

(2000) 10 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 126 of 1998

Bashir Ahmad Naikoo

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 05-10-2000

Acts Referred:

Citation : (2001) 1 SCT 605

Hon'ble Judges : B.P.Saraf, C.J and Syed Bashir-ud-Din, J

Bench : Division Bench

Advocate : R.A. Khan, S.R. Hussain, Advocates appearing for the Parties

Judgement

Syed BashirudDin, J.—Petitioner, an Agriculture Overseer, was adjusted in his own pay and grade with charge allowance under rules

against a vacant post of Field Assistant, Soil Conservation in Agriculture Department of the State by order No. 350/E of 1985 dated 25.11.1985.

On 10.3.1988 by order No. 22/E of 1988 petitioner was adjusted as Agriculture Overseer against one of the posts available with the department.

This order of 10.3.1988 of Director Agriculture was challenged in SWP No. 559/88. The learned Single Judge, after providing opportunity to the

petitioner, dismissed the writ petition on 16.4.1998. This order of dismissal of the Writ Petition is under challenge before us in this Letters Patent

Appeal.

2. The Appellant's counsel submits that the Appellant was promoted vide order dated 25.11.1985 to a higher post of Field Assistant, therefore, he

could not have been demoted by order dated 10.3.1988 without providing him an opportunity. The counsel further submits that notwithstanding

styling of the order dated 10.3.1988 as an adjustment, the order, as per practice

in the Department of Agriculture, is for all practical purpose the promotion, of course, made subject to clearance by the D.P.C. Appellant, alongwith other Overseers/Supervisors/Store Keepers/Laboratory Assistants, was promoted on the basis of his placement/position in the seniority list. The order dated 10.3.1988, in effect reducing him in rank and status, could not have been passed without hearing the appellant. The cases of others like appellant have been regularised.

3. The counsel for respondents, Mr. R.A. Khan, GA, counters the submissions of Appellant's counsel by canvassing that the order dated

25.11.1985, in fact simply adjusts the petitioners, among others, against a post of Field Assistant in District Pulwama in the grade of the post of

Overseer, to which post and grade appellant is substantively appointed. For this adjustment, petitionerappellant has been paid chargeallowance

under rules and further even this adjustment has been made subject to DPC, petitioner was never promoted under this order. Subsequent order of

10.3.1988, would fairly show that the petitioner was asked time and again to produce testimonials of eligibility qua academic and technical

qualification of petitioner for the post, in which he was adjusted. He was given time for the purpose to produce academic as well as technical

qualifications which he failed to do although. Besides, as the arrangement ordered under Order dated 25.11.1985, was a mere arrangement meant

to run the field work, the adjustment of Appellant back to back to his substantive post as Agriculture Overseer, was not in any sense of the term

his reduction in rank and/or status. The order dated 25.11.1985, makes it amply clear that the arrangement of adjusting Appellant against the post

of Field Assistant was in his own pay and grade (carried by the post of Agriculture Overseer to which appellant was substantively appointed) with

charge allowance. Not only so, even this arrangement was kept subject to approval of the DPC. All this should suffice to show that by passing the

order of 10.3.1988, posting of appellant as Agriculture Overseer/Storekeeper is neither demotion nor reduction in rank nor stigma.

4. Apart from the question that the Appellant was given ample opportunities to produce academic and technical qualification testimonials before the

Competent authority which he did not avail of, the arrangement ordered and adjustment made under Order dated 25.11.1985 simply speaks of

adjustment of appellant alongwith many others in his own pay and grade with charge allowance permissible under rules against one of the vacant posts of Field Asstt. in the Agriculture Department in District Pulwama. This order no where shows that the petitioner was promoted to the post of Field Assistant from his present substantive post of Storekeeper. Even so, this arrangement was kept subject to approval by the Departmental Promotion Committee. The payment and drawal of charge allowance, as permissible under rules, during adjustment and work in the post of Field Assistant by Appellant with stipulation of his working in this post in his own pay and grade, amply makes it clear that adjustment of Appellant in the Post of Field Asstt. is by no known interpretation of the language used in the order a promotion to a higher grade. Therefore, the subsequent order dated 10.3.1988, adjusting the appellant as Agriculture Overseer in his own pay and grade, is not reduction in rank or reversion of the appellant. It does not carry any stigma. Even, we are told that the Departmental Promotion Committee. If at all constituted, had not met to approve the said arrangement. The contention of the counsel that others who joined with appellant in the arrangement have reached higher posts is not the question that substantially and directly arises in the facts and circumstances of this case, for consideration and adjudication before us.

In result, the Appeal does not succeed on merits and is dismissed without order as to costs.