

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 9.05.2012

+ **W.P.(C) No.4610/2008**

Narender Pal Singh & Ors. ... Petitioners

versus

Govt. of India,
Through Director General,
Railway Protection Force & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr. M.K.Bhardwaj Advocate
For Respondent : Mr. J.K.Singh Advocate for the respondent/UOI
: Mr. Suresh Chand Advocate for Respondent No.5

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

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1. The petitioners have sought the quashing of order dated 2nd February, 2007 passed by respondent Nos.1 to 4 correcting the seniority of respondent No.5, Sh. Bhanwar Singh, from serial No.1102 to serial No.1. The petitioners have also sought the restoration of the seniority of Head Constables (Dog Squad) to status quo ante. The petitioners have further sought directions to the respondents to convene a DPC meeting for promotion of the Head Constables (Dog Squad) to the post of ASI (Dog Squad).

2. By order dated 2nd February, 2007, the Director General, Railway Protection Force had revised the seniority of Sh. Bhanwar Singh, respondent No.5, Head Constable, RPF/BCTC from serial No.2847 to 583/A and had placed him between Sh. Ranjit Singh, s/o Sh. Charan Singh serial No.583 and Sh. Rajpal Singh, s/o Sh. Mohar Singh serial No.584. The present seniority of respondent No.5, as on 20th December, 2006, was revised from serial No.1102 to serial No.1.

3. The petitioners in the present writ petition have assailed the order dated 2nd February, 2007 which seeks to correct and revise the seniority, by alleging that they are working as Head Constables (Dog Squad), Railway Protection Force, RPF Line, Delhi Mandal-1, Delhi- 35 w.e.f. 21st June, 2000. The petitioners have alleged that they have 8 years of service as Head Constables in the Dog Squad and consequently they have become eligible for promotion to the post of ASI, as per the recruitment rules. The petitioners have also alleged that though the vacancies were available in the year 2004, however, no DPC had been held to consider their cases, which is contrary to the instructions, as it provides for holding of DPC meetings on a yearly basis. As a consequence of this, representations were also made by the petitioners requesting for convening the DPC for their promotion to the post of ASI. According to the petitioners, the promotion rule contemplates the minimum technical qualifications/experience for the post of ASI (Dog

Squad) as 28 weeks of trained Dog Handler's Course and three years' service in the Dog Squad in any rank.

4. The case of the petitioners is that respondent No.5, Sh. Bhanwar Singh, was in the Dog Squad in the Eastern Railway and was posted at Liluah. According to the allegations made by the petitioners, he had applied for transfer to the Northern Railway on deputation on account of the education of his children, which was accepted for a period of three years w.e.f. February, 1995 by order dated 17th February, 1995. However, even after the expiry of the three years of deputation period, respondent No.5 was not repatriated to his parent cadre. The request of the respondent no.5 for absorption in the Northern Railway Dog Squad was accepted but according to the petitioners, it was pursuant to his willingness to accept bottom seniority in case of his absorption. The absorption of respondent No.5 was approved by order dated 3rd October, 2000 as Head Constable BCTC, Northern Railway.

5. The petitioners disclosed that respondent No.5, by his representation dated 20th April, 2000, however, claimed absorption/transfer in the bottom seniority w.e.f. 1998, instead of 2000, which was rejected by the respondents by their letter dated 7/9th July, 2005 on the alleged ground that he had been transferred to Northern Railway in the year 2000. The petitioners also disclosed that the parent

department of respondent No.5 had confirmed that respondent No.5 was not eligible for promotion in the executive cadre as ASI in the Dog Squad in the Eastern Railway.

6. According to the petitioners, respondent No.5 was shown at seniority No.1102 and he was junior to all the petitioners, however, by order dated 2nd February, 2007 his seniority has been changed to seniority No.1 illegally and arbitrarily, without giving any notice to the petitioners, whose promotional chances have been seriously prejudiced by this act of the official respondents. The petitioners have also relied on Instructions dated 7/13th September, 1998 to contend that the seniority of the deputationist, working at BCTC Dayabasti/Delhi was to be maintained in the parent Unit, and therefore, respondent No.5 could not have claimed his seniority in Northern Railway prior to his absorption. The petitioners further relied on Section 99(2) of the Railway Protection Force Act, 1957 and quoted the same in the writ petition. However, the section quoted by the petitioner in the writ petition is not correct, as the seniority on transfer is dealt with in the Railway Protection Rules, 1987. The correct provision is Rule 99(1) which is as under:-

Sec 99(2) regarding Transfer as quoted by the petitioner in the WP in para 8	Correct Rule 99 (1) as quoted by the respondents
99.2 Transfer on Own Request or on mutual exchange:	99.1 Seniority of an enrolled member of force on transfer from one zone to another or to Railway

"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 members 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."	Protection Special Force and vice versa made in the interest of administration shall be regulated by the date of appointment to the grade or rank as the case may be, where the date of appointment of the transferred member of the Force is the same as that of another member of the Force already serving on that zonal Railway or Railway Protection Special Force, the relative seniority shall be determined on the basis of the date of birth – the elder being the senior. 99.2 Transfer or 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 members of the force in the relevant rank of the Railway or Railway protection Special Force irrespective of the date of confirmation or length of officiating service of the transferred member of the Force
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7. The petitioners have further contended that they had made a number of representations against the actions of the official respondents giving higher seniority to respondent No.5 and not holding the DPC though the eligible candidates and vacancies in the rank of HC (Dog Squad) were existing since 2004. In the circumstances, the petitioners have challenged the revision of the seniority of respondent

No.5 from serial No.1102 to serial No.1 and the inaction of the official respondents in not convening the DPC meeting, on the ground that assigning seniority to the deputationist who joined from other Railway (Cadre) is contemplated under the statutory provisions of Section 99.2 of the RPF Act, 1957. The petitioners have also contended that the delayed DPC may make the petitioners ineligible by the due date. The petitioners have also pleaded that promotion is considered to be an important aspect of right to life as contemplated under Article 21 of the Constitution of India. In this regard, reliance has been placed on PSN Rao v. State of Orissa (2002) 6 SCC 478; A.P.SRTC & Ors. v. V.Veeraiah (2000) 9 SCC 425 and P.Satyanarayana Rao & Anr. v. S.V.P.Sarvani & Ors., (2009) 1 SCC 419 and directions have been sought to the official respondents to quash the order dated 2nd February, 2007 revising the seniority of respondent no.5 from serial No.1102 to serial No.1 and to convene the DPC for promotion of the petitioners from Head Constable (Dog Squad) to the rank of ASI (Dog Squad).

8. The writ petition is contested by the respondents. Respondent Nos.1 to 4 have filed a counter affidavit of Sh. Ratan Chand, s/o Sh. Beli Ram working as a senior DSC/RPF dated 7th January, 2009 filed on 9th January, 2009. The said respondents have specifically averred that respondent No.5 was transferred on request from Eastern Railway to Northern Railway. However, he was placed at the bottom seniority by Railway Board's Letter No.90/Sec(ABE)/DS/13/1 dated 3rd October,

2000. Accordingly, his seniority was fixed at serial No.2847 as Head Constable of the Zonal Seniority List published in the year 2000. Thereafter, respondent no.5, not being satisfied with his seniority fixed by the administration, had made a representation for fixing his seniority from the date of joining the RPF (Dog Squad). The request was, however, declined by letter dated 7th July, 2005.

9. The respondent No.5 again requested for reconsideration of his seniority. Thereafter, the Director General/RPF by Railway Board's Letter No.2005/Sec/ABE/DS/13/2 dated 22nd January, 2007 decided after noticing that respondent No.5 was in fact transferred from Eastern Railway to BCTC on administrative grounds, by order dated 5th September, 1995, for a period of three years and not on account of transfer sought by respondent No.5, so as to attract the rule 99(2) of the Railway Protection Rules 1987.

10. Respondent Nos.1 to 4 further detailed that after the expiry of his period of transfer of three years, respondent no.5 had continued till 2000 with the Northern Railways. It was also noticed that during the period from 1998 to 2000 he was not considered for promotion, either by the Northern Railway or the Eastern Railway. In these circumstances, it was decided to transfer respondent No.5 to the Northern Railway with effect from the date of his original transfer, that

is 5th September, 1995, and his seniority was re-fixed from serial No.2847 to serial No.583A between Sh. Ranjit Singh serial No.583 and Sh. Rajpal Singh serial No.584. As both Sh. Ranjit Singh, who was above respondent no.5, and Sh. Rajpal Singh, who was immediately below respondent no.5, were promoted under the cadre re-structuring w.e.f. 1st July, 2004, therefore, respondent No.5 was assigned the seniority at serial No.1 in the seniority list of HC/Executive issued on 20th December, 2006 and not as Head Constable (Dog squad).

11. The official respondents disclosed that the seniority of respondent no.5 was revised as per the Instructions of the Railway Board and that he had become due for promotion under the re-structuring. Therefore, a committee was nominated for granting him promotion to the rank of ASI/Executive in the Scale of Rs.4,000-6,000/-, subject to passing of the screening of ACR. The duly nominated committee, after considering the ACRs of respondent No.5, found him eligible for promotion to the rank of ASI/RPF (Executive) under the cadre re-structuring w.e.f. 1st July, 2004. Therefore, he was promoted as ASI/RPF (Executive).

12. Respondent Nos.1 to 4 categorically asserted that respondent No.5 was promoted as ASI/RPF (Executive) and not as ASI (Dog Squad) as there is no separate seniority list of Dog Squad staff for the purposes of promotion. Respondent Nos.1 to 4 also averred that the parent cadre of the petitioners is also RPF/Executive and not Dog Squad. According

to the directives issued under Rule 28 of the RPF Rules, 1987 read with Section 8 of the RPF Act, 1957, the staff inducted in the ex-cadre post are not entitled to promotion within the ex-cadres and they are entitled for promotion only against the higher posts in their parent cadre. In the circumstances, the claim of the petitioners for seniority/promotion to the rank of ASI/Dog Squad was held to be neither correct, nor acceptable. Respondent Nos.1 to 4 averred emphatically that in order to streamline the seniority, respondent No.5 was treated to have been transferred with effect from the date of his original transfer i.e. 5th September, 1995, on administrative grounds and not on account of the request by respondent No.5. The seniority of respondent No.5, therefore, had been justified and since he had become eligible for promotion, therefore, respondent No.5 was promoted to the rank of ASI/RPF (Executive) under the cadre re-structuring w.e.f. 1st July, 2004.

13. It has been further contended that all the petitioners are junior to respondent No.5 and they are not entitled for promotion, as the petitioners are in the rank of Head Constables (Executive) and are at serial No.939, 934, 936 & 937 respectively in the provisional seniority list of Head Constables (Executive) issued by circular No.847-E/2/RPF/HC/sen/07 dated 12th September, 2008. The respondents further disclosed that the petitioners shall be promoted as ASI (Executive) against the vacancy in the executive cadre on seniority-cum-suitability criteria, subject to vacancy. Respondent Nos.1 to 4 also

placed reliance on directive No.18 contemplating that the total strength of the respective ex-cadres is to be decided by the Chief Security Commissioner from time to time as per the workload. However, the strength of the ex-cadres and the permanent cadre of executive is not to exceed the sanctioned strength of the executive at any time. The Directive No.18 issued by the Railway Board's Letter No.92/Sec(E)/PM/1/1 dated 27th February, 1997 is as under:-

(a) "These ex-cadre posts will form part of the number of executive cadre posts of RPF/RPSF. Wherever these ex-cadre posts have not been identified (especially Band), the concerned CSCs will now earmarked the required number of posts in each rank to be operated as ex-cadre posts.

(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 Railway/RPSF will be maintained and eligible staff will be considered/called for promotion test/selections at the appropriate time

(d) The personnel attending the selection test for the ex-cadre post of Armourers, Dog Squad and Band will not be required to be tested in IT/PT etc. during the practical tests."

14. The respondents further reiterated that the rule for promotion and appointment of ex-cadres in the post of RPF/FPSF were clarified by Directive No.18 issued by the DG/RPF by Railway Board's Letter No.2004-Sec/(E)/Re-3/38 dated 18th July, 2006 contemplating that the staff inducted into the ex-cadres are not entitled for promotion within the ex-cadre and that they are entitled for consideration for promotion

only against the higher posts in their cadre. Consequently, the petitioners are not entitled for promotion under the head of Dog Squad. Also in the parent cadre i.e. the executive cadre the petitioners are junior to respondent No.5.

15. The respondents emphasized that as per Railway Board's Letter No.2005/Sec/ABE/BS/13/2 dated 22nd January, 2007, respondent No.5 was transferred from Eastern Railway to BCTC on administrative grounds for a period of three years, however, he still continued till 2000 when he was formerly transferred to BCTC. During the interim period he was not considered for promotion either by the Northern Railway or by the Eastern Railway. Consequently, it was decided in order to streamline the respondent no. 5's seniority that he may be treated to have been transferred to the Northern Railway with effect from the date of his original transfer dated 5th September, 1995 and his seniority was regulated accordingly. Respondent Nos.1 to 4 also asserted that respondent No.5 was transferred from Eastern Railway to Northern Railway, Executive-cadre of RPF on administrative grounds and not in the Dog Squad as has been alleged by the petitioners. It was further held that therefore, he could not be placed at the bottom of the seniority.

16. The respondents denied that respondent No.5 was promoted within one week's time after clearance was obtained from the concerned

quarters and contended that seniority was decided by letter dated 22nd January, 2007, whereas, the promotion order was issued only after one and half year on 30th July, 2008. The respondents also disclosed that regular DPC was held for the promotion of the respondent no.5 to the rank of ASI(Executive) and not ASI (Dog Squad), details of which are as under:-

Year	Vacancy			Empanelled ASI		
	UR	SC	ST	UR	SC	ST
2004 & 05 (under re- structuring)	266	57	32	261	57	31
2006	61	12	06	57	09	06
2007	36	13	03	36	13	03
2008	100	19	10	100	19	3

17. Respondent Nos.1 to 4 also revealed that the panel for promotion to the rank of ASI(Executive) held during 2008 had been called due to the recommendations of the Vigilance Directorate of the Railway Board and that the petitioner, Sh. Narender Pal Singh, had not applied for selection under Rule 72. Regarding allegations of ignoring the seniority of the petitioners, it has been averred that the petitioners have not been lowered in the rank of Head Constable (Executive) and are at serial No.939, 934, 936, & 937 respectively in the provisional seniority list of

Head Constables (Executive). It is further contended that the petitioners will be promoted as ASI (Executive) against the vacancy in the executive cadre on seniority-cum-suitability criteria, subject to availability of vacancies.

18. Along with the writ petition, the petitioners had also filed an application, being CMP No.8873/2008, seeking stay of order dated 2nd February, 2007, by which the seniority of respondent No.5 was fixed at serial No.583A between Sh.Ranjit Singh and Sh.Raj Pal Singh. No interim order was passed in favour of the petitioners on various dates staying the order dated 2.2.2007 though the counsel for the petitioners had contended that interim order was passed in favor of the petitioners.

19. The petitioners had not taken any steps in compliance with the orders passed by the Court from time to time requiring them to serve the notice on respondent No.5. Consequently, the writ petition was dismissed in default of proper prosecution of the writ petition by the petitioners on 21st December, 2009. The petitioners filed an application for restoration of the writ petition and again took considerable time to comply with the orders. On 23rd November, 2010, respondent No.5, however, appeared without service of notice on him and accepted the notice of the application. Thereafter, the writ petition was restored on 23rd February, 2011 and the petitioners took time to file the rejoinder

affidavit to the counter affidavit filed by respondent Nos.1 to 4. Respondent No.5 had adopted the pleas and contentions raised by respondent Nos.1 to 4.

20. Rejoinder affidavit was, however, not filed by the petitioners and the pleas and contentions raised by the respondents have remained un-rebutted. The writ petition was again dismissed in default on 18th April, 2011. The petitioners again filed an application for restoration of the writ petition and for recalling of the order of dismissal dated 18th April, 2011. Even while pursuing the application for restoration, the petitioners were lax and consequently a cost of Rs.5,000/- was imposed on them. By order dated 17th October, 2011 the writ petition was, however, restored and the matter was taken up for hearing. Petitioners, however, still failed to file any rejoinder affidavit rebutting the pleas and contentions raised on behalf of respondent Nos.1 to 4, that respondent No.5 was transferred in the year 1995 on administrative grounds and not on account of the request made by respondent No.5, for which reason he could not be placed at the bottom of the seniority in accordance with rule 99.2 of the Railway Protection Rules, 1987; respondent no.5 was promoted as ASI/RPF (Executive) and not as ASI (Dog Squad); there is no separate seniority list of Dog squad staff for the purpose of promotion; staff inducted into ex-cadre are not entitled to promotion with ex-cadre and they are entitled for promotion only

against the higher posts in their parent cadre and that the petitioners were junior to the respondent no.5 in the seniority of Head Constable (Executive).

21. This Court has heard the learned counsel for the parties and perused the writ petition and the counter affidavit filed on behalf of respondent nos. 1 to 4. The claims of the petitioners are based on certain facts which have not been established nor can they be inferred from the record. The plea of the petitioners that respondent no. 5 was transferred in the year 1995 at his own request from Eastern Railway to Northern Railway and, therefore, in accordance with Rule 99.2 he should have been placed at the bottom of the seniority is not correct and sustainable. The respondent nos. 1 to 4 have categorically averred that respondent no. 5 was transferred on account of administrative reasons for three years and, thereafter, he continued in the Northern Railway without any promotion. This plea has not been refuted by the petitioners, as despite various opportunities, rejoinder to the counter affidavit of the respondents was not filed. No document has been filed by the petitioners which would show that the respondent no.5 was transferred at his request and not on account of administrative reasons.

22. The reliance of the petitioners on the order dated 3rd October, 2000 is also misplaced as it does not stipulate that the transfer had

been made at the request of respondent no. 5 and not on account of administrative reasons. The order dated 3rd October, 2000 is as under:

“No.90/Sec(ABE)/DS/13/2 New Delhi Date 3.10.2000

ORDER

Approval of DG/RPF is hereby communicated to the transfer of Shri Bhanwar Singh Head Constable/Dog Squad/ Eastern Railway (presently working in BCTC/ Daya Basti in terms of Board's order of even number dated 17.2.1995) to Northern Railway on bottom seniority and his subsequent retention at BCTC/Dayabasti, Delhi in same capacity.

Necessary action may be taken accordingly under intimation to this Office

(Sheela Verma)
Under Secretary/ABE
Railway Board”

23. By order dated 17th February, 1995, the respondent No.5 was transferred for administrative reasons, which fact has been categorically asserted by the official respondents in their counter affidavit and which fact has not been denied and cannot be denied by the petitioners. The order dated 3rd October, 2000, has also been passed in accordance with the order dated 17th February, 1995, except mistakenly placing the respondent no.5 at the bottom of the seniority contrary to rule. Consequently, it is inevitable to infer that respondent no. 5 was transferred on account of administrative reasons and his seniority could not have been fixed in accordance with Rule 99 (2) of the Railway Protection Rules, 1987 nor could respondent no. 5 have been placed at

the bottom of the seniority. The plea of the petitioners in the facts and circumstances is based on their own misconception of the facts and surmises and thus their petition is devoid of any merit.

24. If respondent no.5 could not be placed at the bottom of the seniority, and on account of his representation, if his seniority has been corrected by the official respondents, then the petitioners cannot impugn the same. The petitioners have not been able to refute the plea that they are not entitled for promotion under the head of Dog Squad as their parent cadre is the Executive Cadre. The petitioners have also not been able to refute the plea that in the Executive Cadre they are junior to the private respondent. According to the directive issued under Rule 28 of the RPF rules, 1987, read with section 8 of RPF Act, 1957, the staff inducted into the ex-cadre is not entitled to promotion within the ex-cadre and such staff is entitled for promotion only against the higher posts in their parent cadre. The petitioner therefore, cannot claim promotion to the rank of ASI/Dog squad and their plea is neither correct nor acceptable nor has it been established by them so as to entitle them for any of the reliefs claimed by them.

25. Thus, the petitioners are only entitled for promotion to the ASI (Executive) against the vacancies in the executive cadre on seniority-cum-suitability criteria, subject to the availability of vacancies. The

respondents have categorically stated that the petitioners shall be promoted according to the rules in the executive cadre, as per their seniority against the available vacancies and in the circumstances, the petitioners are not entitled for any relief as has been claimed by them.

26. No mala-fides or favoritism or bias in favor of Respondent no.5 has been alleged against the official respondents while revising his seniority. This is not the plea of the petitioners that the Chief Security Commissioner or any other officer wanted to favor him and therefore his seniority was revised. If this is not the case, then undoubtedly the revision was done to correct the mistake in the seniority of the respondent no.5, which had occurred on account of fixing his seniority in the year 2000 on the basis of Rule 99 (2) of the RPF Rules, 1987 even though the private respondent was transferred on account of administrative reasons in the year 1995 and not on account of his own request, as has been asserted by the official respondents, and it has not been proved otherwise by the petitioners. In the circumstances, it is evident that the seniority of the private respondent was to be fixed in accordance with Rule 99 (1) of the said rules, which was subsequently done by the official respondents. In view of the specific assertion by the respondents that the private respondent was transferred on account of administrative reasons, the plea of the petitioners that the private respondent was transferred at his own request is a bald plea, which is

unsupported by any documents or any record. The entire case of the petitioners is based on an incorrect assumption that the private respondent was transferred on his own request and therefore, his seniority on transfer is to be fixed in accordance with Rule 99.2 of RPF Rules, 1987. Though the order dated 3rd October, 2000 was passed on the wrong assumption that the private respondent had been transferred on his own request, on account of which the private respondent was placed at the bottom of the seniority in the Northern Railway, it was subsequently rectified by the Railway Board and after correcting the seniority of respondent no.5, the same was intimated to the private respondent by communication dated 2nd February, 2007, which has been challenged by the petitioners. The petitioners, therefore, are not entitled to challenge the order dated 2nd February, 2007 nor can it be set aside on the grounds as has been raised by the petitioners.

27. For the foregoing reasons and in the facts and circumstances, the petitioners are not entitled for any relief and the orders of the official respondents cannot be interfered with on any grounds as has been alleged by the petitioners. The petitioners have failed to make out any illegality, irregularity or any perversity in the orders of the official respondents so as to require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is therefore, without any merit and it is dismissed. The

petitioners shall also be liable to pay a cost of Rs.10,000/- to the respondent no. 5. Cost be paid within four weeks. With these directions the writ petition is dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

MAY 9, 2012
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