
(2015) 05 RAJ CK 0068
In the Rajasthan High Court
Case No : Civil Writ Petition No. 511 of 1999

Mahaveer Prasad

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 05 RAJ CK 0068

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : H.S. Sidhu, Counsel, for the Appellant; Shweta Bora, Counsel for Anil Kumar Bissa, AGC, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jaishree Thakur, J.—The present writ petition has been filed under Article 226 of the Constitution of India challenging the order dated 9.9.1998 by which the selection pay scale given to the petitioner was withdrawn.

2. The petitioner was appointed as Constable on 8.1.1973 as per the provisions of the Rajasthan Police Subordinate Service Rules, 1989. The petitioner completed 18 years of service on 7.1.1991. After completion of 18 years of service, vide an order dated 24.10.1992 the petitioner was given selection pay scale as per the provisions of Government Order dated 25.1.1992. His initial basic pay scale was fixed from Rs. 1225/- was increased to Rs. 1290/- and scale granted to him was with effect from 25.1.1992. However, vide the impugned order dated 9.9.1998, the selection pay scale granted to the petitioner on completion of 18 years of service was cancelled and the petitioner's basic pay scale was reduced from Rs. 1290/- to Rs. 1225/- and recovery was ordered. Aggrieved against this action, the present writ petition has been filed seeking to quash the impugned order dated 9.9.1998. It is further contended that the order dated 9.9.1998 has been passed without giving an opportunity of hearing to the petitioner and thus, is against the principles of natural justice.

3. Reply has been filed on behalf of the respondents wherein it has been stated that the petitioner got the higher pay scale on being granted selection pay scale to which he was not entitled and after the error was discovered, the pay scale was corrected.

4. I have heard the counsel for the parties and have perused the record of the case.

5. Mr. H.S. Sidhu, learned counsel appearing on behalf of the petitioner has contended that on completion of 18 years of service, the petitioner was granted a selection pay scale which was increased from Rs. 1225/- to Rs. 1290/-. It is submitted that an order dated 24.8.1995 was issued by the Office of the Inspector General of Police, Rajasthan, Jaipur to the effect that those who have been provided punishment shall not be granted the selection pay scale. Pursuant to the order passed on 24.8.1995, the impugned order dated 9.9.1998 was passed by which the selection grade payable to the petitioner was withdrawn stating that the penalty of stoppage of four annual grade increments without cumulative effect had been imposed upon the petitioner vide order dated 31.5.1991. It is contended that the order dated 24.8.1995 is prospective in nature and cannot be made applicable with retrospective effect since the selection grade had already been granted to the petitioner with effect from 25.1.1992. It is further contended that the reduction in the basic pay scale amounts to reduction in rank which is a major penalty as per rule 14 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "the CCA Rules, 1958") and such a penalty can only be imposed by making an enquiry as envisaged under Rule 16 of the CCA Rules, 1958. It is further contended that there has been total violation of the rules as envisaged under the CCA Rules, 1958 in so far as no enquiry was conducted nor any notice was served upon the petitioner before the order dated 9.9.1998 was passed of withdrawing the selection grade.

6. Per contra, the counsel for the respondents Ms. Shweta Bora has argued that the selection pay could not have been given to him since the petitioner was given punishment of stoppage of four annual grade increments without cumulative effect vide order dated 25.1.1992. The Inspector General of Police, Head Quarter, Jaipur, Rajasthan had issued an order dated 24.8.1995 to the effect that those persons who had been provided the punishment, would not be entitled to selection pay scale and since the petitioner had been imposed a penalty of stoppage of four annual grade increments without cumulative effect vide order dated 25.1.1992, he was not entitled to selection grade and thus, the withdrawal did not suffer from any infirmity. It has also been argued that the pay of the petitioner has not been reduced but has been corrected as earlier the petitioner had been wrongly granted selection pay scale. It is further contended that there was no requirement to provide any opportunity of hearing.

7. A perusal of the record shows that the petitioner was granted selection grade vide order dated 24.10.1992 on completion of 18 years of service. He was

appointed on 8.1.1973 and completed 18 years of service on 7.1.1991. At that time, he was in the pay scale of Rs. 1225/-. Based on the Notification dated 25.1.1992, on completion of 18 years of service, a selection scale was granted to the petitioner and he was placed in the pay scale of Rs. 1290/-. This selection grade was withdrawn vide order dated 9.9.1998 and his pay was reduced on account of the fact that he had been imposed punishment of stoppage of four annual grade increments without cumulative effect vide order dated 31.5.1991.

8. The question that needs to be determined is whether the selection grade granted to the petitioner could be withdrawn unilaterally without affording the petitioner an opportunity of hearing? It also needs to be determined whether the punishment awarded on 31.5.1991 of stoppage of 4 increments could be used to deny the selection grade to the petitioner who had completed 18 years of service prior to the imposition of the penalty.

9. Admittedly, the petitioner had been granted selection grade on 24.10.1992 with effect from 25.1.1992 on the basis of the Notification issued by the State of Rajasthan. The Office order dated 24.8.1995 was issued giving a direction that all cases where selection grade has been wrongly given should be reviewed and on the basis of which the selection pay scale granted to the petitioner was withdrawn on account of the fact that he had been imposed a penalty of stoppage of four annual grade increments without cumulative effect vide Office Order dated 31.5.1992. It has to be seen that the petitioner had completed 18 years of service as on 7.1.1991 and on that day, there was no imposition of penalty in existence.

10. In *State of Rajasthan and Others Vs. Kuldeep Singh Chauhan and Another*, (1998) 3 WLC 1 : (1998) 1 WLN 28 , a similar question came up for determination in this Hon"ble High Court as to whether suitability for grant of selection scale under circular dated 25.1.1992 to the employees who had completed 9, 18 and 27 years of satisfactory service was to be examined on the basis of service record preceding seven years of the date of circular or from the date on completion of 9, 18, 27 years of service. In *State of Rajasthan and ors. v. Kuldeep Singh Chauhan and anr.*, supra it was held that:-

"(9) A conjoint reading of all paragraphs of the Circular makes it clear without any doubt that an employee who completes 9 years of service from the date of his first appointment in the existing cadre becomes entitled to get first Selection Grade, provided his service record is satisfactory. Thus, he becomes eligible to get first Selection Grade on completion of 9 years service, as such, his service record to judge his suitability for granting first Selection Grade could be of that period and not that of later period. Similar shall be the position while examining suitability for second and third Selection Grades on completion of 18 and 27 years of service. The date of Order/Circular i.e. 25.1.92 prescribes grant of Selection Grades and entitlement of the employees. The eligibility to get first, second and third Selection Grades is completion of 9, 18 and 27 years of service. Hence, suitability for grant has to be judged accordingly and the APARS of the

preceding years when one becomes eligible to get first, second and third Selection Grade, are relevant. The contention that seven years satisfactory service record should be examined from the date of Order/Circular i.e. 25.1.92 cannot be accepted as this date is not the date of eligibility. If interpretation, as contended by Shri Gupta is accepted, it would lead to absurdity and serious anomaly. For example, an employee who had already completed 27 years of service on 25.1.92, having only one adverse entry in the year 1990 before he completed 27 years of service, would be denied all the three Selection Grades. In other words, in that situation he shall not be entitled to get first, second Selection Grades and fixation as per the Circular, though his service record for 18 years from the date of his appointment may be unblemished and exemplary. This cannot be intention of the Circular, nor the various paragraphs of the circulars, if read jointly and harmoniously, lead to such conclusion. Similarly, if 7 years service record is examined from 25.1.92 for judging suitability of an employee to get benefit of Selection Grades, there may be cases where preceding seven years record from 25.1.92 may be good but prior to it highly blameworthy. In that situation also, he shall be entitled to get benefit of all the three Selection Grades and fixation if Mr. Gupta's submission is accepted. Then, if this interpretation is accepted, an employee shall be entitled to get benefit under the Order, inspite of the fact that his preceding service record is good but after it becomes highly unsatisfactory. The Tribunal has rightly observed while rejecting the contention "now one can be granted three Selection Grades on the basis of the same 7 years service record and when some adversity is there that adversity would debar him from all the three Selection grades on the same basis. This cannot be the intention of the notification dated 25.1.92."

11. Taking a cue from the above referred judgment, it can safely be concluded that the petitioner would be entitled to get the selection grade that became available on completion of 18 years of service, that is, on 7.1.1991. The imposition of penalty of stoppage of four annual grade increments without cumulative effect was imposed subsequently vide order dated 31.5.1991. Meaning thereby that for judging the suitability for grant of first, second and third selection grade, the dates when an employee completes 9, 18 and 27 years of service would be his date of entitlement and his annual appraisal reports of the preceding seven years of his entitlement would be relevant. (emphasis supplied). In the present case the penalty of stoppage of 4 annual increments imposed on 31.5.1992 can not be taken into account to deny him his selection grade.

12. It is also to be noticed that the impugned order dated 9.9.1998 has been issued withdrawing monetary benefits which had occurred to the petitioner under the order dated 24.10.1992. Thus, admittedly, no prior notice was issued to the petitioner, with the result the petitioner did not get a reasonable opportunity to defend himself. The arguments raised by the counsel for the respondent that the withdrawal of benefits had been made only on account of the fact that an Office Order dated 24.5.1995 had been issued, does not stand to reason. The mere fact

that there was a reduction of pay without any show cause notice being issued is enough for the petitioner to plead non-compliance of the principles of natural justice and violation of the CCA Rules, 1958. I am of the opinion that the petitioner was denied a reasonable opportunity of hearing and on this ground alone impugned order dated 9.9.1998 is unsustainable. It has been held in B.D. Gupta Vs. State of Haryana, AIR 1972 SC 2472 : (1972) LabIC 1613 : (1973) 1 LLJ 26 : (1973) 3 SCC 149 : (1973) 2 SCR 323 : (1973) 5 UJ 418 that:

"if an order affects the employee financially, it must be passed after an objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order. In the instant case, the order unquestionably is one that seriously prejudices the appellant. We would like to add that the fact that even the order of punishment was made without giving the appellant a real opportunity to make an effective representative against it makes the second order affecting his pay and allowances still more vulnerable."

Similarly, in the present case, the order dated 9.9.1998 affects the rights of the employee financially and the same was passed without giving him any opportunity of hearing and the same is unsustainable.

13. In a matter which is reported as Devi Singh Vs State of Rajasthan, 2004 (2) CDR 925 (Raj) an employee was given benefit under the notification dated 25.1.1992 and subsequently the same was withdrawn without issuing a show cause notice and it was held that an employee who has already been granted the benefit of Selection Grade, such benefits could not be taken back by the State, without issuance of a Show Cause Notice to him in this regard. Similar is the situation in the present case. Impugned order dated 9.9.1998 has been passed in utter violation of the principles of natural justice and deserves to be set aside. The respondents passed an order dated 9.9.1998 ostensibly using an Office Order dated 24.8.1995 as the basis of rectifying the selection given. This too was passed almost after a period of three years of the office circular dated 24.8.1995 and the same is wholly unreasonable as by that time a vested right had accrued to the petitioner.

14. Therefore I am of the opinion that the petitioner having completed 18 years of service on 7.1.1991 became entitled to a selection grade as on that date and any subsequent penalty can not be taken into account to deny him the grade available to him on that date. The Office Order dated 9.9.1998 being wholly unreasonable, illegal and against the principles of natural justice, is hereby set aside. If any recovery has been made from the petitioner on the basis of the Office Order dated 9.9.1998, the same is liable to be refunded to him with interest @ 9% per annum within a period of three months from the date of receipt of copy of this order.

15. The writ petition is, accordingly allowed, with no order as to costs.