

(1999) 07 AHC CK 0053
In the Allahabad High Court
Case No : C.M.W.P. No. 41452 of 1993

Awan Kumar Timber Merchants and Suppliers	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Forest Act, 1927 — Section 2(2), 41
Uttar Pradesh Adhinastha Rajasva Karyapalak Sews Niyamawali, 1977 — Rule 7
Uttar Pradesh Transit of Timber and other Forest Produce Rules, 1978 — Rule 28, 3, 8(2)

Citation : (1999) 3 AWC 2712

Hon'ble Judges : Onkareshwar Bhatt, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Amarendra Singh, for the Appellant; S.C., Laljee Sinha, for the Respondent

Judgement

N.K. Mitra, C.J.,

1. The question that arises for consideration in this Special Appeal is whether the respondents who belonged to Lekhpal cadre of State Services were entitled to be given-the pay scale of "Bhulekh Nirikshak". i.e.. Rs. 1350-30-1440-40-2200 with effect from 28.1.1991 as held by the learned single Judge or with effect from 1.8.1994 as held in the order impugned in the writ petition? The answer to the question would, in our opinion, depend on the interpretation of Clause 3 (10) of Government Order No. VI. A.a-1-1763/Das-391M)/89 Vitt (Vetan Aayog) Anubhag-1. Lucknow, dated June 3. 1989 and Its interaction with the orders dated 28.1.1991 and 1.8.1994 the Commissioner and Secretary. Rajasva Parishad Anubhag-4, Lucknow for the Board of Revenue U. P.

2. We have had heard Sri M. S. Plpersenla, learned standing counsel for the appellants and Shri P. N. Saxena for the respondents. With the consent of the learned counsel for the parties, the matter was taken up for final disposal at the admission stage itself.

3. It may be recalled that upon consideration of the report of Samata Samiti, Uttar Pradesh (1989), the pay scales admissible to State Government servants were revised w.e.f. 1.1.1986. The scale of pay of Lekhpal-Assistant Registrar Kanoongo, Registrar Kanoongo and Bhulekh Nirkshak also known as Rajashva Nirkshak or Supervisor Kanoongo was Rs. 950-20-1150-E.B.-25-1500 ; 975-25-1150-E.B.-30-1660 ; 1200-30-1560-E.B.-40-2040 and 1200-30-1560-E.B.-40-2040 respectively. The scale of pay admissible to Assistant Registrar Kanoongo was further revised vide Government Order dated 22.2.1995 as Rs. 1200-30-1560-E.B.-50-2200 vide Government Order dated 4.6.1992.

4. The Government Order dated 3.6.1989 which defines the term "present perquisites" was issued laying down therein the principles for determination of pay of the Government servants in the revised scales of pay. Sub-para (10) of para 3 of the Government Order aforesaid being relevant is quoted below for ready reference :

^^10- ,sls deZpkjh ftuds iqujhf{kr rsrueku dk vf/kdre :- 3]500&00 gS vkSj tks lEcU/kr in ij fu;fer gks pqds gSa mudh tc 6 o"kZ dh lUrks"ktud lsok lsysDlu xzsM ds YkkHk dh frfFk ls iw.kZ gks tkrh gS izksUufr dk vxyk osrueku oS;f?d :i ls vuqeU; fd;k tk; A lsysD"ku xzsM dh lsok dh x.kuk fnukad 1-7-1982 vFkok okLrfod :i ls vuqeU; lsysD"ku xzsM dh frfFk] tks Hkh ckn esa gks] ls dh tk,xh A ,sls laoxZ@in ftuds fy;s izksUufr dk dksbZ in ugha gS A mudks ml osrueku ls vxyk osrueku ns; gksxk A mnkgj.k Lo:i ,slk in/kkj d tks iqujhf{kr osrueku :- 1200&2040 esa gS mls :- 1350&2200 dk iqujhf{kr osrueku oS;f?d osrueku ds :i esa ns; gksxk A**

5. Para 3 (9) of the Government Order dated 3.6.1989 on the other hand provides the manner and conditions for grant of promotion to selection grade and visualises that the employees the maximum of whose revised scale of pay is upto Rs. 3,500 and who would be completing 10 years of satisfactory service after 1.8.1986 would be given selection grade by giving them one increment in their revised scale and this is what is visualised in the Board's order dated 28.1.1991 as well which reads as under:

^^isz"kd]

vk;q? ,oa lfpo]

jktLo ifj"kn m-iz-]

vuq-&4] y[ku?

lsok esa]

leLr ftykf/kdkjh]

m?kj izns"k A%

la[;k 1186@4250@86 fnukad tuoJh 28] 1991

fo"k;&iqujhf{kr osrueku ds "kklukns"k la- oh-th-&1&1783@10&39 ,-&89]

fnukad 3-6-1989 ds ifjPNsn&10 ds vUrxZr ys[kikyksa dks osru fu/kkZj.k ds IEcU/
k esa A

egksn;]

mi;qZ? fo"k; ds lUnHkZ esa eq>s ;g dgus dk funsZ"k gqvk gS fd orZeku fu;eksa
ds vUrxZr 10 o"kZ dh lUrks"ktud lsokvksa ds mijUr mlh osrueku esa ,d osru
o`f) nsdj Loh?fr fd;k tkrk gS A

tgk? rd lqij lsysD"ku xzsM dk iz"u gS laxzg vehuksa ds leku ys[kikyksa dks
Hkh :- 875&1680 ds osrueku ds lqij lsysD"ku xzsM fn;s tkus ds fy, laLrqfr "kklu
dks Hksth x;h gS A

jktLo foHkkx esa :- 950&1500 ds osrueku ls vxyk mPp osrueku ds chp vkSj
dksbZ osrueku ugha gS vkSj "kklu dh uhfr ds vuqlkj vxyk mPp osrueku lqij
lsysD"ku xzsM ds :i esa nsuk fufgr gS A blhfy;s lHkh vgZ ys[kikyksa dks lqij
lsysD"ku xzsM 975&1660 osrueku esa nsus dk fu.kZ; fy;k x;k gS A

Hkonh;

g- viBuh;

?t- ?k- yksgeh?

lgk;d Hkwfe O;- vk;q?

?rs vk;q? ,oa lfpo A

la[;k o fnukad mijks?

izfrfyfi fuEufyf[kr dks lwpukFkZ ,oa vko";d dk;Zokgh gsrq iszf"kr&&

1- leLr e.Myk;q?] m-iz- A

2- lfpo m-iz- "kklu jktLo vuq- 9 y[ku? dks ifj"kn ds i= la- 19921@ 4&25,@ 86
fnukad 17-10-1990 ds ?e esa A

vkKk ls

?t- ?k- yksgeh?

?rs vk;q? ,oa lfpo A**

6. The Board's order dated 28.1.1991 indicates that recommendation had been made to the Government for giving super selection grade of Rs. 875-1680 to Lekhpals at par with Collection Amins ; and further that in the revenue department, there was no other scale of pay in between Rs. 950-1500 and Rs. 975-1660 and since the Government policy envisaged that next higher scale should be given by way of super selection grade, it was decided that all the eligible Lekhpals would be given super selection grade of Rs. 975-1660. Concededly Rs. 975-1660 was the grade admissible to the post of Assistant Registrar Kanoongo which according to Rule 7 of the Uttar Pradesh Rajasva Lipik (Registrar Kanoongo and Assistant Registrar Kanoongo) Sewa Niyamavali. 1958

was required to be filled by promotion from amongst Lekhpals having six years of service to their credit in substantive capacity. The criterion for selection according to Rule 8 (2) of the said Rules was "seniority subject to the rejection of the unfit". Lekhpals are also eligible to promotion to the extent of 60% of vacancies in the cadre of Supervisor Kanoongo as provided in Rule 7 of the U. P. Adhinastha Rajasva Karyapalak Sewa Niyamawali, 1977 but there the eligibility qualification is ten years of service as Lekhpal in substantive capacity. Therefore, Pronnatt Ka Agala Vetanmaan" in relation to Lekhpal prior to 1.8.1994 was that of Assistant Registrar Kanoongo, i.e., Rs. 975-1660.

7. The aforesaid avenue of promotion available to Lekhpals came to be subsequently abolished in view of the decision taken by the Board in its meeting held on 3.5.1994 which was approved by the State Government as would be evident from the communication dated 17.6.1994 which reads as under :

^ ^ izs"kd]

Jh ujsUnz dqekj JhokLro]

la;q? lfpo]

m- iz- "kklu A

Isok esa

vk;q? ,OAa lfpo]

jktLo ifj"kn m- iz-]

y[ku? A

jktLo vuqHkkx&2 y[ku? fnukad % 17 twu] 1994

fo"k;&&Jh vjfoUn oekZ] rrdkyhu e.Myk;q?] y[ku? dh v/;{krk ls xfbR lfefr dh laLrqfr;kas ij fy;s x;s fu.kZ; ls foHkkx ds vU; lEoxks? esa mRiUu folaxfr;ksa ds lEcU/k esa A

egksn;]

m? fo"k; ij vkids i= la[;k&4414@4&17bZ@94] fnukad 10 ebZ] 1994 ds lUnHkZ esa eq>s ;g lwfpr djus dk funs"k gqv kS fd fnukad 3 ebZ] 1994 dks ekuuh; lnL;&2 jktLo ifj"kn dh v/;{krk esa gqbZ cSBd esa fy;s x;s fuEukafdr fu.kZ;ksa ij "kklu us vuqeksnu iznku dj fn;k gS&&

?d? jftLV?kj dkuwuxks ls uk;c rglhynkj@lgk;d Hkwys[k vf/kdkjh ds in ij inksUufr gsrq mu jftLV?kj dkuwuxks dks vgZ ekuk tk,xk ftUgksaus ys[kiky@lgk;d jftLV?kj dkuwuxks@jftLV?kj dkuwuxks ds :i esa dqy feyk dj 7 o"kZ dh larks"ktud Isok iwjh dj yh gks A

?[k? lgk;d jftLV?kj dkuwuxks dh rhu o"kZ dh Isok ds vk/kkj ij jftLV?kj dkuwuxks in ij inksUufr gsrq vgZ ekuk tkrk gS A bl "krZ dks lekIr djds lgk;d jftLV?kj dkuwuxks dks lgk;d jftLV?kj dkuwuxks ds in ij inksUufr dk ekin.M ^ ^vuqi;qDr

dks NksM++dj T;s"Brk** fu/kkZfjr dh tk; A

?x? ioZrh; iVokfj;ksa ds IEcU/k esa orZeku fu;eksa ds vuqlkj 7 o"kZ dh Isok ij Hkwys[k fujh{kd ds fy, vgZrk fu/kkZfjr gS A eSnkuh {ks= ds ys[kikyksa ds leku ioZrh; {ks= ds oVokfj;ksa ds IEcU/k esa Hkh mudh 5 o"kZ dh Isok ds i"pkr Hkwys[k fujh{kd ?jktLo fujh{kd? ds in ij izksUufr gsrq vgZ ekuk tk; A rnuqlkj IEcfU/kr Isok fu;ekoyh ds fu;e 19 dks la"kksf/kr dj;k tk; A

??k? ys[kikyksa dks izksUufr ds miyC/k voljksa dks n`f"Vxr j[krs gq, ys[kikyksa dks lgk;d jftLV?kj dkuwuxks ds in ij izksUufr dh orZeku O;oLFkk rRdky lekIr dj nh tk; A

2- eq>s ;g Hkh vuqjks/k djuk gS fd mi;qZ? fu.kZ;ksa dk dk;kZUo;u fu;ekuqlkj "kh?kz dj;k;s rFkk dk;kZUo;u fu;ekuqlkj "kh?kz dj;k;s rFkk IEcfU/kr Isok fu;ekokfy;ksa eas la"kks/ku ds izLrko "kklu ds fopkjkFkZ ,d ekg ds Hkhrj fHktokus dk d"V djsa A

Hkonh;

g-@& ujsUnz dqekj JhokLro

17-6-94

?ujsUnz dqekj JhokLro?

8. Thereafter the Commissioner and Secretary, Rajasva Parishad, Uttar Pradesh Anubhag-4, Lucknow issued a general order dated 1.8.1994 which provides that such Lekhpals who have had to their credit six years of satisfactory service in the selection grade would be given the pay scale of "Bhulekh Nirikshak", i.e., Rs. 1350-2200 by way of "personal promotion". The Board's order dated 1.8.1994 came into force with immediate effect." The respondents herein who were, earlier given super selection grade of Rs. 975-25-1150-30-1600 pursuant to the Board's order dated 28.1.1991 read with Government Order dated 3.6.1989. w.e.f. the date on which six years of satisfactory services in selection grade were completed by them were subsequently given the grade to Bhulekh Nirikshak (Revenue Inspector), i.e., Rs. 1350-2200 with retrospective effect perhaps under some misunderstanding. On the audit objection being raised, the excess payment was sought to be recovered by means of the impugned order whereupon the writ petition came to be filed challenging the recovery.

9. The learned single Judge held as under :

"The effect of the order passed by the Board of Revenue dated 1.8.1994 was that the petitioners became entitled to get the pay scale of Supervisor Kanungo in the scale of Rs. 1350-2200 w.e.f. 28.1.1991 and the respondents granted pay scale of Rs. 1350-2200 to the petitioner w.e.f. 28.1.1991 itself."

And further :

"A bare perusal of the order of the Board of Revenue dated 1.8.1994 clearly demonstrate that it was passed in supersession of earlier order dated 28.1.1991

meaning thereby that the petitioners were entitled to the pay scale of Supervisor Kanungo, i.e.. Rs. 1350-2200 w.e.f. 28.1.1991."

10. In view of the above conclusions the learned single Judge while disposing of the writ petition directed the Board of Revenue to treat the petitioner in the pay scale of Rs. 1350-2200 as per the order of the Board of Revenue dated 1.8.1994 and refund. If any amount already recovered within a period of two months from the date of production of certified copy of the judgment with a superadded direction that "in case the amount is not refunded to the petitioners within time specified, the petitioners shall be entitled to Interest at the rate of 10%".

11. Upon hearing Shri M. S. Pipersenia, learned standing counsel appearing for the appellants and Sri P. N. Saxena, learned counsel for the respondents, we are of the considered view that judgment under challenge cannot be sustained as it proceeds on misconstruction of the Board's Orders. According to the Government Order dated 3.6.1989, the respondents were entitled to the scale of Rs. 975-25-1100-30-1660 the scale admissible to the post of Assistant Registrar Kanungo--on completion of six years of satisfactory service in the selection grade as the same was the next promotional scale--"Pronnatf Ka Agfa Vetanmaan" within the meaning of para 3 (10) of the Government Order dated 3.6.1989 and the same was given to the respondents w.e.f. the respective of date of completion of six years of satisfactory service in the selection grade. It appears that the respondents were given selection grade on different dates between 1.7.1985 and 1.10.1986 and if the judgment of the learned single Judge is maintained, they would get the benefit of the Revenue Inspector's grade even before completing six years" service in the selection grade. In fact, they became eligible to next promotional grade on different dates between 1.7.1991 and 1.10.1992. Rs. 1350-30-1440-40-2000, i.e., the grade admissible to Land Record Inspector/ Revenue Inspector was not the next promotional grade in relation to Lekhpals working in the selection grade. What is visualised in paragraph 3 (10) of the Government Order aforestated is that Government servants whose maximum pay in the revised scale of pay is up to Rs. 3,500 and who have been regularised on their posts would be entitled to be given the next higher scale of pay by way of "personal promotion" w.e.f. the date of completion of six years of "satisfactory service" in the selection grade. The period of six years service in the selection grade is to be counted w.e.f. 1.7.1982 or the date on which the selection grade is actually given, whichever is later. The expression "Pronnati Ka Agla Vetanmaan" occurring in para 3 (10) of the Government Order aforestated is significant. According to Rule 19 of the Lekhpal's Service Rules. 1958 fifteen per cent posts in the cadre in each district carry selection grade on which promotion is made "on the basis of seniority subject to the rejection of unfit". As such, the respondents were not entitled to be given the scale of Rs. 1350-20-1440-2200 prior to the abolition of the promotional avenue of Assistant Registrar Kanungo in the scale of Rs. 975-25-1150-30-1660. The respondents, in our view, became entitled to the scale of Rs. 1350-2200 w.e.f. the date the scale of Rs. 975-1660 was replaced by the scale of Rs. 1350-2000. i.e., w.e.f.

1.8.1994. The view taken by the learned single Judge that they are entitled to be given the said scale w.e.f. 28.1.1991 merely because the Board's order dated 28.1.1991 was superseded by the order dated 1.8.1994 is unsustainable. The supersession of Board's order dated 28.1.1991 by subsequent order dated 1.8.1994 does not have retrospective effect. The supersession, in our opinion, will operate w.e.f. the date on which the scale of pay of Rs. 975-1660 was replaced by the new promotional pay scale of Rs. 1350-2200. i.e., w.e.f. 1.8.1994 and all future promotions would be given in the said grade. Consequently, the respondents who were earlier given personal promotion in the scale of Rs. 975-1660 became entitled as of necessity to the new promotional grade of Rs. 1350-2200 for otherwise the implementation of Board's order dated 1.8.1994 would lead to an anomalous position in the sense that while subsequent promotees would be getting higher scale of pay, i.e., Rs. 1350-2200 the respondents though promoted earlier in accordance with the Government Order dated 3.6.1989 read with the Board's order dated 28.1.1991 would remain in lower scale.

12. Before parting, it may be observed that the relevant service rules which do not appear to have been amended as desired in the Government Order dated 17.6.1994, should be suitably amended as early as possible.

13. In view of the above discussion, the appeal succeeds and Is allowed. Judgment and order of the learned single Judge is set aside and It is provided that the respondents shall be given the pay scale of Rs. 1350-2200 with effect from the date on which the earlier scale of Rs. 975-1660 was replaced by the scale of "Bhulekh Nirekshak". i.e., Rs. 1350-2200.