Directive 32 was in force. The reasons given by the Respondents for the change in policy are bonafide. Indeed if there was a large scale exodus of members of the RPSF to the RPF, it would end up weakening the RPSF and defeat the very purpose for which it has been constituted.

42. A reference has been made to the Rule concerning the fixation of inter se seniority, which is not relevant in the present context. Rule 99.2 of the RPF Rules talks of transfer on request or mutual exchange. This Rule again only envisages the possibility of such transfer but does not guarantee it.

43. For the aforementioned reasons, the Court finds no merit in any of these petitions. They are dismissed as such, but in the circumstances with no order as to costs.