



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No.5989/2020
(SWP No. 829/2004)

This the 7th day of September, 2021

Through Video Conferencing

Hon'ble Ms. Manjula Das, Chairman

Mohan Lal Pandita
s/o Late Prasad Ram
r/o Karagam Teh. Handwara
at present Deep Nagar,
Gangyal, Jammu, Age 59 years

...Applicant

(Mr. P N Bhat, Advocate)

Versus

1. State of Jammu and Kashmir,
Through Principal Secretary
Housing and Urban Department, J & K
Srinagar

2. Director Local Bodies, Old Secretariat, Srinagar

3. Director Local Bodies, Jammu

...Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

ORDER (ORAL)

Brief facts of the case are that the applicant was working as Senior Assistant prior to 1990 and was posted as TAC Sopore. Due to turmoil in Kashmir valley, the applicant migrated to Jammu. Thereafter, he was promoted as



Secretary-Cum-Clerk (Head Assistant) in the year 1991 and accordingly, was given benefit of the said promotion at Jammu. It is stated that similar other migrant employees were also given the benefits. The applicant was subsequently promoted to the post of Secretary (SO) in the year 1999 against a clear vacancy in Municipal Committee Kulgam. He was required to join in the Kashmir valley vide order dated 06.07.1999 and it was made clear that in case he did not join, the next in the seniority would be promoted. It is submitted that the atmosphere in the valley was not congenial, he did not join. Aggrieved by this, he approached the Hon'ble High Court of Jammu & Kashmir by filing SWP No.2493/2000, which was disposed of on 01.10.2001. In compliance of this, the respondents passed the impugned order dated 27.12.2003, whereby the applicant came to be promoted to the post of Secretary (SO) notionally w.e.f. 06.09.1999, the date his juniors came to be promoted. Not satisfied with this order, the applicant filed SWP No.829/2004 before the Hon'ble High Court, seeking the following reliefs:

“A. Writ of certiorari quashing the impugned order as contained in Annexure : A so far it relates to the promotion of petitioner notionally to the post of Secretary.



B. Writ of mandamus commanding on respondents to issue corrigendum to the aforesaid order as contained in Annexure : A showing the promotion of petitioner as Secretary allowing him to draw salary in the pay scale of Rs.6500-10500 w.e.f. 06.07.1999 alongwith the other consequential benefits without being influenced by the promotion of petitioner on notional basis.

C/ Any other order which his Hon'ble Court may deem fit and proper in the circumstances of the case may also be passed in favour of the petitioner and against the respondents."

2. *Per contra*, the respondents filed a detailed counter affidavit. It is submitted that as the applicant belongs to the Directorate of Local Bodies, Kashmir and the post against which he was promoted, also belongs to that organization, the question of adjusting him against the post in Jammu Division was not possible. It is also stated that number of persons belonging to the minority community were in fact discharging their duties in Kashmir valley. It is further submitted that in due deference to the orders passed by the Hon'ble High Court, the matter was considered and it was in view of the facts and circumstances of the case that the applicant was granted notional promotion taking a lenient view in order to safeguard the pensionary benefits.



3. Today, I heard Mr. P N Bhat, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.

4. The SWP has since been transferred to the Tribunal in view of re-organization of the State of Jammu & Kashmir and re-numbered as T.A. No. 5989/2020.

5. It is not in dispute that some junior officers, who were also promoted vide different orders, were granted the benefits, wherein the case of the applicant was denied. Thus, there is discrimination. The applicant has also given names of certain juniors, who have been granted such benefits. Earlier, the applicant approached the Hon'ble High Court by filing SWP No.2493/2000, which was disposed of through an order dated 01.10.2001, with the following directions:

“ii) That the respondent/state would take steps with a view to accommodate the petitioner in Jammu province.

iii) They be paid their wages/salary on the promoted posts.”

6. The directions given by the Hon'ble High Court were unambiguous and unequivocal, and it was made clear that the applicant be paid wages/salary on the promoted post. It



is just un-understandable as to how the respondents granted promotion to the applicant on notional basis.

7. In these circumstances, I dispose of the T.A. with a direction to the respondents to accord benefit to the applicant, as has been granted to his juniors, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Manjula Das)
Chairman

September 7, 2021
/sunil/