

**Central Administrative Tribunal
Jammu Bench, Jammu**



T.A. No.6170/2020
(SWP No. 1623/2004)

Tuesday, this the 2nd day of February, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Krishan Kumar Sharma, aged 58 years, S/o Late Pt. Hardayal Sharma, R/o Basohli District Kathua.

..Applicant

(Mr. Anirudh Sharma, Advocate)

VERSUS

1. State of Jammu and Kashmir through Commissioner-cum-Secretary to Government, Department of Health and Family Welfare, Civil Secretariat, Srinagar.
2. Director Health Services, Jammu and Kashmir Government, Jammu.
3. Chief Medical Officer, Kathua.
4. Block Medical Officer, Basohli.
5. Accountant General, Jammu and Kashmir State, Shakti Nagar, Jammu.

..Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant joined the service of the Directorate of Health of State of Jammu & Kashmir as Medical Assistant (Compounder) Allopathic in the year 1964. Through an order



dated 16.04.1981, he was promoted to the post of Junior Pharmacist, adjusting it against the post Ophthalmic Assistant, in the Sub District Hospital Billawar; in his own pay and subject to his clearing qualifications and being found fit by the Departmental Promotion Committee (DPC). He retired from service in the year 2004.

2. The applicant contends that the respondents did not extend him, the benefit of pay scale attached to the post of Junior Pharmacist by stating that the DPC did not meet. He also contends that the non-holding of DPC over a period was not on account of any lapse on his part and he cannot be denied the pension on the basis of last pay drawn. He filed SWP No.1623/2004 before the Hon'ble High Court of Jammu & Kashmir, claiming the relief in this behalf.

3. The respondents filed a counter affidavit, which is somewhat incomplete.

4. The SWP has since been transferred to the Tribunal in view of the re-organization of the State of Jammu & Kashmir and re-numbered as T.A. No.1623/2004.

5. Today, we heard Mr. Anirudh Sharma, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.



6. The grievance of the applicant is about the denial of pay scale attached to the post of Junior Pharmacist. He joined the service as Medical Assistant (Compounder) Allopathic in the year 1964. On 16.04.1981, the Deputy Director, Health Services, Jammu passed an order, which reads:-

“Shri Krishan Kumar Sharma, Medical Assistant Allopathic Dispensary Bhaggar (Bani Block) promoted to the post of Junior Pharmacist in the pay scale of 280-250 without prejudice to the seniority of others and posted in District Hospital Udhampur in his own pay and scale vide this office order No. EST-1/promotion/7506-08 dated 5-11-80 is hereby adjusted as Ophthalmic Assistant in Sub District Hospital Billawar against the available vacancy subject to the condition that he clears the qualification prescribed for the post and clearance by the Divisional Departmental Promotion Committee.

The resultant envoy of medical assistant at Dhaggar will be filled in by this office separately.”

7. There are several typical features in this, such as non-verification of seniority, educational qualifications and the order being passed even before the DPC met. In case the applicant was extended the benefit of promotion and he worked in the post to which he was promoted, there is no reason to deny him, the resultant benefit. The applicant could have done better, had he filed the SWP while in service. Necessary steps could have been taken in that behalf. The only aspect, which can be dealt with, at this stage, is whether the respondents have sanctioned the pension to the applicant by treating the last pay drawn by him as

valid. In other words, if the last pay drawn by him was treated as not valid, on account of the fact that the DPC did not meet, the applicant cannot be penalized for that. The reason is that the applicant does not have any role to play in that behalf.



8. We, therefore, dispose of the T.A. directing that the last pay drawn shall be treated as holding good for fixation of pension. However, if it is not done earlier, necessary steps shall be taken within eight weeks from the date of receipt of a copy of this order. In case it results in enhancement of pension, the enhanced pension shall be paid prospectively and the applicant shall not be entitled to any arrears. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 2, 2021
/sunil/ankit/shakhi