

Jammu & Kashmir High Court

Syed Mohammad Ashraf vs State Of J And K And Ors. on 17 February, 2005

Equivalent citations: 2005 (2) JKJ 504

Author: Y Nargotra

Bench: Y Nargotra

JUDGMENT Y.P. Nargotra, J.

1. The petitioner was appointed on 7.11.1984 as Field Operator in the department of Wild Life Protection for a period of three months against the available vacancy of one Abdul Majid Allaie by order No. 190 of 1984-85 dated: 5.3.1985 passed by Chief Wild Life Warden, J&K Government. The petitioner was allowed to continue on the said post till further orders from the date of expiry of previous order subject to the active duty certificate of Range Officer. At the time of appointment of the petitioner, admittedly there were no recruitment rules existing for regulating and making appointments in the department. It is only by issuance of SRO 469 dated: 21.11.1985, rules called, Jammu & Kashmir Wild Life Protection Subordinate Service Rules, 1985 came to be framed. After framing of the Rules, the Government by its order No. 138-FST-GR of 1990 dated: 27.7.1990 accorded the sanction for creation of the following posts under the plan schemes of the Department during the current financial year:

"Sanction is hereby accorded to the:

(A) Creation of the following posts under the plan scheme of the Wild Life Department during the current financial year.

Designation of the post.	Grade Rs.	No. of Posts
I. Research survey and census.		
Direction office.		
1. Wildlife warden	1900-3200	one
2. Storekeeper	900-1830	one
3. Section Officer	1550-550	one
4. P.A cum stenographer	1550-2250	one
II. Small and Big Game reserves.		
1. Range Officer Grade II	1235-2325	six
2. Forester	1150-1410	eight
3. Madehs	830-910	five

4. Cameraman	1150-2050	one
5. Project Operator	1075-1735	one
6. Guards	800-1400	thirty
III. Wetland and Reserves.		
1. Range Officer Gratde-I	1550-2550	four
2. Range Officer Grade-II	1235-2325	two
3. Foresters	1150-1910	six
4. Guards	800-1400	thirty
IV. National Parks/Sanctuaries.		
1. Asstt. Engineer (Civil)	2000-3500	one
2. Sectional Officer -do-	1300-2550	one
3. Draftsman	1200-2170	one
4. Junior Asstt. (Typist)	800-1500	one
V. Wildlife Warden Office.		
1. Wild Life Warden	2900-3200	four
2. Head clerk/Accountant	1150-2050	three
3. Orderlies	830-940	three
4. Junior Asstt. (Typist)	900-1500	three
5. Driver	900-1830	two

(B) Purchase of one publicity van for the Chief Wildlife Warden.

(C) Purchase of one jeep by replacement to old one by the Chief Wildlife Warden.

The life of the posts will be upto March, 1991 agreed by the Planning and Finance Department and conveyed vide their U.O. No. PD-501/88-89/Forest dated: 18.6.1990 and U.O. No. PS-13/FFst-88 dated, 10.7.1990 respectively.

The above creations will be subject to the conditions as indicated in Annexure "A" to this order.

These issues with the joint agreement of Planning and Development Departments O.M. No. 501/88-89/Forests dated: 12.12.1989 By order of the Governor."

2. By order dated: 30.12.1992 issued by the Chief Wild Life Warden, the petitioner was allowed to function as Camera-man in his own pay and grade subject to the rectification of departmental promotion Committee. The petitioner was allowed to draw charge allowance in the pay scale of Rs. 1400-2600 by order No. 24 of 93-94 dated: 13.10.1993. Thereafter vide order dated: 10.10.1994 being order No. 44 of 94-95 of Chief Wild Life Warden, the promotion of the petitioner as Camera-man vide order No. 24 of 93-94 dated: 13.10.1993 was regularized with immediate effect i.e. 10.10.1994. This order was however partially modified by order dated: 1.7.1995 being order No. 24 of 95-96 and thereby instead of regularizing the services of the petitioner with immediate effect, it was ordered that regularization shall be from the date he has actually been officiating on the post of Camera-man. Thus with effect from 13.12.1992 he stood regularized from that date on the said post and even till date he continues to hold the said post, meaning thereby that for the last more than 15 years he has been stagnating on the said post without being considered for any functional promotion to any higher post.

3. The grievance of the petitioner is that he has been stagnating on the said post, so in the first place he should be accorded benefit of insitu promotion under SRO 14 of 1996. He is also claiming the relief of issuance of an appropriate writ including the writ of mandamus to the respondents for directing them to provide avenues of further promotion within the service for the post of Camera-man or in the alternative to treat the post of Camera-man equivalent to the post of Wild Life Forester which is of the same grade and consider him for promotion to the next higher post.

4. The stand of the respondents is that there is only one post of Camera-man borne on the sanctioned strength of the department which is being held by the petitioner but he is not entitled to any promotion to the higher post in view of the rule position. So far as his stagnation is concerned, his case for granting the benefit under SRO 14 of 1994 is under consideration.

5. I have heard learned counsel for the parties and perused the record of the case thoroughly.

6. The post of Cameraman is a non-gazetted post. The recruitment rules of 1985 do not provide for the said post on the cadre strength of the service. Rule 4 of 1985 rules provides for enlargement of the cadre. It reads:

"4. Strength and composition of service: - The authorized permanent and temporary strength of the cadre and the nature of the posts included therein shall be determined by the Government from time to time and shall at the initial constitution of the service under these rules, be such as specified in the schedule 'T':

Provided that the Government may create temporary posts in the cadre of service for specified period as may be considered necessary from time to time.

(2) The Government shall, at the interval of every three years or at such other intervals as may be necessary re-examine the strength and composition of the cadre of the service and make such alterations therein as it deems fit;

Provided that nothing in this sub-rule shall be deemed to affect the power of the Government to alter the strength and composition of the cadre at any time."

7. Rule 4 thus saves the power of the Government to determine as to what should be the permanent and temporary strength of the cadre and nature of posts and at the same time confers power upon the Government for creating temporary posts in the cadre of the service for specified period. Sub-Rule (2) of Rule 4 enjoins upon the Government to re-examine the strength and composition of the cadre of service and make necessary alteration at the interval of every three years. Provisio to this rule further saves the residuary power of the Government to alter strength and composition of the cadre at anytime.

8. Thus the Government possesses wide powers for altering the cadre strength and the composition of the cadre by creating new posts on the establishment of the service. In exercise of the said power, the Government has created more posts including the post of Cameraman by its order dated: 27.7.1990 (supra). The posts created though were for a period upto 31.3.1991 but even after the expiry of more than 15 years continue to remain on the cadre of the service an it is not the stand of the Government that the posts are temporary intended to be wound up. To the contrary regarding the post of Cameraman, it is its admitted stand that there is only one post of Cameraman borne on the sanctioned strength of the department. The post of a Cameraman in view of the above position cannot be treated to be post for a specified period. The posts created subsequent to the coming into force of the Rules 1985 have altered the cadre strength and composition of the service. Some of the posts so created are in the gazetted cadre; some are in the non-gazetted cadre while some are in ministerial strength of the service. The post of Cameraman is in the non-gazetted cadre which earlier to the commencement of Rules of 1985 did not exist in the composition of the cadre. By creation of the said post, the composition of the cadre of the service has been changed. While changing the composition by the post of Cameraman no avenue for promotion has been provided for the holder of the post. Resultantly the petitioner has been stagnating in the same grade and this apart there are no promotional avenues for him. It is an admitted fact that most of the posts newly created have found place in the Rules of 1985 with promotional avenues except the post of Cameraman.

9. During the course of hearing Mr. Shah has submitted that grievance of the petitioner for extending the benefit of SRO 14 on account of stagnation of the petitioner stands re-dressed. With regard to promotional avenues, he contends under service jurisprudence a person who holds a public post cannot be allowed to be kept frozen and insolated on the same post indefinitely till he retires. He is entitled to be provided with promotional avenues, keeping in view his interest as well as the interest of efficiency of the service.

10. Per contra Mr. Khan, learned counsel for the respondents submits that as there is no provision in the Rules of 1985 for providing promotion to the holder of the post of Cameraman, therefore,

petitioner is not entitled to claim promotion.

11. I am not in agreement with Mr. Khan. The public employment is created by the Government for efficient and effective governance by the State in which lies the interest of the public at large.

12. Optimal level of efficiency in public service cannot be achieved if there is dissatisfaction and service frustration in the government employees holding the public post. To maintain efficiency in service it is necessary that every employee should get in time what is due to him under law. That is to say, if an employee holding a post in public service is due for promotion under the service rules governing him, he should be considered for the same immediately on the promotional vacancy becoming available. However in a situation like in the present case, the question arises whether the employee holding a post for which rules of service do not provide for promotional avenues, has a right to ask for promotion.

13. In my opinion right of promotion flows from right of equal opportunity in matters relating to employment or appointment to a post in public service guaranteed under Article 16 of the Constitution. Holding of a public post in public service carries with it right to be paid for fairly for the service rendered. With the efficient working an employee earns periodic increments and functional promotions. Stagnation at the same grade and at the same post affects his efficiency which in turn affects the efficiency of the service itself proving detrimental to the public interest. The government for removing stagnation in non-gazetted service has framed rules for giving higher grades to the employees stagnating at the same grade for the stipulated years. These rules are not substitute for functional/regular promotion in view of the provisions contained in Rule 11 of SRO 14 of 1996, the promotion (insitu) to higher standard scale can be made against the existing post during the period of such appointment by treating the post as that of the relevant higher standard scale till it is vacated by the concerned employee by way of normal promotion or retirement etc. It is necessary for the government to create reasonable promotional opportunities for every wing of public service. In the case titled Raghunath Prasad Singh v. Secretary Home (Police) Department, Government of Bihar and Ors., , their lordships observed:

"Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to service properly."

With these observations their lordships in that case directed State of Bihar to provide at least two promotional opportunities to the Officers of the State police in the wireless Organization within six months by appropriate amendment of Rules. Their lordships further observed that in case State of Bihar fails to comply, with this direction, it should within two months thereafter, give a fresh opportunity to personnel in the police wireless organization to exercise option to revert to the general cadre and that benefit should be extended to every one in the wireless organization.

14. In the case titled Jagannadha Rao and Ors. v. State of A.P. reported in AIR 2002 SWC 77, while dealing with the question of stagnation their Lordships observed:

"Notwithstanding our aforesaid conclusion, it would be in the interest of the administration to have a channel of promotion for every service so as to avoid stagnation at a particular level. Subject however to the condition that the incumbent of service or otherwise qualified to shoulder the responsibilities of the higher promotional post. The appropriate authority of the Government, therefore, should bear this in mind and consider the feasibility and desirability of continuing the supernumerary posts already created in Boilers and Factories Department on a permanent basis, so that the employees from the flower echelon in the said department have a promotional channel or to make suitable promotional avenue at least up to some level, so that their would not be any discontentment amongst the employees in the concerned department."

15. Merely because the service rules do not provide for promotional avenues to the petitioner, the petitioner cannot be denied of his right to be considered for promotion. Rules can be amended but the right of the petitioner to be considered for promotion by providing promotional avenues cannot be defeated. In this view of the position, this writ petition is allowed. The State/respondents are directed to provide for promotional avenues for the post of Cameraman by amending the Jammu and Kashmir Wild Life (Protection) Subordinate Service Rules, 1985 and consider the petitioner for promotion or in the alternative, since the post of Cameraman carries the same grade which is carried by the post of Wild Life Forester covered by the service rules of 1985 to treat the post of Cameraman equivalent to the post of Wild Life Forester and consider the petitioner for promotion to the higher post in the same manner in which the holder of the post of Wild Life Forester is considered under the Rules. This shall be done within a period of four months from today.