

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

SWP No. 2469/2002
IA No. 2276/2002

Pronounced on:- 8 .6.2020

Rajeev Kaw Petitioner(s)

Through:- Mr. P. N. Bhat, Advocate

V/s

State of J&K and othersRespondent(s)

Through:- Mr. S. S. Nanda, Sr. AAG

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Petitioner was appointed as Draftsman in the office of Srinagar Municipality, Kashmir on 20.05.1985. The petitioner alongwith other similarly situated persons migrated due to turmoil in the Valley, and he was duly registered as Migrant at Jammu, drawing leave salary.

02. The Executive Officer, Srinagar, circulated the tentative seniority list and as per the tentative seniority list, private respondent No. 4, who was junior to the petitioner, was promoted as Head Draftsman.

03. The grievance of the petitioner is that he is senior to respondent No. 4, as he was appointed as Draftsman on 20.05.1985, whereas private respondent was appointed only on 30.06.1996, therefore, he should have been considered for promotion to the post of Head Draftsman prior to respondent No. 4. The petitioner also places reliance on Government Order No. 362-GAD of 1992 dated 29.04.1992, which reads as under:-

“a) the employees who have migrated from Valley in the wake of the present situation and are getting leave salary, shall be considered for promotion by the respective D.P.C’s on the basis of their merit and seniority under the rules if they are eligible for promotion and the posts are available and are to be filled up. The requirement of APRs for the period of migration shall be dispensed with in their cases. The APRs prior to migration would, however, be duly considered.

b) Such of the migrant employees who are cleared by the D. P. C. for such promotions shall be entitled to the benefit of promotion only after joining their new places of posting against the posts on which they have been promoted.”

04. Petitioner, thus submits that he was not accorded any consideration in terms of the aforesaid government order for promotion to the post of Head Draftsman. It also submitted that he was ready and willing to work in Srinagar in case, he was granted promotion, but he was not given any option to do so. The promotion of respondent No. 4 without considering the petitioner is thus bad and *mala fide* and made for extraneous consideration, as such, the same is required to be set aside.

05. The respondent Nos. 2 & 3 in their objections have stated that respondent No. 4 alongwith others was considered for promotion as Head Draftsman, due to necessity, as the petitioner for more than a decade was not working physically in the institution. Thus, respondent No. 4 was appointed due to administrative necessity. The respondents submitted that they had sent a communication to the petitioner on 17.02.2003, wherein he was advised to report physically for duties so that his case could be considered and sorted out on the analogy of respondent

No. 4 and others, for promotion and adjustment as Head Draftsman. Since the petitioner has not reported for duty physically till date, therefore, his case for promotion could not be considered.

06. The respondents have admitted, that petitioner is senior to respondent No. 4. They also submitted that they were willing to consider the petitioner for promotion, but since he had not reported physically for duty at Srinagar, therefore, he was not considered for the same in terms of Government Order No. 362-GAD of 1992 dated 29.04.1992.

07. A perusal of the communication dated 17.02.2003 which was sent to the petitioner for reporting on duty reveals that it was sent after the writ petition was filed, whereas, Government Order No. 362-GAD of 1992 dated 29.04.1992 clearly states that the employees, who have migrated from the Valley in the wake of the present situation would be considered for promotion on the basis of their merit and seniority. If they are cleared by the DPC for such promotion, they shall be entitled to benefit of promotion only after joining their new places of posting against the posts which they have been promoted.

08. The respondents have not considered the petitioner for promotion, therefore, the plea that he has not reported physically for consideration of promotion, is not available to them. It is only after his promotion by Departmental Promotion Committee, he would be entitled to benefit of promotion only, if he joins the new place of posting. The petitioner, thus, despite being senior has right to be considered for promotion to the post of Head Draftsman.

09. In view of the aforesaid, this petition is allowed. Respondents are directed to consider the petitioner for promotion in

terms of his seniority and merit and also in terms of Government Order No. 362-GAD of 1992 dated 29.04.1992 within a period of six weeks from the date, copy of this order is made available to them by the petitioner.

(Sindhu Sharma)
Judge

JAMMU
8 .06.2020
Ram Murti

Whether the order is reportable : *Yes/No*
Whether the order is speaking : *Yes*

