

HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT JAMMU

Reserved on :06.04.2023
Pronounced on:12.05.2023.

WP(C) No. 587/2022

Phalel Singh Jamwal

..... Petitioner(s)...

Through:-Mr. Rahul Pant, Sr. Advocate
Ms. Arushi Shukla, Advocate

Vs.

High Court of Jammu & Kashmir and Ladakh
at Jammu Th.Registrar General and others

.....Respondent(s)...

Through:- Mr. Vishal Sharma, DSGI .

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

TASHI RABSTAN-J

1. Petitioner in the present petition has prayed for quashing the communication issued by the respondent no. 3 bearing No. PNRJ-4/C-5/2021-22/1354-55 dated 23.12.2021, whereby respondent nos. 2 and 3

refused to re-fix the pensionary benefits of the petitioner in terms of the notional promotion granted to him by the High Court vide order dated 24.11.2020. Petitioner has further prayed for issuance of writ of mandamus commanding the respondents to compute his pensionary benefits taking into account his pay after his promotion as Additional Registrar-cum-Bench Secretary in Pay Level-13 (1,23,100-2,15,900) w.e.f 01.05.2020.

2. The petitioner's contention is that he retired from service on 31.07.2020 during the pandemic from the post of Joint Registrar-cum-Bench Secretary in Pay Level-12. After his retirement, promotions were made by the respondent no.1 to the post of Additional Registrar-cum-Bench Secretary in Pay Level-13 vide order no.477 dated 16.10.2020 whereby one Shri Baldev Raj, Joint Registrar-cum-Bench Secretary, who was junior to him, was promoted as Additional Registrar-cum-Bench Secretary in the Pay Level-13 notionally from 01.05.2020 and monetarily from the date of order. It is further contended that because of the pandemic, there was delay in finalizing the promotions to the post of Additional Secretary-cum-Bench Secretary and during this period the petitioner retired from the service on 31.07.2020. A representation was submitted by the petitioner before the competent authority for accord of promotion in his favour from the date, his junior had been promoted notionally, i.e., 01.05.2020 because on the said date the petitioner was in service and, as such, could not have been ignored for promotion. The said representation of the petitioner was accepted and vide order no. 578 dated 24.11.2020, the petitioner was also promoted as Additional Registrar-cum-Bench Secretary in Pay Level-13 (1,23,100-

2,15,900) notionally from 01.05.2020 for pensionary benefits and consequently pay of the petitioner was re-fixed notionally from the date he had been granted the promotion, i.e., 01.05.2020. Vide letter no.48639/RG/GS dated 17.11.2021, the case of the petitioner was forwarded to the office of the respondent no.3 to re-fix his pension in the pay-scale i.e. Pay Level-13 by taking Rs.1,23,100 as last pay so that no monetary loss is caused to the pensioner-petitioner. However, the Respondent no.3 vide communication impugned dated 23.12.2021 refused to re-fix the pension of the petitioner as per the revised pay scale on the ground that the petitioner was promoted notionally w.e.f. 01.05.2020 so he was not entitled to fixation of the pensionary benefits on the basis of notional pay and reliance was placed on Note-3 below Article 242 of the J&K CSR Volume-1. Hence, the present writ petition.

3. The short controversy involved in the present petition is as to whether the petitioner is entitled to pensionary benefits in terms of the promotion order dated 24.11.2020, passed by the respondent no.1 or not.

4. In support of his arguments, learned counsel for the petitioner has relied upon the judgment dated 12.09.2014 passed in case titled **Jasbir Singh Gill Vs. Union of India (WP(c) No. 947/2013)** by Delhi High Court as also upon the judgment dated 14.07.2017 titled **Shri Krishna Kumar Sharma Vs. State and others** passed in **WP No. 4945/2009** by the Gauhati High Court.

5. Respondents 2 and 3 filed objections contending therein that the pay of the petitioner was fixed by his department notionally in the Pay

Level-13 @ Rs.1,23,100/- with effect from 01.05.2020 which was not actually received by him. Thus, the pensionary benefits were allowed on the basis of pay @ Rs.1,15,800 in the Pay Level-12 (actually drawn by him) in accordance to the Note-3 below Article-242 of J&K CSR, Volume-1 which clearly mentions that pay actually received has to be taken into account for the calculation of pension and other allied benefits. Therefore, it is contended on behalf of respondents 2 and 3 that the communication impugned dated 23.12.2021 issued by the answering respondents is based on Note-3 below Article-242 of J&K CSR, Volume-1.

6. Heard learned counsel for the parties and perused the record.

7. It appears that the order dated 24.11.2020 passed by the High Court was quite clear in so far as grant of notional promotion from 01.05.2020 is concerned as it contained a categorical stipulation that the said order was issued for the pensionary benefits. The notional promotion was granted to the petitioner from a date while he was in service and discharging his duties in the High Court. Notional promotion whenever granted to an employee, it simply denies the monetary benefit of salary from the period the notional promotion is granted, but, for the purposes of seniority and fixation of pay, his said date of notional promotion is taken into account and this is exactly how the respondent no.1 vide communication dated 10.12.2020 re-fixed the pay of the petitioner at the time of his retirement and the same was forwarded to the respondent no.3 for re-fixation of the pension of the petitioner.

8. In order to deny the claim of the petitioner, respondents No.2 and 3 have relied upon Note-3 below Article 242 of the J&K CSR Volume-1 which reads as under:-

“Excepting as provided in notes 1 and 2 above, only emoluments actually received can be included in the calculation. For example, when an officer is allowed to count the time retrospectively towards increase of pay, but does not receive retrospectively the intermediate periodical increments, these intermediate increments should not be reckoned in the calculations.”

9. Note relied upon by the respondents no. 2 and 3 is not at all applicable to the present case as in the instant case the promotion has been granted to the petitioner retrospectively and it is on account of his promotion that his salary has been re-fixed. As such, on the date of his retirement his actual salary would be the salary which was fixed after his notional promotion w.e.f 01.05.2020.

10. The others who were in service and continued in service even after 01.05.2020 were granted the salary which was fixed on notional basis w.e.f 01.05.2020. Although, the actual salary for the period of notional promotion was denied yet for the purpose of fixation of pay the date of notional promotion is taken into account.

11. Similarly, in the case of petitioner his date of notional promotion is also to be taken into account for the purpose of fixation of his salary and salary of the petitioner against the promoted post has been fixed w.e.f.

01.05.2020. On the date of his retirement the actual pay of the petitioner is the pay fixed after the promotion of the petitioner w.e.f. 01.05.2020.

12. The Note which has been relied upon does not cover the aforesaid eventuality. This is not a case where the officer is allowed to count time retrospectively towards the increase of pay. This is not a case of intermediate increments, but, this is a case of substantive promotion of an employee against the higher post. The very purpose of grant of notional promotion is defeated in case the same is not taken into account for the purpose of fixation of the pensionary benefits.

13. The stand taken by the respondent is unsustainable and Note-3 relied upon by the respondents has no applicability in the case where promotion is granted retrospectively for the simple reason that once the competent authority has decided to grant the benefit to the petitioner, respondents 2 and 3 cannot object to the same by relying upon a Note which has no application to the case of the petitioner. The petitioner is, therefore, entitled to re-fixation of his pension keeping in view the notional promotion granted to him as Additional Registrar-cum-Bench Secretary in Pay Level-13 (1,23,100-2,15,900) notionally w.e.f 01.05.2020.

14. Considering the facts and circumstances discussed above, this petition is allowed. The communication No. PNRJ-4/C-5/2021-22/1354-55 dated 23.12.2021 whereby respondents 2 and 3 have refused to re-fix the pensionary benefits of the petitioner in terms of the notional promotion granted to the petitioner vide High Court Order No.578 dated 24.11.2020, is quashed. The respondents are directed to compute the pensionary benefits of the

petitioner after taking into account the pay of the petitioner after his promotion as Additional Registrar-cum-Bench Secretary in Pay Level-13 (Rs. 123100-215900) w.e.f. 01.05.2020 and release the arrears of pensionary benefits on account of the revision of the pensionary benefits within a period of eight weeks from the date a copy of this order is served upon them.

15. Disposed of as above along with connected CM(s).

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Jammu
12.05.2023
(Madan-PS)

Whether the order is reportable : Yes/No.

