

(2021) 12 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2147 Of 2016

Mohammad Farooq Shah

APPELLANT

Vs

State Of J&K & Others

RESPONDENT

Date of Decision : 03-12-2021

Acts Referred:

Jammu And Kashmir Civil Service Regulations Volume II — Article 77B
Jammu And Kashmir Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996
— Rule 5A, 6

Citation : (2021) 12 J&K CK 0009

Hon'ble Judges : Ali Mohammad Magrey, J; Sanjay Dhar, J

Bench : Division Bench

Advocate : B. A. Dar, Aatir Javed Kawoosa, J. A. Kawoosa, Sajjad Ashraf, Nazir Ahmad

Final Decision : Allowed

Judgement

1) Petitioner has challenged Government Order No.2327-LD(A) of 2016 dated 22.08.2016, whereby his claim for stepping up of his pay at par with his junior counterpart has been rejected.

2) The facts giving rise to the filing of the instant writ petition are that petitioner was appointed as a Junior Assistant in the Courts subordinate to the High Court of Jammu and Kashmir on 08.06.1979 and was later on confirmed in the said post in terms of order No.882 dated 13.12.1986. In terms of order No.207 dated 27.07.1996, petitioner along with others was granted insitu promotion as per the J&K Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996 placing him in the 1st Higher Standard Pay Scale w.e.f. 01.01.1995. Petitioner was granted functional promotion to the post of Senior Assistant in the pay scale of 1200-2040 in terms of order No.349 dated 15.10.1996 and was later promoted to the post of Head Assistant, on which post he superannuated on 31.12.2010.

3) Case of the petitioner is that one Mohammad Ramzan Dar, who figured junior to him in the seniority list of Junior Assistants, was, at the time of fixing his pay

in the higher post of Senior Assistant, granted higher pay scale of Rs.1400-2300/ as against the pay scale of petitioner which was fixed at Rs.1200-2040. According to the petitioner, as per SRO 225 of 1997, his pay scale was eligible to be stepped up so as to bring it at par with the pay scale of his junior, namely, Mohammad Ramzan Dar. It is further submitted that in the case of another employee, namely, Mushtaq Ahmad Bhat, who is also figuring junior to the petitioner but senior to aforesaid Mohammad Ramzan Dar in the seniority list of Junior Assistants, the benefit of stepping up of pay has been accorded to him by respondents No.1, 3 and 4 by applying the provisions of SRO 225 of 1997 whereas similar treatment has been denied to the petitioner.

4) It appears that the petitioner had filed a writ petition bearing SWP No.2153/2013 which was disposed of by this Court in terms of order dated 05.08.2014, whereby respondents were directed to accord consideration to the grant of Administrative Approval for upgradation of salary of the petitioner on the strength of SRO 225 of 1997. It also appears that in pursuance of order dated 05.08.2014 passed in SWP No.2153/2013, respondent No.1 has accorded consideration to the claim of the petitioner and rejected the same as being not covered under rules.

5) The petitioner has challenged the aforesaid order of rejection of his claim on the grounds that he has been invidiously discriminated, inasmuch as similar cases of Mushtaq Ahmad Bhat, Mushtaq Ahmad Shah, Bashir Ahmad Khan and Mohammad Akbar Mir have been favourably determined by respondent No.1. It is further urged that the impugned order passed by respondent No.1 smacks of non-application of mind, inasmuch as the said respondent, while applying Instruction No.8 appended to Article 77-B of J&K Civil Service Regulations (for Short J&K CSR), has ignored the fact that petitioner and Mohammad Ramzan Dar belonged to the identical cadre/service. Lastly, it has been contended that interpretation made by respondent No.1 to the relevant rules in the case of petitioner is absolutely erroneous.

6) The writ petition has been resisted by respondents No.1 and 3 by filing a reply thereto. In their reply, respondents No.1 and 3 have submitted that upon examination of the matter in its entirety, it was seen that anomaly in the pay of petitioner did not take place directly as a result of application of the Jammu and Kashmir Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996 [for short "the Rules of 1996"] but because the pay of Shri Mohammad Ramzan Dar had been fixed at a higher stage by virtue of his length of service which he had rendered in another cadre. It has been contended that Note to Rule 6 of the Rules of 1996 provides for dealing of cases of pay anomaly in accordance with Instructions below Article 77-B of J&K CSR and after application of these Instructions to the case of petitioner, he was found not entitled to stepping up of pay on account of the fact that Shri Mohammad Ramzan Dar was initially appointed in the cadre of Jammu Province whereafter he was absorbed in the cadre pertaining to Kashmir Province terminating his lien in the initial cadre.

7) Respondent No.5, Accountant General, has also filed his reply, wherein he has taken the stand that once Administrative Department accords approval to the stepping up of pay in favour of the petitioner, follow up action shall be taken by the said respondent by authorising revision in his pension.

8) We have heard learned counsel for the parties and perused the record of the case.

9) Certain facts which emerge from the pleadings of the parties are that petitioner was, admittedly, ranking senior to Mohammad Ramzan Dar in the seniority list of Junior Assistants. It is also not in dispute that pay of Mohammad Ramzan Dar at the time of his promotion as a Senior Assistant has been fixed at a higher level than that of petitioner at the time of his promotion as Senior Assistant, which has, admittedly, taken place prior to the promotion of Mohammad Ramzan Dar. It also emerges that Mushtaq Ahmad Bhat was ranking above Mohammad Ramzan Dar and below petitioner in the seniority list of Junior Assistants but in his case, respondent No.1 has accorded approval to the stepping up of his pay so as to bring it at par with the pay of Mohammad Ramzan Dar. It is also not in dispute that prior to absorption of Mohammad Ramzan Dar in the divisional cadre of Junior Assistants in Kashmir Province, he was serving in divisional cadre of Junior Assistants in Jammu Province.

10) Before we come to the question whether petitioner is entitled to the relief on the ground of parity with Mohammad Ramzan Dar, let us first test the merits of the claim of petitioner on the touchstone of legal position on the subject.

11) In para (5) of the writ petition, petitioner has clearly stated that he was placed in the pay scale of 1200-2040/ by granting him first insitu promotion w.e.f. 01.01.1995 whereas from the same date, Mohammad Ramzan Dar was granted second insitu promotion placing him in the pay scale of 1400-2300. At the time of promotion of petitioner to the post of Senior Assistant, his pay was fixed in the scale of Rs.1200-2040/ and at the time of promotion of Mohammad Ramzan Dar to the post of Senior Assistant, his pay was fixed in the scale of 1400-2300/ because he was drawing higher pay than that of petitioner in the lower post of Junior Assistant. Now the question arises whether it amounts to a case of pay anomaly covered by the Rules of 1996 and Regulation 77-B of J&K CSR and if so, which provision or rule would govern the case of petitioner.

12) It is not in dispute that both the petitioner as well as Mohammad Ramzan Dar, upon absorption of Mohammad Ramzan Dar in the cadre of Junior Assistants of Kashmir Province on 13.12.1986, belonged to the same cadre of Junior Assistants of Kashmir Province. It is also not in dispute that in terms of Rules of 1996, petitioner was placed in first higher standard pay scale w.e.f. 01.01.1995 and Mohammad Ramzan Dar was placed in the second higher standard pay scale w.e.f. 01.01.1995. It is also an admitted position that the petitioner was promoted to the post of Senior Assistant on 15.10.1996 whereas Mohammad Ramzan Dar was promoted to the said post on 30.07.1997 and it is also not in

dispute that the petitioner is senior to Mohammad Ramzan Dar in the category of Junior Assistants as well as in the category of Senior Assistants. On account of length of service of Mohammad Ramzan Dar, upon application of the Rules of 1996, he was placed in the second higher standard pay scale whereas petitioner was placed in first higher standard pay scale in terms of the said Rules. Thus, Mohammad Ramzan Dar started getting higher pay than that of his senior i.e., petitioner herein, on account of application of Rules of 1996. The disparity and anomaly in the pay of petitioner, as such, is a direct result of application of Rules of 1996.

13) That takes us to the question as to which provision or rule would apply to the present case. According to the petitioner, the case is covered under SRO 225 dated 4th July, 1997, whereby Rule 5-A and Note appended below the said Rule has been incorporated in the Rules of 1996. The case of respondents No.1 and 3 is that SRO 225 does not have any application to the case and that the same is covered by Instruction No.8 to Regulation 77-B of J&K CSR which is made applicable to such cases in terms of Note appended to Rule 6 of the Rules of 1996.

14) Before determining as to which set of rules would cover the present case, let us notice provisions of the Note appended below Rule 5-A of the Rules of 1996 as also the provisions of Instruction 8 to Regulation 77-B of J&K CSR.

Note below Rule 5-A reads as under:-

"Cases may arise where a Government Servant may be carrying lower scale of pay on or after 1-1-1995 and another, junior to him. This situation may arise where the junior official may have taken the benefit of Higher Standard Pay Scale(s) in accordance with the provisions of the above rules.

In order to remove this anomaly, the senior official shall be allowed the pay scale equivalent to the pay scale of his junior counterpart, on the date the latter was allowed as such, provided both the junior and senior officers belong to the same cadre and the posts held by them are identical and in the same cadre. The provision shall be deemed to have existed in the rules *ibid*, *ab initio*.

Instruction 8 to Regulation 77-B of J&K CSR reads as under:

Cases may arise where a Government servant has been promoted to a higher post before 01-01-1995 (as the J&K Civil Service Higher Standard Pay Scale Scheme Rules, 1996 have come into effect from 01-01-1995 and draws a lower rate of pay than the another junior to him. This may be because pay of junior counterpart has been/is fixed after availing the benefits of the in-situ promotion in the lower post in accordance with the provisions of the J&K (HSPSS) Rules, 1996 before his functional promotion in the higher post.

In order to remove this anomaly, the pay of the senior counterpart in the higher post shall be stepped up to the figure equal to the pay as fixed for the junior counterpart in that higher post. The stepping up should be done with effect from

the date of the functional promotion of the junior subject to the condition that:-

I. Both the senior and the junior belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre and in the same scale of pay.

II. The anomaly should be directly as a result of application of J&K Civil Service (Higher Standard Pay Scale Scheme) Rules, 1996, for example if even in the lower functional post the junior official had been drawing from time to time a higher rate of pay as compared to that of the senior by virtue of fixation of pay under normal rules, any advance increment granted to him, the provisions of these instructions shall not be invoked to step up the pay of the senior counterparts.

III. The next increment of the senior official whose pay has been so stepped up will be drawn after completion of the requisite qualifying service of twelve months from the date of such stepping up.

IV. The senior shall not be entitled to any step up if the pay of the junior has come to be fixed at a higher stage by virtue of his promotion under in situ promotion scheme on the basis of the length of service his encadrement in the present post, if any, and the service so rendered has been allowed to be computed for the purpose under orders.

V. Pending cases, if any, shall be decided accordingly.

15) From a bare reading of Note appended to Rule 5-A of the Rules of 1996 it becomes clear that where a Government servant carries lower scale of pay on or after 01.01.1995 than another junior to him on account of the fact that junior may have taken the benefit of higher standard pay scale in accordance with the provisions of Rules of 1996, the case would be covered by the provisions of the said Note, provided both junior and senior officers belong to the same cadre and the posts held by them are identical and in the same cadre.

16) A bare reading of Government Instruction No.8 to Regulations 77-B shows that it covers the cases where a Government servant has been promoted to a higher post before 01.01.1995 and draws a lower rate of pay than the another junior to him. Clause (IV) of the aforesaid Instruction, on which the respondents No.1 and 3 have placed reliance while passing the impugned order, provides that in such a case senior shall not be entitled to any step up if the pay of the junior has come to be fixed at a higher stage by virtue of his promotion under insitu promotion scheme on the basis of the length of service which the junior had rendered in another cadre prior to his encadrement in the present post.

17) In the instant case, as already noted, petitioner has been promoted to the post of Senior Assistant on 15.10.1996 whereas Mohammad Ramzan Dar, a junior officer, has been promoted to the said post on 30.07.1997. This means that, admittedly, both petitioner and Mohammad Ramzan Dar have been promoted to the higher post after 01.01.1995. It is at the stage of promotion of

Mohammad Ramzan Dar that a case of pay anomaly of petitioner came to the fore because the pay of Mohammad Ramzan Dar at the time of his promotion on 30.07.1997 came to be fixed at a higher level than that of the petitioner on account of the fact that he was already drawing higher pay in the lower post. Thus, it is not a case where pay anomaly had occurred prior to 01.01.1995. Therefore, Government Instruction No.8 does not have any applicability to the present case.

18) In fact, our aforesaid view is supported by the observations of the Finance Department conveyed to respondent No.1 vide U.O No.A/37/(2005)-509 dated 24.06.2015, which is reproduced in the impugned order itself. It would be apt to refer to those observations in the context of this case and the same are reproduced as under:

"Returned. The proposal has been examined. The Department is advised to consider the case strictly in terms of SRO - 225 of 1997 and not in relaxation of rules by issuing a speaking order. The Department is further advised to clearly establish to work out as to how the junior is drawing higher pay vis-à-vis the senior and incorporate the reasons in the consideration order itself and ensure compliance of the Court Orders."

19) From the aforesaid observations of the Finance Department, it is clear that the case of petitioner was to be considered in terms of SRO 225 of 1997 and not in terms of Government Instruction No.8 to Regulation 77-B of J&K CSR. The respondent No.1, however, ignoring the advice of the Finance Department went on to apply the provisions contained in Government Instruction No.8 to Regulation 77-B and rejected the claim of the petitioner on the ground that Clause (IV) to Government Instruction No.8 debarred the petitioner from claiming the benefit of step up as Mohammad Ramzan Dar was given higher pay on the basis of length of service which he had rendered in another cadre prior to his adjustment in Kashmir Province. The reasoning given by respondent No.1 is misplaced as, despite advice of Finance Department, the respondent No.1 has chosen not to consider the case of petitioner in terms of SRO 225 but has erroneously chosen to apply Government Instruction No.8 to Regulation 77-B of J&K CSR which cannot be made applicable to the case in hand.

20) Once the provisions of the Note appended to Rule 5-A of the Rules of 1996, which has been incorporated vide SRO 225, are made applicable to the case of petitioner, he becomes entitled to stepping up of his pay w.e.f. the date his junior Mohammad Ramzan Dar was promoted to the post of Senior Assistant as prior to the promotion of petitioner and Mohammad Ramzan Dar, both the officials belonged to the same cadre of Junior Assistants of Kashmir Province and the posts held by them were identical. Besides this, admittedly, the petitioner was senior to Mohammad Ramzan Dar. Therefore, petitioner cannot be denied the benefit of stepping up of his pay scale so as to bring it at par with the pay scale of his junior Mohammad Ramzan Dar in the category of Senior Assistants. The denial of claim by respondents No.1 and 3 through the medium of impugned

order is, therefore, unsustainable in law.

21) Apart from the above, three more officials, namely, Mushtaq Ahmad Bhat, Mushtaq Ahmad Shah, Bashir Ahmad Khan and Mohammad Akbar Mir, who were senior to Mohammad Ramzan Dar but junior to the petitioner in the seniority list of Junior Assistants, have been given the benefit of step up of pay by application of SRO 225 dated 4th July, 1997 to their cases and administrative approval in this regard has been granted by respondent No.1. Denial of similar benefit to the petitioner who is even senior to the aforesaid three persons would amount to invidious and hostile discrimination against him. The action of respondent No.1 in denying the similar benefit to petitioner is liable to be struck down on this ground as well. In fact, denial of benefit of stepping up of pay to petitioner would amount to perpetuating illegality as the same would result in drawing of less pay by petitioner not only in comparison to his junior Mohammad Ramzan Dar but even in comparison to his other juniors viz. Mushtaq Ahmad Bhat, Mushtaq Ahmad Shah, Bashir Ahmad Khan and Mohammad Akbar Mir, who have already been granted benefit of step up of pay.

22) For the foregoing reasons we hold that the impugned order denying the claim of the petitioner for stepping up of his pay at par with that of his junior is unsustainable in law and, as such, liable to be quashed. The writ petition is, accordingly, allowed and the impugned order passed by respondent No.1 is quashed. Respondent No.1 is directed to accord administrative approval to the stepping up of pay to the petitioner as recommended by the concerned District Judge, within a period of one month from the date a certified copy of this order is served upon respondent No.1, whereafter respondent No.5 shall take necessary follow up action of re-fixing pension and pensionary benefits of the petitioner.