

Gurpartap Singh And Ors vs Union Of India And Ors on 31 January, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11293/2016

GURPARTAP SINGH AND ORS

Through:

..... Petitioners

Ms.Saahila Lamba, Advocate.

versus

UNION OF INDIA AND ORS

Through:

..... Respondents

Mr.Joydeep Mazumdar with
Ms.Priyata Chakraborty, Advocate for
Railways.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% 31.01.2019

1. For the reasons stated therein, the application is allowed. Respondent Nos. 78, 86, 88, 94, 98 and 99 are deleted from the array of parties.

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2. 122 Petitioners who are Constables with the Railway Protection Force (RPF) have approached this Court with the present petition aggrieved by the seniority list of Constables of the RPF, Northern Railways circulated by a letter dated 31st August 2016 issued by the Inspector General of RPF (Respondent No.3). They seek a writ of certiorari for quashing such seniority list and writ of mandamus directing the Respondents to re-fix seniority of the Petitioners in the rank of Constable by placing them above the Respondent Nos.4 to 122 in the revised seniority list.

3. At the outset it requires to be noted that as regards service of notice of the petition on the private Respondents i.e. 4 to 122, the Registrar in an order dated 8th August 2018 noted that all the Respondents except Respondent Nos. 4, 78, 86, 88, 94, 98 and 99 had been served. Counsel for the Respondent Nos.1 to 3 informed the Registrar on that date that Respondent No.4 had died and Respondent Nos. 78, 86, 88, 94, 98 and 99 are no longer under his jurisdiction. At the subsequent

hearing on 22nd November 2018, it was found that the aforementioned Respondent Nos. 78, 86, 88, 94, 98 and 99 still remained unserved. Learned counsel for the Petitioners submitted that on making enquiries it was learnt that the said unserved Respondents are no longer in service. She accordingly sought leave to file an application seeking the deletion of these Respondents from the array of parties.

4. The said application (CM 4697/2019) has today been allowed by this Court deleting the aforementioned Respondent Nos. 78, 86, 88, 94, 98 and 99 from the array of parties. In effect, therefore there remains no private Respondent who is to be served with a copy of the notice issued in the present petition. None of the Respondents who has been served has come forward to oppose the present petition.

5. The point involved in the petition is a short one. The present Petitioners were appointed on various dates between 11th February 1999 and 8th March 2007 as Constables in the RPF. In the seniority list of RPF Constables circulated by the impugned letter dated 9th September 2016, they figured between Sl.Nos.734 and 2432.

6. It is pointed out in the petition that there are two kinds of transfers in the RPF under Rules 91 and 92 of the Railway Protection Rules, 1987 (RPF Rules). The first is the inter-zonal transfer and the second is a periodical transfer.

7. Rule 99 of the RPF Rules deals with determination of seniority on inter- zonal transfer. This could be a transfer on request or on mutual exchange. Rule 99.2 talks of the effect such inter-zonal transfer would have on seniority and reads as under:

"99.2 Seniority of an enrolled member of the Force transferred on his Own request or on mutual exchange from one zonal railway to another or the Railway Protection Special Force, and vice-versa shall be fixed below that of all existing confirmed and officiating enrolled members of the Force in the relevant rank of that railway or RPSF irrespective of the date of confirmation or length of officiating service of the transferred members of the Force."

8. In other words, in terms of Rule 99.2 of the RPF Rules, where a member from another force or even the Railway Protection Special Force (RPSF) is transferred to the RPF on his own request, his seniority will be fixed "below all members working on that date" irrespective of the date of such persons initial appointment/confirmation or length of service. Para 312 of the Indian Railway Establishment Manual, Volume 1, deals with the same issue and reads as under:

"Transfer on request - The seniority of railway servants transferred at their own request from One railway to another should be allotted below that of the existing confirmed, temporary I and officiating railway servant, in the relevant grade in the promotion group in the new establishment irrespective of date of confirmation or length of officiating or temporary service of the transferred railway servant."

9. Under Rule 117 of the RPF Rules, for matters not prescribed under the RPF Rules, the extant Railway Rules would apply. Thus it is contended by the Petitioners that from any angle, where members of the RPSF are transferred of their own accord to the RPF, their seniority would be below the seniority of the RPF members as originally enrolled irrespective of the seniority of such member of the RPSF.

10. According to the Petitioners, in November 2006 and 2008 a large number of Constables from the RPSF were transferred to the Firozpur Division of the RPF on their own request. It is stated that on 5th July 2016, a seniority list of Constables in the RPF Northern Railways prepared by Respondent No.3 was circulated to the Post Commander, Firozpur Division. The said RPSF members who had to be placed below the RPF members already working in the Firozpur Division in terms of Rule 99.2 of the RPF Rules, were, however, placed above them in the seniority list.

11. A representation was submitted by the Petitioner No.1 and a number of the remaining Petitioners. But nothing was heard in response thereto, till 31st August 2016, when the Respondent No.3 issued a letter to all Senior Divisional Security Commissioners including the one in Firozpur Division asking them to circulate the seniority list of Constables, RPF, Northern Railways in all concerned zones.

12. Thereafter the Chief Security Commissioner, RPF issued the impugned letter dated 9th September 2016 enclosing the seniority list. The Petitioners upon examining the impugned letter, discovered that the members of the RPSF who had come to the RPF on their own request were placed above the Petitioners who were already working at the Firozpur Division as per their initial appointment dates. This was in clear violation of Rule 99.2 of the RPF Rules. In the circumstances, the present writ petition was filed seeking the aforementioned reliefs.

13. In response to the petition, a counter-affidavit has been filed on behalf of the Respondent Nos.1 to 3 where none of the facts mentioned above are denied. However, reference is made to standing order No.70 dated 27th September 2004 issued by the Director General RPF (Respondent No.2). The said order stated that on inter-zonal transfers the transferred member "should be ready to go on bottom seniority in the same rank." It is contended that the private Respondent Nos.4 to 122 were appointed from 1979 to 1995 whereas all the 122 Petitioners were appointed between 1999 and 2007 and hence Respondent Nos.4 to 123 were granted seniority above the Petitioners.

14. It is pointed out on behalf of the Petitioners that the reference made by the Respondents to letter dated 9th August 2006 amending para 17(B)(b) of the standing order No.70 to read that "he should be ready to go to bottom seniority of his batch-mates on the same rank" is contrary to Rule 99.2 of the RPF Rules which had to take precedence in the matter of arranging the inter- se seniority amongst those in the RPF from the beginning and those that have come on voluntary transfer subsequently.

15. Indeed it is settled law that where this is a statutory rule in place, there cannot be any administrative instruction to the contrary. Inasmuch as the amended para 17(B)(b) of standing order No.70 is inconsistent with Rule 99.2, it is the latter that will prevail and not the former when it

comes to arranging the inter-se seniority amongst those in the RPF from the beginning and those that have come on voluntary transfer subsequently. The above legal position is not able to be disputed by the Counsel for the Respondents.

16. Consequently, the Court has no hesitation in quashing the impugned seniority list circulated with the letter dated 9 th September 2016 of Respondent No.3 and directs the Respondents to correctly fix the seniority of the Petitioners in accordance with the Rule 99.2 of the RPF Rules, as explained in this judgment, within a period of 12 weeks from today and circulate the corrected seniority list to all concerned forthwith. The petition is allowed in the above terms. No order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 31, 2019 tr