

(2006) 01 RAJ CK 0081
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4188 of 1992

Rikhab Raj Kumbhat

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Constitution of India, 1950 — Article 309
Rajasthan Civil Services (Revised Pay Scale) Rules, 1983 — Rule 14, 14(1), 14(2), 5
Rajasthan Service Rules, 1951 — Rule 31

Citation : (2006) 3 RLW 1715 : (2006) 2 WLC 619

Hon'ble Judges : S.N. Jha, C.J.; R.C. Gandhi, J

Bench : Division Bench

Advocate : M.S. Singhvi, Sangeet Lodha, for the Appellant; S.K. Vyas, G.A., for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, C.J.

1. This writ petition is directed against the decision of the State Government contained in letter No. F. 17(27)FD(Gr.2)/83 in the light of which the Rajasthan High Court by order dated 28.6.1986 recalled its earlier order dated 7.3.1984 stepping up of the date of increment and the consequential fixation of pay of the petitioner. Besides the order dated 28.6.1986 the petitioner has also challenged orders dated 22.9.87, 21.3.88, 2.6.89, 10.1.90, 31.8.90 and 20.11.90. By the said orders, the State Government clarified its stand and declined to modify the basic order and the High Court also declined to interfere.

2. Shorn of details, facts of the case relevant for disposal of this writ petition are that while working on the post of Civil Accountant in the Rajasthan High Court in the scale of Rs. 500- 940 and drawing the pay of Rs. 940/- the petitioner was promoted on the post of Superintendent cum Chief Accountant in the scale of Rs. 620-1100 on 2.1.1980. On promotion, his pay was fixed at Rs. 985/- in accordance with the provisions of Rajasthan Service Rules, 1951 with next

increment due on 10.11.1980. One Ram Singh Bhatnagar (in short Bhatnagar) who was Bench Reader in the scale of Rs. 500-890 and getting pay of Rs. 940/- (including personal pay of Rs. 50), was also promoted as Superintendent in the scale of Rs. 620-1100 with effect from 22.5.1980 and on such promotion, his pay too was fixed at 985/-, his next date of increment being 1.10.1980.

3. The Rajasthan Civil Services (Revised Pay Rules), 1983 (in short the "Revised Pay Rules") framed by the Governor of Rajasthan under proviso to Article 309 of the Constitution of India revising the pay scales of the employees of the State Government came into force from 1.9.1981. By virtue of the Revised Pay Rules, the existing scale of Rs. 620-1100 was revised to Rs. 820-1550. As a result of pay revision, the pay of both the petitioner and Bhatnagar was fixed at Rs. 1300/- with effect from 1.9.1981. The date of increment in the case of Bhatnagar being 1.10.1981, his pay was raised to Rs. 1340/- with effect from 1.10.1981. The date of increment of the petitioner being 10.11.1981, his pay was raised to Rs. 1340/- from 10.11.1981.

4. The petitioner made a grievance that being senior to Bhatnagar on the post of Superintendent, his date of increment/pay should be stepped up from the date pay of Bhatnagar was raised, that is, from 1.10.1981. His representation was allowed by the High Court and by order dated 7.3.1984 his pay was "stepped up equal to the pay of" Bhatnagar at Rs. 1340/- with effect from 1.10.1981 fixing the next date of increment as 1.10.1982 under Rule 31 of the Rajasthan Service Rules. The order was passed giving reference to Rule 14(2) of the Revised Pay Rules. The State Government did not approve the stepping up by the impugned order dated 28.6.1986, and as a result the order dated 7.3.1984 was recalled by the High Court. The representations filed by the petitioner having gone in vain, he filed this writ petition.

5. Facts of the case as aforesaid are not in dispute. The respondents also do not dispute the case of the petitioner that by virtue of prior his promotion on the post of Superintendent on 2.1.1980 as compared to Bhatnagar, he was senior to Bhatnagar who got promotion on the post on 22.5.1980. The point is whether the petitioner could claim parity of pay with him.

6. It is to be kept in mind that the pay of Bhatnagar was fixed at Rs. 1340/- on 1.10.1981 as it happened to be the due date of increment. It was a chance that due date of increment of the petitioner was later than Bhatnagar and therefore his pay was fixed at Rs. 1340/- later on 10.11.1981. Had his due date of increment been prior to 1.10.1981 the pay would have been fixed at Rs. 1340/- from such date. Nevertheless it created an anomaly and it was to remove that anomaly, that the High Court had passed the order on 7.3.1984.

7. It may be stated here that though the order dated 7.3.1984 was passed under Sub-rule (2) of Rule 14 of the Revised Pay Rules, counsel for the parties agreed that Sub-rule (2) can be applied only in cases of anomaly arising from pay fixation as a result of pay revision under the Revised Pay Rules; the anomaly

which was sought to be removed by order dated 7.3.1984 is contemplated in Sub-rule (1) of Rule 14. But whereas according to counsel for the petitioner, Sub-rule (1) of Rule 14 covers the case of the petitioner, according to counsel for the respondents, the conditions laid down in the rule are not satisfied and therefore, the petitioner was not entitled to the stepping up of his pay/increment in terms of Sub-rule (1) of Rule 14.

8. Sub-rule (1) of Rule 14 of the Revised Pay Rules around which the dispute revolves runs as under:

14. Removal of anomalies.-(1) The next date of increment of a government servant, whose pay is fixed on 1.9.1981 at the same stage as the one fixed for another government servant junior to him in the same cadre/service and drawing pay at a lower stage than him in the existing pay scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier.

9. On a plain reading, it would appear that if the pay of "A" was fixed at the same stage on 1.9.1981 - which was the date of commencement of the Revised Pay Rules, and the pay of "B" - junior to "A" - was also fixed at the same stage on that Date, "A" could be allowed the next increment on the same date on which the increment became due to "B" if the date of increment of "B" happened to be earlier. As mentioned above, there is no dispute between the parties that by virtue of his prior promotion compared to Bhatnagar the petitioner was senior to him in the cadre of Superintendent but the pay of Bhatnagar was raised to Rs. 1340/- on 1.10.1981, which was the due date of increment, and the pay of petitioner remained Rs. 1300/- till 9.11.1981.

10. The contention of the counsel for the respondent was that in order to apply Sub-rule (1) of Rule 14, it is not only necessary that the other government servant should be junior, it is also necessary that he (junior) was drawing pay at a lower stage in the existing pay scale i.e., the scale applicable prior to coming into force of the Revised Pay Rules viz. 31.8.1981, and as Bhatnagar was getting the same pay in the existing Scale of pay i.e., Rs. 1010/- (Rs. 985 + Rs. 25/- as increment), the rule does not cover the petitioner's case.

11. If the provision is literally interpreted, one gets the impression that "B" (of the illustration) should not only be junior, he must also be drawing pay at a lower stage than "A" so as to apply Sub-rule (1) of Rule 14 for the benefit of the senior i.e., "A". On behalf of the petitioner, it was submitted that the word "and" between the words "in the same cadre/service" and "drawing pay at a lower stage should be read as "or otherwise the very object of the rule would be defeated and the rule would become redundant.

12. Having given our anxious consideration, we are of the view that the contention put forward on behalf of the petitioner is sound and must be accepted.

13. The rule apparently has been framed to protect the pay of the government

servant who though senior to his junior counterpart gets a lower pay-even though for a temporary period, merely because his due date of increment happens to be later. If the object was to protect the pay of the senior government servant, strict compliance of the other condition that the pay of the junior should be less in the existing pay scale, may render the object haywire. Where a literal interpretation is likely to defeat the purpose of any enactment or rule, it is permissible to read down the provision so as to achieve the purpose. The possibility of two government servants drawing maximum pay in the existing scale of pay cannot be ruled out and therefore, if Rule 14 were to be strictly followed, and the second condition were to be strictly enforced, the senior government servant may not be able to get the benefit of pay protection under Rule 14(1). Where the pay of both of them was fixed at the same stage, it would still result in anomaly if the junior government servant gets more pay earlier merely because his date of increment happens to be earlier. But the date of increment cannot be postponed. The due date of increment is fixed under the rules, namely, the Rajasthan Service Rules and the right of the person to get the increment on the due date which flows from the rule cannot be denied to him. The only option available to the authority is to prepone the due date of increment of the senior government servant by stepping up his pay/date of increment, in order to remove the anomaly.

14. As a matter of fact, prior to his promotion, Bhatnagar was in the scale of Rs. 500-890 i.e., a lower scale compared to the petitioner who was in the scale of Rs. 500-940. It was by virtue of personal pay of Rs. 50A that Bhatnagar was drawing the same pay as the petitioner, i.e., Rs. 890/-; however, the fact remains that Bhatnagar was in lower scale of pay. We are conscious of the fact that the pay scale contemplated in Sub-rule (1) of Rule 14 was the scale existing prior to commencement of the Revised Pay Rules i.e., the pay scale existing as on 31.8.1981-as per Rule 5 of the Revised Pay Rules. As on that date the petitioner as well as Bhatnagar were in the same scale of Rs. 620-1100 and were getting the same pay i.e., Rs. 1010/- (after adding the increment of Rs. 25 - Rs. 985 + Rs. 25, but whereas the petitioner started getting pay of Rs. 985/-from 2.1.1980 Bhatnagar started getting pay of Rs. 985/- from 22.5.1980.

15. In these premises, the decision of the High Court to step up the pay of the petitioner equal to or at par with Bhatnagar with effect from 1.10.1981 and prepone the date of increment at par with him was not illegal to warrant any interference by the State Government. The impugned order of the State Government dated 28.6.1986 and the subsequent orders referred to above therefore, must be quashed. We order accordingly.

16. In the result, the writ petition is allowed. We make no order as to costs.