
(2017) 02 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : 139 of 2016 MP nos 01 of 2016, 02 of 2016 and 04 of 2016

Aftab Ahmad Kakroo & anr.

APPELLANT

Vs

State of J&K & ors.

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

[Jammu and Kashmir Police \(Gazetted\) Service Recruitment Rules, 2002](#), Rule 4

Citation : (2017) 02 J&K CK 0019

Hon'ble Judges : Ali Mohammad Magrey

Bench : SINGLE BENCH

Advocate : M. I. Qadri, Mushtaq Gandroo, B. A. Dar, Azhar-ul-Amin

Final Decision : Disposed Of

Judgement

1. This petition, though still at admission stage, was heard on 19.12.2016 and the judgment was reserved. Since the matter has been finally heard, it shall be deemed to have been admitted to hearing.

2. Having considered the matter, it comes to fore that the real purpose of this petition seems to be to pre-empt the State respondents from disturbing the petitioners' seniority as assigned to them in the seniority list notified in terms of order No.508 (P) of 2010 dated 29.04.2010, though the prayers made in the writ petition are altogether different.

3. The prayers made by the petitioners in the writ petition are as under:

In the premises, it is, therefore, prayed that in views of the above submissions, Hon'ble Court may be pleased to: a. Issue writ, direction or order

in the nature of prohibition restraining the respondents from issuing any final seniority list or otherwise without complying with SRO 210 of 1994 by

giving due share to promote Deputy Superintendent of Police. b. Issue writ, direction or order in the nature of mandamus commanding the

respondents to finalize the seniority list of the posts of Deputy Superintendent of Police/Superintendent of Police by giving due benefit of SRO 210

of 1994 as provided in Rule 3 of said Rules and maintain the seniority of the petitioners as was existing in the year 2010 drawn as per Rules. c.

Any other writ, direction or order which this Hon'ble court may deem fit and proper in the facts and circumstances of the case may also be passed

in favour of the petitioner and against the respondents alongwith costs of litigation.

4. Facts pleaded in the writ petition may briefly be summarized. Petitioner no.1, Aftab Ahmad Kakroo, was appointed as Sub-Inspector in the

year 1982, promoted as Inspector in 1989 and as Deputy Superintendent of Police in his own pay and grade vide Government order no.136(P) of

1998 dated 18.04.1998. He was later confirmed on the post with effect from 01.11.1999 in terms of Government order no.36-P of 2002 dated

25.01.2002. Thereafter, on the recommendations of the State Public Service Commission, the Government issued order no.Home-79(P) of 2007

dated 27.02.2007 promoting the petitioner along with 47 other Officers as Superintendents of Police. The petitioner's name figured at serial no.40

of the said order. He was shown to be promoted as such notionally with effect from 02.11.2003 to 04.11.2003 and regularly with effect from

05.11.2003.

5. Petitioner no.2, Ramesh Kumar Jalla, was appointed as Inspector of Police in the year 1984 and is said to have been promoted as Deputy

Superintendent of Police on 11.11.1994. Later on, in terms of Government order no.Home-9(P) of 2001 dated 08.01.2001, the petitioner along

with two other persons was promoted as Superintendent of Police with immediate effect.

6. The Government by its order no.508(P) of 2010 dated 29.04.2010 issued the final seniority list of the gazetted members of the Jammu and

Kashmir Police in the rank of Superintendents of Police. Name of petitioner no.1 figured in the said seniority list at serial no.79 and that of

petitioner no.2 at serial no.22. Therein the date of promotion of petitioner no.1 as Deputy Superintendent of Police was shown as 01.11.1998 and

his date of promotion as Superintendent of Police was shown as 02.11.2007. The date of promotion of petitioner no.2 as Deputy Superintendent

of Police was shown to be 11.11.1994 and his date of promotion as Superintendant of Police as 19.12.2000.

7. It may be mentioned here that earlier the gazetted service of the Police Department in the State was governed by the Jammu and Kashmir Police

(Gazetted) Service Recruitment Rules, 1977. These Rules were repealed by the Jammu and Kashmir Police (Gazetted) Service Rules, 1984 which

came to be notified by SRO 540 dated 19.10.1984 published in the Government Gazette dated 19.10.1984. However, the 1984 Rules were kept

in abeyance by notification SRO 166 dated 22.04.1985.

8. Meanwhile, the Government in the Home Department issued order no.GR-349(POLICE) of 1986 dated 26.09.1986, according sanction to the

provision of: (i) 20% deputation reserve of the total strength of Superintendents of Police and 10% of the total strength of Deputy Superintendents

of Police; (ii) 10% leave reserve of the total strength of Superintendents of Police and Dy. Superintendents of Police each; and (iii) 15% training

reserve of total strength of the Superintendents of Police in the Jammu and Kashmir Police Gazetted Service.

9. On 5th October, 1994, the Government vide SRO 210 promulgated the Jammu and Kashmir Gazetted Service Recruitment (Amendment)

Rules, 1994. These Rules were made applicable to 17 services, including the post of Deputy Superintendent of Police in the J&K Police

(Gazetted) Service. Rule 3 of the said Rules provided as under:

Notwithstanding anything contrary contained in their relevant recruitment rules, in respect of the posts indicated under column (3) of Schedule I

annexed to these rules, borne on the services to which these rules apply, the number of persons recruited through competitive examination and by

promotion / selection shall not at any time exceed 50% of the number of posts in the respective cadre.

Explanation:

Posts shall mean duty posts, deputation and leave reserve, if any, sanctioned for the respective cadres, carrying the time scale and pay of Rs.2125-

3600.

Provided further that the posts under the training reserve, if any, sanctioned for

respective cadre, shall be deemed to be direct recruitment posts.

10. Thereafter, the Government, in terms of SRO 132 dated 03.04.2002, framed and promulgate the Jammu and Kashmir Police (Gazetted)

Service Recruitment Rules, 2002. Obviously, these Rules were thus framed more than 17 years after the 1977 Rules were repealed and, likewise,

about 17 years after the 1984 Rules were kept in abeyance.

11. The case of the petitioners, in short, is that in order to implement the 50:50 ratio between the direct recruits and promotee Deputy

Superintendents of Police, fixed and prescribed by Rule 3 of the Jammu and Kashmir Gazetted Service Recruitment (Amendment) Rules, 1994,

the total number of the cadre posts in the rank of Deputy Superintendents of Police has to be determined inclusive of the deputation reserve and

leave reserve posts, equivalent to their respective percentage provided in Government order no.GR-349(POLICE) of 1986 dated 26.09.1986.

Once that is done, the number of posts as may become available in the promotion quota from time to time has to be worked out applying the

mandate of Rule 3 of the 1994 Rules and the promotees have to be assigned their respective dates of promotion and seniority depending upon

such determination.

12. The above is the foundational contention of the petitioners in context of their prayer to direct the respondents to comply with SRO 210 of

1994 by giving due share to promotee Deputy Superintendents of Police. In this connection, they submit that, in fact, the respondents have made

promotions on the above basis on the posts of Deputy Superintendents of Police from time to time.

13. It is averred in the petition that pursuant to the decision of the Court in Anita Sharma v State of J&K, 2011 (4) JKJ 478, the Government, in

terms of order no.Home-190(P) of 2012 dated 29.02.2012, constituted a committee which examined the whole issue particularly the provision of

reserve posts in the Service and made certain recommendations. On the basis of such recommendations of the Committee a tentative seniority list

of the Deputy Superintendents of Police, as it stood on 01.08.1999, was notified vide Circular no.18-Home of 2013 dated 24.10.2013. It is

stated that the name of petitioner no.1 in the said tentative seniority list appeared at serial no.175, showing the date of effect to his promotion as

Deputy Superintendent of Police as 01.06.1999 instead of 01.11.1998 as had been shown in the 2010 seniority list. Likewise, the name of

petitioner no.2 appeared at serial no.62, showing the date of his promotion as Deputy Superintendent of Police as 23.06.1997 instead of

11.11.1994 as had been originally determined. It is stated that though the petitioners filed their objections to the assignment of the above seniority

positions to them, the final seniority list has not yet been issued.

14. Meanwhile, it is stated that though the respondents have not finalized the seniority list, yet they have constituted another committee in terms of

Government order no.33-Home/2015 dated 07.08.2015 which, according to the petitioners, undertook the process of implementing the judgment

and order of the Court in context and in consideration of the Rules. It is averred by the petitioners that they were neither called for any hearing nor

asked to submit any documents. The petitioners state that they have reliably learnt that the committee has made two alternate recommendations:

one based on taking the reserve posts into consideration and the other without taking such posts into consideration. It is alleged by the petitioners

that some persons who are at advantageous positions in the Civil Secretariat are trying to manage and ensure that the second recommendation is

accepted by the Government and, if that is done, the petitioners' rights would be adversely affected inasmuch as their service period to the extent

of 3 to 4 years would get wiped off without any reason and without affording them any hearing.

15. The contentions raised by the petitioners are vehemently contested and denied by the respondents.

16. As is seen from the above, this petition is wholly based on apprehensions. It is not in dispute; rather, it is admitted, that the exercise of finalizing

the seniority in implementation of the judgment of the Court in Anita Sharma v State of J&K (supra) is in the process. It may be that the

respondents appointed a Committee whose report culminated into issuance of a tentative seniority list, but that fact by itself would not amount to

implementation of the judgment. Consideration to be accorded to the objections received in response to the tentative seniority list so as to correctly

finalize the seniority of the members of the cadre would itself constitute a continued exercise in the process of implementation of the judgment of the

Court. Things would continue to be fluid until the final seniority list is issued in implementation of the directions of the Court. When the final seniority list is issued, if someone is aggrieved of the position assigned to him therein, he can challenge the same, but the appropriate stage to come to the Court against such seniority list or the seniority position assigned therein would be only when the same is finally issued. The petitioners cannot file a writ petition merely on the basis of their apprehension that their positions in the seniority list are likely to be illegally altered, that too, at the instance of some hidden hands. What the petitioners apprehend is not supported by any document on record. Once it is admitted by them that they have filed their objections to the tentative seniority list, a responsibility is cast on the respondents to consider such objections. It is also not their case that no other member of the service has or could file objections to the tentative seniority list. Once such objections have been filed by those aggrieved of the position assigned to them in the tentative seniority list, which would include the petitioners, a duty is cast on the respondents to accord due consideration to such objections, of course, in due regard to the relevant Rules, and, for accomplishment of such duty, the respondents may even choose to appoint another committee. There is nothing wrong in such an approach, if adopted by the respondents. Once the objections are considered by any such committee and if, on the basis of the Rules holding the field and in light of the directions of the Court, it finds any merit in the objections, the same would have to be accepted and it is, therefore, natural that the positions shown in the tentative seniority list may change. This Court cannot forestall such an exercise undertaken by the respondents, more so when the same is being done in implementation of the judgment of the Court. Determination of seniority of members of any Service is the job of the concerned competent authority; it is not the Court's job. If the Court would proceed to meddle in the process of determination and finalization of the seniority of members of a Service, then, I am afraid, the job will never be accomplished. Yes, it is reiterated, once the seniority is finalized by the concerned competent authority, if some member of the Service is aggrieved by the position assigned to him, he can challenge the same with positive averments and particulars as to what his seniority position ought to be and why.

17. Naturally, it would also be within the domain of the committee to decide such objections taking into account the fact whether or not the reserve

posts as had been envisaged by Government order no.GR 349(Police) of 1986 dated 26.09.1986 have been available from time to time and are

provided by the Rules. The contention of the petitioners before this Court has been that the provision of such reserve posts has been preserved

and maintained by the Jammu and Kashmir Police (Gazetted) Service Recruitment Rules, 2002, but a bare perusal of the said Rules do not suggest

that. It be seen that Rule 4 of these Rules, dealing with the strength and composition of the Service, provides as under:

Strength and composition of the service.- (i) The authorised permanent and temporary strength of the cadre and the nature of the posts included

therein shall be determined by the Government from time to time and shall, at the initial constitution of the service under these rules, be such as

specified in Schedule-I annexed to these Rules.

Provided that the Government may create such temporary posts in the cadre of the service for specified period or purpose as may be considered

necessary from time to time subject to the condition that such posts shall be held by a member of the service.

Provided further that the Government may authorise, if felt expedient, holding of a cadre post by non-cadre officer on ex-cadre basis.

(ii) The Government shall, at the interval of every three years or at such other intervals as may be necessary, reexamine the strength and

composition of the cadre of the service and make such alteration therein as it deems fit.

Schedule I appended to the 2002 Rules provides the total sanctioned strength of the posts of Dy. Superintendents of Police as 335 with the break-

up of 200 posts as permanent and 135 as temporary. However, this Schedule, which essentially delineates the sanctioned strength and

composition of the Service, does not prescribe any deputation reserve post, leave reserve post or training reserve post. Therefore, it is impossible

for this Court to uphold the contention of the petitioners that the Rules provide for any such reserve posts.

18. It is true that Schedule II at its end bears an entry to the effect ""reserves on duty posts"", but Schedule II itself prescribes the qualifications and

the method of recruitment to the service; it does not relate to the sanctioned strength of the posts of the cadre or composition of the Service. The

ratio of 50:50 to be maintained in direct recruitments and promotions in terms of Rule 3 of the Jammu and Kashmir Gazetted Service Recruitment

(Amendment) Rules, 1994 relates to and has to be determined on the total strength of posts. Once such posts, in terms of the relevant Schedule,

are not borne on the sanctioned strength of the cadre, there is no question of including and counting any such posts in the total strength of the

cadre.

19. It is contended that deputation and leave reserve posts envisaged by Government order no.GR-349(Police) of 1986 dated 26.09.1986 have

to be over and above the sanctioned strength of posts. If such a contention is accepted for a moment, then these reserve posts would, at least, be

included in the composition of the Service. Rule 4 of the 2002 Rules and Schedule I appended thereto do not only prescribe the sanctioned

strength of the Service, but also prescribes its composition. Had it been the intention of the Government to prescribe the reserves envisaged by

Government order no.GR-349(Police) of 1986 dated 26.09.1986 in the Rules, then it would, at least, include such percentage of reserves in the

composition of the service and show that in Schedule I appended to the 2002 Rules. It is to be borne in mind that the reserves talked about were

envisaged by order dated 26.09.1986 and the Rules presently governing the Service were framed in 2002. Nothing prevented the Rule making

authority from making a mention about it there in the relevant Schedule. It, therefore, follows that the Service does not compose of such posts over

and above the sanctioned strength of the posts as prescribed in Schedule I appended to the 2002 Rules. Yes, if the petitioners feel aggrieved of

non-inclusion of such posts in the composition of the Service, they are free and at liberty to challenge the Rules; nothing will prevent them from

doing so. But as long as such posts are not shown in Schedule I, these cannot be directed to be taken into account for purposes of Rule 3 of the

1994 Rules, as the cadre does not compose of such posts. It may be mentioned here that so long as the 2002 Rules had not been framed, one

could say that the Government order no.GR-349(Police) of 1986 dated 26.09.1986 would have application, for, strictly speaking there were no

rules governing the Service after the 1984 Rules had been kept in abeyance. It may be apt to mention here that the 1977 Rules were repealed by

the 1984 Rules and, therefore, stood obliterated. The 1977 Rules in no circumstances could not be revived, especially so when there was no such

statutory order passed and the 1984 Rules were only kept in abeyance. Reference in this connection may be made to the settled position of law in

this regard. The Supreme Court in *State of U.P. v. Hirendra Pal Singh*, JT (2010) 13 SC 610, considered a large number of judgments particularly

in *Firm A.T.B. Mehtab Majid & Co. v. State of Madras*, AIR 1963 SC 928; *B.N. Tewari v. Union of India*, AIR 1965 SC 1430; *Indian Express*

Newspapers (Bombay) Private Ltd. v. Union of India, AIR 1986 SC 515; *West U.P. Sugar Mills Association v. State of U.P.*, AIR 2002 SC

948; *Zile Singh v. State of Haryana*, (2004) 8 SCC 1; and *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit*, (2009) 8 SCC

46, and came to the conclusion that once the old rule has been substituted by the new rule, it stands obliterated, thus ceases to exist and under no

circumstance can it be revived in case the new rule is held to be invalid and struck down by the Court, though position would be different in case a

statutory amendment by the Legislature, is held to be bad for want of legislative competence. In that situation, the repealed statutory provisions

would revive automatically. So, the 1977 Rules stood obliterated and never resurrected. Once the 2002 Rules were framed, and if the

Government intended to make a provision of reserve posts as had been envisaged by Government order no.GR-349(Police) of 1986 dated

26.09.1986, the same could have been shown in the composition of the Service, but, as discussed above, that has not been so.

20. Mr. M. I. Qadri, learned counsel for the petitioners cited and vehemently relied upon the decision of a Coordinate Bench of the Court in *Ali*

Mohammad Shah v State of J&K, SWP no.1079/2010, decided on 02.01.2013, especially paragraph 32 thereof. Therein the Court held that

Explanation to Rule 3 of the Rules of 1994 is applicable to Jammu and Kashmir Police (Gazetted) Service. The issue is not in relation to

application of Rule 3 of the 1994 Rules or the Explanation given thereunder; it actually relates to the provision and availability of deputation and

leave reserve posts in the composition of the Service. It is reiterated that Schedule I appended to the 2002 Rules, which have admittedly been

made 16 years after the 1986 Government order, does not include such reserve posts in the composition of the Service. The judgment, therefore, does not help the petitioners. Mention of such reserve posts in Schedule II is immaterial in the context of the case of the petitioners and their prayer.

21. In light of the above, this petition in context of the petitioners' prayer for maintenance of their seniority is disposed of with direction to

respondents to consider the objections which the petitioners have filed to the tentative seniority list notified vide Circular no. 18-Home of 2013

dated 24.10.2013 and thereafter finalize the seniority.

ii. Respondents are further directed to ensure that the petitioners are heard in person with reference to the contentions raised in the objections

before finalizing the seniority.

iii. Respondents are further more directed to complete the process of finalizing the seniority expeditiously preferably within one month from today.

22. Since the time limit for finalizing the seniority has been fixed from today, therefore, it shall be appropriate to provide a copy of the order to Mr.

B.A Dar, Id AAG for its transmission to respondent no.1 for compliance.

23. Bench Secretary of this Court shall provide a copy of the judgment under his seal and signature to Mr. Dar today itself.

24. Before parting with the file, it is made clear that anything said in this judgment is not intended to unsettle the settled things in the Service or to

disturb what has long since been set at rest. The findings are returned and be read only in context of the claims of the petitioners.

25. No order as to costs.