

(2004) 07 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 124 of 1993

Trilochan Nath

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 14-07-2004

Acts Referred:

Central Civil Services (Revised Pay) Rules, 1973 — Rule 1(2)
Jammu and Kashmir Civil Services (Classification, Control and Appeal) (Amendment) Rules, 1976 — Rule 24
Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 24

Citation : (2005) 2 JKJ 113

Hon'ble Judges : Yash Paul Nargotra, J

Bench : Single Bench

Advocate : D.K. Khajuria, for the Appellant; B.S. Salathia, AAG, for the Respondent

Final Decision : Allowed

Judgement

Y.P. Nargotra, J.—The petitioner is presently working as Tehsil Supply Officer in the Food and Supply Department. He was initially

appointed as a daily wager in the Department of Food and Supplies. His services were regularized vide Govt. Order No. 336-FST of 1971 dated

23.8.1971 w.e.f 26.3.1971. Thereafter against the available vacancy he was appointed as Junior Assistant in the pay scale of Rs. 70-135vide

Govt. Order No. 10714-21/G dated 9.10.1971, which order was passed in pursuance of the Govt. Order No. 335/FST of 1971 dated

23.8.1971 w.e.f 26.3.1971 and this way the date of appointment of the petitioner as Junior Assistant was 23.8.1971. Thereafter vide SRO No.

149 dated 7.4.1973 revision of the grades of the various employees was effected and the petitioner came into the grade of Rs. 200-320 w.e.f

1.7.1972. Thus petitioner entered the grade of Rs. 200-320 w.e.f 1.7.1972.

2. Respondent No. 3 Sat Pal Sharma, was appointed as Junior Assistant in the pay scale of Rs. 75-150 vide Director Food and Supplies Jammu's

order issued under endorsement No. 7426-3119 dated 29.9.1972. The said grade i.e Rs. 75-150 was also revised to the new grade i.e Rs. 200-

320 by SRO No. 149 dated 7.4.1973, where under both the grades i.e Rs. 70-135 and Rs. 75-150 held by the Junior Assistants were clubbed in

the same pay scale of Rs. 200-320. Director Food and Supplies Jammu vide his letter No. 4925/G dated 28.8.1976 issued a tentative seniority

list of Storekeepers, Assistant Store-Keeper, and Junior Assistants working in the pay scale of Rs. 200-320 was circulated among the concerned

officials in which petitioner was shown at serial No. 78 where as name of the respondent No. 3 did not figure in this seniority list. The petitioner

made a representation and claimed that he should have been assigned a higher place higher than the private respondents. Then the Director Food

and Supplies, Jammu issued a seniority list in which one Bhajan Singh was reflected at serial No. 55, name of petitioner came to be reflected at

serial No. 104 where as respondent No. 3 Sat Pal Sharma was shown at serial No. 111. Respondent No. 3 SatPal Sharma represented against

the Final seniority list on the ground that he was appointed as Junior Assistant in September 1972 in the higher grade of Rs. 75-150 as compared

to Bhajan Singh and the petitioner Trilochan Nath who had appointed in the lower grade of Rs. 70-135. The Administrative department after

examining the representation of respondent No. 3 vide letter No. FK 981-E dated 14.8.1991 held that respondent No. 3 Satpal Sharma should

figure senior to Bhajan Singh as well as Trilochan Nath as he was holding higher scale at the time of his appointment and accordingly the Director

Food and Supplies Jammu changed his seniority No. 111 to 31-A in the final seniority list vide letter dated 22.3.1983. Respondent No. 3 Satpal

Sharma was subsequently promoted as Senior Assistant vide Director Food and Supplies Jammu's Order No. 179-FST of 1983 dated

16.9.1983. Aggrieved by the alteration of the seniority, petitioner along with said Bhajan Singh filed writ petitions No. 683/1983 and 745/1983

challenging the revised seniority position of respondent No. 3 Satpal Sharma and his promotion to the post of Senior Assistant. The writ petition

No. 683 of 1983 filed by the petitioner was disposed of by the Learned Single Judge of this Court by his order dated 9.12.1988 in the following

terms:

In the light of the above noted findings the petition succeeds to the extent indicted in the preceding paragraph with directions to the respondents 1

and 1-A, the State of Jammu and Kashmir to dispose of the representations of the petitioner dated September 2, 1982 and September 30, 1982

within four months and if in accordance with the decision the petitioner's seniority is improved he shall be considered for promotion for the post of

Senior Assistant, if not otherwise disqualified and not already promoted.

3. When the order of the Court was not complied with the petitioner filed a contempt petition in this court, which came to disposed of by a

Learned Single Judge of this Court vide his order-dated 18.9.1991, with the following directions:

the respondents shall re-submit the entire case to the law department of the State Government and the law secretary shall personally examine the

case file in the light of the judgment of this court and the rules applicable on the subject and record his personal opinion with reference to the

reasons, which he shall assign in support of his said opinion. This reasoned opinion of the law secretary shall accordingly be forwarded to the

concerned administrative department which based on this opinion and other material shall pass a speaking order disposing of the representation of

the petitioners as directed by this Court in the judgment aforesaid.

4. The Law secretary examined the matter and opined as follows:

Before the endorsement of the Jammu and Kashmir Pay Rules, 1973 applicable to the State Services, there were two grades available to

clerks/junior Assistant namely Rs. 70-135 and 75-150 even though the clause and category of these officials was the same. In view of the

differences in their grade separate seniority list for two-difference grade were required to, be maintained under Rule 24 of the Jammu and Kashmir,

Civil Service (Classification, Control and Appeal) Rules, 1956. It is not clear as to whether such a practices of framing two separate seniority lists

were maintained in the Department or not. However, when the aforesaid Pay Rules of 1973 came to be enforced the two grades were clubbed

together bringing the entire class of junior Assistants/Clerks under one grade Rs.

200-320. By clubbing superior grade of Rs. 75-150 with a lesser grade it was the former class of officials who have been put to disadvantage by the clubbing of the two grade and not the ones who are not clamoring for marching ahead of them on the basis of their length of service from the date of their initial appointment in the lower grade. The contention of the official in the inferior grade that they should steel a march after they were clubbed with those who were initially holding the superior grades is not based on any sound footing. There also does not seem to any logic behind the claim raised by them in their representations etc. In deed the official who was holding superior grade should figure ahead of the one who was holding an inferior grade at the time two grades were clubbed together at a subsequent date notwithstanding the difference in their length of service.

5. The Government in view of the aforesaid opinion of the law secretary by its order No. 49-FS of 1992 dated 5.8.1992 rejected the representation filed by the petitioner and one Bhajan Singh.

6. The case of the petitioner projected in the writ petition is that he is senior to respondent No. 3 as well as other respondents but has wrongly been shown junior to them. As regard to other private respondents except respondent No. 3 learned counsel for the petitioner has not been able to

show as to when they were appointed or in what grade they were appointed, therefore he has restricted his challenge of seniority to respondent

No. 3 Satpal Sharma alone. As regard respondent No. 3 Satpal Sharma indisputably he was appointed as junior assistant on 29.9.1972 in the

grade of 75-150 where as the petitioner had come to be appointed as junior assistant in the pay scale of 70-135 a lower grade then that of

respondent No. 3 w.e.f 26.3.1971. It is also not disputed that both the grade came to be clubbed in a single grade of Rs. 200-320 under SRO

149 dated 7.4.1973, through which rules called Civil Service (Revised Pay) Rules 1973, came into force. These rules were made retrospective as

Sub-rule 2 of Rule 1 declared that these rules shall be deem to have came into force with effect from 1.7.1972. Accord-ingly as the petitioner was

in service on that date i.e. 1.7.1972 he entered the grade of 200-320 on 1.7.72 where as respondent No. 3, as he had joined service on 29.9.72

could enter the grade only on that date i.e 29.9.1972. Thus the petitioner was to

be ranked senior as compared to respondent No. 3 as for the purposes of the said grade he was to be deemed to have been appointed on 1.7.1972 whereas respondent No. 3 could be deemed to have been appointed on 29.9.1972. Contrary to this ground position the law secretary opined that respondent No. 3 Satpal Sharma was senior to the petitioner because he was in the higher grade of 75-150 when the petitioner was in the lower grade of 70-135 at the time when clubbing of both the grades took place under revised Pay Rules of 1973, therefore it was former class of officials of the higher grade who has been put to disadvantages position and not the ones who were clamoring for marching ahead of them in the ground of length of service from the date of initial appointment in the lower grade. The opinion of the law secretary ex-facie was not correct. With the clubbing of both the grades i.e. 70-135 and 75-150 into a single grade of Rs. 200-320, the officials of both the grades formed the same class of officials and their seniority inter-se was to be determined by having regard to their date of entry into the common grade of Rs. 200-320, in terms of Rule 24 of CCA Rules. Although the petitioner was in the lower grade and the respondent in the higher grade but by clubbing the grades both of them came at par. The revision of pay scales took place on 1.7.1972 the petitioner became entitled to the grade of 200-320 from that date, whereas respondent No. 3 who was not in service could not be entitled to that grade w.e.f 1.7.1972 as he was appointed only on 29.9.1972, therefore he entered the grade from that date i.e. 29.9.1972.

7. Rule 24 of Classification Control and appeal rules 1976 provides that the seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be. In this view of the matter the claim of the petitioner that he is senior to respondent No. 3 has to be upheld.

8. As respondent No. 3 was promoted to the post of Senior Assistant w.e.f 16.9.1983 under Govt. No. 178-FSJ of 1983 dated 16.9.1983 when in his place the petitioner ought to have been promoted to the said post.

9. Therefore the writ petition of the petitioner is allowed. Govt. Order No. 49-FS

5.8.1992 is quashed and respondents are directed to promote the petitioner from the date when promotion was accorded to his junior i.e. respondent No. 3 Satpal Sharma. As the petitioner stands already promoted, therefore he shall be granted notional promotion with all the consequential benefits w.e.f 16.9.1983 the date on which respondent No. 3 was promoted. The promotion of respondent No. 3 is not being quashed as it is not deemed equitable and especially when he is reported to have already superannuated.