
(2001) 05 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 630/95 Service Writ Petition (SWP) No. 1889 Of 1998 Service Writ Petition (SWP) No. 1624 Of 1998 Service Writ Petition (SWP) No. 131 Of 1998

Farooq Ahmad Mir and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Jammu and Kashmir Police Manual — Regulation 172

Citation : (2001) KashLJ 486 : (2002) 4 SCT 415

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.Hakim, Rahul Pant, Parmod Kohli, P.S.Dutta, M.P.Sharma, J.R.Arora, H.Rehman, Baldev Singh , Advocates appearing for the Parties

Judgement

1. Four writ petitions dealing with the same subject matter shall stand disposed of vide this common judgement.

2. The facts be noticed as under: Petitioners in writ petition No. 630/95 i.e. Farooq Ahmad Mir and others vs. State and others are at present

members of Jammu Kashmir Armed Police. As per them initially they came to be appointed in the Jammu and Kashmir Police. Later on, they were

allocated to the Jammu and Kashmir Armed Police. It is submitted that the Jammu and Kashmir Armed Police is a part and parcel of a Single

Police Force governed by the Jammu and Kashmir Police Act and the Jammu and Kashmir Police Manual. According to the petitioners, the

Armed wing and the others wing etc. are to be treated as a single unified force. It is one entity. It is submitted that a person working in one wing

can be transferred to another wing also. In short it is submitted that a person working in one wing can be transferred to another wing also. In short

it is submitted that a person borne on different cadres are intertransferable. The only distinction which is being pointed out is that beyond the level

of inspector, the seniority has to be maintained state wise. What is sought to be urged is that the members of Jammu and Kashmir Armed Police

being part and parcel of police Force should be treated as one force and single seniority should be prepared. The promotions as and when the

vacancies arise should be made on the basis of this common seniority. With a view to sustain this argument reference is made to Jammu and

Kashmir Police Act. It is said that the term "Police district" has been defined in section 5 of the Act. Reliance is also being placed on regulation 173

of the Jammu and Kashmir Police Manual which deals with the posting and transfer and also on regulation 172 which deals with the issue of

seniority. It is accordingly submitted that the entire police force is to be treated as a single unit and therefore a common seniority list has to be

prepared. With a view to sustain this argument, reliance is being placed on a Division Bench Judgement of this court LPA No. 28/72 decided on

05.12.1992.

3. In writ petition SWP 1889/98 i.e. Abhay Kumar Mahajan V State and the point of view which is sought to be put across is almost similar to the

one raised in Farooq Ahmad Mir's case with a view to appreciate the controversy the facts in Abhay Kumar Mahajan's writ petition be also

noticed:

Petitioner Abhay Kumar Mahajan is a member of Executive Wing of the Police Force. His grievance is that respondents No. 3 to 40 who came to

be appointed in the Jammu and Kashmir Armed Police, have been given promotions in the Armed wing of the force. It is submitted that if a

common seniority list is maintained, then the petitioner who came to be appointed earlier to these private respondents was also eligible to be given

the promotion on the same basis as has been done in the case of private respondents. It is also urged that after respondents 3 to 40 become

Inspectors a common seniority is being maintained and these private respondents have been placed over and above the petitioner on the basis of

their having carried the promotions earlier to the petitioner in the Jammu and Kashmir Armed wing of the Police force. With regard to respondent

No. 41 it is submitted that he came to be promoted as Deputy Superintendent of

Police on the basis of reservation. It is submitted that the concept of reservation is no longer available. For this reliance is being placed on a decision of the Supreme Court reported as Indira Sawhney etc Vs. Union of India and Others AIR 1993 SC 477. It is stated that the aforementioned Judgement was given on 16th Nov' 92. The Supreme Court of India had protected the rights of this category for a period of five years. This period of per the counsel expired on 16th Nov'97 there can be accordingly urged that after 16th Nov'97 there can be no reservation. It is urged that no doubt Article 16 of the constitution has been amended but there is no corresponding amendment made in the Jammu and Kashmir constitution, therefore the amendment made in the constitution of India would not come to the rescue of respondent NO. 41. Reliance is also being placed on a decision given by this court in SWP No. 486/89 decided on 23rd Dec' 96.

4. In writ petition SWP NO. 1624/97 i.e. Sain Dass Vs. State and others the petitioner is a member of Jammu and Kashmir Police

Telecommunication wing. It is submitted that there are three wings in this category. These are wireless, cipher and technical. Petitioner is a number of wireless section. It is submitted that once a person is appointed in the wireless section then he is to continue in that. These are not transferable posts. It is further submitted that separate seniority list is being prepared. A copy of the same is placed on record as annexure C/1.

5. In SWP No. 131/98 i.e. Ved Parkash Saini and others Vs. State and others the petitioners No. 1 to 5 submit that they joined as constable

(Technician) in the year 1976, whereas petitioners No. 6 to 10 joined as constables (technician) in the year 1978. It is submitted that they were

appointed constables (technician) against the post of Head Constable (Technician) It is submitted that respondents 3 to 49 came to be appointed

as constable/wireless operators It is submitted that these are two different wings and different seniority was maintained. It is submitted that

thereafter a new wing namely cipher wing was created and many constables appointed as operators were given promotions to the post of Assistant

Sub Inspectors and Sub Inspectors It is submitted that these persons were junior to them. The argument is that this act of official respondents in

promoting the constables/ wireless operators was not challenged because

different seniority list was prepared visavis the wing to which they belong. It is further submitted that in the year 1997, a common seniority was issued of the technical staff as well operators It is submitted that the respondents who were junior to the petitioners were shown above in the seniority list on account of their promotions which they got earlier to the petitioners in the cipher wing. It is thus submitted that the private respondents were given double benefit first by promoting them under the seniority list which was maintained separately and then by maintaining a common seniority list and again giving them further promotions as they were shown over and above the petitioners though appointed on a later date. 6. The provisions of police act of Svt 1983 (1927 A.D.). Sections 4 to 5 of the police act in so far as relevant are reproduced below: ""Section 4 : In Interpretation clause the following words and expressions in this act shall have the meaning assigned to them unless there be something in the subject of context repugnant to such construction that is to say the words

'Magistrate' shall include all persons who shall be enrolled under this act:

The words 'general police district' shall embrace the local area within the state in which this act shall be ordered to take effect:

Section 5 Constitution of the force. The centre police establishment under the purposes of this act be and deemed to be one police force and shall

be formally enrolled and shall consist of such members of officers and men and shall be constituted in such manner and the members of such force

to time be ordered by the government.

Regulation 4 is also being reproduced below:

Inspectors shall be interranged Assistant Sub Inspectors shall be borne on range rolls and shall receive range constabulary numbers.

Head constables and constables in each district shall be borne one district rolls and shall receive district constabulary numbers.

7. Provision of regulation 172, 173 and 174 be also noticed, These read as under:

172 Authorities Empowered to make appointment:

Recruitment to the rank of Assistant Superintendents of police is governed by the India Service (Recruitment) rules 1954.

Deputy Superintendents of police are appointed in accordance with the rules prepared by the public service commission and sanctioned by the

government from time to time.

The table omitted.

2. All appointments to nongazetted rank above that of constables shall be made by the appointing authority on consideration of recommendations

of a section board. Such boards shall be constituted in accordance with the orders of the Inspector General.

3. The power to confirm the appointment of officers appointed on probation vests in the case of gazetted officers with the government and assistant

sub inspectors with the inspector general of police, in the case of head constables Junior grade and constables with the Superintendents of police.

4. The seniority of Inspectors and sub inspectors shall be interrange.

Assistant sub inspectors shall be borne on range rolls and shall receive range constabulary numbers.

Head constables and constables in each district shall be borne on district rolls and shall receive district constabulary numbers." 173 Seniority and

Probation :

The seniority of Assistant Superintendents of Police of the I.P.S. is regulated by the orders passed from time to time by the government of India.

No probationary Assistant Superintendent of Police shall be permanently appointed as an Assistant Superintendent of Police until he has passed

the prescribed departmental examination.

A probationary Assistant Superintendent of Police who doesn't qualify the passing these examinations will be removed from Government Service

provided that the Government shall have power to relax this rule in special case when the probationary Assistant Superintended of police is likely

to make a good police officer.

The probation and seniority of Deputy Superintendents of Police are governed by the Jammu and Kashmir Civil Services Rules.

174. Direct appointments of Inspectors and Assistant Sub Inspectors : Recruitment may be Inspector up to a limit of 50 % of the vacancies. The

government however permit the Inspectors General of Police to make appointments direct to other non gazetted ranks.

8. It is one the basis of above submitted that the Jammu and Kashmir Armed Police is part to parcel of the entire police force and therefore, a

single seniority should be maintained. It is on this basis further promotions are to be made. As noticed in the factual part in writ petition 630/95 the

prayer made is that there should be a combined seniority list whereas in writ petition 131/98 the prayer made is that there should be a separate

seniority list.

9. The stand taken by respondent state in Farooq Ahmad Mir's case is that Armed and Executive wings are two different cadres. It is submitted

that upto the level of inspectors, separate seniority list is maintained. Thereafter, the cadre shrinks and a common seniority is maintained. The fact

that executive police personnel are transferred to other wings like CID, Vigilance, Traffic etc is said to be true but so far as Armed Police

Personnel are concerned it is submitted that they usually remain in Armed Police upto the rank of Inspectors. However it is submitted that they are

transferred to CID, Police Training College and central Bureau of Investigation. Notwithstanding the above stand taken by the State it is submitted

that the State is justified in maintaining a separate seniority list.

10. A perusal of the Rules and Regulations quoted above do bring out that the entire police force is to be taken as a single entity. This becomes

apparent from the definition of word 'general police district.'" As a matter of fact, this precise question was considered by the Division Bench of this

court in letter patent appeal No. 28/72 decided on 05.12.1972. This was an appeal preferred by the inspector General of police against a decision

given by a learned single judge of this court in writ petition 7 of 1971 decided on 9th Dec 71. The contention which was put forward by the

Additional Advocate General appearing on behalf of the state was noticed. This is being reproduced below:

That the order of seniority of Armed Police and regular police was separate and distinct and the learned Single Judge has erred in holding in that

there was one common seniority of the two police wing and

2. that in any case the observation of the learned single judge that the respondent would be entitled from the date of his appointment as Assistant

sub inspector of police cannot be sustained. After noticing the facts, the provisions of section 5 of the police Act and regulation 172 (4) that was

observed by the division bench is being reproduced below:

Section 5 of the police act provides that the entire police establishment in the

general police district shall for the purpose of the act be deemed to be one police force and shall be formally enrolled and shall consists of such members of officer and men shall be constituted in such member and the members of such forces shall receive such pay as govt. rule 172 (4) of the rules lay interrange in accordance with this sub rule, the ASIs constabulary Nos and Head constables and constables in each district are borne on the district rolls and are to be given be district constabulary Nos.

Thus there is no manner of doubt that the police establishment is one though there are various branches or wings thereof such as criminal investigation branch, Anti corruption branch and traffic branch. Our attention has not been invited to any rule of govt order which direct that the

KAP which is maintained at Srinagar and Jammu internal security of the State and is ordinarily used through the State to meet any emergency is the

law and order situation is to be treated as a separate range. In absence of such a rule or order we are inclined to think that the order of seniority of

Head constables and ASIs is to be maintained range wise i.e. Kashmir range and Jammu range and not for every one of its wing. We are further of

the opinion that for the purpose of promotion all the Head constables in the range are to be considered as one group for promotion to the rank of

ASI and all the ASIs is range are like wise to the rank of S.I. This conclusion receives support not only from perusal of the order of the appellant

from a perusal of the government order accepting the aforesaid appeal of the respondent and from various orders passed officers including the

respondent from one wing to another." It was ultimately said :

Accordingly I would allow the appeal in the part and set aside that portion of the impugned judgement and order of the learned single judge

whereby he has held the respondent entitled to promote on the basis of his seniority from the date he was promoted to the rank of Asst. sub

inspector instead I would direct the appellant to consider with all reasonable dispatch and expedition the fitness of the respondent for promotion on

the relevant dates when officers junior him were promoted (after the date of his appointment as Asst. Sub Inspector) taking into account all the

relevant considerations prescribed by the relevant law and the rules. In case the appellant finds that the respondent was entitled to promotion on

those dates he would grant consequential monitory and other benefits due to him. The direction regarding the grant of seniority to the respondent in

the Regular Police Force on the basis of govt order No. 107 of 1966 dated April 11, 1996 from the date he was initially promoted as Asst.. Sub

Inspector is however maintained. There will no order as to costs of this appeal.

12. In view of the above it is held that the entire police force is single entity and a common seniority list has to be maintained and promotions are to

be made accordingly.

13. In writ petition 1624/97 the prayer made that a separate seniority list should be maintained in respect of inspector. Wireless wing and

telecommunication wing of the police force.

14. The stand taken by the respondent in this petition is as under:

After series of discussions it was decided by the authorities to go in for combined seniority list in all ranks with Jammu and Kashmir Police

Telecommunication Organization. It will not be out of place to mention that wing wise seniority viz., wireless / tech/ cipher in the organization was in

existence till 1993 it is submitted that the same was not based on any of the authority or order of the government or other competent authority. The

set up based on conventions in the wireless department created undersired results, which resulted the working of the organizations adversely. The

pick and choose method were adopted for placing the officials in Technical / cipher wings, which gave rise to favouritism and unequal distribution

of wireless wing were ignored and denied equal promotion prospects.

15. The above stand taken by the official respondents is in line with the view expressed by the division bench in LPA 28/72 referred to above.

Therefore, this petition is found to be without merit and dismissed. The respondents what maintain a common seniority list and shall make

promotions accordingly.

16. In writ petition 131/98 the stand taken in para III of the objections is as under:

That the seniority list of wing wise wireless/tech and cipher was separate in organization till 1993. This separate seniority list has created multiple

complication because certain people from different wing were gave rise to favouritism of undue promotion as a result of unequal distribution of

sanctioned strength of post due to which work of organization was effected adversely:

17. The above stand taken is in line with the view expressed by the Division bench in the aforesaid letters patent appeal which view has been

adopted in Farooq Ahmad Mir case. This petition shall also stand dismissed.

18. In writ petition SWP No. 1889/98 the stand taken by the respondent authorities in para 4 of the preliminary objections is also in line with the

view expressed by the Division Bench in LPA 28/72. This petition shall also stand dismissed.

19. An Additional argument has been raised in writ petition No. 1189/1998 Abhay Kumar Mahajan's case. It is stated that respondent No. 41

who came to be promoted on the basis of reservation, this could not be so promoted. The contention is that In Indira Sawhney's case the

protection which was allowed qua promotional quota was only for a period of five years. Thereafter the state was to make a provision in this

regard. As this has not been done, therefore no promotion could be made on the basis, of reservation.

20. A perusal of the judgement in Indira Sawhney's case makes it apparent that a view has been expressed that reservation could also be provided

by an executive order. It was observed that the appropriate government has the power to prescribe conditions of service of its employees by an

executive order under the proviso to article 309 of the constitution. It was further observed that even where rules are silent government case issue

guide lines and instructions. If this be the position then an individual order passed in favour of respondent No. 41 would be protected by the theory

that the state can in the exercise of executive function pass such an order. Therefore the argument raised in this regard is found to be without any

basis the same deserves to be rejected.

21. In view of the above discussion, writ petitions shall stand disposed of the manner indicated above.