

GAHC010211752012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3259/2012

L. DAYANANDA SINGH
ACCOUNTS CLERK, N.F. RAILWAY, MALIGAON, ASSAM

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE MINISTRY OF RAILWAY, NEW DELHI.

2:THE DIRECTOR/ABE
RAILWAY BOARD

NEW DELHI.

3:THE INSPECTOR GENERAL-CUM-CSC
RAILWAY
PROTECTION SECURITY FORCE RAILWAY BOARD
NEW DELHI.

4:THE COMMANDING OFFICER

NO. 4TH BATTALION
RAILWAY PROTECTION SECURITY FORCE
NEW JALPAIGURI
WEST BENGAL.

5:THE DIRECTOR GENERAL

RAILWAY PROTECTION FORCE
RAILWAY BOARD
NEW DELHI.

6:THE F A and CHIEF ACCOUNTS OFFICER

AD
N.F. RAILWAY
MALIGAON

Advocate for the Petitioner : MR.S SAIKIA

Advocate for the Respondent : SC, RAILWAY

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.05.2024

Heard Mr. S.K. Singha, learned counsel for the petitioner, who at the outset has prayed for an adjournment. This being a matter of 2012, the prayer is declined. Also heard Mr. R.K.D. Choudhury, learned DSGI appearing for the respondents.

2. In brief, the case of the petitioner is that while working in the RPSF 4th Battalion, his service was placed under the disposal of FA & Chief Accounts Officer, N.F. Railway as an Accounts Clerk. The petitioner had exercised his option for inter-departmental transfer pursuant to an option given by the respondent authorities vide letter dated 17.06.2008, which was duly forwarded by the Deputy Director (ABE), Railway Board to the Deputy CAO (G), FA&CAO, N.F. Railway. In the written examination for selection of Accounts Clerk, the petitioner had cleared the said examination and his name appeared at Sl.No.6 of the result of successful candidates, which was notified on 31.12.2008. However, the Deputy Director (ABE), vide communication dated 29.01.2009 to the Commanding Officer, 4th Battalion, RPSF, informed that as per Railway Board's letter dated 11.08.2003, RPF/RPSF personnel cannot be allowed to appear in GDC Examination (GDCE for short) and they are also not eligible to appear in

other departmental selections in departments other than RPF/RPSF. Accordingly, the NOC given to the petitioner vide letter dated 15.09.2008 was withdrawn.

3. The consequential communication made by the Director/ABE, Railway Board, dated 18.06.2012 to the FA&CAO, N.F. Railway, by which decision of repatriation of the petitioner to the parent battalion was issued, has been assailed in this writ petition filed under Article 226 of the Constitution of India.

4. The stand of the respondents is that the Railway Board under the Ministry of Railway vide communication dated 11.08.2003, had notified a scheme of GDCE for filling up a part of direct recruitment quota post in Group-C category and it was decided that the selection of RPF/RPSF staff under the GDCE cannot in any way facilitate redeployment of surplus staff and accordingly, it was decided that the RPF/RPSF personnel cannot be allowed to appear in GDCE. The recommendation of the petitioner vide communication dated 15.09.2008 by the Deputy Director/ABE, Railway Board is *ex facie* contrary to the communication made by the Railway Board, Ministry of Railway dated 11.08.2003, by which RPF/RPSF personnel was disallowed to appear in GDCE and they were also not allowed to appear in departmental selections in departments other than RPF/RPSF. Moreover, it has been made clear in the said communication dated 11.08.2003 that the past cases decided would not be re-opened. Therefore, if any personnel of RPF/RPSF were given promotion prior to the communication dated 11.08.2003, it will not confer upon the petitioner any right to be absorbed in the establishment of FA&CAO, N.F. Railway.

5. The petitioner has placed reliance on the order dated 15.06.2011, passed by this Court in WP(C) 1455/2009, wherein the respondents were directed that in the event if the respondents want to take any action in the matter towards his re-deployment in the RPSF, he will be given the opportunity

of being heard with a further direction that the respondents shall also consider as to the feasibility of the petitioner for continuation in the Accounts Department. It is also noted that the letter dated 11.08.2023 was considered by this Court and it was held that the said letter was not in form of any general circular, but was issued to the General Manager (P), SC Railways, Secunderabad. Nonetheless, the said communication is by the Railway Board and it cannot be said that the said communication will not have a binding effect. The training and the deployment of the petitioner in the establishment of the FA&CAO, N.F. Railway, Maligaon was subsequent to the said letter dated 11.08.2003, which is not under challenge, the consequential action of the respondents cannot be said to be contrary to the said communication dated 11.08.2003.

6. In this regard, we take note that vide communication dated 22.03.2012, which is annexed to this writ petition as Annexure-I that pursuant to the order dated 15.06.2011, passed by this Court in WP(C) 1455/2009, the petitioner was given an opportunity of hearing and in view of policy decision dated 11.08.2003, the repatriation of the petitioner to the parent battalion was ordered. In this writ petition, the petitioner has not assailed the said communication dated 22.03.2012, nor the petitioner has assailed the policy decision vide communication dated 11.08.2003.

7. Be that as it may, the Court is of the considered opinion that till such time the said communication bearing no. E(NG)I/2002/PM2/9 dated 11.08.2003, issued by the Deputy Director Estt. (N), Railway Board is in force, if any decision taken by the respondent authorities is contrary to the same, it cannot be sustained.

8. Therefore, the Court is of the considered opinion that no case is made out by the petitioner for interference with the impugned order under Memo

No.2009/Sec (ABE)/CC/2/9, dated 18.06.2012, issued by the Director/ABE, Railway Board.

9. Accordingly, this writ petition fails and the same is dismissed.

JUDGE

Comparing Assistant