

(1998) 01 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1330 of 1997

State of Rajasthan and Others

APPELLANT

Vs

Kuldeep Singh Chauhan and Another

RESPONDENT

Date of Decision : 16-01-1998

Acts Referred:

Rajasthan High Court Ordinance, 1949 — Section 18

Citation : (1998) 2 RLW 816 : (1998) 3 WLC 1 : (1998) 1 WLN 28

Hon'ble Judges : R.P. Saxena, J;N.L. Tibrewal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—The appellants have filed this Special Appeal u/s 18 of the Rajasthan High Court Ordinance, 1949, being aggrieved by the judgment and order dated, January 21, 1997 of the learned Single Judge of this Court in S.B. Civil Writ Petition No. 5752/95. The learned Single Judge had dismissed the writ petition filed by the appellants. Before the learned Single Judge, that part of the order dated, January 19, 1995 of the Rajasthan Civil Services Appellate Tribunal, Jaipur, was under challenge whereby the appellants were directed to review the case of respondent No. 1 herein, for grant of selection scales under Order/Circular dated, 25.1.1992 keeping in view observations and findings made in the order after examining his suitability.

2. The controversy relates to interpretation of the Government Order/Circular dated, 25.1.1992. The factual aspect giving rise to the present appeal may be narrated, which is as under: The Respondent No. 1 was initially appointed as Enforcement Inspector in the Food and Civil Supplies Department, Jaipur vide order dated. 22nd August 1973. He was posted in the office of the District Supply Officer, Bikaner. Thereafter, he was confirmed on the said post vide order dated, 17.8.1981. The State Government has issued an Order/Circular dated, 25.1.1992 to grant selection scales in lieu of promotion to the employees who completed 9, 18 and 27 years of satisfactory service. By the Circular the benefit of selection

grade was given to the employees in Class-IV, Ministerial and Subordinate Services and those holding isolated posts. The order was passed in supersession of all orders issued in this regard in the past. The salient features of the Order/Circular, as described therein, are as under:

1. This order shall be applicable to all Government Servants in Class IV Ministerial and Subordinate Services and those holding isolated posts and drawing pay in Revised Pay Scales, 1989 the maximum of which does not exceed Rs. 3220/-. This order shall not apply to Government Servants in the State Services as defined in the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1989 and to those who have got Selection Grade of Rs. 2200-4000 in terms of this Order.

(I) The first Selection Grade shall be granted from the day following the day on which one completes Service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre.

(II) The second Selection Grade shall be granted from the day following the day on which one Completes Service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first Selection Grade granted to him was lower than the pay Scale of Rs. 2200-4000.

(III) The Third Selection Grade shall be granted from the day following the day on which one completes Service of twenty Seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the Second Selection Grade granted to him, as the case may be, was lower than the pay scale of Rs. 2200-4000.

3. The Service of nine, eighteen or twenty seven years, as the case may be, shall be counted from the date of first appointment in the existing cadre, Service in accordance with the provisions contained in the Recruitment Rules:

Provided that if an employee subsequent to his first appointment to a post in a Cadre/Service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, Service from the date of later appointment shall be taken into consideration for the purpose of grant of Selection Grade.

Provided further that if an employee subsequent to his first appointment to a post in a Cadre/Service, in accordance with provisions contained in the relevant Service Rules is promoted to a post in some other Cadre, Service from the date of such promotion shall be taken into consideration for the purpose of grant of the Selection Grade.

Provided further that in the case of an employee who is declared surplus and absorbed against a new post, the Service of nine, eighteen or twenty seven Years, as the case may be, shall be deemed to have been completed on the date on which his immediately junior employee completes that period of service or on completion of Service from the date of appointment to the post held before

absorption, whichever is later.

4. (I) The first Selection Grade, wherever admissible in terms of this order shall be the pay scale of the first promotion post in the same Service, Cadre i.e. Class-IV/Ministerial/Subordinate Service, Provided that in case there is no next promotion post in the same Service/cadre or the employee does not possess academic qualifications prescribed for promotion and in respect of the isolated posts the first Selection Grade shall be the pay scale corresponding to his existing pay scale as specified in paragraphs.

(II) The second Selection Grade, wherever admissible in terms of this order, shall be the pay Scale of the second promotion post available to that employee in the same Service/cadre, provided that in case there is no second promotion post in the same Service/cadre or the employee does not possess academic qualifications prescribed for promotion and in respect of the isolated posts, the second Selection Grade shall be the pay scale corresponding to his existing pay scale (pay Scale of the post held or the Selection grade) as specified in paragraph-5.

(III) The third Selection Grade, wherever admissible in terms of this order, shall be the pay scale of the third promotion post available to that employee in the same Service/Cadre provided that in case there is no third promotion post in the same Service/cadre or the employee does not possess academic qualifications prescribed for promotion and in respect of the isolated posts, the third selection Grade shall be the pay scale corresponding to this existing pay scale (pay scale of the post held or the selection grade) as specified in paragraph-5.

5.

6. The appointing authority for the post held by the employees shall be competent to grant Selection Grade. In respect of categories of posts where seniority is maintained by an authority senior to the appointing authority, such senior authority shall be competent to grant selection Grade.

7. Selection Grade in terms of this order shall be granted only to those employees whose record of service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of grant of the selection Grade.

8. Not withstanding anything contained in the foregoing paragraphs, if an employee forges promotion on issue of order to this effect he shall not be granted second or third Selection Grade under this order.

9. Grant of Selection Grade shall not affect the seniority in the cadre nor the sanctioned strength of each category of posts in the cadre.

10. If an eligible employee becomes entitled to second or third Selection Grade Staring-way in terms of this order, his pay would be fixed directly in the second or third Selection Grade, as the case may be with reference to pay being drawn

immediately before grant of the second or third Selection Grade.

11. When a Government Servant is granted First, second or third Selection Grade, as the case may be, his initial pay in the Selection Grade shall be fixed at the stage next above the pay notionally arrived at by increasing the pay being drawn by him in the existing pay scale (pay scale of the post held or the Selection Grade) by one increment. If Selection Grade is granted to an employee with effect from the date on which he earned increment, pay in the Selection admissible in the existing pay scale including the increment.

12. The pay of the employee already granted Selection Grade before issue of this order shall be re-fixed at the next above stage in the Selection Grade admissible in terms of this order. Pay in the second or third Selection Grade admissible in terms of this order shall be fixed thereafter.

13. In case of an employee who gets this regular promotion after getting the selection grade (identical to or lower than the pay scale or the promotion post), his pay shall be fixed in the pay scale of the promotion post, at the equal stage, if there is no equal stage in the pay scale of the promotion post, pay shall be fixed at the next higher stage. In cases where the Selection Grade (second or third) already granted to an employee is higher than the pay scale of the promotion post, the employee shall continue to draw pay in the Selection Grade and his pay shall not be fixed in the pay scale of the promotion post.

14. The next increment in the Selection Grade shall be granted to an employee on the date he would have drawn his increment had he not been granted the Selection Grade, provided that where the pay is fixed at the minimum of the Selection Grade and the pay so fixed is more than the pay drawn in the existing pay scale by an amount equal to the amount of the next increment in the existing pay scale plus the amount of first increment in the Selection Grade, the next increment shall be admissible after completion of service for the full incremental period of one year under Rule 31 of the Rajasthan Service Rules.

3. Before the Rajasthan Civil Service Appellate Tribunal, the respondent, Kuldeep Singh had filed an appeal on 15.3.1994 whereby the orders dated, 8.12.1993, 21.12.1988 and 16.12.1989 were challenged. By order dated, 8.12.1993 he was denied Selection Scale as per Circular dated, 25.1.1992 on the ground of adverse entry in his APAR for the year 1987-88 and by order dated, 16.12.1989 his representation against adverse remarks was rejected. In this appeal, we are only concerned as to whether denial of the benefit of first Selection Scale on the ground of adverse entry in APAR for the year 1987-88 is justified. In other words, the question which calls for consideration is as to whether suitability has to be examined on the basis of service record preceding 7 years of the date of the Circular dated, 21.1.1992 or from the date on completion of 9, 18 or 27 years service, as the case may be. The Service Tribunal has taken the view that preceding 7 years service record should be seen from the date an employee completes 9, 18, or 27 years service and not from the date of notification/

Circular dated, 25.1.1992. This view has been confirmed by the learned Single Judge in the writ petition.

4. Mr. Mahesh Gupta, learned Counsel appearing for the respondents, has contended that the date 25.1.1992 is the cut off date for granting benefit of Selection Scales on completion of 9,18, 27 years and as such, this date is relevant for scrutinising preceding record to judge suitability of an employee, Learned Counsel, therefore, contended that the view taken by the Service Appellate Tribunal and the learned Single Judge is not sustainable.

5. After giving our careful and anxious consideration to the above submission we are unable to agree with the contention as we find no merit in it.

6. Adverse remarks in APAR for the year 1987-88 are as under:

We don't agree with R.O.'s assessment because the Official Liquidator has not even given the resumes of his performance, the work done and his achievements. This shows him to be negligent and careless.

7. The Order/Circular dated. 25.1.1992 prescribing and granting Selection Grades on completion of 9.18 and 27 years of service is with a view to provide relief to the employees covered under the Circular, who are not having promotional benefits and facing stagnancy in their service. As per the Circular first Selection Grade is to be granted from the day following the day on which one completes service of 9 years. Similarly, second Selection Grade is to be granted from the date following the day on which one completes service of 18 years and 3rd Selection Grade from the day following the day on which one completes 27 years. The Circular makes it clear in para-3 that service of 9, 18 and 27 years, as the case may be, shall be counted from the date of first appointment in the existing service cadre in accordance with provisions contained in the Recruitment Rules. Then Para-7 of the Circular provides that Selection Grades in terms of the Circular shall be granted only to those employees whose record of service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of grant of the Selection Grades.

8. A conjoint reading of all paragraphs of the Circular makes it clear without any doubt that an employee who completes 9 years of Service from the date of his first appointment in the existing cadre becomes entitled to get first Selection Grade, provided his service record is satisfactory. Thus, he becomes eligible to get first Selection Grade on completion of 9 years service, as such, his service record to judge his suitability for granting first Selection Grade could be of that period and not that of later period. Similar shall be the position while examining suitability for second and third Selection Grades on completion of 18 and 27 years of service. The date of Order/Circular i.e. 25.1.1992 prescribes grant of Selection Grades and entitlement of the employees. The eligibility to get first, second and third Selection Grades is completion of 9, 18 and 27 years of service. Hence, suitability for grant has to be judged accordingly and the APARs of the

preceding years when one becomes eligible to get first, second and third selection grade, are relevant. The contention that seven years satisfactory service record should be examined from the date of the Order/Circular i.e. 25.1.1992 cannot be accepted as this date is not the date of eligibility. If interpretation, as contended by Shri Gupta is accepted, it would lead to absurdity and serious anomaly. For example, an employee who had already completed 27 years of service on 25.1.1992, having only one adverse entry in the year 1990 before he completed 27 years of service, would be denied all the three selection Grades. In other words, in that situation he shall not be entitled to get first and second Selection Grades and fixation as per the Circular, though his service record for 18 years from the date of his appointment may be unblemished and exemplary. This cannot be intention of the Circular, nor the various paragraphs of the Circular, if read jointly and harmoniously, lead to such conclusion. Similarly, if 7 years service record is examined from 25.1.1992 for judging suitability of an employee to get benefit of Selection Grades, there may be cases where preceding seven years record from 25.1.1992 may be good but prior to it highly blame-worthy. In that situation also, he shall be entitled to get benefit of all the three selection Grades and fixation if Mr. Gupta's submission is accepted. Then, if this interpretation is accepted, an employee shall be entitled to get benefit under the Order, inspite of the fact that his preceding service record is good but after it becomes highly unsatisfactory. The Tribunal has rightly observed while rejecting the contention, "now one can be granted three selection grades on the basis of the same 7 years service record and when some adversity is there that adversity would debar him from all the three selection grade on the same basis. This cannot be the intention of the notification dated, 25.1.1992."

9. We are in agreement with the above observations. In our view, the interpretation given by the Tribunal to the Notification/ Circular dated 25.1.1992 is the only possible and just interpretation.

10. Consequently, we hold that for judging suitability for grant of first, second and third Selection Grades the dates when an employee completes 9, 18 and 27 years of his service and APARs of preceding 7 years of his entitlement would be relevant.

11. In view of this, we find no merit in this appeal and it is hereby dismissed summarily.