

Central Administrative Tribunal Jammu Bench, Jammu



T.A. No.6276/2020
(S.W.P. No.1613/2004)

Tuesday, this the 18thday of May, 2021

(Through Video Conferencing)

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

Pawan Kumar Sharma, age 54 years
s/o Shri Ram Saran
r/o 686 Sarwal, Jammu

..Applicant
(*Nemo* for applicant)

VERSUS

1. State of J & K through Commissioner/Secretary to Govt.,
Health & Medical Education Department,
Jammu
2. Director Health Services, Jammu

..Respondents
(Mr. Sudesh Magotra, Deputy Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was working as Medical Assistant, now renamed as Pharmacist, in the Health & Medical Education Department of Jammu Kashmir. Alleging that some discrepancies were noticed at the time of handing over the charge in the year July, 1989, he was placed under suspension in 1989 itself. A criminal case was also filed, alleging that on the one hand, there was shortage of medicines/drugs amounting to



Rs.1,27,154.09 and on the other, there was excess of medicines amounting to Rs.1,43,002.09. The Trial Court acquitted the applicant vide its judgment dated 17.12.1998 and the Appeal preferred by the Government against it, was dismissed on 04.05.2000. The applicant was reinstated into service in January, 2003. However, he was not paid the difference of pay and subsistence allowance. On the other hand, departmental proceedings were initiated against him by issuing a charge memo dated 23.08.2003. He filed SWP No.1613/2004 before the Hon'ble High Court of Jammu & Kashmir, with a prayer to quash the departmental proceedings initiated vide charge memo dated 23.08.2003 and for a direction to the respondents to pay him the difference of salary for the period during which he was under suspension. He has also prayed for consequential benefits.

2. The respondents filed a detailed counter affidavit. It is stated that on noting discrepancies in the stock, an FIR was filed against the applicant, leading to registration of criminal case, and though the applicant was acquitted therein, the disciplinary proceedings were initiated in view of the fact that the standard of proof in both the matters is substantially different. It is further stated that the promotion was denied to the applicant on account of the pendency of the criminal case.

3. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.6276/2020.



4. Today, there is no representation for the applicant. We perused the record and heard Mr. Sudesh Magotra, learned Deputy Advocate General.

5. This is somewhat peculiar case wherein the allegations are made almost in contradictory terms. On the one hand, it is stated that there was excess stock of medicines worth Rs.1,43,002.09 and on the other, it is alleged that there was shortage of stock of medicines/drugs worth Rs.1,27,154.09. The applicant was acquitted by the Trial Court vide its judgment dated 17.12.1998. In matters of this nature, the departmental proceedings are initiated simultaneously with the criminal case and further steps in the departmental proceedings are deferred awaiting the outcome of the criminal case. Herein, the criminal case is ended in acquittal of the applicant vide judgment dated 17.12.1998 and the Appeal preferred by the Government against it, was dismissed on 04.05.2000, whereas the disciplinary proceedings were initiated by issuing charge memo dated 23.08.2003. This is totally impermissible in law. In a way, it amounts to witch-hunting of the applicant. What is a bit shocking is that after the charge memo was issued, a Committee was constituted. Assuming that it answers the description of inquiry officer, the findings thereof were equivocal. There again, the disciplinary authority did not pass any order. The result is that the applicant retired from service even while the disciplinary proceedings were



pending and the disciplinary authority did not pass any order whatever. The whole episode is a reflection of the improper handling of the matter by the Department. The applicant cannot be made to suffer. It is not known as to whether the applicant was extended the retirement benefits so far and the difference of salary for the period during which he was under suspension. Though he has also claimed the benefit of promotion, we do not intend to examine the same at this length of time, in the absence of relevant record.

6. We, therefore, dispose of the T.A., directing that the respondents shall release the entire retirement benefits as well as difference of salary for the period during which the applicant was under suspension, if not already paid, within two months from the date of receipt of a copy of this order.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 18, 2021
/sunil/rk/sd/