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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12102/2016**

H. C. SUNIL KUMAR AND ANR

..... Petitioners

Through: Mr. Harpreet Singh with Ms. Suhani
Mathur, Advocates.

versus

THE RAILWAY PROTECTION FORCE AND ORS.

.... Respondents

Through: Dr. Ashwani Bharadwaj, Advocate for
R1 to R3.
Mr. Tarun Sharma with Ms. Akanksha
Kapoor and Mr. Pradeep Singh,
Advocates for R4 and R5.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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22.01.2020

1. The Petitioners, aggrieved by the seniority list published for the Drivers Grade-II in the Railway Protection Force ('RPF'), have challenged the seniority assigned to Respondent Nos. 4 and 5 i.e. Mr. Virender and Mr. Balkishan, both ASI/ Drivers, who have been shown at Sl. Nos. 10 and 11 of the said seniority list of Driver Grade-II, respectively.

2. Both Petitioner No.1 (Sunil Kumar) and Petitioner No.2 (Ramesh Chand) were appointed as Constables in the RPF on 17th September, 1995 and promoted as Drivers Grade-III on 5th November, 2005. There is a separate

seniority list of Drivers Grade-III in which they figured at Sl. Nos. 6 and 9 based on their date of promotion as Driver Grade-III.

3. Respondent Nos.4 and 5 were initially appointed in the Railway Protection Special Force ('RPSF') first as Constables and then secured their promotions as Drivers Grade-III and further as Drivers Grade-II. On the request made by the Respondents No.4 and 5, in terms of Rule 99.1 of the Railway Protection Force Rules, 1987 ('RPF Rules'), they were transferred as Drivers Grade-II to the RPF by the Railway Board's letter dated 25th June, 2008. The condition on which they were granted the transfer is that they would get "bottom seniority of their batch-mates" as Drivers Grade-II in the RPF. This is also consistent with Rule 99.2 of the RPF Rules.

4. Therefore, when a seniority list was drawn of Drivers Grade-II, Respondent Nos.4 and 5 figured in the bottom of that list at Sl. Nos. 10 and 11 respectively. The Petitioners contend that this has deprived them of their rightful seniority as Drivers Grade III and correspondingly their chance to be promoted as Drivers Grade II.

5. The case of the Petitioners is based entirely on the judgment dated 12th February, 2016 of this Court in W.P. (C) 4476 of 2007 (**B.L. Bishnoi v. Union of India**). In the said case, the Court held that for the *inter se* transfers of railway servants between the RPSF and RPF, apart from the RPF Rules, Para 312 of the Indian Railway Establishment Manual (Volume 1) ('IREM') would also apply. In terms of para 312, the transfer to the "relevant grade" would apply to a grade "where there is an element of direct recruitment." The note (ii) below para 312 clearly stated that "no such transfers should be

allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of that recruitment.”

6. The case of the Petitioners is that since admittedly the Drivers Grade-II is a post entirely filled by promotion with there being no element of direct recruitment, Respondent Nos.4 and 5 could not have, on an inter-zone transfer been brought from RPSF to RPF in that grade. The case put forth is that they could be appointed on transfer only to a grade which has an element of direct recruitment, which according to the Petitioners would be a post of Constable.

7. The difficulty in accepting the above submission of the Petitioners is that as of date they have not been promoted as Drivers Grade-II and, therefore, their names do not figure in the seniority list of Drivers Grade-II. The first prayer in the present petition reads as under:

“(i) Issue a writ of Certiorari quashing and setting aside the impugned seniority list of Drivers Gr. II in so far as it wrongly places the petitioners below Respondent No.3;”

8. The above prayer proceeds on the wrong premise that the Petitioners figure in the seniority list of Drivers Grade-II. They in fact figure in the seniority list of Drivers Grade-III to which both Petitioners have been promoted. Therefore, the first prayer itself is misconceived.

9. As regards permitting the Petitioners at this stage to challenge the transfers of Respondent Nos.4 and 5 from the RPSF to RPF, it is clearly barred by laches. As far as the explanation offered by Mr. Harpreet Singh, learned

counsel appearing for the Petitioners, that such challenge was possible only after the judgment dated 12th February, 2016 of this Court in ***B.L. Bishnoi v. Union of India*** (*supra*) is concerned, the Court observes that the said judgment only explains the law as it stood and does not lay down a law afresh. All that the judgment held was that para 312 of the IREM, in addition to the RPF Rules, would govern the transfers *inter se* between the RPSF and RPF. In any event, the Petitioners have in fact not challenged the orders by which Respondent Nos.4 and 5 were transferred upon their request as Drivers Grade-II from the RPSF to the RPF. Even if the Petitioners had chosen to do so, it would be barred by laches.

10. For the aforementioned reasons, the prayer of the Petitioners cannot be granted. The petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 22, 2020

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