

(2004) 04 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition No. 24296 of 2000

A.S.N. Murthy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

All India Services Act, 1951 — Section 3 (1)
Indian Police Service (Pay) Rules, 1954 — Rule 4 (1) (b), 7

Citation : (2004) 7 KarLJ 215 : (2004) 2 KCCR 1386

Hon'ble Judges : Ajit J. Gunjal, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : B.S. Patil, for the Appellant; D. Gangadhar, Additional Central Government Standing Counsel for Respondent-1 and Rosa Paramel, High Court Government Pleader for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J

1. The petitioner who was an applicant before the Central Administrative Tribunal, Bangalore, questions the legality and correctness of the order of the Tribunal dated 21st January, 1998 dismissing the application O.A. No. 381 of 1997 filed by him.

2. The petitioner filed the application before the Tribunal questioning the letter dated 19th June, 1996, issued by the Government of India taking the stand that he shall cease to earn increments in the Junior Scale of pay until having regard to his length of service he becomes entitled to higher pay as provided by Rule 4(1)(b) of the IPS (Pay) Rules, 1954. The case set up by the petitioner before the Tribunal is to the effect that Rule 4(1)(b) of the Indian Police Service (Pay) Rules, 1954 ("the Rules" for short), is subject to the proviso and that he would be entitled to the regular increments due under Rule 7 of the Rules.

3. We have heard the learned Counsel for the petitioner, Mr. B.S. Patil and Sri D.

Gangadhar, Additional Central Government Standing Counsel for the respondents.

4. Mr. B.S. Patil laid emphasis on Annexure-B to the writ petition and submitted that Rule 4(1)(b) ought to be read along with the office memorandum dated 7th August, 1989 (Annexure-B). It is his submission that the rule and the memorandum when read together lead to the inevitable conclusion that the petitioner is entitled to the regular increments de hors the fact that his pay in the service has been fixed at a scale higher than the minimum prescribed for the post in order to protect his pay in his previous employment. Drawing our attention to the memorandum he submitted that it does not speak of denial of any increment and in the absence of any specific mention of such denial, the refusal on the part of the Government to grant him the annual increments to which he is rightfully entitled to is totally uncalled for and has to be interfered with.

5. The learned Additional Central Government Standing Counsel, on the other hand, supported the impugned order of the Tribunal.

6. Rules have been formulated by the Central Government, in consultation of the State Governments, to govern matters of pay arising under the Indian Police Service, in exercise of the powers conferred by Sub-section (1) of Section 3 of the All India Services Act, 1951 (LXI of 1951). These Rules are called the Indian Police Service (Pay) Rules, 1954. As the petitioner belongs to the I.P.S. cadre and the matter in dispute relates to his pay, there can be no gainsay in denying that the matter in dispute has to be determined in accordance with the said Rules. Fixation of initial pay is governed by Rule 4 of the said rules. We are herein concerned with Rule 4(1) only. It reads:

"4. Fixation of initial pay in the time-scale.--(1) The initial pay of a direct recruit shall be fixed at the minimum of the junior time scale:

Provided that, if a direct recruit holds a lien, or would hold the lien, had his lien not been suspended, on a permanent post, under the rules applicable to him prior to his appointment to the Indian Police Service.--

(a) his initial pay shall be regulated as follows.--

(i) he shall, during the period of probation, draw the pay of the permanent post, if it is more than the minimum of the junior scale.

(ii) on confirmation in the Indian Police Service,

(1) if he was holding a Class I post before appointment to the Indian Police Service his pay shall be fixed at the same stage as the pay in the Class I Post if there be such a stage in the Junior scale admissible to a member of the Service, or at the next lower stage if there is no such stage in the Junior scale admissible to a member of the Service. Where the pay so fixed in the Indian Police Service is less than his pay in the Class I post, he shall be allowed the difference as personal pay to be absorbed in future increment; and

(2) if he was holding a post lower than Class I post, his pay shall be fixed at a stage next above the pay nationally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay had accrued.

(b) he shall, however, cease to earn any increments in the junior scale, until, having regard to his length of service, he becomes entitled to higher pay:

Provided further that he shall draw the pay admissible under Rule 7 if that is more than the pay referred to in the preceding proviso".

In the light of Clause (b) of the proviso to Sub-rule (1) of the Rules he would not be entitled to any increments in the junior scale until having regard to the length of service he becomes entitled to higher pay. In terms of Sub-clause (i) of Clause (a) of Sub-rule (1) of Rule 4 his pay has been rightly fixed at an higher scale than the minimum prescribed by protecting his pay and this fact is not disputed by him. Having thus gained protection of his pay that he was drawing in the previous post the petitioner, nevertheless, contends that he is not governed by Clause (b) of the proviso to Sub-rule (1) whereunder he was denied increments. Sub-rule (1) of Rule 4 therefore provides for two eventualities, first one being the protection of pay under Clause (a) of the proviso and the second one being the denial of increments till such time he becomes entitled to higher pay under Clause (b). The petitioner who has no qualms about earning the benefit accruing to him under Clause (a) of the proviso and the second one being the denial of increments till such time he becomes entitled to higher pay under Clause (b). The petitioner who has no qualms about earning the benefit accruing to him under Clause (a) nevertheless is unable to reconcile himself to the denial of the increments under Clause (b). We are of the singular view that when a rule governs two aspects of the same matter, both aspects have to be given effect to and the action complained of by the petitioner is the second aspect of denial of increments which he is estopped from contesting by virtue of the fact that having enjoyed the benefit under the same rule, it is no longer open to him to ask the Government to forbear from enforcing the disadvantage that also accrues from the very same rule which provided him with some advantage.

7. Mr. Patil repeatedly read to us Annexure-B, the official memorandum, in order to demonstrate that under the official memorandum, which has been issued after the coming into force of the Rules and after taking full cognizance of the Rules, there is no denial of the increments and, therefore, the rule relating as it does exclusively to persons who join the service from the Public Sector undertakings will have precedence over Clause (b) of Sub-rule (1) of the Rule 4. In order to appreciate whether the official memorandum makes out such a case for the petitioner and exempts persons joining the IPS from the public sector undertaking from the operation of Clause (b) of the proviso to Sub-rule (1) of the Rule 1 of the Rules, we quote the official memorandum:

"The undersigned is directed to say that as per extant rules/orders on the subject, pay protection is granted to candidates who are appointed by the

method of recruitment by selection through U.P.S.C. if such candidates are in Government Service. No such protection is granted to candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, when they are so appointed in Government. As a result of this, it has not been possible for Government to draw upon the talent that is available in non-Government organisations.

2. The question as to how protection can be given in the case of candidates recruited from Public Sector Undertakings, has been engaging the attention of the Government for some time. The matter has been carefully considered and it has been decided that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post, so that the pay and D.A., as admissible in the Government will protect the pay plus D.A., already being drawn by them in their parent organisation. In the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such Organisations.

These orders take effect from the first of the month in which this Office memorandum is issued i.e., 1st August, 1989"

(emphasis supplied)

The whole object behind the Rule of pay-protection, as it is generally understood in service jurisprudence, is not to place a candidate appointed to a post under the Government at a disadvantage insofar as emoluments drawn by him in his parental department or organisation is concerned. The rule on the one hand aims at protecting his last drawn pay and D.A., while on the other it makes sure that the rule does not also provide an unfair advantage to such appointees over the others appointed to the same post and thereby making sure that the principle "equal work, equal pay" is not violated. It is in order to achieve these twin objectives that the last drawn pay and D.A. are protected till such time he is entitled to higher pay. So long as he enjoys this pay protection, he is denied the annual increments so that when ultimately he becomes entitled to the higher pay, the pay and the pay of others appointed along with him would be on the same scale. The principle that operates behind this pay-protection rule is that the appointee should neither gain an advantage over his equals from the circumstance that his pay initially was fixed at a scale higher than the minimum nor suffer reduction in emoluments by virtue of his switching over to a different service under the Government. What the official memorandum at Annexure-B

does is to extend the benefit that under Rule 4 was exclusively provided only to Class-I and other classes of appointees in Government to those working in other Government organisations and public sector undertakings also. Nothing more can be read into that official memorandum. Para 1 of the official memorandum amply makes it clear why the official memorandum is being issued. What was not earlier available to the appointees who were previously employed in public sector undertaking has been, by virtue of Annexure-B, extended to them also and in para 2 spells out how this pay protection has to be given. The official memorandum is strictly in conformity with Rule 4 and it does not alter the rule in any way and nor is it issued in deviation of Rule 4 of the Rules. The opening sentence in the memorandum reading, "the undersigned is directed to say that "as per extent rules /orders" on the subject pay protection is granted to candidates who are appointed by the method of recruitment by selection through U.P.S.C. if such candidates are in Government Service" makes it all the more obvious that the object of issuing the memorandum is to bring the employees of public sector undertakings on par with the employees in the Central and State Government Services in the matter of protecting their pay drawn in their previous employment. Nothing more and nothing less. The underlined phrase "as per extent rules/orders" makes it obvious that the object behind issuing the official memorandum is to extend the benefit which was hitherto available only to persons holding Class I and Class II appointment in Government, to those appointed in public sector undertakings also. We are not convinced with the attempt made by learned Counsel Mr. Patil to read into this memorandum the intention of the Government to extend to them the annual increments also in addition to protection of the pay last drawn by them because that is clearly ruled out by Clause (b) of the proviso to Sub-rule (1) of Rule 4 of the Rules. That clearly could not have been the object in issuing the official memorandum and if it were to be so the official memorandum would have drawn attention to Clause (b) and provided an exception to it.

8. The petitioner is very much governed by Rule 4 of the Rules and while under Clause (a) of the proviso to Sub-rule (1) he has been granted the pay-protection, the Government has, rightly, in conformity with Clause (b) of the proviso to Sub-rule (1) denied him the increments. A rule, if it applies, it applies as a whole and never on piece-meal basis. The attempt now made to overcome the consequence flowing from Clause (b) of the proviso to Sub-rule (1) with the aid of the official memorandum has to fail because official memorandums do not have statutory force and do not confer any rights on the Government Servants, but they are in the nature of guidelines issued to give effect to the rules. Therefore, such guidelines cannot be enforced in a legal forum and what is more the official memorandum, Annexure-B, does not state anything contrary to what is said in Clause (b) of the proviso to sub-rule. We find the grievance of the petitioner is unfounded and he is not in law entitled to the annual increments till he reaches a higher scale of pay in the present cadre and till such time he has to be content with the protected scale of pay that has been initially fixed.

9. Be that as it may, the matter does not end there. This official memorandum was followed up by another official memorandum dated 10-7-1998 by way of clarification to the O.M. No. 12/1/88, dated 1st August, 1989 (Annexure-B). It reads:

"Protection of pay for candidates recruited from Autonomous Bodies/Public Sector Undertakings is admissible, if the selection is through interview only.--This Department's O.M. No. 12/1/88-Estt. (Pay-I), dated 7-8-1989, 28-2-1992 and 8-6-1993 lay down guidelines for protection of pay in respect of the candidates working in Public Sector Undertakings, etc., on their appointment as Direct Recruits on selection through a properly constituted authority including Departmental authorities. The O.M., dated 7-8-1989 was issued on the initiative of the UPSC.

2. This Department has received certain cases seeking clarification as to the exact of this Department's O.M., dated 7-8-1989 and the conditions under which benefit under that O.M., is admissible. The matter has been examined in consultation with the UPSC and the position is clarified as under.

3. The benefit of pay protection is available to the Government servants on their recruitment by selection through UPSC, subject to fulfilment of certain conditions. The benefit under the O.M., dated 7-8-1989 was extended to the candidates working in Central PSUs/State PSUs/Universities/Semi-Government Institutions/ Autonomous bodies, etc., with a view to drawing talent which is available in those organisations. The question whether the objective underlying the above orders could be achieved through Open Competitive Examination in which the employees from Public Sector Undertakings, etc., also appear, has been considered. It is clarified that the benefit of pay protection under the above orders is available only, if the selection is through interview and not through an Open Competitive Examination. Wherever the protection under the above orders is to be given the Commission will indicate in its recommendation letter to the Ministry concerned that pay of such candidate should be fixed as per the guidelines laid down in the above orders. Further, the benefit would be available to an officer coming from PSU, etc., only if the officer has completed the period of probation successfully for being regularised/confirmed in the post in the parent organisation.

4. The Ministry of Agriculture, etc., are requested to keep the above clarification in mind in fixing the pay in such cases. The cases already decided otherwise in consultation with this Department need not be reopened".

(emphasis supplied)

In view of the second memorandum also we feel that the petitioner's claim for annual increments is legally untenable. From our discussion above, it is clear that the petitioner is not entitled to annual increments during the period in which he has had the benefit of pay-protection.

10. We find no merit in this writ petition and it is accordingly dismissed.