

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 21.12.2023
Pronounced on 31.01.2024**

**WP(C) No.1052/2022
CM No.3163/2022**

Abdul Rashid Zargar, Age 58 yrs,
S/o Sh. Abdul Subhan Zargar,
R/o Village Gundow, Tehsil Chilypingal,
District Doda.

.....Petitioner

Through: Mr. Rahul Pant, Sr. Advocate, with Mr.
Dhruv Pant, Advocate.

versus

1. Union Territory of Jammu & Kashmir,
through Commissioner/Secretary to
Government,
Department of Food, Civil Supplies &
Consumer Affairs,
Government of Jammu & Kashmir,
Civil Secretariat, Jammu

2. Director,
Food Civil Supplies & Consumer Affairs,
Near Nehru Market, Warehouse,
Jammu

.....Respondent(s)

Through: Mr. Mohd. Irfan Inqlabi, GA.

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

JUDGMENT

Tashi Rabstan - J

1. The instant petition has been filed against the order dated 21.01.2022 passed by the Central Administrative Tribunal, Jammu Bench, Jammu in O.A. No.61/190/2021, whereby the learned Tribunal, while allowing the O.A., has directed the respondents to release the arrears on account of entitlement to the

financial benefits with effect from 01.01.1995 in favour of the petitioner within a period of three months from the date of receipt of the order. It was further directed that in case the payment is not released within the stipulated period, the same shall be payable along with interest @ 6% per annum.

2. The facts-in-brief, as gathered from the file, are that the petitioner being a matric pass was appointed as a Class IV employee (Chowkidar) on 02.07.1985 in the Department of Food, Civil Supplies & Consumer Affairs. After his appointment as such, he continued to discharge his duties on the same post on substantive basis, but was not granted even a single promotion in his entire service career of 36 years. It is averred that he was eligible to be promoted against the post of Junior Assistant/Junior Clerk/Storekeeper/Assistant Store Keeper/Depot Assistant. As per Jammu & Kashmir Food and Supplies (Subordinate) Service Recruitment Rules, 1972, 75% of the posts of Junior Clerks/Storekeeper etc. were required to be filled up by promotion from Class IV and 25% by direct recruitment. Accordingly, on the basis of seniority and qualification, 192 Class IV employees, who were recruited in 1986 or before, were notionally promoted as Junior Assistants/Salesmen-cum-Storekeepers with effect from 03.12.1993 vide Order No.87-CAPD of 2009 dated 03.01.2009. They were given the effect of promotion notionally with effect from 03.12.1993, i.e., the date from which their counterparts in Kashmir Division were up-graded/promoted. However, as per Annexure "B" to the said order, 15 officials including the petitioner herein, who has been shown to have joined the services on 02.07.1985, were not cleared for up-gradation/promotion for want of certain codal requirements and it was stated that their names would be included at the appropriate place in the seniority list after issuance of their up-gradation/promotion orders. It is also the

case of petitioner that otherwise too his services were being utilized as Incharge Storekeeper with effect from 1986.

3. As per the case set up by the petitioner, the Class-IV employees, who were far junior to the petitioner but promoted as Junior Assistants/Salesman, again vide Order No.193-DFC S&CAJ of 2018 dated 09.08.2018 came to be promoted as Senior Assistants/Storekeepers in the higher pay scale retrospectively. However, the case of petitioner was not considered at all despite his being repeatedly representing the respondents. The respondents only vide Order No.75-DCAPDJ of 2016 dated 19.03.2016 posted the petitioner as Incharge Storekeeper, Food Store Changa in his own pay and grade without any benefit of substantive promotion.

4. The further case of petitioner is that since he was not granted any substantive promotion, as such respondents decided to grant him in-situ promotion, as such vide Order No.241-DFCS&CAJ of 2020 dated 20.10.2020 the respondents accorded him three in-situ promotions on completion of 9 years, 18 years and 27 years of service. These in-situ promotions were granted to the petitioner notionally only and monetary benefit was accorded to him only from the date of order, i.e., 20.10.2020. It is averred that the aforesaid approach adopted by the respondents was absolutely illegal and arbitrary as the petitioner was entitled to be promoted on substantive basis from the dates his juniors had been promoted.

5. When nothing happened even after filing of number of representations, the petitioner filed O.A. No.61/190/2021 before the Central Administrative Tribunal, Jammu Bench, Jammu seeking the following reliefs:

- i) Direct the respondents to upgrade/promote the applicant as Junior Assistant retrospectively w.e.f. the date the juniors of the applicant were granted the said benefit i.e. w.e.f. 03.12.1993 with all consequential benefits including further promotions to the next higher post.
- ii) Direct the respondents to promote the applicant as Senior Assistant retrospectively w.e.f. the date his juniors have been granted the said benefit i.e. w.e.f. 17.08.2013 with all consequential benefits.
- iii) Direct the respondents to grant In-situ promotions to the applicant retrospectively w.e.f. the date same became due to the applicant with monetary benefits.
- iv) Quash the order No.241-DFCS&CAJ of 2020 dated 20.10.2020 to the extent benefit of in-situ promotions has been granted to the applicant notionally w.e.f. 01.01.1995.
- v) Direct the respondents to grant the benefit of all the three in-situ promotions monetary w.e.f. 01.01.1995.
- vi) Any other relief this Hon'ble Court may deem fit and proper in the facts and circumstances of the case also grant in favour of the applicant and against the respondents.

6. The learned Central Administrative Tribunal vide order dated 21.01.2022 allowed the O.A., with a direction to the respondents to release the arrears on account of entitlement to the financial benefits with effect from 01.01.1995 in favour of the petitioner within a period of three months from the date of receipt of the order. It was further directed that in case the payment is not released within the stipulated period, the same shall be payable along with interest @ 6% per annum.

7. Besides the prayer for grant of in-situ promotions, the other prayer of petitioner before the learned Tribunal was to direct the respondents to upgrade/promote him as Junior Assistant with effect from the date his juniors were granted the said benefit, i.e., with effect from 03.12.1993 and, thereafter, Senior Assistant with effect from the date his juniors were granted the said benefit, i.e., with effect from 17.08.2013 with all consequential benefits. Since

the learned Tribunal vide order dated 21.01.2022 has only allowed the prayer relating to the grant of in-situ promotions and did not consider/deal with other prayers, as such, feeling aggrieved, the petitioner has filed the instant petition.

8. Learned counsel appearing for petitioner argued that although the learned Tribunal considered and allowed the alternative prayer of the petitioner but has failed to consider the main prayer, even a reference has not been made about the same in the order impugned. It was further argued that it was incumbent upon the learned Tribunal to decide the main relief first as the cause of action for the alternate prayer would have arisen only after the first/main prayer was decided one or the other way. He further argued that the learned Tribunal without recording the reasons for grant or rejection of his prayer has passed the order impugned, as such the same is against the principles of natural justice.

9. Learned counsel appearing for respondents argued that the petitioner raised the instant issues after a period of almost 24 years; as such the same are barred by delay and laches. Further, it was argued that the respondents were not having the knowledge of order dated 21.01.2022 as they did not receive the copy of said order. It was argued that had it been received, the order of learned Tribunal would have been challenged before this Court by now. Lastly, it was argued that since there were certain shortages against the petitioner, as such he was not entitled to any kind of relief as claimed in the petition.

10. Heard learned counsel appearing for the respective parties, considered their rival contentions and also perused the file.

11. It is not in dispute that the petitioner came to be appointed as a Class IV employee in July 1985. The respondents have also not denied that number of Class-IV employees, who were junior to the petitioner, came to be notionally promoted as Junior Assistants/Salesmen-cum-Storekeepers vide order dated 03.01.2009 and that they were given the effect of promotion with effect from 03.12.1993. It is also the admitted position that in the said order itself the respondents had specifically provided that the petitioner including some other employees could not be cleared for up-gradation/promotion for want of certain codal requirements, however, the order says that their names would be included at the appropriate place in the seniority list after issuance of their up-gradation/promotion orders; meaning thereby the petitioner too was to be promoted as such and his name was to be appropriately placed at the seniority list after completion of certain codal requirements by the department. However, the respondents had not mentioned what were those codal requirements. Nowhere in the said order was it mentioned that the petitioner or some other employees were dropped from promotion as there were certain allegations against them or there were alleged shortages in respect of petitioner herein.

12. It is very strange that even after passing off more than 15 years since the issuance of order dated 03.01.2009, the respondents have failed to complete those codal requirements, leaving no option for the petitioner, but to work on the same post on substantive basis for the last more than 38 years. Not only this, he has also been made to work under his juniors for the last more than 15 years since the issuance of order dated 03.01.2009. Even juniors to the petitioner have also been promoted as Senior Assistants and might be on the

next higher post too, but the petitioner has been made to sit on the same very post against which he had been appointed.

13. The stand taken by the respondents in not granting the in-situ promotions in time as also regular promotions to the petitioner is that there was alleged shortage against him. A perusal of the objections filed before the learned Tribunal reveals that the respondents in paragraph-3 of the factual matrix had averred that the petitioner was not granted 1st and 2nd in-situ promotion due to shortage; meaning thereby once the respondents themselves have granted him three in-situ promotions after completion of 9 years, 18 years and 27 years of service in October, 2020, it leads to the conclusion that the alleged shortage has already been fulfilled. Otherwise too, the respondents have also admitted in the *reply to the rejoinder* filed in November, 2023 that the petitioner has already remitted the amount on account of alleged shortage. Therefore, it was obligatory on the part of respondents to accord promotions to the petitioner too in terms of order dated 03.01.2009.

14. Further, a perusal of the file reveals that the Administrative Department vide Letter No.CA&PD/Estt/144/2005-Gen dated 29.12.2008 had specifically directed that in order to rectify the wrong and to meet the ends of justice, best could be to promote all the Class-IV employees recruited in 1986 or before maintaining their inter-se seniority as it was in the Class-IV Cadre; meaning thereby the Administrative Department had itself admitted that wrong had been committed by the Department and justice had not been done with the Class-IV employees by not promoting them to the post of Junior Assistants/Salesmen-cum-Storekeepers. However, when the order of promotion came to be issued on 03.01.2009, the petitioner could not be accorded promotion for want of

certain codal requirements. The respondents have failed to give any substantial or plausible reason in not granting substantive promotions to the petitioner on the next higher posts; neither in the order 03.01.2009 nor in the pleadings before the learned Tribunal or before this Court and, perhaps, that is why the respondents always avoided to file para-wise reply/objections to the petitions – either before the learned Tribunal or before this Court, instead they opted to file usual reply, which too seems to be evasive in nature. The respondents, thus, cannot be expected to allege something out of the context of order dated 03.01.2009. The doer in this case was the department itself. Once the department has failed to act for the last more than 15 years, the petitioner cannot be held responsible for the delay in approaching the department. The lapse, if any, was on the part of respondents themselves, therefore, they can be allowed to attribute delay on the part of petitioner herein, especially as regards non-granting of monetary benefits of in-situ promotion on the ground of delay and laches.

15. On one hand the respondents declined the in-situ promotions on the ground of alleged shortage and, on the other hand, they allowed the same notionally on completion of 9 years, 18 years and 27 years of service and monetary benefit was accorded to him only from 20.10.2020. Once, as alleged, as there was delay of 24 years on the part of petitioner herein, as such his claim was barred in terms of Rule 2.4(i) and 2.4(iii) of the Jammu and Kashmir Financial Code Vol-1, then how the respondents in October 2020 accorded him in-situ promotions; meaning thereby there was in-action on the part of respondents themselves, as in the year 1995 itself the respondents had found the petitioner entitled to the grant of 1st in-situ promotion with effect from 01.01.1995. Otherwise too, the financial benefits accruing on account of in-situ

promotions to a Class-IV employee cannot be said to be petty claim. Further, the respondents were otherwise under an obligation to grant in-situ promotions to the petitioner monetarily from the date the same became due to him. Therefore, the approach adopted by the respondents is totally illegal and violates the fundamental right of the petitioner to seek consideration for promotion to the post of Junior Assistant and Senior Assistant subsequently. The petitioner has been discriminated against for the purposes of promotion, whereas in respect of one Mr. Mangat Ram, against whom also shortages had been alleged, has already been given promotions. Further, the idea of grant of in-situ promotion on notional basis is totally illegal and arbitrary, as in terms of the scheme of the rules issued vide SRO 14 of 1996, the petitioner was entitled to all the monetary benefits with effect from the dates of such in-situ promotions and it can never be on notional basis.

16. Even the respondents did not challenge the order dated 21.01.2022 passed by the learned Tribunal in O.A. No.61/190/2021; meaning thereby the respondents have accepted the said order, thus, the same has already attained finality. It was averred by the respondents that since they did not receive the copy of the order of learned Tribunal, that is why they did not challenge the same.

17. A perusal of the order dated 21.01.2022 passed by the learned Tribunal reveals that the same was kept reserved in presence of one Mr. Sudesh Magotra, learned Dy.A.G. for Union Territory of J&K, therefore, the respondents cannot be allowed to escape merely by claiming that they were not in knowledge of order dated 21.02.2022 or that the same was not received by them. Otherwise too, the copy of the instant petition along with copy of order

dated 21.01.2022 was received by the Office of Advocate General as well as by the Government Advocate on 28.04.2022. The respondents filed objection to the instant petition in January 2023, thus, what prevented the respondents in not challenging the order of learned Tribunal for the last more than twenty months. The fact of the matter is that the respondents fully know that they were wrong in not granting the in-situ promotions as well as regular/substantive promotions to the petitioner on the analogy of his juniors and that is why they did not opt to challenge the order dated 21.01.2022 of learned CAT.

18. Therefore, in view of what has been discussed above, we deem it proper to allow the petition. Accordingly, the same is allowed. The order of learned Tribunal is modified with a direction to the respondents to consider the case of petitioner for giving him promotions to the post of Junior Assistants/Salesmen-cum-Storekeepers and Senior Assistants/Storekeepers or any other higher post from the date his juniors came to be promoted as such, thereby maintaining his inter-se seniority. It is made clear that the petitioner shall be entitled to all consequential benefits. The petitioner shall also be entitled to in-situ promotion(s), whichever is due to him under rules, with all monetary benefits from the date the same became due to him. Let this exercise be completed within a period of three months from today, failing which the payment/arrears shall be payable along with interest at the rate of 6% per annum from the date the same became due to the petitioner till its actual realization. Connected CM, accordingly, stands disposed of.

Jammu
31.01.2024
(Anil Sanhotra)

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No