

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18272 of 2014

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1. Shashi Bhushan Pandey s/o Sri Ganesh Pandey residential of mohalla - Bagdalhan, P.O. Hajipur, P.S. Hajipur, District - Vaishali, State - Bihar
 2. Amit Kumar S/o Late Parmanand Singh resident of Village - Bekapur, P.O. Munger, P.S. Munger, District - Munger, Bihar
 3. Sanjay Kumar Jha S/o Late Kaleshwar Jha resident of village - Chiraiyabad, P.O. Ratanpur, P.S. Bariyarpur, District - Munger, State - Bihar
 4. Kamleshwar Kumar s/o late Bacchu Mandal resident of village - Chandanpur, P.O. Jamalpur, P.S. Naya Ram Nagar, District - Munger, State Bihar
 5. Ravi Shankar Sharma s/o Sri Chandrika Sharma resident of village - Sharma Tola, P.O. Areraje, P.S. Govind Ganj, District - East Champaran, State - Bihar
 6. Dileep Kumar Yadav s/o Sri Kapil Dev Yadav resident of village - Bankata, P.O. Kepa Samhata, P.S. Kepa, District - Chapra (Saran), State - Bihar
 7. Bhupendra Kumar s/o Sri Sada Nand Yadav resident of village - Bhatpura, P.O. Pahapur, P.S. Simri Bakhtiyarpur, District - Saharsa, State - Bihar
 8. Ganesh Mukhiya s/o Sri Rameshwar Mukhiya resident of village - Kamalpur, P.O. Baryahi Bazar, P.S. Bangaw, District - Saharsa, State - Bihar
 9. Bhisham Kumar s/o Sri Awadhesh Prasad Yadav resident of village - Bank (Harpur), P.O. Bank, P.S. Muffasil, District - Munger, State - Bihar
 10. Suresh Rai s/o Sri Rajendra Rai resident of village - Kamhariya, P.O. Kamarpur, P.S. Kamarpur, District - Buxar, State - Bihar
 11. Tara Prakash Singh s/o Sri Surendra Singh resident of village - Bharkuriya Kala, P.O. Surajpura, P.S. Surajpura, District - Rohtas, State - Bihar
 12. Ajay Kumar Paswan s/o late L.R. Paswan resident of village - Jharna Colony, P.O. Shaibganj, P.S. Shaibganj, District - Shaibganj, State - Jharkhand
 13. Kamal Singh S/o Sri Chandrama Singh resident of village - Misharwalia, P.O. Kamarpur, P.S. Buxar, District - Buxar, State - Bihar
 14. Mani Bhushan Kumar s/o Sri Yogendra Rai resident of village - Gaighat, P.O. Ashaparari, P.S. Simri, District - Buxar, State - Bihar
 15. Sandeep Kumar s/o late Sadan Prasad resident of village - Giharper, P.O. Bihar Sharif, P.S. Bihar Sharif, District - Nalanda, State - Bihar
 16. Ashok Kumar s/o late Janardhan Ram resident of village - Shuklpura, P.O. Dharipur, P.S. Muffasil Ara, District - Ara (Bhojpur), State - Bihar
 17. Bidhya Sagar Dubey s/o late Dwarika Nath Dubey resident of village - Duboli, P.O. Ekouna, P.S. Simari, District - Buxar, State - Bihar
 18. Asgar Ali Khan s/o late Athar Ali Khan resident of village - Fatah pur, P.O. Bhutahi, P.S. Son Barsa, District - Sitamarhi, State - Bihar
 19. Sanjeev Kumar Singh s/o Sri Bindeshwari Prasad Singh resident of village - Rasidpur, P.O. Khanpur (Mal), P.S. , District - Bhagalpur, State - Bihar
 20. Shambhu Nath s/o Sri Jagdish Prasad resident of village - Bariarpur (Busti), P.O. Bariarpur, P.S. Bariarpur, District - Munger, State - Bihar

.... Petitioners

Versus

1. The Union of India through its Director General, Railway Protection Force, Railway Bhawan (Railway Board), New Delhi
2. The Chief Security Commissioner Cum Inspector General, Railway Protection Special Force, Railway Bhawan (Railway Board), New Delhi
3. The Deputy Inspector General, Railway Protection Special Force, Railway Bhawan (Railway Board), New Delhi
4. The Senior Commanding Officer/Commanding Officers, 11-BN/R.P.S.F., Garhara, Barauni, District - Begusarai, State - Bihar
5. Manoj Kumar Soren s/o Sri Mirja Soren
6. Ramesh Kumar s/o Sri Sita Ram Modi
7. Basant Kumar s/o Kesho Chiudhary
8. Hare Ram Singh s/o Paras Singh All Present address of Respondent nos. 5 to 7 through Inspector General Cum Chief Security Commissioner RPF/South Eastern Railway Gardan Rich, Kolkota - 43
9. Mahesh Chand Meena Meena s/o Dhooji Ram Meena
10. Chhagan Lal Saini s/o Mulo Ram Saini
11. Jai Prakash S/o Raje Ram
12. Khel Singh Meena s/o Kalu Chand Saini
13. Vineet Kumar Saini s/o Ilam Chand Saini All present address of Respondent nos. 9 to 13 through Inspector General Cum Chief Security Commissioner/RPF, Western Railway Churchgat, Mumbai

.... Respondents

Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Respondent/s : Mr. Mahesh Prasad

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 17-07-2015 Heard learned counsel for the parties.

2. The prayer of the petitioners in this writ application reads as follows:

“(i) For issuance of an appropriate writ commanding the respondents to transfer R.P.S.F. (Railway Protection Special Force) to R.P.F. (Zonal Railways) of the petitioners as to when other employees as Head Constables/ Constables have juniors from the petitioners and they have been transferred but the petitioners have not transferred from RPSF to RPF till date as per annexure 2

and 3 of the writ application.”

3. Learned counsel for the petitioners while pressing for the aforementioned relief has initially relied on the provision of the Standing Order No.102 dated 29.3.2010, as contained in Annexure A-2 of the counter affidavit, which reads as follows:-

“3) **Inter Zonal Transfer:**

(A) Conditions for transfer from RPSF to RPF (Zonal Railways)

i) Sub Inspectors and Constables who have been posted in RPSF after initial training shall be eligible for transfer to RPF on completion of 5 years of service including training period.”

4. On the basis of the aforementioned provision learned counsel is of the view that every person after qualifying for transfer on completion of five years of service the respondents are bound to make transfer only by following the seniority.

5. This Court does not find anything of that nature either in the Rule or even in the aforesaid portion of Standing Order referred which in fact is not statutory in character but only a guideline.

6. Learned counsel for the petitioners had then referred to an order dated 16.4.2013 in C.W.J.C.No. 6756/2013 (Vibhanshu Kumar & ors. v. Union of India & ors.) to contend that an exactly similar issue has been decided by this Court wherein the principle

of following seniority in the matter of transfer from RPSF to RPF, has been upheld.

7. This Court has carefully gone into the order in question in the case of Vibhanshu Kumar (supra) and does not find a word therein which can support the aforementioned submission of the learned counsel for the petitioners. All that the aforementioned order says in the operative portion reads as follows:

“ After having heard the parties and on consideration of the materials available on record as also taking into consideration the nature of claims raised in the present proceeding, this Court is of the opinion that no useful purpose shall be served by keeping this matter pending any longer before this Court. However, interest of justice would be sub-served if the petitioners are granted liberty to file their separate representations with all supporting documents before the respondent no.2 raising all the pleas, which have been raised in the present proceeding. It is ordered accordingly.

If such separate representation are filed on behalf of each of the petitioners within a period of one month from today with all supporting documents and the certified copy of the present order, then the respondent no.2 and/or any other competent authority shall be obliged to consider and decide their representations and to take a final decision at an earliest possible time strictly in accordance with law by a reasoned and speaking order. If on consideration of materials and the relevant rules, the respondent no.2 and/or



any other competent authority of the Railway Protection Force/ Railway Protection Special Force come to a conclusion that the grievances raised on behalf of the petitioners are admissible to them, then he shall further be obliged to issue consequential order for grant of such admissible reliefs to the petitioners without any unnecessary delay.

Entire exercise must be completed by the respondent no.2 and/or any other competent authority of RPF/ FPSF within a maximum period of three months from the date of filing of the representation with all supporting documents by each of the petitioners separately.

The writ application stands finally disposed of with the observations and directions made above.”

8. Thus, the precedence sought to be referred to and relied by the learned counsel for the petitioners in the case of Vibhanshu Kumar (supra) also will be of no help and avail to the petitioners.

9. At this stage learned counsel for the petitioners has emphatically relied on paragraph no.10 of the counter affidavit which for the sake of clarity and gravity is also quoted hereinbelow:

“10. That is stated that the petitioners in the instant writ petition has contended that earlier inter railway transfer request of their juniors (who have also been made the respondents by the petitioner as respondent no.05 to 08 and 09 to 13) have also been considered by the answering respondents i.e. administration whereas they have yet not



been considered for inter railway transfer. In this regard, it is stated that based on the request of inter railway transfer, some of the juniors were also considered as a special case for inter railway transfer were permissible under the provision of the then administrative instructions contained in Standing Order 70 dated 27.9.2004) on bottom seniority subject to the availability of vacancies in the rank of Constables in the different zones of RPF. With regard to the petitioner it is stated that the request for inter railway transfer in the rank of Constable on bottom seniority does not seem to have been received by the respondents for consideration during the period when the request of their juniors were considered for transfer to the various RPF zones.”

10. As would be evident as the instance of the year 2004 relied by the petitioners on the basis of earlier standing order has been explained, that will give no right to the petitioners at least when subsequent standing order No.102 dated 29.03.2010 has already been brought into force superceding the earlier standing order of 2004 and the same in no way confers right to the seniors be posted in RPF. The matter of transfer of the personnel and that too disciplined force, like Railway Protection Force (R.P.F.) and Railway Protection Security Force (R.P.S.F.) being wholly discretionary under the Rules and the standing order, this Court is not inclined to interfere with the same.

11. As a matter of fact whenever such a provision in service regulation has to be examined in relation to exercise of power of transfer, which again is an incidence of service, and no right is vested in the employee to get a transfer to a particular post or establishment or organization. In fact whatever has been mentioned in the Standing Order, already quoted above, only makes a person eligible. Therefore, the employer will always be at liberty to select best persons for bringing from RPF. The only restriction made is fulfillment of the minimum period prescribed. The petitioners, therefore, have a complete misconceived notion of the Standing Order.

12. This writ application, therefore, is wholly misconceived and is accordingly dismissed.

(Mihir Kumar Jha, J)

surendra/-

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