

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

**MAT 406 of 2020
CAN 1 of 2020 (Old No. CAN 2831 of 2020)
CAN 2 of 2020**

**Union of India & Ors.
Vs.
Atul Kumar Sarkar & Ors.**

For the Petitioner	:	Mr. S. N. Dutta
For the Respondents.	:	Mr. Achin Kr. Majumder, Ms. Ananya Adhikary
Judgment on	:	5 th March, 2026

Madhuresh Prasad, J.:

1. We have heard the learned counsels representing the parties.
2. A list of eligible Sub-Inspectors as on 13.06.2018 for participating in a process of promotion to the post of Inspector was published under a communication dated 23.08.2018. The petitioners' names did not figure in the list. They thus approached the Writ Court seeking directions to allow them to participate in the process of promotion taking into consideration the fact that they had rendered the requisite qualifying (8 years service) for being considered in the promotional process.

3. The petitioners put to challenge the list of Sub-Inspectors found eligible for the promotion process, wherein they were excluded. The writ petitioners contended before the Writ Court that since they possessed the requisite qualification (8 years' service as Sub-Inspector). Thus, there was no basis for excluding them from the process of promotion.
4. The Railways, on the other hand tried to justify the exclusion of the petitioners from the list of eligible candidates by placing reliance on Rule 99.2 of the Railway Protection Force Rules, 1987 (hereinafter referred to as the 1987 Rules for short) read with Schedule IV of the Rules. They have also relied upon the communication dated 01.01.2018 issued by the DIG of the Force in the Railway Board.
5. The Railways were respondents before the writ court and preferred the present intra court appeal. It was contended before the Hon'ble Single Judge as has been canvassed before this Court, that the writ petitioners voluntarily sacrificed their seniority when they were transferred on request to the Eastern Railway.
6. From a combined reading of the provisions contained in the Rules and the communications noted above the effect of a transfer on request; or a mutual transfer is a loss of seniority. The transferred officer is required to be placed below the persons already serving substantively or in officiating capacity in the transferred place.
7. In view of the unambiguous provision contained in the Rule, schedule and the communications, the petitioners were placed below the 14 Sub-

Inspectors already posted at the transferred place. Therefore, the 14 sub-inspectors were declared eligible for promotion in the impugned notification dated 23.08.2018. The petitioners, have no sustainable claim. They were placed at the bottom of seniority due to their transfer on request; or mutual transfer to the transferred post. The judgment of the Hon'ble Single Judge, dated 24.12.2019, allowing the writ petition, therefore, is unsustainable in as much as it has found the petitioners eligible for participation in the process of promotion conducted under the notification dated 23.08.2018 and directed for consideration of their claim for promotion to the rank of Inspector, ignoring their place in the seniority list, if they were otherwise eligible as per notification dated 23.08.2018.

8. The writ petitioners participated in the subsequent recruitment process conducted in the year 2021. Therefore, there is no scope for giving any benefit of the promoted post (Inspector) prior to their being declared successful in a promotion process conducted in the year 2021.
9. The learned advocate representing the writ petitioners on the other hand submits that the impugned list of eligible candidates published by the authorities is unsustainable. It is founded on a misreading of the Rules and the notifications issued thereunder. When the petitioners sought transfer on request or mutual basis, the only thing they sacrificed under the Rule was seniority. Such transfer did not obliterate or wipe out their past length of service so as to be irrelevant for determining their eligibility for participation in the promotion process. They could not be shut out

from participation or consideration by overlooking their 8 years of continuous service. They were duly qualified to participate in the promotion process.

10. He submits that the Hon'ble Single Judge after a threadbare consideration of the issue found that the action of the authorities in excluding the petitioners was unsustainable. The conclusion is founded on a harmonious construction of the Rule and notifications and, therefore, the order of the Hon'ble Single Judge requires no interference. Learned Counsel reiterated the reliance placed by the petitioners on the judgments of the Apex Court, in the case of ***Scientific Advisor to RakshaMantri v. V.M. Joseph***, reported in ***(1998) 5 SCC 305***, ***M.M. Thomas v. Union of India***, reported in ***(2017) 13 SCC 722***, and ***Coal India Ltd. v. Navin Kumar Singh***, reported in ***(2018) 18 SCC 333***.

11. We have considered submission on behalf of the parties. Rule 99.2 of the 1987 Rules, is the rule relevant for consideration in the present dispute. The Rule contemplates fixing of seniority of an enrolled Member of the Force who is transferred on his own request, or on mutual exchange from one zone to another zone, or to the Railway Protection Special Force, at the transferred place below the existing substantive and officiating members 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 Members of the Force.

12. One of the criteria for promotion to the post of Inspector is that the candidate should have 8 years continuous regular service as Sub-inspector. The Hon'ble Single Judge, therefore, has rightly considered that the requirement of 8 years continuous service is to be reckoned, for the purpose of eligibility by taking into consideration 8 years continuous service as Sub-Inspector, irrespective of the place or zone of posting.
13. Rule 99.2 of the 1987 Rules does not contemplate a sacrifice/obliteration of the past length of service by an enrolled member of the force transferred either on his own request, or by way of mutual transfer. We find that eligibility of the candidate on account of past length of service (8 years) on a post is not affected by his transfer on request or mutual transfer. He, therefore, cannot be barred from participating in the promotion process. However, since the applicants consciously sacrificed their seniority under Rule 99.2 of the 1987 Rules, irrespective of their result in the process of promotion they will not be promoted till such time their seniors, at the transferred place have been promoted; or found ineligible for such promotion.
14. We at this juncture considered it appropriate to deal with a hypothetical situation, when sufficient number of seniors at the transferred place do not emerge successful in the promotion process, and the promoted post remain unfilled. In such circumstance, if the junior candidate transferred on his own requests or on mutual transfer, having 8 years' requisite service emerges successful, then he may be in a

position to get the promotion irrespective of being placed below the unsuccessful senior/s at the transferred place.

15. There is a distinction between eligibility of a candidate and seniority. While eligibility acquired in any zone/organisation remained untouched by Rule 99.2 of the 1987 Rules; seniority was adversely affected.

16. The learned Single Judge rightly held that the directive of the Rail Board contained in communication dated 1st January 2018 is inconsistent with Rule 99.2 of 1987 Rules in as much as it contemplates that the enrolled members who have come on transfer on request, or on mutual ground and have not completed 8 years' service in the transferred zone/organization shall not be considered for promotion till completion of requisite period (8 years) in that zone/organization. We also find introduction of a requirement of completing 8 years service at the transferred place, which is not a requirement under Rule 99.2 of the 1987 Rules, to be unsustainable. We are in agreement with such conclusion of the learned Single Judge and affirm the view.

17. Our conclusion is fortified by decision of the Hon'ble Supreme Court in the case of ***Union of India & Ors. vs. Deo Narain & Ors.***, reported in ***(2008) 10 SCC 84***. After considering its earlier judgments in the case of ***Union of India & Ors. vs. C.N. Pannappan*** reported in ***(1996) 1 SCC 524***, ***Renu Mullick v. Union of India***, reported in ***(1994) 1 SCC 373*** and ***Scientific Advisor to Raksha Mantri & Anr. vs. V.M. Joseph*** reported in ***(1998) 5 SCC 305***, the Apex Court held:

"40. Referring to Renu Mullick [(1994) 1 SCC 373 : 1994 SCC (L&S) 570 : (1994) 26 ATC 602] , the High Court observed that "it is not in dispute that the persons on voluntary transfer would lose their seniority, but the same by itself would not mean that their entire past service is wiped off. For the purpose of consideration of their cases for promotion, their past service is required to be taken into consideration." We are in agreement with the High Court. Renu Mullick [(1994) 1 SCC 373 : 1994 SCC (L&S) 570 : (1994) 26 ATC 602] and other cases referred to by us clearly lay down the above proposition of law that even if the transfer is voluntary and unilateral, services rendered by an employee would not be wiped off for considering eligibility for promotion to the higher cadre."

18. The other decisions of the Apex Court, in the case of **M.M. Thomas** (*supra*) and **Navin Kumar Singh** (*supra*) relied upon by the learned Advocate for the writ petitioner reiterate this settled legal position. The directive in the Railway Board communication dated 01.01.2018 was therefore contrary to law and unsustainable.

19. We further find that perhaps, recognizing such flaw in the directive dated 01.01.2018, the Rail Board, within 9 days from issuance of the communication dated 01.01.2018, issued a letter dated 10.01.2018, containing Corrigendum in the following terms.

~~-CORRIGENDUM-~~

Sub: Cadre restructuring of Group "C" RPF/RPSF (Combatised) staff.

Ref: CSC/RPF/SER-cum-Chairman, DPC's letter No. RPF/EA-11/2-82/XXVII/Restructuring/6658 dated 04.12.2017.

The contents of para (4) of this letter of even number dated 01.01.2018 i.e.

4. The enrolled members of the Force who have come on transfer from another zone on request or mutual ground and they have not completed their 08 years of service in the new zone. they shall not be considered for promotion till the completion of requisite period of eligibility in that zone to they are placed on bottom seniority of that rank

may be read as under

"4. An enrolled member of the Force who has come to a zone on transfer from another zone on request or mutual ground shall be considered for promotion in the zone only after all the candidates placed above him in Zonal seniority are considered for promotion, subject to his completion of residency period as prescribed in RPF Rules, 1987."

This issues with the approval of DG/RPF

20. The inconsistent and unsustainable communication dated 01.01.2018, therefore, was in effect for a brief period of 9 days only in between 1st January 2018 to 9th January 2018. The Railway Board itself has rectified the mischief within 9 days from issuance of the same. It, therefore, does not lie in the mouth of the respondents to rely on the communication dated 01.01.2018, to bar the candidature of the writ petitioners for participation in the promotion process for Sub-inspector even though they have the requisite eligibility under the 1987 Rules, in terms of length of service (8 years).

21. The Hon'ble Single Judge has considered the issue threadbare, with reference to the citations relied upon by the Advocate/s for the parties. The elaborate consideration of the learned Single Judge, in our opinion, requires no interference in the present intra-court appeal.

22. The petitioners are therefore, eligible for participation in the process in terms of the notification dated 23.08.2018, but can be considered for grant of the promotion, only after others above them in seniority are either promoted or are held ineligible for promotion, subject to fulfilment of other requirements.

23. The appeal is dismissed.

24. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)