(1980) 07 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 995 of 1980

Ram Prasad Chechani APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 18-07-1980

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1980) WLN 287

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This is a petition under Article 226 of the Constitution of India filed by Ram Prasad Chechani praying therein that the order (Annexure-1) dated September 9,1977 of the Deputy Secretary to the Government of Rajasthan and the order (Annexure-2) dated February 13,1979 of the Rajasthan Civil Services Appellate Tribunal, Jaipur (for short ''the Tribunal'' hereafter may be quashed and that it may be declared that the pay drawn by the petitioner on the post of Accounts Clerk for the purposes of his fixation under Rule 26-A(2) of the Rajasthan Services Rules (hereinafter referred to as ''the Rules'') was Rs. 180/- only and not Rs. 172/- and as such, the pay fixed on the post of Accountant does not exceed by an amount equal to the amount of next increment in the lower post plus the first amount of increment in the higger post, and, so the petitioner is entitled to have his next increment on the date he would have drawn had he continued in the lower post.

2. A few facts leading to filing of this writ petition are as under: The petitioner was appointed as Accounts Clerk and was working in the time scale of Rs. 130-8-170-10-210-15-300 as applicable to the Accounts Clerks at the relevant time i.e. on February 28,1970. His basic pay was Rs. 162/-. He was getting Rs. 10/- as special pay attached to this post since December 31, 1962. Thereafter, the petitioner was promoted as Accountant and he joined his duties as

Accountant in the afternoon of February 28,1970 in the pay scale of Rs. 200-15-350-20-450-24-525. His date of increment is December 31 of every year as he was initially appointed as Accounts Clerk on December 31,1962. He was fixed at the minimum in the time scale prescribed for the post of Accountant in accordance with the provisions of Rule 26-A of the Rules, vide letter No. F. 1(A)(17)/FD/Gr. 2)/77 dated September 9, 1977, the Deputy Secretary to the Government of Rajasthan, Finance (Gr. 2) Department, informed the Project Officer, Small Farmers Development Agency, Bhilwara (respondent No. 3) that Rule 26-A(2) of the Rules is quite clear in the matter and on promotion, the petitioner has been benefited by Rs. 28/- and not by Rs. 20/- and as such, his date of next increment shall be regulated after counting full incremental period under Rule 31 of the Rules. Aggrieved by the aforesaid order (Annexure-1) dated September 9, 1977, the petitioner preferred an appeal before the Tribunal which was dismissed vide order (Annexure 2) dated February 13, 1979. Thereafter, the petitioner submitted a petition (Annexure-3) dated March 2, 1979 to the Governor of Rajasthan. This petition was rejected and an information to this effect was sent to the petitioner vide letter (Annexure-4) dated October 10, 1979. The petitioner has filed this writ petition for the reliefs aforesaid.

3. I have heard Mr. N.P. Gupta, learned Counsel for the petitioner.

4. It was contended by the learned Counsel appearing for the petitioner that Annexure-1 dated September 9, 1977 and Annexure-2 dated February 13, 1979 are manifestly erroneous and the interpretation put on rule 26-A of the Rules is wrong. He submitted that while holding the post of Accounts Clerk, the petitioner was appointed as Accountant after passing the qualifying examination on February 23, 1970. His initial pay drawn as Accountant was fixed at the minimum i.e. Rs. 200/- and that prior to this, he was working as Accounts Clerk and was receiving Rs. 162/- pay + Rs. 10/- as special pay. According to him,by order of the Finance Department dated July 18,1968 inserted as an exception No. I under Rule 26-B of the Rules, for fixation of pay as Accountant, his pay should have been notionally treated as Rs. 180(160 + 10) and next stage equal to Rs. 180/-). According to the learned Counsel, this is an amount to be treated as "pay drawn" under the said Finance Department memo. He further submitted that notwithstanding the notional pay drawn by him as Accounts Clerk being treated as Rs. 180, his pay as Accountant was fixed at Rs. 200/- per month being the minimum of the scale of pay and not by virtue of any notional fixation. The second argument in this connection was that under Rule 26-A(2) of the Rules, since the petitioner had not been benefitted as an Accountant by more than the aggregate of next increment in the post of Accounts Clerk and amount of next increment in the post of Accountant, his date of further increment under Rule 31 of the Rules should remain unchanged In other words, according to the learned Counsel his next increment should accrue with reference to his date of increment on the post of Accounts Clerk and not after one year of duty after his appointment as an Accountant.

5. I have bestowed my most anxious and careful consideration to the submissions advanced by the learned Counsel for the petitioner.

6. Rule 26-A at the relevant time existed as under:

26-A. (1) When a Government servant holding a post in a substantive, temporary or officiating capacity is promoted to a post in the regular line of promotion in his service, cadre or department, in a substantive, temporary or officiating capacity, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing the actual pay drawn by him in the lower post by one increment at the stage at which such pay is drawn; provided:

(i) that where a Government servant is, immediately before his promotion to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage in that time scale next above such maximum in the lower post;

(ii) that provisions of this rule shall not apply in cases enumerated in the schedule below this rule in respect of which the Government may provide such other method of pay fixation as may be deemed appropriate; and

(iii) that the provisions of sub rule (2) of Rule 35-A shall not be applicable in any case, where the initial pay is fixed under this rule.

(2) Notwithstanding the provisions of Rule 31, where the pay of a Government servant is fixed under Sub-rule (1) above the next increment shall be granted on the date he would have drawn his increment had he continued in the lower post, provided that where the pay is fixed at the minimum of the time scale and the pay so fixed exceeds the pay in the lower post by the amount equal to the amount of the next increment in the lower post plus the first amount of increment in the higher post, the next increment shall be admissible after completion, of service for the full incremental period counting for increment under Rule 31 of Rajasthan Service Rules.

Vide Finance Department Notification No. F. 1(40)FD(Gr. 2)/74 dated August 28,1974, the following was substituted for the existing Rule 26A(1)(i):

(i) that were a Government servant is, immediately before his promotion to a higher post, drawing pay at the maximum of the time scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing the pay drawn at the maximum by him in the lower post by an amount equivalent to the last increment in the lower post.

Rule 26-B of the Rules reads as under:

26-B. Notwithstanding anything contained in these rules where a Government servant has drawn a special pay granted for higher responsibilities or specially arduous nature of duties under Rule 7(31)(a) continuously for a period of not less than two years and his pay, on promotion or appointment on or after 1-9-1961 to a post carrying duties and responsibilities of greater importance than those attached to the post held by him, under the provisions of other rules in this chapter plus special pay attached to the higher post, if any, works out to less than the pay of the post held by him, the difference shall be allowed as personal pay to be absorbed in future increments.

Rule 31 of the Rules deals with service counting for increment in time scales. As reliance was placed on the Finance Department Memo No. F. 1(29)FD(Rules) 68, dated July 18,1968, it may be reproduced below:

The question of protection of special pay of Rs. 10/-drawn by Accounts Clerks on their promotion to the post of Accountant in accordance with provisions contained in Rule 27 of the Rajasthan Subordinate Accounts Service Rules, 1963 has been under consideration of the Government for some time past.

The matter has been considered and it has been decided that special pay of Rs. 10/- drawn by Accounts Clerks who on their passing the Accountant''s Qualifying Examination are promoted to the post of Accountants under the aforesaid rule, may be notionally treated as pay for the purpose of pay drawn in the scale of pay of the post of Accounts Clerks, provided that where the pay so arrived at (i.e. pay plus special pay) does not correspond to a stage in the time scale of the post of Accounts Clerk such notional pay shall be fixed at the higher stage in the said time scale of the post of Accounts Clerk.

Fixation of pay on promotion to the post of Accounts will be made under the provisions of the rule 26-A of Rajasthan Service Rules on the basis of the pay arrived at by merging of special pay into pay in the manner indicated in para 2 above.

These orders take effect from 1-1-1967.

It is clear from para 1 of the aforesaid memo that it applies for protection of the special pay of Rs. 10/- drawn by Accounts Clerks on promotion to the post of Accountant. It has to be noted that the aforesaid memo is not in exception either under Rule 31 or Rule 26A(2) of the Rules. Rule 26-A(2) does not contemplate inclusion of the special pay notionally as pay drawn. The petitioner was fixed at the minimum of Rs. 200/- in the scale of Rs. 200-15-350-20-450-25-525 on the post of Accountant. His pay on the post of Accountant was not fixed by notional fixation envisaged by the aforesaid memo of the Finance Department. The difference between the minimum of the scale of Accountant i.e. Rs. 200/- and Rs. 172/- (Rs. 162/- pay plus Rs. 10/-as special pay) as Accounts Clerk comes to Rs. 28/. The amount of Rs. 28/- exceeds the amount of two increments envisaged under Rule 26-A(2) of the Rules and, therefore, the notional calculation of the pay of the petitioner cannot be taken into account. The difference in the petitioner''s pay as Accounts Clerk (Rs. 162 pay plus Rs. 10/- special pay) and as Accountant (initial salary of Rs. 200/-) is more than the aggregate of the increments in the lower post i.e. Accounts Clerk and higher post

(Accountant). In these circumstances, for future increments, his original date of increment as Accounts Clerk is no longer relevant. The amount of Rs 8/- difference between Rs. 172/- and Rs. 180/-) in the pay scale of 130-8-170-10-210-15-300 as Accounts Clerk, which was not drawn by the petitioner when he was fixed at initial pay of Rs. 200/- as Accountant, in my opinion cannot be treated as pay for the purpose of initial fixation of pay under Rule 26A of the Rules. The petitioner, in fact, was benefitted by Rs. 28/- and as such, the petitioner is entitled to the increments after completion of a period of one year as Accountant in accordance with Rule 31 of the Rules.

7. In this view of the matter, the contentions raised by the learned Counsel for the petitioner are, therefore, rejected.

8. No other point survives for my consideration and the orders Annexure-1 dated September 9,1977 and Annexure-2 dated February 13, 1979 being in accordance with the Rules do not call for any interference by the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

9. The result is that this writ petition has no force and it is accordingly, dismissed summarily.

