
(2019) 12 CAL CK 0143

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 322 (W) Of 2018

Sudhansu Kumar Sudha & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Railway Protection Force Rule, 1987 — Rule 70, 71, 71.1, 71.2, 71.3, 99.2

Citation : (2019) 12 CAL CK 0143

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Achin Kumar Majumder, Pratik Majumder, Saptarshi Bhattacharjee, Shailendra Kr. Mishra

Final Decision : Disposed Of

Judgement

Amrita Sinha, J

The petitioners, 17 in number, are members of the Railway Protection Force. They are serving as Sub-Inspectors and posted at different divisions under different zonal railways. The petitioners opted for transfer on request. The requests of the petitioners were accepted and they were posted at the place of their choice. They are serving in their posts and regions since 2015.

According to a Directive issued by the Railway Board being no. 86/ACC(E)/TR-1/1 dated 9th August, 2006 members who opt for request transfers are supposed to go the bottom of seniority of his batch mate of same rank. By virtue of the Standing Order No. 102 dated 29th March, 2010 the enrolled members of the Force who were transferred from the Railway Protection Special Force to the Railway Protection Force or from one zonal railway to another, on own request or on mutual transfer, was to go to the bottom seniority of their rank.

According to the aforesaid the petitioners were placed in the bottom seniority but the petitioners allege that even though they belong to the 50th batch they were wrongly placed after the 52nd Batch.

A notification for promotion to the rank of Inspector/RPF under cadre restructuring of Group-C, RPF/RPSF (combatised) Staff was published by the respondent on 16th November, 2017. According to the said notification a member who has served a continuous period of eight years were eligible to come under consideration zone for screening for promotion to the rank of Inspector under the restructuring scheme. The petitioners were not considered eligible for promotion as they did not complete eight years of regular service at the place where they seek promotion.

The petitioners are aggrieved as they have been left out illegally from the zone of consideration of promotion. The petitioners rely upon the various provisions of the RPF Act and the corresponding Rules.

The petitioners rely upon the decision delivered by the Hon'ble Supreme Court in the matter of M. M. Thomas & Ors. -vs- Union of India & Ors. reported in (2017)13 SCC 722 (paragraphs 7 & 9), Scientific Advisor to Raksha Mantri & Anr. -vs- V. M. Joseph reported in AIR 1998 SC 2318 (paragraph 6) and Coal India Ltd. & Anr. -vs- Navin Kumar Singh reported in AIR 2018 SC 4753 (paragraphs 15 & 16) in support of their case.

The petitioners pray for a direction upon the respondent authorities to permit them to participate in the screening process for promotion to the post of Inspector.

The respondents oppose the prayer of the petitioners and submit that according to Schedule IV of the Railway Protection Force Rules 1987 a Sub-Inspector with eight years of regular service is eligible to appear in the selection test for promotion to the rank of Inspector but the same is not the only criteria for consideration of candidature of a Sub-Inspector for promotion to the rank of Inspector. According to the modified selection process for promotion under the restructuring scheme the eligible staff is considered by the selection board/screening committee, one by one, in order of their seniority. The screening committee/selection board considered the claim of 41 Sub-Inspectors according to the vacancy position and those who were found eligible have already been promoted to the rank of Inspector. As the petitioners' name appeared in the bottom of the seniority list they did not come within the zone of promotion. The candidates who fulfilled the criteria of regular service as Sub-Inspector and at the same time held top position in the seniority list as per the declared vacancies were considered eligible for promotion.

The respondents pray for dismissal of the writ petition.

I have heard the submissions made on behalf of both the parties.

The respondents have taken a preliminary objection with regard to the maintainability of the writ petition before this court by the petitioners.

It appears from the cause title that the petitioner nos. 5, 6, 7, 8, 9, 10, 15, 16 and 17 are serving outside the jurisdiction of this court. The cause of action in

respect of the aforesaid petitioners does not arise within the jurisdiction of this court and accordingly in my opinion the writ petition will not be maintainable by the aforesaid petitioners before the Calcutta High Court. The writ petition is dismissed on the ground of lack of territorial jurisdiction in respect of the aforesaid petitioners.

Though the petitioners have challenged their respective positions in the seniority list but no submission with regard to the above was made at the time of hearing of the writ petition accordingly the said issue is not decided by the court at all. In the event the petitioners are aggrieved with their positions in the seniority list they will be at liberty to approach the appropriate forum in accordance with law, if so advised.

According to Rule 99.2 of the Railway Protection Force Rule, 1987 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 Force irrespective of the date of confirmation or length of officiating service of the transferred member of the Force.

Appointments and promotions are covered under Schedule IV of the Railway Protection Force Rules, 1987. The said provision mentions that promotion from the post of Sub-Inspector (Executive) to the post of Inspector shall be by selection and the method of recruitment will be in accordance with the Promotion Rule 70 of the aforesaid Rules and Sub-Inspector with "eight years of regular service as Sub-Inspector" will be eligible for promotion.

Rule 71 of the said Rules lays down the guidelines for the Departmental Promotion Committee for holding selection under Rule 70 and in Rule 71.1 the allocation of marks for the written examination and practical test are mentioned. The candidates qualifying in the aforesaid test is subjected to a viva-voce test and the mark to be allocated is specified in Rule 71.2. According to Rule 71.3 the Departmental Promotion Committee prepares a list of candidates securing 60% or more marks in the order of their respective seniority in their rank.

It is only those candidates who obtain 60% or more marks in the merit test who are considered for promotion in accordance with their seniority. It is only when a candidate obtains the requisite marks in the written, practical test and also in the viva-voce then only the seniority position comes into play.

The criterion for promotion to the post of Inspector as laid down in the Schedule is that the candidate should be a Sub-Inspector with eight years of regular service as Sub-Inspector. The Statute is silent as to whether the service should be at a particular zone or place or should be at the place where the member seeks promotion.

Assuming that a member is transferred in usual course and he retains his

seniority at the transferred place of posting but does not complete eight years of regular service at the place then will the member be deprived of his chance of promotion? To avoid these anomalies the legislature thought it fit to use the expression 'regular service' without qualifying whether the same should be at a particular place or at several places or zones.

The Directive of the Railway Board which speaks of continuous service appears to be inconsistent with the Rules which speak of only eight years of "regular service" as Sub-Inspector to be the eligible criterion for promotion to the post of Inspector. The post in question is to be filled up by the Departmental Promotion Committee and the allotment of marks is based upon merit. There is no reasonable justification to restrict the number of eligible candidates based on their period of posting at a particular place or zone. Indian Railways is an all India organisation where members are selected on the basis of all India examination. The members are posted and subsequently transferred, usually, on the basis of administrative exigencies. The mode of functioning throughout the country is the same. The experience which a member gain by putting in a fixed period of service is relevant and not the place or the zone where the member has served. The Railway Board circular has included an unreasonable and unnecessary fetter which is not mentioned in the Rule. Many meritorious candidates may fall out of the zone of consideration because of the restriction. The idea of promotion is to give impetus and encourage the deserving employees to better in their field, and in the process the employer gets the services of the best candidates.

It is settled law that whenever there is a conflict between a Statute and the Directive it is the Statute which prevails over the Directive. The Directive is always issued and meant to run parallel to the Statute and not contrary to the same. When the Statute is silent with regard to the period of posting at a particular place the same ought not to be supplemented by way of a Directive. There being no ambiguity in the Statute the same ought not to be supplemented by another Directive which is not in agreement with the Statute.

The issue raised herein was discussed at length in WP No. 20374 (W) of 2018 (Atul Kr. Sarkar -vs- Union of India & Ors.) and by the judgment dated 24th December, 2019 the court was of the opinion that the action on the part of the respondents in excluding the petitioners from the zone of promotion cannot be supported in law. The learned counsel appearing for the petitioner in the instant case appeared for the petitioners in the case of Atul Kumar Sarkar (supra) and advanced the same argument. The contentions of the respondents in both the matters are nearly same. Accordingly, the discussions made in the case of Atul Kumar Sarkar will also apply in the facts and circumstances of the instant case.

In view of the above, the respondents are directed to consider the petitioners for selection for promotion to the rank of Inspectors, if they are otherwise eligible, in accordance with the notification dated 16th November, 2017 ignoring their place of posting and their position in the seniority list.

W.P No. 322 (W) of 2018 is disposed of.

Seventeen petitioners have filed the writ petition by depositing only one court fees. The learned advocate appearing for the petitioners is directed to put in the deficit court fees in respect of the petitioner nos. 2, 3, 4, 11, 12, 13 and 14 within 3rd January, 2020 in default, the instant order shall be restricted in respect of the petitioner no. 1 and the writ petition shall be deemed to have been dismissed in respect of the rest.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.