



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

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Date of decision: February 07, 2024

+ W.P.(C) 12627/2018

(48) S. N. SHARMA AND ORS.

..... Petitioners

Through: Mr. B.P. Nahar with
Mr. Mohinder Singh, Advts.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vikram Jetley, CGSC with
Ms. Shreya Jetly, Adv. for UOI
with SI Satbir Singh, RPSF

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioners with the following prayers:-

“In the facts and circumstances of the case, it is most respectfully prayed that this Hon’ble Court be pleased to:-

i) Issue a writ of mandamus/directions to the respondents to grant to the petitioners one time relaxation of five months and four days in the facts and circumstances of the case.

ii) quash the impugned order dated 28.05.2018 passed by the Director General of RPF, Respondent No. 2, Ministry of Railways, Govt. of India, Rail Bhawan,

iii) The Petitioners holding the present post of the Sub Inspector, ad-hoc Railway Protection Security Force may kindly be protected till the decision of the Writ Petition.

iv) Any other relief which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case may kindly be granted.”



2. From the above prayers, it would reveal that the petitioners are seeking one time relaxation of eligibility for their promotion to the post of Sub-Inspector (Executive) ('SI (Ex.)', for short) in Railway Protection Special Force ('RPSF', for short). It is a conceded position that the eligibility period of promotion of an ASI to the post of SI (Ex.) is 5 years, whereas they are seeking relaxation of 5 months and 4 days.

3. It is the case of the petitioners that the Railway Board, Ministry of Railways has issued guidelines dated March 27, 2017 to promote different cadres while introducing "*Restructuring of Group 'C' RPF/RPSF(Combatised) Staff*", upgradation / promotion under restructuring scheme. The petitioners, who on the relevant date were working as ASI on *ad-hoc* basis w.e.f. December 27, 2016, were short of 5 years eligibility period and had sought relaxation in eligibility period for their promotion, vide an application dated July 30, 2017, which was forwarded to the Director General.

4. It is the case of the petitioners that in the case of directly recruited SI, the relaxation of one year was given.

5. We have heard the learned counsel for the parties, at length on February 06, 2024 and also, today i.e., February 07, 2024 and called for the records.

6. It is the case of the respondents in the counter-affidavit that there was no vacancy at the level of SI (Ex.). Later, during the hearing on February 6, 2024 a note was filed wherein it is represented that around 101 vacancies were created at the level of SI (Ex.) and 164 vacancies were available on March 27, 2017. It is also represented that only 95 ASIs were found to be eligible having completed 5 years



regular service upto April 01, 2017 (cut-off date). The petitioners were not eligible for the post of SI (Executive) as they had not completed the requisite residency period of 5 years upto April 01, 2017. Hence, they were not considered for promotion to the rank of SI (Executive).

7. With regard to the plea of the petitioners that one year relaxation was granted to the SI (Ministerial) for promotion to the post of Inspector, is concerned. Mr. Vikram states that, only one month relaxation was given. In any case, insofar as the petitioners are concerned, it transpired that no relaxation with regard to residency period was given.

8. The issue is whether the petitioners are entitled to relaxation as a matter of right. The answer to the same has to be in the negative. Merely, because relaxation has been granted at the level of SI to the post of Inspector, it is not automatic that the lower cadre must also get relaxation for a similar period. In fact, it is noted that the relaxation of one month for SI resulted in the lower ranks including ASI getting the benefit of vacancies. The law with regard to the relaxation as a matter of right is settled by the judgment of the Supreme Court in the case of ***State of U.P. & Ors v. Vikash Kumar Singh & Ors., CIVIL APPEAL NO. 6868 OF 2021***, wherein the Court has held as under:-

“7.1 The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 has issued the writ of mandamus commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the Relaxation Rules, 2006. The word used in the Rule 8 4 of Relaxation Rules, 2006 is “MAY”. Therefore, the relaxation may be at the discretion of the competent authority.



The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.”

(emphasis supplied)

9. The grant of relaxation in eligibility is an issue which has to be decided by the Competent Authority in the respondent's organisation and it is not for the Court, to issue a writ of mandamus to give relaxation, even though there is no functional requirement. We have been informed that some of the petitioners have been promoted as SI (Ex.) on regular basis.

10. In the given facts of this case, more so, in exercise of our jurisdiction under Article 226 of the Constitution of India, we are of the view that this writ petition lacks merit and is liable to be dismissed. It is ordered accordingly. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 07, 2024/ak