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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.NO. 2439/89

DATE OF DECISION: 30th Sept. 1994.

Ashwani Kumar Sonik

Vs.

Union of India

CORAM: Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Counsel for Applicant Shri/Ms. P.P. Khurana.

Counsel for Respondent Shri/Ms. O.PP Kshatriya.

1. Whether to be referred to the Reporter? Yes
2. Whether Reporters of Local Newspapers may be allowed to see the judgement? A
3. Whether their Lordships wish to see the fair copy of the Judgement? L
4. Whether to be circulated to other Benches? L

B
(B.K. SINGH)
MEMBER (A)

Dear
(J.P. SHARMA)
MEMBER (J)

File No. 14

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A. NO.2439/89

New Delhi, the 30th September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Ashwani Kumar Sonik,
s/o late Shri Chuni Lal Sonik,
Assistant Personnel Officer,
Divisional Manager's office,
Northern Railway,
New Delhi.

2. Miss Urvilla Chibber,
d/o late Major Krishan Lal,
Asstt. Personnel Officer,
Northern Railway Headquarters
Office, Baroda House,
New Delhi.

..... Appellants

By Shri P.P. Khurana, Advocate

Vs.

1. Union of India through its
Secretary,
Railway Board,
Rail Bhavan,
New Delhi.

2. Union Public Service Commission,
through its Chairman,
Dholpur House,
Shahjehan Road,
New Delhi.

3. Ku. Sumangala Naganath,
Divisional Personnel Officer,
Divisional Railway Manager's
Office, Western Railway,
Bombay Central Division,
Bombay.

..... Respondents

By Shri D.P. Kshetriya, Advocate

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

Both the applicants jointly filed this
application on 24.8.89 while working as Assistant
Personnel Officer, Northern Railway, New Delhi.

(15)

The applicants were appointed to the service as a result of selection of the Combined Civil Service Examination held in 1985. They were appointed to the service in December, 1986 and were placed on probation which they successfully completed in December, 1988. The Indian Railway Personnel Service (IRPS) was constituted in 1976 as per IRPS (Recruitment) Rules, 1975. The recruitment to the service through U.P.S.C. commenced with effect from 1980. 50 percent of the vacancies in the junior scale Class I are filled up as a result of direct recruitment as said above through U.P.S.C. The remaining 50 per cent of the vacancies in the junior scale are filled up by selection on merit from Class II officers with at least 3 years service in the grade in the Railway Ministry and the Personnel Departments on the Railways. The next promotion is to the post of senior scale in which 50 per cent of the vacancies in the senior scale are filled by promotion in the order of seniority subject to rejection of the unfit from the junior scale (Class I) officers of the service with at least 5 years service in that scale. The remaining 50 per cent of the vacancies in the senior scale are filled by transfer of officers belonging to Class I service under the Ministry of Railways excluding Indian Railway Medical Service who have completed 6 years of service in the junior scale or 2 years service in the grade of Under Secretary in the Ministry.

of Railway and elect on the basis of an option to be appointed to the service. Provided that an officer who is eligible to exercise an option under these rules fails to do so at the first available opportunity shall not be given another opportunity to exercise an option at any future occasion. In case any of the methods of recruitment for filling up the vacancies in the senior scale referred to above fails, the vacancies shall be filled up by transfer on deputation of suitable officers of the Class I service under the Ministry of Railways (excluding the Indian Railway Medical Service). The period of deputation shall not ordinarily exceed 3 years.

2. The grievance of the applicant is that Rule 8(1)(c)(II) is violative of the equality clause guaranteed under the Constitution of India inasmuch as officers of IRPS are not eligible to be inducted in any other organised service of the Railways. The further grievance of the applicant is that the Railway Protection Force is an Armed Force of the Union and its officers are not at all eligible for induction into IRPS. The Respondent No.3 Ku. Sumangala Naganath who was serving as Assistant Security Officer of the Railway Protection Force and was at the relevant ^{time} in the junior scale was inducted in the senior scale of IRPS by the order dated 13.7.89. The proposal to induct Respondent No.3 in the senior scale of IRPS was earlier turned down by the U.P.S.C. but second time she was successful in getting the clearance from the U.P.S.C.

3. The applicants have prayed for the grant of the following reliefs.

In view of the facts mentioned in para 4 above and grounds urged in para 5 above, the applicants pray for the following reliefs:

- i) to issue a writ of certiorari quashing Rule 8(1)(c)(II) of the IRPS Rules, 1975 as being ultra vires.
- ii) to issue appropriate writ, direction or order quashing the appointment of Respondent No. 3 in IRPS vide respondent No. 1's order dated 13.7.89.

4. A notice was issued to the respondents to file their reply opposing the grant of the reliefs prayed for by the applicants. The respondents justified the vires of Rule 8(1)(c)(II) and stated the rules are statutory in nature. These rules came into force in 1976 and since the Railway Organisation is a very vast and complex organisation it was decided to draw officers from other disciplines also. This was considered important with a view to strengthen the service by experienced officers of other disciplines. Regarding Respondent No.3 it is stated that earlier U.P.S.C. did not agree for induction Respondent No.3 into IRPS but subsequently she

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was recommended and so she was appointed to the senior scale of IRPS. The applicants, therefore, have no case.

5. The applicants have also filed the rejoinder in reply to the counter filed by the respondents. It is stated that R.P.F. officers to which the Respondent No.3 belongs do not belong to the main stream of Railway service and are not eligible for being appointed as General Manager, Additional General Manager Railway and Divisional Manager. By appointing R.P.F. officers in the IRPS, the respondents have violated their own rules by making ultimate provision for appointing the very person as General Manager/Additional General Manager who were not eligible to be appointed as such. The applicants have also reiterated their stand that once a particular service had been assigned to a candidate on the basis of option in the CCS examination by the UPSC on the basis of the grading/merit in the said examination then the choice to switch over to another Central Service, Group 'A' is no more available with such candidate. The rule therefore where after serving for a period of six years or so another organised Group 'A' service of the Railways, the incumbent switches over to the IRPS and also claims his seniority of the total length of service he renders in the earlier organised service. Thus, the relief prayed for in the application has been pressed on merits.

6. The applicants have also stressed that a proposal for amendment of the recruitment rules sent by the Joint Director(Estt.) of the Railway Ministry for induction in the senior scale of R.P.F. Class I officer was turned down by the U.P.S.C. by the letter dated 22.7.87. After this letter, again the Executive Director wrote to the U.P.S.C. to consider the case for amendment of the rules to make Class I officers of R.P.F. eligible for giving option for induction to the senior scale of IRPS. In reply to the same the U.P.S.C. by their letter dated 28.9.87 again informed the Executive Director, Ministry of Railways that the proposal for inducting Class I officers after taking their option in the senior scale of IRPS cannot be accepted. Such officers at the time of their selection in the combined selection on the basis of Combined Civil Service Examination had an option for giving a choice for allotment to IRPS. Lateral inter-service movement in one Ministry might lead to similar requests and proposals from other cadre controlling Ministries. It is further stated that R.P.F. Class I officers have other channels of promotion.

7. The respondents have also filed a supplementary counter and stated that Respondent No.3 was inducted as a special case and thereafter neither any officer has been inducted into IRPS senior scale nor it is proposed to be inducted. The apprehension of the petitioner that the other R.P.F. officers will also get inducted into IRPS is therefore not correct. The applicants have

also filed rejoinder to the above reply. It is stated that the respondents have wrongly stated a fact that induction of Respondent No.3 in IRPS was for the benefit of IRPS while in fact in the RPF cadre there are not enough personnel and being a new force having been formed in 1981 the Police Officers from the States are still being taken on deputation to man the various posts. The induction of Respondent No.3 was actuated with malafide and is also bad in law.

8. We have heard the learned counsels for the parties at length and perused the records.

9. Rule 8(1)(c)(II) which has been challenged as ultravires Article 14 and 16 of the Constitution of India is as follows:-

" 50% of the vacancies in the senior scale (Senior Personnel Officers)/ Divisional Personnel Officer) shall be filled by transfer of officers belonging to Class I Service under the Ministry of Railways (excluding the Indian Railway Medical Service) who have completed six years of service in the junior scale or 2 years' service in the grade of Under Secretary in the Ministry of Railways and elect on the basis of the option to be appointed to the Service".

Rules 8(2) provides as follows:

"In case any of the methods of recruitment referred to above fails, the vacancies shall be filled by transfer on deputation of suitable officers of the Class I Service under the Ministry of Railways (excluding the Indian Railway Medical Service). The period of deputation shall not ordinarily exceed three years".

10. It is also undisputed that U.P.S.C. conducts the Civil Service Examination for each year for recruitment to a number of services and the relevant are:-

- xii) Indian Railway Accounts Service, Group 'A'.
- xiii) Indian Railway Traffic Service, Group 'A'
- xiv) Indian Railway Personnel Service, Group 'A'
- xxvii) Post of Assistant Security Officer, Group 'A'
in the Railway Protection Force.

11. The State has the power of distinguishing and classifying persons or things for the purposes of legislation. Classification to be valid must not be arbitrary. It must always rest on ^{need} service, ^{being} real and substantial distinction ~~being~~ reasonable and just relation to the needs in respect of which the classification is made.

(i) The classification must be founded on intelligible differentia which distinguish persons or things that are grouped together from others left out of the group and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question.

11A. Let us take the case of Respondent No.

4 Kum. Sumangala Nagannath who belongs to Railway Protection Force ^{has} and working as Assistant Security Officer in the junior scale of Rs.2200-4000. By the order dated 13.7.89 she has been inducted in the senior scale of IRPS which is not even contemplated by Rule 8(1)(c)(II) of the Rules.

The applicant has challenged his induction in service because RPF and IRPS constitute two separate and distinct cadres and their amalgamation shall not be in keeping with the spirit of the choice given by the candidate while taking the combined Civil Service Examination. It is a fact that Respondent No.4 to the Civil Service Examination in the year 1980 and she was allotted Railway Protection Force. In the year 1986 a request was made to UPSC for lateral induction of Respondent No.4 in the senior time scale of IRPS in 1986. In fact the Joint Director by the letter dated 4.8.86 has even proposed for amendment of the recruitment rules for IRPS that RPF Class I officer should also be brought within the scope of eligibility for induction in the senior scale of IRPS in terms of Rule 8(1)(c)(II) of the Recruitment Rules. The request was turned down by the UPSC by the letter dated 22.7.87. It was again in August, 1987 the Railways has written to the UPSC to consider the lateral induction of RPF officers in the senior scale of IRPS. The Commission again replied by the letter dated 28.9.89 that the Commission is not inclined to accept the proposal made by the Railway Ministry and the reply is quoted below : -

"While arriving at a decision in the matter, as communicated by the Commission's letter of even number dated 22nd July 1987, various relevant factors in the case had been taken into consideration and it was felt that the amendment proposed in regard to recruitment rules for the Indian Railway Personnel Service could not be agreed to. Among other things it was felt that RPF and IRPS constituted 2 separate and distinct cadres and their amalgamation at any level may not be entirely in keeping with the spirit of the system under which candidates appearing at a common examination ultimately opt for or get allotted to different services on the basis of their choice, perception of suitability and relative position in the Merit List of successful candidates. As regards officers of RPF also being "given an option to opt for IRPS", it may be stated that these officers had an option for allotment to IRPS at the time of their selection in the combined Civil Services Examination, but, again, depending on their relative merit in the list of successful candidates and such other factors, they may not have been allotted the IRPS. You will agree that allowing a lateral inter-service movement in one Ministry might lead to similar requests and proposals from other cadre controlling Ministries also and the entire sanctity of the existing system of allotment to various services will be under stress. In view of this, you will, I hope, appreciate that the Commission will not be inclined to accept the proposal made by the Railway Ministry."

The Respondents in their reply have admitted of these facts and stated that the case of Respondent No.4 was again referred to UPSC in 1988 and UPSC agreed. However, the letter dated 30.9.88 of Joint Director(Estt.) makes no reference to the earlier correspondence regarding amendment of IPRS Rules 1975 to make provision in the Rule 8(1)(c)(II) of the rules for lateral induction of RPF officers.

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The UPSC by the letter dated 15.5.89 agreed to the proposal and by the letter dated 13.9.89 Respondent No.4 was appointed in the senior scale of IRPS.

12. Respondent No.4 has been served but none appeared from other side to contest the application. The official respondents have taken the plea has been that the lateral induction into IRPS was to draw officers from various disciplines to strengthen the new formed service in order to cope with the new challenge and complexity faced by the IRPS department. It is also stated that she was inducted as a special case and that in future no officer shall be inducted into IRPS. This contention of the respondent's counsel that Respondent No.3 was inducted as a special case has no basis whatsoever. She could not have been inducted dehors rules of 1975. Moreover when earlier attempts in 1986 and 1987 for amendment of the rules were not agreed to by UPSC then by suppressing that fact the induction of Respondent No.3 is from back door. What she could not get directly she has been made to achieve by concealing of facts from UPSC. The services of RPF personnel which is an armed force of Union of India cannot in any manner be utilised with regard to experience gained in the IRPS. IRPS is totally deals in the administration matters concerning the employees in the railways. While Railway Protection Force

is only meant and drawn for the purpose of protecting the railway property. Since the respondents do admit that attempt with RPF is not organised service of Union of India, and Civil Service Examination is held only to fill up the post in RPF, the case of the applicant is not at all covered under the provisions or Rule 8(1)(c)(II) of IRPS Rules.

13. The mere fact that Respondent No.3 is a lady will not give her weightage for lateral induction in IRPS. The applicants have rightly challenged her induction as only that will mark their prospects of promotion and service career. She will become senior by virtue of earlier service rendered in RPF, has by lateral induction the seniority in RPF shall be maintained in the new service also. When the vested right of an employee is illegally curtailed or suppressed and chances of further career prospects are diminished he has every right to get such an appointment quashed according to law. The respondents cannot take the defence that UPSC has agreed to her lateral induction. In fact UPSC has been kept in dark to the earlier correspondence totally disagreeing with the proposal of lateral induction of the RPF officers in IRPS. Thus, the induction of the applicant Respondent No.3 in service is to be quashed. Her experience in R.P.F will no way be an asset in I.R.P.S.

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14. Now coming to the next point about the vires of Rule 8(1)(c)(II) of the IRPS Rules. The combined Civil Service Examination is held for 27 services/posts, the first three namely I.A.S., I.F.S. and I.P.S. are All India Services except 8 Group 'B' services/posts the remaining are Central Services Group 'A'. Among Group 'A' services are included Indian Railway Accounts Service, Group 'A', Indian Railway Traffic Service, Group 'A' and Indian Railway Personnel Service, Group 'A' and among the Group 'B' services Railway Board Secretariat Service, Group 'B' (Section Officer grade is included). Among the posts of Group 'A' post of Assistant Security Officer in the Railway Protection Force is included. The IRPS rules came into force with effect from 1.1.76 and it provides that 50% of the vacancies in the senior scale (Senior Personnel Officer/Divisional Personnel Officer) shall be filled by transfer of officers belonging to Class I service under the Ministry of Railways (excluding Indian Railway Medical Service) who have completed six years of service in the junior scale or two years service in the grade of Under Secretary in the Ministry of Railways and elect on the basis of the option will be appointed to the service. If this process fails then under the Rule 8(2) of the rules these 50% vacancies shall be filled by transfer on deputation of suitable officers of Class I service under the Ministry of Railways and the period of deputation shall not ordinarily

exceed three years. The allotment to the various services is made by the UPSC as per choice given by the successful candidates in that examination. However, the proviso to rule 4 of CSE rules was introduced in December 13, 1986. It lays down if a candidate who is permitted to appear in the next CSE (Main) on fulfilment of the conditions enumerated in first part of this proviso is allocated to a service on the basis of next Civil Service (Main) Examination, he should either join that service or the service to which he has already been allocated on the basis of previous CSE. If he fails to join his allocation to the service based on one or both the examinations, as the case may be, shall stand cancelled. Further, notwithstanding anything contained in Rule 8 of the rules, a candidate who accepts allocation to the service and who is appointed to the service shall not be eligible to appear again in CSE unless he has first resigned from the service. In short if a candidate has been approved for appointment to the Central service Group 'A' and expresses his intention to appear in next CSE (Main), the services to which he is eligible to compete are IAS, IFS and IPS. This restriction has been upheld by the Hon'ble Supreme Court in the case of Mohan Kumar Singhania & others Vs. UOI reported in (1992) 19 ATC 881. It clearly goes to show that interse mobility in Group 'A' service cannot take place except on the choice and option exercised by the candidate while appearing in CSE and he has

accepted the offer he is to be allocated to that Group 'A' Central Service. In the present case the IRPS rules provide interse mobility of 3 services i.e. Railway Audit & Accounts Service, Indian Railway Traffic Service and the Group 'B' service of Railway Board Secretariat service. As regards Railway Board Secretariat Group 'B' service, there is no challenge to that before us. Obviously because as per the decision in the Mohan Kumar Singhania case (supra), a candidate who has qualified Group 'A' service in CSE of particular year can again appear and compete for any of the Group 'A' Central Services in the next Civil Service Examination and can be allocated to that service in case he comes out successful on the basis of his choice. The Respondents in their reply has categorically stated that interse mobility of the service in the Railways of IRTS and IRAS is to have personnel to man senior scale of IRPS having experience of the other discipline of the railway service. The applicants have challenged this on the ground of arbitrariness as well as at the time of entry to the Group 'A' Central Service. The choice of the candidate has been taken into account and on which the allocation of the service was made and which has been accepted. It appears that the IRPS rules came in the year 1975 when there was no bar for taking CSE and to appear in successive CSE and after qualifying any of these examinations the candidate could claim allocation to the

service of his choice subject to merit in a subsequent year examination though he had already qualified ^{and given offer} of appointment in the earlier examination. Thus, the inter-service mobility between the services of the railways was permissible even according to CSE rules ^{existing} at the time. However, by the passage of time and considering that there has been frequent complaints from the Autonomous and Training Institutes by the Government in informing that the candidates who, taking advantage of the opportunity of mobility from one service to another, were intending to appear in the next CSE (Main) in the hope of getting a better position and a more preferred service were ^{ignoring} ~~including~~ their regular training programmes whereunder they had to undergo specialised training and acquire the necessary potential to perform their tasks in the service to which they have been allocated and for which training the Government incurs huge expenditure. In order to overcome this problem of indiscipline amongst the probationers undergoing training, the aforesaid restriction was imposed. Thus, the avenue of another choice given by the IRPS Rules, 1975 is against the policy which has been taken into account in opposing the restriction on inter-service mobility of the Central Services, Group 'A'.

In the case of A.S. Sangwan V. Union of India reported in 1981 SCC (L&S) 378, the Hon'ble Supreme Court observed as follows:-

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"A policy once formulated is not good forever; it is perfectly within the competence of the Union of India to change it, recharge it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. We cannot, as Court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitution and not over it.... It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily."

15. The contention of the learned counsel for the applicant is that the aforesaid rule 8(1)(c)(II) is arbitrary and is malafide. The plea of malafide is not sustainable against a rule making body. It is for the expert body to frame the rules or for the legislation to regulate the method of recruitment, prescribed qualifications etc. It is open to the President or the authorised person to undertake such exercise and that necessary tests should be conducted by UPSC before giving certificates to them. The Court cannot discharge the function to adjudicate on such matter of rule making authority unless the same is ultravires of the

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Constitution. IRPS Rules 1975 has been made by the President exercising the powers to under proviso to Article 309 of the Constitution. In that case 50% of the vacancies in the senior scale are to be filled up by promotion from the junior scale of IRPS and 50% by inducting persons from other railway services i.e. IRTS, Indian Audit and Accounts Service except Indian Railway Medical Service. If this recruitment in 50% of the vacancies of senior scale collapses then the persons can be taken on deputation. This policy decision of the Government therefore at this point of time cannot be said to be arbitrary or violative of the Constitution of India. There is a legitimate classification with a particular object to be achieved for the 50% senior scale posts in IRPS. The rules therefore cannot be said to be unreasonable or arbitrary.

16. However, it appears that the policy adopted by the rule making authority has lost its effectiveness in view of the fact that person who appears in CSE can very well give their choice for IRPS and if they are not above in the merit or cannot be ~~adjusted~~ ^{adjusted} to that service then in the subsequent stage of their career they should be refrained from shifting to another service permanently on absorption thereby gaining seniority over junior scale officer already working in IRPS. It would be only adviseable

to the Government to lay down more clearly its policy for the future to avoid disappointment to those who are already allocated to IRPS and have assessed their chance of promotion on the basis of their seniority from the date of joining of IRPS. It is, therefore, expected that the Government of India will dispel misapprehension from the mind of such junior scale employee who think that action of the Government is not fair. In all fitness Govt. of India may consider that 50% senior scale posts may only be filled under rule 8(2) of the IRPS rules instead of resorting to rule 8(1)(c)(II) of the IRPS rules.

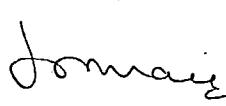
17. In view of the above facts and circumstances, the application is partly allowed as follows:

- i) The recruitment of Respondent No.3 to IRPS by the order dated 13.9.89 is quashed. She shall be treated on deputation in IRPS till she is repatriated to her substantive post of Asstt. Security Officer in RPF. Of course she will be entitled to promotion which she could have got if she had continued in that service. Her period in IRPS shall be treated only on deputation basis.
- ii) The validity of rule 8(1)(c)(II) is upheld subject to the observation made in the body of the judgement.

Application is disposed of with no order as to cost.


(B.K. SINGH)
Member (A)

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(J.P. SHARMA)
Member (J)