
(2009) 12 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2319 of 2003

Ravi Kant Sharma

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2010) 2 JKJ 548

Hon'ble Judges : Mohd. Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohd. Yaqoob Mir, J.—Petitioner initially appointed as Sub Inspector with Central Reserve Police Force in the year 1985 was sent on

deputation, in the year 1987, to National Security Guard (NSG). In the year 1990 vide Government order No. Home-275/GR of 1990 dated

10.10.1990 was sent on deputation to J&K Police for a period of two years as Sub Inspector. In the year 1995 vide order dated 25.3.1995

Petitioner was recommended by Additional Director General (CID) J&K Police for permanent absorption in J&K Police. At the relevant time he

was performing his duties with J&K Police uninterruptedly since 1990. In his parent department i.e. CRPF, the Petitioner was promoted to the

rank of Inspector in the year 1992.

2. Petitioner consequent to the recommendation was permanently absorbed in the J&K Police vide order No. Home-317(P) of 1995 dated

11.10.1995 the services of the Petitioner in the rank of Inspector were regularised from i.3.1992 up to the date he was permanently absorbed in

J&K Police i.e. 10.10.1995 as is borne out by Government order No. 1153(P) of

1996 dated 27.12.1996 and the arrears were released by the

Respondents in favour of the Petitioner right from 1.3.1992.

3. Respondents issued tentative seniority list on 30.6.1997, wherein services of the Petitioner, for the purposes of seniority, has been counted from

10.10.1995 i.e. the date when he was permanently absorbed in J&K Police. As against the said tentative list objections as filed by the Petitioner

were rejected on 10.10.1998 on the ground that the Petitioner cannot be granted seniority with effect from 1.3.1992. Subsequent to that final

seniority list has been issued on 26.10.1998 wherein the Petitioner figures at serial No. 214. In case his services would have been counted from

1.3.1992, then he could have been placed at serial No. 124 in the said seniority list. Representations as filed by the Petitioner for redressal of his

grievances did not yield any result which prompted the Petitioner to file the writ petition (SWP) No. 3082/2001. The said petition was disposed of

on 19.3.2002 with direction to the Respondents to treat the petition as notice of demand and to settle the matter within three months. As a result

thereof, order No. 375 of 2003 dated 25.1.2003 was issued by the Respondents where-under, after re-examining the case of the Petitioner in light

of the court order dated 19.3.2002, it has been recorded that the Petitioner was absorbed in J&K Police with effect from 11.10.1995 on his own

consent. The period from 1.3.1992 to 10.10.1995 is shown to have been regularised vide Government Order No. Home-1153(P) of 1996 dated

27.12.1996 for purposes of release of pay dues only. Thereafter it is concluded that in terms of Rule 24 of the Classification, Control and Appeal

Rules the seniority of the Petitioner has been fixed appropriately with effect from 11.10.1995.

4. Dissatisfied with the said order, the Petitioner has filed the instant petition.

5. The question involved is as to whether the Petitioner on being permanently absorbed is entitled to count his substantive services as Inspector in

the parent department i.e. CRPF, for the purposes of his seniority in the cadre of Inspector in J&K Police.

6. Learned Counsel appearing for the Petitioner would contend that it is an admitted position that the Petitioner, a permanent resident of State of

J&K, serving in CRPF, was deputed to J&K Police for a period of two years. Pursuant to order dated 11.10.1995 absorption of the Petitioner as

Inspector in J&K Police was sanctioned. Subsequently vide Government Order No. 1153 dated 27.12.1996 sanction has also been accorded to

the regularisation of deputation period of the Petitioner in the rank of Inspector from 1.3.1992 up to the date he was permanently absorbed in

J&K Police for the release of his pay dues. In addition, vide order No. 3836 of 2002 dated 18.10.2002 Petitioner has been granted in-situ

promotion in the first higher standard pay scale in terms of SRO 11 read with SRO 225. While doing so his services in the rank of Inspector has

been counted with effect from 1992 because for grant of first higher standard pay scale requirement of completion of nine years service in the

existing rank is pre-requisite. Same is also reflected in the said order which means his service with effect from 1.3.1992 has been counted for the

purposes of service benefits including grant of in-situ promotion but his service for the purposes of seniority in the rank of Inspector with effect

from 1.3.1992 till the date of his permanent absorption i.e. 11.10.1995 is not being counted for seniority. Whether same is permissible, the answer

is in negative.

7. Service of the Petitioner in the rank of Inspector with effect from 1.3.1992 has to be counted for the purposes of seniority. In case it would have

been made known to the Petitioner that such service will not count for seniority, he might not have opted for his permanent absorption in the J&K

Police.

8. The similar controversy has been dealt with by the Hon'ble Apex Court in the judgment captioned S.I. Rooplal and Another Vs. Lt. Governor

Through Chief Secretary, Delhi and Others, . In the reported judgment amongst others, the Petitioners therein appointed as Sub Inspectors in

Border Security Force (BSF) were transferred on deputation to Delhi Police in the cadre of Sub Inspector (Executive), then were permanently

absorbed in the transferred post. When the seniority list of Sub Inspectors in Delhi Police was drawn, the service put in by the Petitioners in the

parent department, namely, BSF was not taken into consideration. The seniority was accorded to them from the date of their absorption in Delhi

Police. The petition was allowed and the Petitioners were allowed to be accorded seniority in Delhi Police with effect from the date of appointment

as Sub Inspector in the BSF. The Petitioners therein were also directed to be

given other benefits flowing from the determination of said seniority.

9. Para 15 and 16 of the reported judgment are quite apt to be quoted:

15. We will now take up the question whether the Appellants are entitled to count their service rendered by them as Sub-Inspector in the BSF for

the purpose of their seniority after absorption as Sub-Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is

pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down in Rule 5(h)

of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the

Appellants' services were regularised in the post of Sub Inspector and they were transferred as regularly appointed Sub Inspectors to Delhi Police

Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be

permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by ratio of judgments

of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan's case to give relief to the deputationists, we will

first consider the law laid down by this Court in K. Madhavan and Another Vs. Union of India (UOI) and Others, . This Court in that case while

considering a similar question, came to the following conclusion (para 21 of AIR, Lab-IC).

We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a

deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a

transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular

post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is

not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from

which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from

different sources are drafted to serve in a new service that their pre-existing

total length of service in the parent department should be respected

and presented by taking the same into account in determining their ranking in the, new service cadre.

16. Similar is the view taken by this Court in the cases of R.S. Mokshi and Wing Commander J. Kumar (supra) which judgments have been

followed by this Court in Madhavan's case. Hence, we do not think it is necessary for us to deal in detail as to the view taken by this Court in

those judgments. Applying the principles laid down in the above referred case, we hold the Appellants are entitled to count the substantive service

rendered by them in the post of Sub Inspector in the BSF while counting their service in the post of Sub Inspector (Executive) in Delhi Police

Force.

10. The facts of the case in hand more or less similar to that of the reported case are almost identical. The ratio laid down squarely covers the case

of the Petitioner herein. Thus petition is allowable. Same is allowed.

11. Respondents are directed to place the Petitioner in the seniority list while counting his service for seniority with effect from 1.3.1992 i.e. the

date when he was promoted as Inspector and his services in the rank of Inspector were regularised by the Respondents and all other consequential

benefits as shall be admissible on determination of his seniority as stated above shall be worked out and made available to the Petitioner.

12. Disposed of as above.