

(2010) 07 CAL CK 0028

Calcutta High Court

Case No: Writ Petition No. 10521 (W) of 2005

Md. Abdul Hannan Kabiraj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: July 7, 2010

Acts Referred:

- Railway Protection Force Rules, 1987 - Rule 117, 216, 320, 68, 69

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Achin Kumar Majumdar, for the Appellant; R.N. Das and A.K. Banarjee, for the Respondent

Judgement

Debasish Kar Gupta, J.

This writ application is filed by the petitioner assailing the decision of the respondent authority to give promotion to the petitioner to the post of Assistant Sub-Inspector without taking into consideration the date of his ad hoc promotion.

2. The petitioner was initially appointed to the post of Constable in Railway Protection Force under Eastern Railway with effect from June 16, 1973. He was promoted to the post of Head Constable in the year 1984. On December 21, 1984 he was transferred to Metro Railway. By an order dated September 23, 1996 passed by the respondent No. 4 with due approval of the competent authority, the petitioner was allowed to officiate as Assistant Sub-Inspector on temporary local ad hoc arrangement. Subsequently, by an order dated February 17, 2005 passed by the respondent No. 4 the petitioner was promoted to the rank of Assistant Sub-Inspector under restructuring scheme. The petitioner submitted a representation to the respondent authority for giving effect of his promotion to the post of Assistant Sub-Inspector from the date of his officiating the above post, i.e. with effect from September 23, 1996. Pursuant thereto an enquiry was conducted by the respondent authority in the matter and enquiry report dated April 5, 2005 was submitted to the respondent No. 4 with recommendation for giving effect of the

above promotion of the petitioner with effect from September 23, 1996. The respondent authority did not act on the basis of the aforesaid recommendation. Hence this writ application.

3. It is submitted on behalf of the petitioner that the petitioner all alone discharged his function under the respondent No. 2, the Metro Railway not being a separate division.

4. It is also submitted by him that there existed a large number of vacancies in the post of Assistant Sub-Inspector and the petitioner came within the zone of consideration on the date of ad hoc promotion as also he had rendered continuous service to the post of Assistant Sub-Inspector with effect from September 23, 1996 till the date of his regular promotion to the above post and he got remuneration for the said post.

5. According to him, the provisions of Section 117 of the Railway Protection Force Rules, 1987(hereinafter referred to as the said Rules), were applicable in case of giving effect to the promotion under the reference to the petitioner in absence of any prescribed provision in the said rules. It is also submitted by the learned advocate appearing for the petitioner that in accordance with the provisions of Rule 216 of the extant railway rules an ad hoc promotion should be ordered only from amongst senior most suitable staff and as a rule junior should not be promoted ignoring his seniority. It is further submitted by him that in accordance with the provisions of Rule 320 of the extant Railway Rules when a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by an employee should be determining factor for assigning seniority irrespective of the date of conformation of an employee with lessor length of continuous service as compared to another unconfirmed employee with longer length of continuous service. According to him, in view of the above the petitioner was entitled for getting the benefit of promotion to the post of Assistant Sub- Inspector with effect from September 23, 1996, i.e. the date of his officiating the above post.

6. The petitioner relied upon the decisions of [Rajbir Singh and others Vs. Union of India and others](#), as also and unreported Judgment of a Division Bench of this Court dated August 27, 2008 in the matter of Union of India v. Chandan Kr. Maji in re. W.P.C.T. 716 of 2005.

7. On the other hand it is submitted on behalf of the respondents that the petitioner did not render continuous service to the post of Assistant Sub-Inspector and there was periodical break in service. It is also submitted that the permanent promotion was given to the petitioner in the year 2005 under the restructuring scheme. It is also submitted on behalf of the respondents that in view of the provisions of Rules 68 and 69 of the said rules, the extant Railway Rules had no manner of application in the instant case.

8. I have heard the submissions made on behalf of the respective parties and I have also considered the facts and circumstances of this case. Admittedly, the petitioner was allowed to officiate as Assistant Sub-Inspector on temporary local ad hoc arrangement by an order dated September 23, 1996 while he was discharging the function under Metro Railway. On a close scrutiny of the above order I find that the same was passed by the respondent No. 4 with due approval of the competent authority. Metro Railway was not a separate division under the Eastern Railway. Therefore, at that material point of time his competent authority was the respondent No. 2.

9. Taking into consideration the aforesaid undisputed facts in considering the claim of the petitioner for counting his seniority in the post of Assistant Sub- Inspector under the Railway Protection Force I find that there is no provision in the said rules for giving ad hoc promotion to a member of the aforesaid force. Therefore, at this juncture the provisions of Rule 117 of the said rules are to be followed for adjudication of the above claim of the petitioner and the above rules is quoted below:

117. Other conditions of service:

In all other matters not prescribed in these rules, all members of the Force, irrespective of their ranks, shall be governed by the provisions contained in the extant Railway Rules as applicable to railway servants of corresponding grades:

Provided that the Central Government may, by notification in the official Gazette, modify the extant Railway Rules in their application to members of the Force on the above matters, where that Government is of the opinion that it is necessary so to do in the interest of the Force, being an armed force of the Union.

10. In view of the above provision the claim of the petitioner has to be considered under the provisions of extant Railway Rules. Under the provisions of Rule 216 of the extant Railway Rules, an ad hoc promotion should be avoided as far as possible. However, in the exigency of service the same be resorted to only sparingly and only for a short duration of three to four months ordering ad hoc promotion only from amongst seniormost suitable staff. As a rule a junior should not be promoted ignoring his seniority. I further find that in case of determining the relative seniority of employees in an intermediate grade belonging to different seniority units should be determined in accordance with the provisions of Rule 320 of the extant Railway Rules and the same are quoted below:

320. RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE BELONGING TO DIFFERENT SENIORITY UNITS APPEARING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or

equivalent grade held by the employees shall be the determining factor for assigning inter seniority irrespective of the date of confirmation of an employee with lessor length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

11. The fact of existence of a large number of vacancies in the post of Assistant Sub-Inspector in Railway Protection Force under Eastern Railway and coming of the petitioner within the zone of consideration for regular promotion to the above post pleaded in the writ petition was not denied in the affidavit-in-opposition filed by the respondents. Discharging of continuous function in the post of Assistant Sub-Inspector by the petitioner from the date of his ad hoc appointment to the above post from September 23, 1996 as pleaded in the writ petition and getting remuneration in the same was not also denied by the respondent in their affidavit-in-opposition. Though the petitioner got his ad hoc promotion while he was discharging his function in Metro Railway yet the arrangement was made with due approval of the competent authority. Therefore, neither the effect of the promotion of the petitioner to the post of Assistant Sub-Inspector could be counted from the date of his regular promotion to the above post nor the seniority of the petitioner to the above post could be counted from that date consequent upon the order of his transfer dated March 18, 2005 from Metro Railway unit to SIB Head Quarters. The issue of counting of seniority of an incumbent from the date of his ad hoc promotion to a post irrespective of the date of conformation relying upon the provisions of Rule 320 of the extant Railway Rules has already been decided by a Division Bench of this Court by a judgment dated August 27, 2008 passed in the matter of Union of India and Ors. v. Chandan Kumar Maji in re. W.P.C.T. 716 of 2005 and the relevant portions of the above decision is quoted below:

Considering rival contentions raised by learned Counsels for the parties and having read the impugned judgment and order of the learned Tribunal, we are of the view, learned Tribunal has correctly held, upon reading relevant Rule 320, that applicant's service in IOW Grade-I during ad hoc period should be counted for the purpose of determining his seniority as there has been no breakage in service and he was thereafter regularized, on selection being held. The aforesaid Rule 320 suggests so and it will appear from the language being used therein "irrespective of the date of confirmation of an employee.

12. I find no substances in the submissions made on behalf of the respondents that there was periodical break in the service of the petitioner to the post of Assistant Sub-Inspector after his promotion to that post. It is evident from the true copy of the daily diary as annexed to the supplementary affidavit in reply affirmed by the petitioner on June 25, 2008 (at pages 41 to 54) that there was no break in the service of the petitioner during the period of officiating the post of Assistant Sub-Inspector on ad hoc basis.

13. In view of the discussions and observations herein above I direct that the respondent authority to determine seniority of the petitioner to the post of Assistant Sub-Inspector in Railway Protection Force under Eastern Railway with effect from September 23, 1996 i.e. the date of his ad hoc promotion and to give all consequential benefits to him within a the period of eight weeks from the date of communication of this order.

14. This writ application is, thus, dispose of.

15. There will be, however, nor order as costs.

16. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.