

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos. 27828 to 27831 of 2010 , 28010 & 33295/2015
and M.P.Nos.1/2010 in W.P.Nos.27828 to 27831/2010, 1&2/2015 in
W.P.No. 33295/2015 and M.P.Nos. 1 to 3/2015 in W.P.No.28010/15

1. M.Velayutham
2. M.Pakirisamy
3. M.P.Kuppusamy
4. A.K.Sukumar
5. K.Murugan
6. A.K.Srinivasan

... Petitioners in
W.P.No.27828/10

1. T.Ganesan
2. T.Dharmaraj
3. G.Saravanan
4. B.A.Balu
5. V.P.Panneer Selvam
6. A.Sekaran
7. C.Gandhi
8. S.Arone
9. N.Gabrial
- 10.L.Venkatesalu

.... Petitioners in
W.P.No.27829/10

1. L.Natarajan
2. M.Devendiran
3. T.Harikrishnan

... Petitioners in
W.P.No.27830/10

1. R.Dinakaran
2. C.Anbazhagan

... Petitioners in
W.P.No.27831/10

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Versus

1. Union of India
Rep.by its Secretary
Ministry of Railways,
Rail Bhavan,
New Delhi.

2. The Director General,
Railway Protection Force,
Railway Board,
New Delhi.

3. The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Park Town,
Chennai-600 003.

... Respondents in all W.Ps.

Common Prayer in W.P.Nos. 27828 to 27831 of 2010 : The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus call for the records relating to Office Order Nos.71, 78, 80, 66/2008 dated 30.05.2008, 13.06.2008, 16.06.2008, 19.06.2008 respectively of the 3rd respondent placing us in the bottom seniority of the constables in Souther Railway's Railway Protection Force and quash the same and direct the respondents to place us in the bottom seniority of the Head Constables in Southern Railway's Railway Protection Force as per Original Seniority.

For Petitioners : Mr.N.R.R.Arun Natarajan

For Respondents : Mr.M. Vijay Anand
Additional Standing counsel

COMMON ORDER

Since the issues involved and the grounds raised in these writ petitions are common, they are taken up and disposed of by this common order.

2. The petitioners were appointed as Constables in Railway Protection Special Force [RPSF] in the year 1988. The petitioners were posted in the 5th Battalion, Trichy and 7th Battalion, RPSF, Hyderabad. Since, all the petitioners are qualified for appointments as Constables, they were recruited through special selection by the competent authority.

3. In 2001, the petitioners and others were promoted from the rank of Constables to the rank of Head Constables in Railway Protection Special Force and posted to the respective battalions in the rank of Head Constables. Subsequently, on completion of their promotion training, they were promoted as regular Head Constables in Railway Protection Special Force and once again posted in the same respective battalions.

4. According to the petitioners, they were entitled to transfer from one Railway zone to another on fulfilling certain conditions in terms of standing order 102. According to the said standing order, the Constables become eligible for consideration by transfer from Railway Protection Special Force (herein after referred as RPSF) to Railway Protection Force (RPF), on inter zonal Railways, on completion of five years of service in the respective Force including the training period. While making such transfer, the seniority has been fixed under Rule 99.2 of the Railway Protection Force Rules, 1987.

5. All the petitioners herein on completion of five years of service, had requested for Inter Zonal transfer. But, however, the same was not considered favorably. Thereafter, on completion of ten years of service, they were once again sought for transfer and it was once again not considered for want of vacancies in the RPF, Southern Railway. Thereafter, on completion of 20 years of service, the petitioners submitted a request for Inter Zonal transfer from RPSF to RPF obviously in the rank of Head Constables, since they were working in the said rank from 2001 onwards. This request was made on the specific understanding of the petitioners that they will be placed on bottom seniority of their rank in terms of Rule 99.2 of the RPF Rules, 1987. On receipt of the representation from the petitioners, the Commanding Officers of both battalions, viz., 5th Battalion/RPSF, Trichy and 7th Battalion/RPSF, Hyderabad recommended to the first respondent for Inter Zonal transfer of the petitioners from RPSF to RPF.

6. On the basis of the above recommendation, vide proceedings dated 23.04.2008, the first respondent stated that the Director General of Railway Protection Force, Southern Railway, has approved the Inter Zonal transfer of the petitioners and others as Head Constables on bottom seniority and in the same rank of their batchmates on the terms and conditions governing such Inter Zonal transfer. The first respondent passed the proceedings after getting concurrence of the RPF, Southern Railway and other competent authorities of the respective zones including the third respondent and after ascertaining the availability of adequate vacancies in the rank of Head Constables in the Zonal Railway concerned. Thereafter, the Commanding Officer of the 5th battalion, Trichy and 7th battalion, Hyderabad by their proceedings dated 07.05.2008 and 24.12.2008 respectively, have stated that in terms of Railway Board's Letter No.2008/Sec(ABE) TR-6/32 dated 23.04.2008, the second respondent agreed and approved the transfer of petitioners and others who are working as Head Constables in RPSF on bottom seniority in the same rank of their batch mates.

7. In respect of one writ petitioner, an order was passed

on 30.05.2008 by the third respondent stating that the petitioner and others who were working as Head Constables in RPSF had reported to RPF, Southern Railway on Inter Zonal transfer on their request and further that the petitioners and others had given their willingness to be posted in their earlier rank of Constables/Executives in RPF, Southern Railway on the bottom seniority of the year of their recruitment. Thereafter, the petitioners were posted in the rank of Constable in the pay scale of Rs.3050-4590/- as against the original pay scale of Rs.3200-4900/-(pay revised). Likewise, in similar proceedings with different dates, the third respondent stated that the petitioners have agreed and given their willingness to join as Constables/Executives and consequently, they were also placed in the bottom seniority in the earlier post of Constable/Executive in the rank and pay scale of earlier post. All these proceedings are put to challenge in these four writ petitions.

8. Mr. N.R.R.Arun Natarajan, learned counsel appearing for the petitioners would submit that posting the petitioners in the lower rank by the authorities concerned, cannot be sustained since the same is contrary to the rule position as envisaged in the Railway Protection Force Rules, 1987. He would draw the attention of this Court to Rule 99.2, which is extracted hereunder:-

"99.2. Transfer on 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 member of the Force in the relevant rank of that railway or Railway Protection Force irrespective of the date of confirmation or length of officiating service of the transferred member of the Force."

9. As per the above Rule 99.2, if members of the Force transferred on their own request or on mutual exchange from one zonal railway to another or to the RPCF and vice versa, their seniority will be fixed below that of all existing confirmed and officiating enrolled member of the Force in the relevant position. In the present case, the petitioners had agreed for such inter zonal transfer since they were under the impression that they would only suffer loss seniority in the rank of Head Constables in terms of the above said Rule.

10. The learned counsel for the petitioner would draw attention of this Court to the proceedings of the first

respondent dated 23.04.2008 in which the first respondent approved the Inter Railway transfer of all the Head Constables (RPSF) staff on bottom seniority and in the same rank of their batchmates as envisaged under Rule 99.2 of the RPF Rules 1987. By proceedings dated 23.04.2008, in quite clear terms, the rank as Head Constables, in which all the petitioner were holding at the time of passing of the impugned order of transfer, the first respondent had approved such transfer and posting and assigned seniority in terms of the Rule 99.2 of RPF Rules, 1987. The learned counsel would also draw the attention of this Court to yet another order passed by the competent authority of the 5th Battalion, RPSF, Trichy, in which, it has been clearly mentioned that the Head Constables of the 5th battalion have been transferred to RPF Zonal Railway and placed in bottom seniority of the same rank of their batch mates. Therefore, the learned counsel for the petitioners would submit that both the competent authority of the 5th Battalion as well as the transferee/Railway, had mutually agreed and approved the transfer of police personnel on the basis of the Standing Order as cited supra and seniority was assigned in terms of Rule 99.2 of the RPF Rules 1987.

11. While matters stood thus, unfortunately it appears that while posting orders were issued which are impugned in the present writ petitions, it was stated that the petitioners were given their willingness to work in the lower post of Constable/Executive and on the basis of their willingness only, such transfers had taken place and therefore, they were assigned bottom seniority in the rank of Constable/Executive. Such posting orders issued cannot alter the service conditions as agreed by the police personnel, like the petitioners herein since there cannot be an estoppel against statutory regulation which provide for fixation of seniority in respect of inter zonal transfer.

12. Upon notice, respondents entered appearance and filed a detailed counter affidavit. The learned Standing counsel for the Railways would vehemently submit that the petitioners knowing full well the consequences, had accepted the transfer to their earlier post in the rank of Constable/Executive by submitting their willingness individually. Only on such willingness being obtained from them, their transfer was approved and effected by the Railways. In the said circumstances, it is not open to the petitioners herein to turn around and assail the order of transfer and posting, stating that they had to be placed in the same rank of Head Constable, of course, in the bottom seniority of the same rank.

13. The learned standing counsel would also submit that though the orders were passed in 2008, the petitioners have

chosen to approach this Court belatedly and moreover the petitioners alone have challenged the impugned proceedings, while many other similarly placed persons, accepted the posting orders. The learned Standing counsel would also submit that as per the willingness given by the petitioners, they were posted in the rank of Constable/Executive and assigned bottom seniority and on such willingness, the Administration had acted upon and now they cannot be asked to re-assign the seniority of the petitioners to their advantage. Such exercise will affect the right of existing Head Constables, who were already working in RPF, Southern Railway.

14. The learned Standing counsel would also, in support of his contention, rely on the decision of the Hon'ble Supreme Court of India, in "Union of India and others Vs. Deo Narain and others" reported in [CDJ SC 2008 P.1570]. The learned Standing counsel would draw the attention of this Court to paragraphs 34 and 44 of the judgment, which are extracted below.

"34. In our opinion, Renu Mullick also supports the view which we are inclined to take, namely, that an employee who is transferred to other Collectorate does not lose his/her past service for the purpose of considering his/her eligibility. But, if such transfer is voluntary or unilateral on condition that he/she will be placed at the bottom of the seniority list in the transferee Department, the said condition would bind him/her and he/she cannot claim seniority over the employees in the transferee Department."

"35. to 43.

"44. In our considered opinion, there the High Court was no right. The statutory rules referred to above, empower the Central Government to relax the provisions of the Rules, the Central Government relaxed eligibility condition. Such action, therefore, cannot be held illegal or unlawful and could not have been interfered with by the CAT or by the High Court. Moreover, the applicants opted for voluntary and unilateral transfer foregoing their seniority and joined Meerut Collectorate with open eyes and were placed below all LDCs who were serving in the said Collectorate. It was, therefore, not open to them to make grievance if LDCs shown above them in the seniority list are considered for promotion to the cadre of LDC. Thus, neither law nor equity supports the so-called claim of the applicants."

15. This Court feels that these observations by the Hon'ble Supreme Court of India, cannot be applied to the facts of the present case. Since in this case the transfer of these writ petitioners had taken place in terms of the standing orders and the seniority for the petitioners is to be assigned only in terms of statutory Rules as contained in the RPF Rules 1987. Likewise, the decisions, viz., "Union of India, through the Secretary Finance, Ministry of Finance, North Block, New Delhi and others versus Ranjeet Kumar & others" reported in CDJ 2016 Bihar HC 008 and "Naresh Kumar Gupta versus Union of India" reported in "CDJ 1999 All HC 1448" cited by the learned Standing counsel for the Railways, on perusal of the same, this Court is view that the same cannot be applied to the factual matrix of the present case.

16. The learned counsel for the petitioners would submit that the decisions of the Hon'ble Supreme Court, which are cited by the learned counsel appearing for the Railways were rendered in the context that there were no statutory rules governing the position of assigning seniority. As far as the present case on hand is concerned, seniority of the petitioners is governed by Rule 99.2 of statutory rules and therefore, these decisions which are relied upon by the learned counsel for Railways cannot be made applicable to the facts of the present case.

16. This Court has given its anxious consideration to all the rival submission of the learned counsel appearing for the petitioners as well as learned Standing counsel appearing for the respondents. As rightly contended by the learned counsel appearing for the petitioners that once the rule position envisages that seniority has to be fixed in a particular manner as provided, the same has to be fixed in that manner alone. This is the legal principle, which has been, time and again confirmed by the Hon'ble Supreme Court of India.

17. More over as rightly contended by the learned counsel for the petitioners that both the transferor as well as transferee authority have approved the transfer of these petitioners in the rank of Head Constables and it is also stated in their proceedings as relied upon by the learned counsel, to place them on bottom seniority and in the same rank of their batchmates. Admittedly in this case, the petitioners were working in the rank of Head Constables at the time of their transfer from their respective RPSFs to RPF.

18. Further, it has to be seen that the undertaking and the willingness given by the petitioners, cannot have any force of law since such undertaking obtained by the Government establishment is against statutory rules and is invalid and it is not open to the respondents authorities to act upon such willingness. This Court find that sometimes employees will give

such willingness under force of circumstances in order to protect their interest. Therefore, such undertaking cannot be held against these petitioners since that has been obtained under duress. Hence, this Court is of the considered view that based upon such undertaking which has no legal force, it would not be appropriate to deny the service benefits as provided in the statutory Rules as mentioned above.

19. From the records produced before this Court and the pleadings placed on record, it is very clear that the petitioners were working as Head Constables during the relevant period and admittedly, they had been posted as Head Constables in 2001 and had been functioning in that position. That being the case, the action of the respondents authorities in posting the petitioners in the lower rank as Constables/Executives and further placing them on bottom seniority in the lower post, is without any justification and cannot be countenanced. On the other hand, the administrative interest is protected by placing these petitioners in the same rank as Head Constables on bottom seniority. Otherwise, if the petitioners are placed as Constables on bottom seniority, which is nothing but appointing them as Constables on bottom seniority and amount to punishment and such contingency is not envisaged in any of the provisions of the standing order or the Rules.

20. For the above said reasons, this Court is of the considered view that all the petitioners have made out a clear case for grant of reliefs and therefore, all the impugned proceedings insofar as the posting of the petitioners in their earlier rank as Constables/Executives and assignment of bottom seniority in that rank, are set aside. The respondents/authorities are directed to post all the petitioners as Head Constables on the basis of the inter zonal transfers and assign bottom seniority in the same rank from the date of respective transfers and posting of the petitioners, with all attendant benefits from the date when their transfer was originally approved and the posting orders were issued. Accordingly, the Writ Petitions in W.P.Nos.27828 to 27831 of 2010 are allowed. Consequently, impugned Office Order Nos.71, 78, 80, and 66 of 2008 dated 30.05.2008, 13.6.2008, 16.06.2008 and 19.06.2008 respectively, passed by the 3rd respondent placing the petitioners in the bottom seniority of the constables in Southern Railway's Railway Protection Force, are hereby set aside. However, it is made clear that the petitioners are not entitled to differential wages for the said period if the pay of the petitioners was not already protected.

21. In view of the decision allowing the writ petitions in W.P.Nos.27828 to 27831 of 2010, no orders are necessary in respect of other two writ petitions, viz.,

W.P.Nos.28010 and 33295 of 2015, wherein, the only challenge pertains to the seniority in the rank of Constables. In view of the above decision, the issue raised in the said Writ Petitions does not survive for further consideration of this Court and these two writ petitions, therefore, stand closed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Union of India
Ministry of Railways,
Rail Bhavan,
New Delhi.
2. The Director General,
Railway Protection Force,
Railway Board,
New Delhi.
3. The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Park Town,
Chennai-600 003.

+4cc to Mr.M.Vijay Anand, Advocate, S.R.No.12067

+1cc to Mr.C.Uma, Advocate, S.R.No.11599

RRK(16/03/2018)

W.P.Nos. 27828 to 27831 of 2010

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