

16 27.02.2024

Ct-08

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MAT 2369 of 2023

with

IA No. CAN 1 of 2023

CAN 2 of 2023

Union of India & Ors.

Vs.

Sri Govinder Singh

Mr. Sanajit Kumar Ghosh

Mrs. Sarda Sha

... For the Appellants

Mr. Achin Kumar Majumder

Ms. Ananya Adhikary

... For the Respondent/

Writ Petitioner

Re: CAN 1 of 2023(Section 5)

1. There is a delay of 53 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 1 of 2023 is thus disposed of.

Re: MAT 2369 of 2023

1. The appeal is arising out of an order dated 14th September, 2023 passed in a writ petition in which the writ petitioner challenged the order of

premature cancellation of transfer dated 31st January, 2013 on mutual basis. The said order of transfer is dated 5th February, 2021. Learned Single Judge allowed the writ petition and directed the petitioner to be posted at the previous place of posting at Metro Railway, Kolkata as was initially directed on 31st March, 2021 by the Senior Security Commissioner, RPF and also directed the authority to implement the order within two weeks from date. This order is assailed in the appeal.

2. Learned counsel appearing on behalf of the appellants submits that the aforesaid order was passed on misinterpretation of Rule 2(I-b), 3.2(I) read with Clause 8 of Directive 60 regarding the posting and transfers in RPF. It is submitted that Railway Protection Special Force is a separate cadre in terms of Rule 7.5 of the Railway Protection Force. The directive issued by the Director General is in terms of Rule 28 of the Railway Protection Force Rules, 1987 by which the Director General can time to time issue permission relating to enforcing furtherance of the provision of the Act and Rules as he might think necessary in respect of the superior officer, enrolled members of the Force.

3. It is submitted that the petitioner was directly recruited as a Constable in Railway Protection Special Force on 12th May, 2005 and posted at 1BN/RPSF/Lumding/Assam. On 10th April, 2007 he was transferred to 9BN/RPSF/Jagadhri/Hariyana/Northern Railway. Subsequently, the writ petitioner sought first Inter Railway transfer from RPSF 9BN/RPSF/Jagadhri/Hariyana/Northern Railway to RPF/ Northern Railway while he was posted at Northern Railway. On 5th February, 2021 the writ petitioner sought second Inter Zonal Railway Transfer from Northern Railway to Eastern Railway on mutual basis with Constable Anoop Kumar of Eastern Railway. This was initially allowed by the Railway Board on 5th February, 2021 but subsequently cancelled on 11th January, 2023 on the ground that the petitioner has not completed 10 years of service in RPF. Learned counsel for the petitioner further submits that under Rule 3.2(I) of Railway Protection Force Rules, the petitioner would be eligible for Inter-Zonal transfer on completion of 10 years service including training period.

4. In view of the fact that since the petitioner was posted as RPF at Northern Railway on 29th August, 2013, he would be eligible for being considered for

transfer in 2023 after he completes 10 years of service. Even if we accept the said submission for the sake of argument, it cannot be disputed that as on date he is eligible for transfer as he completed 10 years of service in August 2023. However, since the appellants have raised an issue with regard to the interpretation of various Rules it is necessary for us to give our views on such Rules.

5. The Railway Protection Special Force was constituted during Chinese aggression for securing the border States and was categorised as “Special Emergency Force”. They were specially entrusted with the task of protecting the border districts. That Force was subsequently renamed as “Railway Protection Special Force”. However, for all practical purposes the RPSF and RPF were considered alike, save and except by reason of their daunting task and difficult life away from family RPSF members are extended some special benefits like seniority and promotion in comparison to RPF. Apart from that the service conditions are almost alike. In fact, on a plain reading of the relevant Rules it does not appear that for seeking a transfer the RPSF may not have to wait for 10 years and in an appropriate case

they may be transferred even prior to completion of 10 years period, which would be discernible from Directive 60 concerning the transfer of the members of the force from RPSF to RPF and vice versa. In fact, it is stated that the purpose of transfer from RPSF to RPF and vice versa RPSF will be treated as executive cadre of Zonal Railway.

6. Directive no. 32, as revised on 28th December, 2017, issued by the Ministry of Railway shows that the period of tenure of posting of other enrolled members of RPF at a particular place is usually 5 years and clause 5 of the Directive relating to inter-zonal transfer, a Constables shall be eligible for being considered for the said transfer after completion of 10 years of service including training period. Here the petitioner was appointed as a Constable in Railway Protection Special Force on 12th May, 2005 and he had successfully completed 10 years of service prior to the Inter-Zonal transfer order passed on 5th February, 2021.

7. Learned Single Judge in the aforesaid conspectus of facts put an important question namely, why the tenure spent by an enrolled member of RPSF performing more arduous task should not be taken into account whereas the

training period of a member of RPF should be taken into consideration while computation of the tenure of service for inter-zonal transfer, is beyond the comprehension of this Court.

8. The appellants could not offer any explanation in support of the argument that a Constable in RPSF, if transferred to RPF, and then seeks Inter-Zonal transfer on completion of 10 years of service from the date of his initial appointment, which is a period of 10 years, would not be considered for the purpose of 3.2(I) of the Service Manual of RPF. The only distinguishing feature is that the enrolled members of RPSF shall form a separate cadre for the purpose of fixation of seniority and any other benefits as stipulated in Directive 60. Apart from the aforesaid distinction, there has been no other change in the Rules which inter alia includes the eligibility criteria for transfer. Moreover, it is not in dispute that the petitioner has fulfilled the criteria on mutual transfer in terms of Clause 3.2(VII) but the order of transfer was recalled that he did not complete 10 years of service as RPF, after his transfer from RPSF on 29th August, 2013.

9. Learned Single Judge has rightly observed that that members of RPF are to be considered a separate cadre from the members serving at RPSF,

so that the seniority of the RPSF members do not get diluted by consideration of their seniority along with the members of RPF. In fact, as observed earlier that the RPSF members are to perform more arduous duties at the border districts and hence certain special privileges have been extended to them by considering their seniority amongst RPSF members.

10. Learned Single Judge has also observed that “why the tenure spent by an enrolled member of RPSF performing more arduous task should not be taken into account whereas the training period of a member of RPF should be taken into consideration while computation of the tenure of service for inter-zonal transfer, is beyond the comprehension of this Court.” is accepted

11. On such consideration we concur with the findings of the learned Single Judge that the application for mutual transfer cannot be rejected merely on the ground that the petitioner has not completed his service in RPF for a period of 10 years, although he was transferred to RPF on 29th August, 2013. In fact, we can give a hypothetical issue to show that the absurdity of the argument. For example, a person was recruited in RPSF in 2005 and transferred inter-departmentally within

3 years and thereafter he was transferred to RPF after 2 years and thereafter he is being frequently transferred to RPSF to RPF then he would never be eligible for transfer on the ground that he has failed to complete 10 years of service in RPSF or RPF, as the case may be. Any other interpretation of the Rule is plainly not accepted and not even suggested or intended by the said Rules. It has to be counted from the date of his initial appointment either in RPSF or RPF, as the case may be. The Directive also shows that the transfer could be vice versa. In any event as on date, the relief cannot be denied to the petitioner even on the basis of interpretation advanced by the appellants. The petitioner has completed 10 years of service in RPF.

12. On such consideration, the appeal fails.

13. MAT 2369 of 2023 is accordingly dismissed.

14. In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2023 and the same is accordingly dismissed.

15. However, there shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

