

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1130/2010
CMP No.1582/2010

Date of Decision: 27.04.2011

Bizal Singh **vs.** **State of J&K and ors.**

CORAM:

Mr. Justice J.P.Singh.

Appearing counsel:

For the Petitioner (s) : Mr. Nirmal Kotwal, Advocate.

For the Respondent(s) : Mr. G.S.Thakur, Advocate for R-1 to 4.
Mrs. Deepika Mahajan, Advocate for R-5

- i) Whether approved for reporting in Press/Journal/Media : Yes/No

ii) Whether to be reported in Digest/Journal : Yes/No

The petitioner-Bizal Singh retired on superannuation from Government Service on October 31, 2009 when he was drawing salary in the pay scale of 3050-4910.

His pension case forwarded by the State Government to the Principal Accountant General, Jammu and Kashmir, Jammu was returned informing the Executive Engineer, Generation Division, PDC Udhampur that the award of one step higher pay scale of pay of Rs.410-700 to the petitioner vide Chief Engineer, Electric Maintenance & RE Wing, Jammu's Order No. CEJ/DPC-I/42 of 2004 dated 23.11.2004 was unauthorized and in violation of Rule 17-13 (1) of the Jammu and Kashmir Financial Code, in that, the stepping up was not sanctioned by the State Government and that action in terms of Rule 17-4 of

the Jammu and Kashmir Financial Code be initiated to recover the excess amount drawn by the Officer so that his claim for full and final pensionary benefits could be authorized in his favour.

The Principal Accountant General's Communication No. PNRJ-I/11013/1441-45 dated 30th March, 2010, referred to hereinabove, has been questioned by the petitioner seeking its quashing besides directing the Accountant General to release the retiral benefits including pension, gratuity taking into account the actual last pay drawn by him at the time of his retirement.

The case set up by the petitioner in the Writ Petition is that award of one step higher scale of pay was authorized and that deductions suggested by the Accountant General were impermissible. The Accountant General, in its Objections to the Petition has, reiterating its stand appearing in Communication of March 30, 2010, stated that the petitioner was not entitled to the fixation of his Pension and other Retiral benefits in the absence of State Government's specific authorization for award of one step higher pay scale.

In their Response to the Writ Petition, the State-respondents have not denied the petitioner's entitlement to the award of one step higher pay scale and rather justified the grant of one step higher grade promotion being Skilled Technician-III in the pay scale of 3050-4910 retrospectively w.e.f. 19th July, 1980. It is further stated that Jammu and Kashmir PDD (Subordinate Service) Recruitment Rules, 1981 were introduced

vide SRO 381 dated 26.08.1981 in terms whereof all promotions against available vacancies in the cadre and vacant posts were regulated by the DPC CE M&RE Wing, Jammu which had one member on the Committee from the Administrative Department of the Power Development Department.

In view of what has been stated by the State-respondents in their Response to the Writ Petition, it becomes clear that one of the members of the DPC being a person from the Administrative Department of the Power Development Department, the State Government is deemed to have agreed to the grant of one step higher pay scale to the petitioner along with other similarly situated Officers who were held entitled to the benefit of pay scale and pension on the basis thereof in terms of the law laid down by this Court in *Accountant General, Jammu and Kashmir Government, Jammu versus Kartar Chand and others*, where *while deciding several Letters Patent Appeals which included LPA (SWP) No. 189/06*, the recoveries sought to be initiated at the instance of the Accountant General were held impermissible.

The petitioner's case as to his entitlement to Pension and other Retiral benefits on the basis of award of one step higher pay scale, which he had been getting at the time of his retirement, having not been contested and rather acceded to by the State Government, is, therefore, covered by what was held

by this Court in Kartar Chand's case (supra), which for facility of reference is reproduced hereunder:-

"In view of clear instructions appended to Rule 77-B of Civil Service Regulation, it is incumbent upon every Administrative Department to obtain the prior approval of General Administrative Department before ordering stepping up of the pay of an employee under it. But, whether failure to obtain such prior approval, as a necessary consequence, would always render the order passed for stepping up the pay of an employee invalid? In our considered opinion it would not be so in every case. Where otherwise entitlement of an employee to the stepping up of his pay is not disputed by the Administrative Department or by the office of Accountant General, the order of stepping up of pay of such an employee would not be rendered invalid for being taken into account for the purposes of fixation of pension and gratuity the reason being that matter of obtaining prior approval is between the Administrative Department and General Administrative Department in which the employee has no role to play. By passing an order in violation of the mandate of the Government instructions appended to Rule 77-B, the officer concerned may be exposing himself to the departmental action, but it cannot *per se* affect the pensionary rights of an employee to which he is otherwise entitled. Therefore, where the right of an employee to have his pay stepped up is not in dispute, the fact of that before passing the order in that behalf by the competent authority, the prior approval of General Administrative Department has not been obtained would only be an irregularity and in such cases the Accountant General's office would not be justified in not sanctioning the pension, as per the stepped up pay of such an employee. However, where the stepping up of the pay of an employee is found to have been wrongly made by the Administrative Department, the failure to obtain such prior approval would be an illegality and in such like cases the Accountant General's Office would be justified in not accepting such an order as valid for the purposes of fixation of pension."

For all what has been said above, the Principal Accountant General (A&E), Jammu and Kashmir, Jammu's Communication No. PNRJ-I/1/11013/1441-45 dated 30th March, 2010 becomes unsustainable being in contravention of the law settled by this Court in Kartar Chand's case (supra) and is liable to be quashed holding the petitioner entitled to Pension and other Service benefits on the basis of the actual last pay drawn by him at the time of his retirement on superannuation.

This Petition, therefore, succeeds and is, accordingly, allowed quashing Principal Accountant General's Communication dated March 30, 2010.

A direction shall, therefore, issue to the State-respondents and the Accountant General to sanction the release of Pension and other Retiral benefits in favour of the petitioner within a period of eight weeks. In case, the Pension and other Retiral benefits were not released to the petitioner within the stipulated period, these will carry interest @ 6% per annum.

(J. P. Singh)
Judge

JAMMU
27.04.2011
Pawan Chopra