

(2004) 02 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 585 of 2003

Mir Mohd. Choudhary

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 2 JKJ 222

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : W.S. Nargal, for the Appellant; K.S. Johal, AAG for Respondent Nos. 1 and 2 and, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—The grievance of the petitioner in the present petition relate to denial of benefits of promotion on regular substantive basis

being the member of Scheduled Tribe Reserved Category notified by the Government. Petitioner claims to be the Member of Scheduled Tribe

Category whereas respondent No. 3 is indisputably a Member of the said Category. Petitioner and respondent No. 3 were serving as Inspectors

of Police in the J&K Police. Both these officials were promoted as Deputy Superintendents of Police, pending clearance by the Departmental

Promotion Committee/Public Service Commission vide order No. 477-Home of 1998 dated 2-12-1998 on stop gap basis in their own pay and

grade with charge allowance as admissible under rules. Petitioner figures at S.No. 37, whereas respondent No. 3 at S.No. 39 of the afore-said

order. A separate grading list was notified by the respondents wherein the petitioner's name figured in the General Category and that of the private

respondent as Member of Scheduled Tribe category. Petitioner has been assigned seniority at S.No. 100 and on the other hand respondent No. 3

who is said to be far junior to him has been assigned seniority at S.No. 103 as a Member of Scheduled Tribe Category. The State issued Govt

Order No. 36-P of 2002 dated 25-1-2002 whereby the Inspectors working on adhoc basis have been confirmed on promotion as Deputy

Superintendents of Police in the pay scale of Es 7500-250-12500 pursuant to the recommendation of Selection Committee against the promotion

quota meant for Inspectors.

Respondent No. 3 is shown at S.No. 5 in the afore-said confirmation order, whereas the petitioner's name does not figure any where. As many as

112 Inspectors have been regularized on promotion vide afore-said order. Petitioner claims his regularization as Dy. S.P being Senior to

respondent No. 3 and seeks his replacement with respondent No. 3. Claim of the petitioner is based upon roster point fixed for reserved

categories under SRO 126. Petitioner has also averred that in the year 1998 promotions were made vide Govt order No. 129-P of 1998 dated

15-4-1998, but he was ignored though he was entitled to be promoted in the said order itself, being Member of the Scheduled Tribe Category.

According to him only two candidates belonging to Scheduled Tribe Category were promoted in the said order, whereas the quota meant for this

category was much more. Petitioner claims that he should have been promoted after Ghulam Haider Badana who also belongs to Scheduled Tribe

Category and figures at S.No. 170 of the said promotion order. It is relevant to mention that as many as 49 Inspectors were promoted as Dy.S.Ps

in the said order. Petitioner is said to have made representation claiming his promotion in the Scheduled Tribe Category. A copy of the same has

been placed on record as Annexure G. The representation filed by the petitioner stands rejected vide the impugned communication No. P-

Case/M-91/2002/PHQ dated 22-4-02.

2. The ground for rejection of the claim of the petitioner is that he did not furnish necessary category certificate and there is no such entry in the

relevant service record of the petitioner. In this communication the respondents however, admitted having received copy of category certificate

from the petitioner alongwith his representation dated 7-3-2002 and have made

necessary entries in the record. It is further stated that the benefit would be made available to the petitioner hereafter. In ground (3) of the writ petition there is a specific assertion of existence of entry in the service record of the petitioner of his belonging to Scheduled Tribe Category, i.e. ""Gujjar

3. In the reply filed by the respondents almost all the averments made in the writ petition regarding his date of promotion, seniority position viz-a-viz respondent No. 3 stands admitted. Regarding regularization of Dy.S.Ps vide order dated 15-4-1998. It is stated that all officers regularized vide the said order are senior to him. Respondents have however, not denied the specific assertion of the petitioner that in the year 1998 only two persons belonging to Scheduled Tribe category were promoted/regularized as Dy.S.Ps though there were more vacancies belonging to the said category and the petitioner being next category candidate in the merit was entitled to be so promoted regularized. In respect to the claim of the petitioner denying him the benefit of regularization in the order dated 25-1-2002 it is stated that there was no entry in the service record of the petitioner of his belonging to Scheduled Tribe category. Petitioner has produced a category certificate issued in the year 2002. Therefore, the question of indicating the name of the petitioner as Scheduled Tribe candidate when the gradation list was issued does not arise. Petitioner being a Member of the Scheduled Tribe category is now a settled position.

Rule 17 of SRO 126 prescribes quota for promotion of Members of Scheduled Tribe and Scheduled Caste categories to the extent of percentage specified therein, upto the pay scale of Rs. 3800/- (pre-revised). Respondents in their reply as also in the impugned order dated 22-4-2002 rejecting the representation of the petitioner have admitted the status of the petitioner as a Member of the Scheduled Tribe Category. The only ground for denying the category benefit to the petitioner as is evident from the impugned order, the reply filed by the official respondents and the submissions made at the bar is that the petitioner did not produce the category certificate nor there was corresponding entry in his service record.

Petitioner placed on record a copy of the service book duly signed by the Inspector General of Police, J&K in July, 1980. Against the column of 'Caste' it is mentioned ""Gujjar"". This is a clear indication of his belonging to Scheduled Tribe Category as all Gujjars in the State of Jammu and

Kashmir have been declared as Scheduled Tribe. This entry in the service book or the genuineness of the copy placed on record placed by the

petitioner has not been disputed or denied in the reply. This leads to un-refutable conclusion that not only petitioner belongs to the Scheduled Tribe

category but there was a corresponding entry in his service record right from July, 1980. In the year 1998 about 200 persons were

promoted/regularized as Dy.S.Ps vide order dated 15-4-1998. Two Scheduled Tribe candidates were promoted. It is not stated whether the

petitioner was eligible for promotion at the time of passing of the afore-said order or was in the consideration zone or not. In absence of there

being any specific averment in the writ petition his claim cannot be considered. However, the petitioner was promoted as Dy.S.P on 2-12-1998.

Some of the candidates promoted in December, 1998 stand regularized on availability of vacancies belonging to the promotees quota to which the

petitioner belongs as is evident from the order dated 25-1-2001. Respondent No. 3 who belongs to Scheduled Tribe category stands regularized

on the basis of roster point in the afore-said order being a Member of Scheduled Tribe Category. Admittedly, the said respondent is much junior

to the petitioner both in the general seniority as also a Member of the Scheduled Tribe Category. Petitioner being senior to him had the preferential

right to be regularized as Dy. S.P at the time of passing of the afore-said order.

There is no reason why he should have been denied the regularization. Petitioner's claim for regularization as a Member of the Scheduled Tribe

Category in place of respondent No. 3 is genuine and has been established from the record. Once a person belongs to a particular category he is

entitled to the benefit as prescribed under rules. Rule 17 of SRO 126 confers such a benefit upon the petitioner. He was not only eligible but

possessed of the requisite criterion for regular promotion on the basis of the roster point as specified under SRO 126.

4. In view of the above, this petition is allowed. Regularization of respondent No. 3 at S.No. 5 of Govt Order No. 36-P of 2002 dated 25-1-

2002 is hereby quashed. Similarly, the impugned communication dated 22-4-2002 whereby the claim of the petitioner is rejected, is also quashed

and a direction in the nature of mandamus is issued to respondents No. 1 & 2 to regularize the services of the petitioner as Dy. S.P with effect

from 10-9-1998 treating him as Member of the Scheduled Tribe Category. He shall be replace respondent No. 3 in the impugned order dated 25-

1-2002. He is also held entitled to all consequential benefits. Though the regularization of respondent No. 3 is quashed, however, in the event

respondents No. 1 & 2 deem it appropriate they may keep the regularization of respondent No. 3 intact by according benefit of regularization to

the petitioner and placing him over and above respondent No. 3 in the seniority list of Deputy Superintendents of Police.