

\$~35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3380/2019 & CM Appl. No. 15577/2019 (stay)**

DHARMENDRA KUMAR YADAV AND ORS. Petitioners
Through: Mr. Prashant Kanha, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. J.K.Singh, Standing counsel with
Mr. Varun Bhadola, Mr. Harsh Pandit
& Ms. Madhulika Agrawal,
Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
% **03.04.2019**

CM Appl. No. 15578/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

W.P.(C) 3380/2019 & CM Appl. No. 15577/2019 (stay)

2. This is a second round of litigation concerning the present Petitioner's prayer that they should be transferred from the Railway Protection Special Force (RPSF), where they are now serving as Constables, to the Railway Protection Force (RPF), on completion of the required tenure which makes them eligible for such transfer.

3. Interestingly the first prayer in the present petition is that the order dated

4th October, 2018 by which the Petitioners were promoted as Head Constables (HC) in the RPSF should be quashed. This is perhaps the first petition of its kind where the Petitioners seek to challenge their own promotion orders.

4. Be that as it may, the basis for the prayer that the Petitioners should be transferred to the RPF is a Standing Order No.102 dated 29th March, 2010 which *inter-alia* states in para 3 (a) (i) that “Sub-Inspectors and Constables were being posted in the RPSF after initial training shall be eligible for transfer to RPF on completion of five years service including training period.” According to the Petitioners there was a legitimate expectation that on their completing five years, including the training period, in the RPSF that would be transferred to the RPF.

5. The Court is unable to read the above clause as holding out any assurance to the Petitioners that on the completion of five years as Constables in the RPSF, including the training period, they would mandatorily be transferred to the RPF. It creates no such vested right in the Petitioners for claiming the transfer to the RPF.

6. It is pointed out by learned counsel for the Respondent that by the time the present Petitioners were appointed in the RPSF in November, 2014 another Directive No. 32 dated 18th September, 2014 had been issued. It was issued in exercise of the powers under Rule 28 of the RPF Rules, 1987 read with Section 8 of the RPF Act, 1957. It was in supersession of Standing Order No. 102 and the subsequent Standing Order No. 110. Directive 32

under para 2 titled 'definitions' defines 'transfer' as under:

“2) Definitions:

a) Transfer

RPF: Any regular posting from one RPF Post/ Outpost/ coy/ unit of Office to another RPF Post/ Outpost/ coy/ unit of Office in the same division or in another division of the same Zonal railway or of another Zonal Railway or to RPSF.

RPSF: Regular posting from one Battalion to another. Rotation of staff from one company to another in the same Battalion of RPSF shall not be treated as transfer.”

7. With this it became clear that there was thereafter no question of an automatic transfer between RPSF and RPF. Therefore, even at the time of their appointment to the RPSF, the Petitioners could have had no expectation that in terms of the Standing Order 102, which already stood superseded by the above directive, they had any vested right to be transferred to the RPF.

8. It must be recalled here that earlier these Petitioners had filed WP(C) No. 1865/2019 questioning the Directive No. 32 dated 18th September, 2014 and the revised directive dated 20th December, 2017. As the writ petition was filed in 2019 and there was no explanation for the delay in approaching the Court for relief, by order dated 25th February, 2019 this Court permitted the Petitioners to withdraw the said petition with liberty to file a fresh petition explaining the delay in approaching the Court for relief.

9. Pursuant to the liberty so granted, the present petition has been filed. The explanation now offered is that some of the Petitioners were pursuing a similar remedy before the High Court of Allahabad and therefore, there was delay in filing the present petition. The Court nevertheless finds that on merits the Petitioners have been unable to make out a case for interference.

10. Learned counsel for the Petitioner then referred to an order passed by the Coordinate Bench of this Court on 13th February, 2018 in WP(C) No. 1382/2018 and subsequent orders dated 13th May, 2018 and 11th March, 2019 in the same petition to urge that this Court is already considering the same issue in that petition.

11. The Court finds that the said orders only reflect the issuing of a notice in an application for directions in the said writ petition. There is no specific order issuing notice in the petition itself. In any event, having examined the merits of the issue, the Court finds no reason to interfere with the impugned directives issued by the Respondents in regard to the matter of transfer of persons belonging to the RPSF to the RPF.

12. The Court finds that no case has been made out by the Petitioners for claiming, as a matter of right, that they should be transferred from the RPSF to the RPF. For the same reason, the Court is unable to interfere with the order dated 4th October, 2018 promoting the Petitioners to the post of Head Constable in the RPSF.

13. For the aforementioned reasons, the petition is dismissed. The applications are also dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 03, 2019

mw