
(2023) 01 CAT CK 0042

In the Central Administrative Tribunal

Case No : Transfer Application No. 287 Of 2021

Ghulam Hassan Mir & Ors

APPELLANT

Vs

State Of Jammu And Kashmir

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2023) 01 CAT CK 0042

Hon'ble Judges : D.S. Mahra, Member J; Shri Krishna, Member (A)

Bench : Division Bench

Advocate : Faizan Majid Bhat, Waseem Gul

Final Decision : Allowed

Judgement

Krishna, A.M, J

1. The facts of the case in a nutshell are that the applicants were appointed on 31.10.1981 as Sectional Officers (Civil) in the respondent's department and figured at serial No. 82, 95 and 122 in the list of appointees. The said posts were re-designated as Junior Engineer – Grade II by the respondent Department. The Applicants were adjusted in Hydraulic wing and other candidates who were appointed with the applicants, were adjusted in PWD (R&B) wing. As per rules, the applicants were eligible and entitled to up-gradation as Junior Engineer Grade-I in the year 1991 after 10 years of service. However, the process was delayed and vide order dated 25.09.1995, 145 Junior Engineers were upgraded as Junior Engineers Grade-I, as against 255 available posts. On the other hand, in PWD wing 167 Junior Engineers were upgraded to Junior Engineer Grade-I. The applicants approached the Hon'ble High Court of J&K mentioning that if all 255 posts were utilized by the department at the relevant point of time, the applicants would have been upgraded as JE Grade –I as other similarly placed JEs had been upgraded. The Hon'ble High Court had directed respondents vide order dated 11.02.2014 to consider the issue of the leftover JEs and decide the same within six weeks. The respondents rejected the claim of the applicants and

passed the consideration order no 466-PW (Hyd) of 2017 dated 23.11.2017, which is under challenge in the instant petition.

2. Being aggrieved by the rejection order passed by the respondents, the applicants have filed this TA seeking following relief :-

a. By issuance of a writ of mandamus the respondents to be directed to give similar treatment to the petitioners also as has been done in terms of Govt. order dated 19.09.1995 and 25.09.1995, whereby the juniors and batch-mates of the petitioners' have been given Junior Engineer Grade-I from the dates the said vacancies were available before 25.09.1995 as has been done in case of the said officers who were given the said benefits.

b. The respondents be further directed to give further consequential benefits to the petitioners in terms of grant of said benefits so that they are brought at par with their juniors and batch-mates who were given the grade -I in terms of said two orders in consequence to same the decisions including consideration order above mentioned may be quashed, as same shall be in the interest of justice.

3. Ld. Counsel for the applicants submitted that in terms of the Rules in vogue at that point of time, the petitioners were entitled to upgradation as Junior Engineer Grade - I, after ten years of service, in 1991. The process was however delayed by the Department, and finally vide order dated 25.09.1995, 145 Junior Engineers were upgraded as Junior Engineer - Grade I from the date of completion of ten years of service. Although, a total of 255 posts were available, but the Department upgraded only 145 JEs. Furthermore, about 110 posts were kept as such and the petitioners would have been upgraded at that time if all the available posts would have been utilized. That in PWD Wing also, 167 Junior Engineers were upgraded to Grade-1.

3.1. He further submitted that the applicant's case simply is that if all the posts were utilized at the relevant point of time, they would have been upgraded as JE Grade-1. The Ld. Counsel submitted that the factual averments have been admitted in totality by the respondents and thus the applicants become entitled to seek the reliefs they are praying for. All the facts of appointment and availability of posts stand candidly admitted by the respondents and thus the writ petition deserves to be allowed. He further submitted that it is evident from the impugned consideration order as also the reply affidavit filed, the only ground taken by the respondents is that the said posts of Junior Engineer Grade-I stood abolished in the year 2011, which excuse is untenable in law as the claim of the applicants pertains to the year 1991 and they had become entitled for upgradation as Junior Engineer Grade-I in the year 1991 itself after rendering ten years of services and admittedly, the posts were available at that point of time. The petitioners thus had a vested and accrued right of up-gradation in terms of Rules in the year 1991 and the said right cannot be taken away by abolition of said posts in future which was ordered in the year 2011. It was submitted that the benefit of such up-gradation has been given to all the eligible officers and

even after abolition of posts the benefits was not taken away. The batch-mates of the petitioners having been admittedly granted the said benefit, the department cannot discriminate against the petitioners, as same is clearly violative of Article 14 and 21 of the Constitution. The law is settled on the point that all the equals are to be treated equally and same set of employees cannot be treated on two different pedestals. Thus, the same yardstick needs to be applied in case of the petitioners also as has been done in favour of their counterparts.

3.2. Learned counsel for applicants also submitted that it is evident that the department for their mistake in drafting the SRO has punished the petitioners for none of their faults by depriving them of up-gradation to which they were entitled under law and thereafter also when clear vacancies became available in the year 1994-95, the applicants were not granted the benefit for none of their faults.

4. Per contra, the Ld. Counsel for the respondents vehemently denied the contention of the applicants and submitted that the applicants have thrown challenge to the Govt. Order dated 23.11.2017, which came to be issued after considering all the facts and factors involved in the matter, in pursuance to Hon'ble High Court's Judgment dated 11.02.2014. He further submitted that vide Govt. Order dated 26.09.2011, JE Grade -I post stands abolished with the conversion/Up gradation of 544 JE Grade -I posts as Assistant Engineers. Finance Department had also agreed to the up gradation of JE Grade -I to the post of Assistant Engineer vide order dated 14.07.2011. The said proposal had received the approval of the state cabinet on 21.09.2011. He further submitted that as per direction of Hon'ble High Court dated 11.02.2014, the department had examined the case at different levels and claim of applicants was rejected by passing a consideration order that the case of applicants is not tenable to convert them in the scale of JE Grade -I, as the posts are not available as they stand abolished in terms of Govt order dated 26.09.2011. However, their career progression has been well protected by virtue of the promulgation of SRO-14 dated 15.01.1996 and addition of 272 posts to the cadre of Assistant Engineers for promotion of JE Grade-I will be made strictly as per their seniority, eligibility and occurrence of vacancies.

5. In the rejoinder, Ld. Counsel for the applicants submitted that the applicants are seeking up-gradation as Junior Engineer Grade-I from the date the vacancies were available with consequential benefits as the said benefit has been inordinately delayed in their favor without any reason and justification. He further submitted that the respondents have taken a single ground that the said post stood abolished in 2011 which is untenable in law because the claim of applicants pertains to year 1991 and they had become entitled for up-gradation in 1991 after rendering 10 years of service. The petitioners thus had a vested and accrued right of up-gradation in terms of Rules in the year 1991 and the said right cannot be taken away by abolition of said posts ordered in the year 2011. He further submitted, even otherwise the abolition was prospective and

admittedly the posts that were existing till 2011 and therefore, no reason arises to deny the claim of the petitioners for such up-gradation with effect from 1991. That even when such abolition was ordered in the year 2011, the department clearly decided that the left over officers in Junior Engineer Grade- I will remain as such in their personal capacity and their posts will get abolished with their promotion/ retirement/death and same has been admitted in reply also.

5.1. Learned counsel for the applicants further submitted that the respondents have also tried to rely upon SRO 14 of 1996 for denying the up-gradation to the petitioners. It is submitted that the said SRO was brought into force w.e.f. 01.01.1996 and has neither been repealed nor overridden the earlier SRO. Since the claim of petitioners pertain to the prior period, same deserves to be settled in terms of Rules in vogue at relevant point of time and not by virtue of aforesaid SRO of 1996. The said SRO even otherwise provides for in-situ promotion and otherwise doesn't contradict or take away benefits of upgradation and that is the reason the Government has granted benefits of both SROs to employees. He submitted that the respondents have admitted that the posts were available at relevant point of time and the petitioners were thus entitled to up-gradation as such and the respondents cannot deny such entitlement deliberately and thereafter tend to grant in-situ promotion. It is for this reason that in all departments the Junior Engineers Grade- II were being granted up-gradation as Junior Engineer Grade-I even after issuance of the said SRO of 1996. The respondents and Government have thus throughout granted benefits of both SROs to all persons including batch-mates of the petitioners. The petitioners are thus entitled to the benefit of retrospective up-gradation as Junior Engineer Grade-I from the date of completion of ten years of service.

5.2. The Learned counsel for applicants further submitted that the applicants have received the file noting of said case through RTI information under No PHE/ IFC/RTI/54/2017 dated 15/01/2018 and it becomes evident from the said information that department was well aware and had taken note of the fact that 1354 actual posts were available for the Junior Engineer Grade-I but due to mistake the posts were shown as 901 only. The applicants were left out in 1991 due to clerical mistake / mathematical error in the SRO as lesser number of posts were shown to be earmarked as Junior Engineers grade-I and the said fact stands admitted by the respondent department itself. It is further revealed in the said RTI information that from 01.05.1994 to 25.09.1995, 112 more posts of JE Grade-I had become available against which the applicants could have been up-graded.

6. We have heard the learned counsels for both sides.

7. We have considered the facts of the case and perused material available on record. We are of the view that the arguments advanced by the respondents and reasons given for rejection of the claim of the applicants are not tenable under law. It is an admitted position that the petitioners were entitled to upgradation as Junior Engineer Grade-I, after ten years of service, i.e. in 1991. It is also an

admitted position that the other counterparts of the applicants were given the said benefit in 1995. The only reason that the applicants were not given the said benefit is that all the posts of Junior Engineer Grade- I were not utilized because of the mistake in SRO. The question which arises in these facts and circumstances is whether the applicants can be denied the said benefit on the ground that the posts of Junior Engineer Grade-I were abolished in 2011. The answer has to be in negative. The availability of the posts in 1991 is not denied and neither the entitlement of the petitioners is disputed. Once the applicants were entitled to the said benefit of upgradation under Rules, they could not have been denied the same. Applicants cannot be made to suffer for the clerical mistake in SRO and their rights cannot be denied for no fault on their part. The abolition of posts in 2011 cannot take away the rights of the petitioners which had accrued to them in 1991, particularly when their counterparts had been granted the benefits in 1995. Even while abolishing the posts in 2011, the interests of the upgraded Junior Engineers have been protected by continuing the benefits in personal capacity so that they do not suffer. But in case of applicants, a different approach has been taken and they have been denied the up-gradation. The claim of the applicants refers to the period when admittedly the posts were available and thus they are entitled for grant of relief.

8. In view of above discussion the TA is allowed. The impugned Order no 466-PW (Hyd) of 2017 dated 23.11.2017 is quashed. Respondents are directed to treat the applicants with other similarly placed candidates who have been granted benefit of up-gradation as Junior Engineer Grade-I in terms of Govt. order No 517-PW of 1995 dated 19.09.1995 and Govt. order No 533-PW of 1995 dated 25.09.1995. The respondents are directed to grant the applicants benefit of up-gradation as Junior Engineer Grade-I with all consequential benefits retrospectively from the date as has been given to their counterparts. This exercise should be completed within a period of 8 weeks from today.

9. With this TA 287/2021 is allowed. No order as to costs.