
(2001) 08 RAJ CK 0079
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4966 of 1999

Netra Pal Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 15, 7

Citation : (2002) 2 RLW 745 : (2002) 3 WLN 105

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : A.K. Bhandari, for the Appellant; M. Rafiq, for the Respondent

Final Decision : Dismissed

Judgement

Verma, J.—The petitioners are the Constables in Railway Protection Force and are aggrieved against the order dated 6.9.1999 and 8.9.1999 perporing to transfer them to Railway Prolection Special Force (here-in-after referred to as the Special Force).

2. The challenge is made mainly on the ground that they cannot be transferred to special force which is a separate cadre to one where the petitioners are posted. The Railway Protection Force is governed by the Railway Protection Force Rules, 1987 (here-in-after referred to as the Rules) and there are three branches on a Zonal Railway, namely; Executive Branch, Prosecution Branch and Fire Service Branch with their definite functions.

3. All the petitioners were appointed initially as Constables in the Railway Fire Service about more than 10 years back. Sometime in the year 1992, the respondent had decided to close the Fire Service Branch, the staff in RPF were ordered to be merged with the Executive Branch of the RPF as per circular dated 16.9.1993, copy of which is attached as Annexure-1. It was further decided vide Annexure-2 dated 14.5.1999 that the staff of Fire Wing would undergo orientation course training of 10 weeks duration and on completion of the course

they would be merged in the Executive cadre of RPF. Yet in another letter Annexure-4 dated 20.5.1999, it was further decided by the Ministry of Railways to close down the Fire Wing and to merge the existing staff of Fire Wing with the Executive staff of RPF, as per the decision taken by the Railway Board. The petitioner had been given the re-orientation course training from June 1999 to August 1999, but instead of posting them with the executive branch of RPF, they have been transferred to Railway Protection Special Force vide impugned order Annexure-6 and 7.

4. It is the contention of the petitioner that the staff of the Railway Protection Special Force was specially trained in Arms and are required to do patrolling duties of Railway Tracks specially in border areas and none of the petitioner has any special training in Arms and reorientation course ever given to the petitioner. It is further submitted that many vacancies of Constables are lying vacant in the Executive Branch and, therefore, the petitioners could be accommodated.

5. Per contra, in the written statement filed by the respondents, it is stated that protection forces are always considered to be on duty and liable to be employed in any part of Railways and inter-zonal transfers are permissible. It is further stated that the duties discharged by the members of the Executive Branch of RPF at the level of Zonal railways and the duties discharged by the members of the RPSF are identical. It is further submitted that the Railway Board had taken a decision that relatively of younger age group, preferably below the age of 45 should be redeployed in RPSF in order to raise two new battalions and those who are older age above 45 years were to be retained to be posted in Executive Branch of RPF in the respective Zonal Railways. However, it is admitted that each zone has got a separate cadre for the purpose of seniority for all these three branches, and Prosecution Branch and the Fire Branch have specific task relating to their branch i.e. Prosecution of the cases launched by RPF under the RP (UP) Act and the Rules whereby the Fire Branch was entrusted the task of manning and maintaining mobile and static fire stations to combat fire hazards on the Railways. They have separate cadre for the purpose of seniority. It is further submitted that it is the prerogative of the employer to merge or post the surplus staff in any of the branch.

6. It shall be worthwhile to narrate the scheme of the Act. Parliament had enacted the Railway Protection Act, 1957 with a view to provide for the constitution and regulation of an armed force. Section 21 of the Act empowers the Central Government to make rules inter alia; for the purpose of said Act and in exercise of (he powers conferred u/s 21 of the Act, the Central Government had made rules which came into force w.e.f. 3.12.1987 (here-in-after called the rules). Rule 7 and 16 provides the branches which read as under:

"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 member 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."

7. There are many zones in RPF all consisting of three branches as mentioned above. Rule 17 deals with Executive Branch, Rule 18 and 19 deals with the Prosecution and Fire Service Branch respectively. Rule 22 empowers the Director General as Head of the forces to take all possible steps for co-ordinated and integrated growth of infrastructural facilities for the development and welfare of the force. Rule 22.3 reads as under:-

"22.3 The Director General shall scrutinize 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.

8. The administration of forces in the zonal railway vests in the 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. 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. A decision was taken to close down the static units of Fire wing in a phased manner within a span of six years starting from September 1992 and was

to be completed in 1999 and a policy decision was taken to absorb the staff of the Fire Service Branch in the Executive Branch vide order dated 11.1.1993 which reads 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-1 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."

9. For the reasons that the policy was applicable to whole of India, the personnels of Fire services had challenged the impugned orders in the High Court of Andhra Pradesh in Writ Appeal No. 1357/2000 (1) and writ Appeal No. 1080/2001 and other (2), connected writ petitions. The Division Bench of Andhra Pradesh High Court had held that the provisions of R.P. Rules do not contemplate that there can be transfer from one cadre to another cadre and had struck down the transfer of personnel to RPSF and held to be bad in law vide its judgment dated 18.3.2001, copy of which has been placed on record whereby the Division Bench had confirmed the order of the Single Bench.

10. Similar matter in Civil Writ No. 6316/99 (3) and 5932/1999 decided on 8.11.2000 (4), challenging the same orders as in the present writ petition had also come up in Delhi High Court where a Single Bench had upheld the orders mainly on the ground that the Fire Wing of RPF once having been closed and decision to absorb the Constables below the age of 40 years for the purpose of absorption in RPSF have been given weapon training and the remaining staff has been adjusted within the Railways in executive branch of RPF was to be justified decision. It was further observed by the learned Judge of Delhi High Court that the petitioners in those writ petitions have been given an option to go to their parent railway department of the three years without loss of seniority. It was further observed that the transfer of such Constables to the Special force was not violative of rules. Delhi High Court primarily was of the view that because of fire wing had been closed, the transfers to the special force was not bad specially when such personnel were to go back in their parent department after three years, meaning thereby, that it was implidely admitted that the Constables who were so deputed to RPSF belonged to other parent department. There cannot be any doubt that the transfer of an official is confined to the cadre itself. Even though Rule 5 provides for transfer to any other zone but that transfer is bound to be within the same cadre i.e. either executive, prosecution. Each case is to be

judged having regard to the policy decision and having regard to merger of transfers in the exigencies of service. The court normally is slow to interfere with the policy decision unless such decisions are arbitrary or illegal as was held in the case of *S.P. Shivprasad Pipal v. Union of India* (5), by the Apex Court that a decision to merge the cadres is essentially a matter of policy. Article 14 and 16 do not forbid the creation of different cadres for Govt. service. And if that be so, equally these two Articles cannot stand in the way of the State integrating different cadres into one cadre.

11. The respondent's plea that the protection force is part of executive cadre does not seem to be without force. As admittedly, there were three branches/cadre; executive, fire and prosecution branches. If the fire service branch is closed and staff is merged or adjusted in executive branch, there remains only two branches left i.e. executive branch and prosecution branch. Prosecution Branch has its own functions relating to the court cases and prosecuting the offenders and all other staff other than the prosecution branch do fall in the executive branch. There is no third cadre left after the fire service cadre having been left after the fire service cadre having been abolished. The contention of the petitioners that for the reason that they were merged in the executive branch and cannot be transferred to RPSF on the ground that it forms a separate cadre, if accepted then the answer have to be given by the petitioners that RPSF personnel would belong to which cadre? There are only two cadres; Admittedly, the petitioners were not in prosecution cadre and in such situation they could be only deemed to have been falling in executive cadre. In this situation, it cannot be said that the petitioners have been transferred from one cadre to another cadre specially when as has been observed by the Delhi High Court that all these persons now being deputed for Railway Special Protection Force are to stay there only for three years and then to revert back to their original posting and that too for those persons who are below 40 years. I fully agree with the view taken by the Single Bench of Delhi High Court. The petitioners cannot deem to have any cause to show that they are being shifted from executive cadre as special force is nothing but a part of executive cadre. Rule 15 does enable the authorities to transfer the members of the force from one zone to other zone as well if contingency so requires.

12. To sum up the petitioners or similarly situated persons who were working in the fire branch which cadre was merged with the executive cadre, if have been given training as is admitted and if any of them is below 40 years can be deputed with the special force as per instructions, it is hoped that after three years of such deputing, they would be sent back to their original post where-ever they were. No, grievance can be made by the petitioners for challenging the order Annexure 6 and 7 in view of the above-said reasons and discussion.

13. The writ petition is dismissed. No costs.