

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3994 of 2017

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1. Alok Kumar Son of late Arun Kumar Resident of Mohan Nagar, Chhapra, Police Station- Nagar Thana, Chhapra , District- Saran Law Superintendent in the Office of Chief Personnel East Central Railway Hajipur, at Present in the Office of Divisional Railway Manager, Sonpur, District- Saran- 841101.

.... Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Minister of Railways, Rail Bhawan, New Delhi 110001
2. The Secretary (Establishment), Railway Board, Minister of Railways, Rail Bhawan, New Delhi- 110001
3. The General Manager, East Central Railway, P.O.- Hajipur, District- Vaishali(Bihar), 844101
4. The General Manager(Personnel), East Central Railway, P.O.- Hajipur, District- Vaishali(Bihar), 844101
5. Chief Personnel Officer (Administration), East Central Railway, P.O.- Hajipur, District- Vaishali(Bihar), 844101
6. Senior Deputy General Manager(Vigilance), East Central Railway, P.O.- Hajipur, District- Vaishali(Bihar), 844101
7. Smt. Pushpa Rani, Deputy General Manager(Law), East Central Railway, 5th Floor, Biscoman Tower, West Gandhi Maidan, Patna- 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Manvendra

For the Respondent/s : Mr. Sanjeet Kumar Tiwari

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 18.05-2017

Since the petitioner failed to beget any relief from the Central Administrative Tribunal, Patna Bench, Patna, in his O.A. No.880 of 2014, he has decided to challenge the order dated 20.2.2017 in the present writ application seeking a judicial review.

2. The following reliefs were prayed for by the petitioner



before the Central Administrative Tribunal :

"[8.1] That your Lordships may graciously be pleased to quash and set aside the impugned order of reversion dated 09.12.2014 as contained in Annexure A/11 together with show cause notice dated 07.10.2014 as contained in A/7.

[8.2] That the respondents further be pleased to grant all consequential benefits in favour of the applicant including protection of pay vis-à-vis his juniors to the post of Law Superintendent in the Pay band Rs.93,00-34800/-Grade Pay Rs 4,600/- together with arrears and interest thereupon.

[8.3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.."

3. Petitioner was appointed as a Constable in Railway Protection Force (RPF) on 26.11.2004. The selection was made through Railway Recruitment Board, Patna.

4. In furtherance to a communication dated 01.08.2012, petitioner applied for selection on the post of Law Assistant, which is now known as Chief Law Assistant/Law Superintendent, since it was his opinion that he was eligible for consideration in terms of the said notification, which is Annexure- A /1 of the O.A.

5. He participated in the selection process, was declared successful and was posted as Law Assistant vide order dated 02.07.2013 and started performing his duty on the new post with effect from 15.07.2013.

6. On 07.10.2014, he was issued a show cause vide Annexure- 7 of the O.A. as to why he should not be reverted to his original post of a Constable in RPF in terms of the Railway Board's



Circular No.139/2003 and 222/2004 since the respondent Railway authorities were of the opinion that he was ineligible *ab initio* from participation as well as consideration for appointment on the post of Law Assistant from the rank of a Constable. The petitioner submitted his response where he took a plea that the Railway Board's circulars were not applicable to Law Superintendent Examination. It was only relevant for General Departmental Competitive Examination (GDCE).

7. The respondents did not find the explanation offered by the petitioner to be satisfactory, therefore, vide order dated 09.12.2014 (Annexure- A/11 to O.A.), he was reverted to the post of Constable and that became the cause of action for filing of the O.A.

8. One of the stand, which was taken before the Central Administrative Tribunal on behalf of the petitioner, was that the reversion order is contrary to Rule 131 and 219 of the Indian Railway Establishment Manual, 1989, Vol.1, as revised in 2009, as well as unsustainable in view of Railway Board's order No.113/2009 and 161/2009. He also placed reliance on some other adjudication made by different Benches of the Central Administrative Tribunal to buttress his argument.

9. The stand of the respondent Railway authorities in their written statement, which has been taken note of by the Central Administrative Tribunal, is as under :



“3. The respondents, through their written statements, have confirmed the selection and posting of the applicant as Law Superintendent. However, additionally the respondents have submitted as below :-

[i] A complaint through Vigilance Organisation of E.C. Railway was received in the office of General Manager (P) Hajipur against the selection of Shri Alok Kumar as Law Superintendent on grounds of his being from the RPF Department. In the light of this complaint, Railway administration reviewed his case. It was observed that as per RBENo. 139/2003 (Railway Board's letter No.E(NG) I/2002/PM2/9 dated 11.08.2003) and RBE No. 222/2004 (Railway Board's letter No. E(EG)I/2002/PM2/9 dated 13.10.2004) RPF/RPSF personnel are/were not eligible to appear in the selection for posts in department other than RPF including the post of Chief Law Assistant/Law Superintendent (PB-II, GP- 4600/-).

[ii] In view of the above, it was established that promotion of Shri Alok Kumar to the post of Law Superintendent from the post of Constable/RPF was ab initio wrong/illegal/void. So a show cause notice in this regard was issued to him vide memo dated 07.10.2014.

[iii] Pursuant thereto, the reply to the show cause was duly considered in the context of applicable / relevant rules and the promotion order of the applicant from Constable (RPF) to Law Superintendent was cancelled vide orders dated 09.12.2014. Simultaneously he was spared and directed to join in his original cadre / department.

[iv] The respondents further submit that the RPF is a separate organisation for all intents and purposes and has its own career progression channel within the department. Further that, RBEs 143 of 2009 and 161 of 2009 (Annexures R/4 series) are normal promotional guidelines and have no relevance in this case; rather the applicant's case comes



under the purview of RBEs 139 of 2004 and 222 of 2004 whereby RPF/RPSF personnel have been debarred to appear in GDCE selection, including any kind of selection to be held in other departments of the Railways. This view has been confirmed by Hon`ble High Court, Andhra Pradesh in Writ Petition No. 13376 of 2004. The above RBE No.222/2004 has been issued by Railway Boards based on this judgment. The operative portion of the judgment is as under :

"In the light of the policy decision of Railway Board that the members of the Railway Protection Force cannot be treated as one of the department of the Railway Board, the judgment of the Supreme court referred supra and in the light of the order of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.2661of 2003, the petitioners being the members of the Railway Protection Force are being treated as a different class and they do not form the same class under which the members of other department of the Railway Board were brought and treating them in a different standard does not amount to violation of the equal right provide under Article 14 and 16 of the Constitution of India. There are no grounds to invoke the extraordinary jurisdiction of this court under Article 226 of the constitution and to issue any direction by way of writ of Mandamus against the respondents.

With the above observations, the writ petition is dismissed at the admission stage."

[v] That RPF/RPSF personnel are part of the combatised force created specifically to look after the security needs of the Railway and the mode of their selections and training has also been so oriented. Further, that channels of promotion in higher grades are also available in the



applicant's original parent cadre for career advancement and that RPF/RPSG personnel are governed under the Railway Protection Force Rules, 1987. Lastly, that there is no interference or encroachment of the Vigilance officials in this case. The Vigilance officials simply forwarded the complaint received against the applicant to the Personnel branch for investigation. The impugned order dated 09.12.2014 has been passed with the approval of competent authority after taking into account all points raised in the applicant's reply to the show cause notice and in accordance with Railway Rules prevalent at present. (emphasis supplied)

[vi] That, in the year 2014, office of General Manager (P), E.C. Railway/ Hajipur, vide notification dated 1.5.2014, called for options for forming a panel of Chief Law Assistant under 60% promotional quota. In partial modification to this notification, a corrigendum dated 2.9.2014 was issued mentioning therein that RPF/RPSF personnel are not eligible to appear in the said selection in the light of RBE No. 139/2003 dated 11.8.2013 and RBE No. 222/2004 dated 13.10.2004. (emphasis supplied) Being aggrieved by the above, a writ petition CWJC No. 18999 of 2014 was filed by Umesh Kumar and 7 others (all RPF /RPSF personnel). After hearing both the parties, the Hon'ble Single Bench of High Court/ Patna disposed the writ, vide order dated 20.11.2014 [Annexure R/5 series], directing respondent no. 4 (Chief Personnel Officer-cum-General Manager (P), E.C. Railway/Hajipur to dispose of fresh representation of the petitioners. Accordingly, a speaking order dated 19.1.2015 [Annexure R/5 series] was issued, debarring RPF/RPSF personnel from appearing in the examination as per extant rules. It has been mentioned in the said speaking order that the applicants are security personnel in the department of RPF/RPSF and are deployed for security of the Railway property. That



RPF/RPSF department is a separate body for all intents and purposes, with a separate career progression channel within their department and cannot participate in various selections conducted by different departments of the Railways. That, in the above context, the selection of the applicant to the post of Law Superintendent was also obviously not in order in terms of Railway Board's order No. 139/2003 and 222/2004.

In sum the respondents submit that the claims of the applicant in this O.A are entirely devoid of merit. They have reiterated this position in their supplementary written statement.

4. The applicant has additionally filed a supplementary petition whereby he has drawn attention to a recent circular of Railway Board, dated 02.05.2016, wherein it has, inter alia, been decided as below :-

"3. In view of above, RPF/RPSF personnel may not be allowed to appear in any of the departmental selections for departments other than RPF/RPSF and previous instructions in this regard may be scrupulously followed.

4. Past cases decided otherwise may not be reopened, however in such selections/panels initiated where RPF/RPSF candidates are allowed for any reason, but not finalized till date shall cease to exist."

5. Heard the parties and considered their arguments/documents/submissions. The facts / views which emerge are as below :-

(a) The claim of the applicant herein hinges on the basic issue whether RPF/RPSF personnel should be considered for or excluded from departmental selections / promotions of the Railways. As such, it is necessary to delve into the position which has emerged and now obtains by virtue of administrative and judicial decisions over the years.



(b) In regard to the eligibility of RPFs personnel for various selections / promotions in the Railway Establishment per se, the Railway Board has stipulated that the RPF / RPSF personnel cannot be allowed to appear in General Departmental Competitive Examination [GDCE], as also other departmental selections conducted by the department other than RPF / RPSF. These instructions have issued in terms of letter dated 11.8.2003 (RBE 139/2003).

(c) Subsequently, a copy of CAT Principal Bench New Delhi's judgment dated 30.12.2003 in OA 2661 of 2003 upholding the above instructions of the Railway Board has also been circulated vide letter dated 24.3.2004.

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Vide letter dated 13.10.2004 (RBE 222/2004), this decision was also circulated to all concerned. Together, RBEs 139/2003 and 222/2004 provide the policy foundation on this issue.

(e) In a recent letter dated 6.5.2016, the Railway Board has further informed all concerned as below:-

**Government of India
Ministry of Railways
(Railway Board)**

NO.E(NG)I-2014/PM1/19 New Delhi, dated 06.05.2016

**The General Managers (P)
All Indian Railways & Pus.
(As per standard list)**

Sub: Clarification regarding exclusion of RPF/RPSF personnel from departmental selections.

Ref: Railway Board's letter No.E(NG)I-2002/PM2/9 dated 11.08.2003, 14.3.2004 and 13.10.2004.



In terms of Board's above quoted letters, RPF/RPSF personnel are not to be allowed for appearing in GDCE and other departmental selections for promotion in departments other than RPF/RPSF. This decision of Railway Board is in consonance with observations made by Hon'ble CAT/PB and Hon'ble High Court of Andhra Pradesh, reflected in letters quoted above. It has, however, been observed that in spite of clear cut instructions on the subject, some Zonal Railways are still allowing RPF/RPSF personnel in departmental selections, causing a number of court cases in various parts of the country.

2. The matter has again been considered and in the light of Hon'ble High Court of Rajasthan, having explained the scope of Section 10 of the RPF Act in the matter of Om Prakash Vs Union of India 1995 Lab IC 1981 (Raj), it has been decided that in spite of the fact that members of the Railway Protection Force have been categorized as railway servants as per Section 10 of the RPF Act, 1957, but they are so only for the purpose of those facilities and conditions, which are not specifically provided by the provisions of RPF Act, 1957 and the Railway Protection Force Rules, 1987. In other words, as a class, the members of the Railway Protection Force are distinct to the other Railway employees because the other railway employees are not the members of the armed forces of the Union, which the members of RPF are.

3. In view of above, RPF/RPSF personnel may not be allowed to appear in any of the departmental selections for departments other than RPF/RPSF and previous instructions in this regard may be scrupulously followed.

4. Past cases decided otherwise may not be reopened, however in such selections/panels initiated, where RPF/RPSF candidates are allowed for any reason, but not



finalized till date shall cease to exist.

Please acknowledge receipt of this letter.

Hindi version shall follow.

**(P.M. Meena)
Deputy Director-II/E(NG)I
Railway Board**

(f) The position which, therefore, emerges clearly is that the RPF/RPSF personnel are part of a combatised force, created specifically to look after the security needs of the Railways and have their own separate mode of selection, training and channels of promotion to higher grade. That, in the result, they are not to be considered for departmental selections /promotions of the Railway Establishment.

(g) Going back to the Railway Board's circular dated 11.8.2003 [RBE 139/2003], it is noted that the following instructions had been categorically conveyed, as below:-

“The question whether RPF/RPSF Personnel should be considered eligible to appear in the GDCE or other Departmental selections for appointment/promotion to posts in Departments other than RPF/RPSF in the Railways has been considered carefully by the Board in consultation with the Ministry of Home Affairs. As the Railways are aware, the scheme of GDCE has been introduced with the main objective of facilitating redeployment of surplus staff either by redeployment of such staff in the posts vacated by staff selected under GDCE or surplus eligible staff themselves getting selected under the scheme. However, the selection of RPF/RPSF staff under the GDCE cannot in any way facilitate redeployment of surplus staff. In view of this and on the analogy of practice being followed by the Central Police Force [CPFs] under the control of the Ministry of Home Affairs as also the very nature of job and the method of recruitment in



RPF/RPSF, it has been decided that the RPF/RPSF personnel cannot be allowed to appear in the GDCE. They will also not be eligible to appear in other Departmental selections in Departments other than RPF/RPSF. However, the past cases decided otherwise will not be reopened."

This instruction was also buttressed by subsequent instructions / judicial decisions, including RBE 222/2004.

(h) It, thus, becomes clear that the applicant's basic contention that the RBE circulars 139/2003 and 222/2004 are not applicable, has no substantive basis on closer examination and analysis of the documents.

(i) It is further noted that the Railway Board's circulars 113/2009 and 161/2009 are essentially general instructions and have no relevance towards substantiation of the applicant's claim that his consideration for selection to the post of Law Superintendent was valid under these circulars. Similarly, it is noted that Rule 131 of 2009 Vol. 1, cited by the applicant, also does not substantiate the applicant's claim that he was eligible for consideration in such selection as Law Superintendent. It is noted that these instructions and rules largely relate to the personnel of the Railway Establishment and to the extent the applicant, as a member of the RPF, is part of a separate establishment [in terms of administrative decisions of the Railway Board and judicial rulings on the subject], he cannot be treated as being eligible for such consideration. That, in the result, his consideration for the post of Law Superintendent in 2013 was indeed incorrect ab initio since RBE circulars 139/2003 and 222/2004 were clearly applicable.

(j) Be that as it may, the applicant also now argues that since he was appointed as a Law Superintendent by due process, his reversion should be invalidated. In this regard, he submits that the latest instructions dated 6.5.2016 have



also stipulated that "the past cases decided otherwise will not be reopened....". However, this argument is not tenable for the simple reason that, as per records, the applicant's appointment was reopened and reviewed by the respondents and decision has already been taken, in terms of applicable RBE circular 139/2003 and 222/2004 to revert him to a substantive post in the RPF. As such, this case no longer qualifies to be treated as a "past case decided otherwise". (emphasis supplied)

10. The Central Administrative Tribunal re-examined the Railway Board's circular dated 11.8.2003, i.e. RBE 139/2003 as well as RBE 222/2004, and was of the categorical opinion that the same have applicability and the stand taken contrary to the same was negated. The Tribunal for the reasons noticed above concluded that the very consideration of the petitioner for the post of Law Superintendent was indeed incorrect decision or action since he is ineligible *ab initio*.

11. The other limb of argument was that since the petitioner was allowed to participate and he qualified, therefore, the respondent should be precluded from reverting him to the substantive post of Constable in RPF. The Tribunal opined that if his basic eligibility was not there in terms of the circular, the notification inviting application dated 01.08.2012 was meant for railway employees and since the Constable of RPF or any such employee performing under the RPF Act are not employees of the railways but



are under control of the railways for a limited purpose, therefore, the notification itself was limited in nature and merely because somebody did manage to go past the scrutiny at the threshold, it does not create a right contrary to the rules.

12. Effort was made on behalf of the learned counsel representing the petitioner that since in Section 234 of the Railway Act, 1989 read with definition in the Railway Protection Force Act they ought to be treated also as employees of the Railway.

13. The argument is too far fetched because not only the Tribunal has dealt with the position of the Constable of the RPF and their status vis-à-vis railway employees, but there have been other litigation of similar kind and an order rendered as far back as on 30.12.2003 by the Principal Bench of CAT, New Delhi, in O.A. 2661 of 2003 has also been tendered before this Court after due service upon the counsel for the petitioner. Here the case related to appointment of Constables on the post of Junior Cashier. This is what the Principal Bench had to say in paragraph 3, 5 and 7:

“3. The respondents while opposing the plea of the applicants have submitted that by issuance of the internal correspondence/policy decision as has been done by the respondents, no cause of action accrues to the applicants for filing the present application. The respondents have further stated that the applicants have already been issued communication dated 24.10.2003 vide which they have been informed that Railway Projection Force/Railway Protection



Special Force (hereinafter referred to as RPF/RPSF) personnel are not eligible to appear in the selection to the post of Junior Cashier (scale Rs.4000-6000), but the applicants have not so far challenged the said order. The respondents main contention is, that the RPF/RPSF personnel are combatised personnel and they have been inducted specifically to look after the security of the Indian Railways and the mode of their selection and training is tailor-made for the said purpose only and the decision now formally taken debarring them to participate in the selections being held for promotion to posts outside RPF/RPSF was in conformity and in line with the pattern being followed in other Central Police Forces as advised by the Ministry of Home Affairs. Even otherwise, according to them, the applicants being from the combatised cadre cannot be shifted to administrative/ministerial cadre outside RPF/RPSF and hence, the decision taken by them was in conformity with the overall policy of the respondents. They have further contended that even the notice for selection issued (Annexure-R/2) would show that the same had not been circulated to the offices of RPF or to the offices of the RPSF because the members of the disciplined Force are not expected to participate in the examination held for the selection to the post of Junior Cashier. While admitting that prior to the year 1997-98 some member of the RPF/RPSF had participated in the departmental examinations for the post of Junior Cashiers, it is contended that it was on account of some inadvertent mistake on the part of the respondents, but this act in itself do not confer any right on other ineligible members of the Force to appear in the examination.

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5. While repelling the arguments of the applicants, the learned counsel for the respondents has, at the first



instance, submitted that the examination in the instant case has already been taken place as far back as on 4.11.2003 and even the supplementary examination for those candidates reporting sick under authorized Railway Medical officer has also been taken place and as such the procedure for selection has been completed, so no cause of action now remains in favour of these applicants. Countering the other arguments of the applicants that they come within the meaning of other Departmental staff as contained in para 170 of the IREM, the learned counsel has submitted that RPF/RPSF is a totally different entity and they are not other Departmental staff as envisaged in para 170 of the IREM. His contention is that the purpose and object of creation of a special Force and the training imparted to the members of such a Force does not permit them to change their status from that of a combatised members to Ministerial staff of the Railways and otherwise also it is not in the administrative or public interest that the members appointed after a stringent training are allowed to migrate to administrative jobs.

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7. After a careful perusal of para 170 of IREM, we are of the considered opinion that RPF/RPSF cannot be said to be covered within the meaning “other Departmental staff”. We are inclined to agree with the contention of the respondents that the applicants are part of a combatised Force created specifically to look after the security needs of the Indian Railways and the mode of their selection and training has also been conducted in that direction only. Thus, creation of such post appears to be totally unrelated to the ministerial needs. Admittedly, the applicants have joined the Force and underwent special training with the full knowledge and intent to remain as members of the combatised Force only and not to migrate to ministerial cadre. Undoubtedly, as



admitted by the respondents as well, on certain earlier occasions some members of the RPF/RPSF staff had participated in the departmental examinations for the post of Junior Cashier, but we tend to agree with the arguments of the respondents that, that by itself does not confer any right on otherwise ineligible members of the Force to appear in the examination because the applicants have not been able to produce before us any rules to show that they are entitled as a matter of right to appear in the examination for the post of Junior Cashier.” (emphasis supplied)

14. Though the decision of the Principal Bench may not be binding upon this Court, but the rational and reasoning provided by the Principal Bench for not treating Constables of RPF as employees of the railway as a concept cannot be ignored and the Court, therefore, considering the overall provisions, is in agreement with the order of the Central Administrative Tribunal, Patna that the order to revert the petitioner from the post of Law Assistant was not an arbitrary or illegal order. In fact, the petitioner has taken a chance by applying and going through the process of selection and within months of the same, the omission or error was pointed out by the vigilance department, therefore, the corrective measure was taken by the respondent railways after giving an opportunity of hearing to the petitioner.

The order of the CAT, Patna Bench is not illegal so the



writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

Nilu Agrawal, J. I agree.

(Nilu Agrawal, J)

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AFR/NAFR	AFR
CAV DATE	08.5.2017
Uploading Date	18.5.2017
Transmission Date	NA

