

**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.6383/2020
(S.W.P. No.43/2005)

Thursday, this the 4th day of March, 2021

(Through Video Conferencing)

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

Ashok Kumar Atri, aged 56 years
s/o Late Mr. T R Atri,
R/o House No.219, Sector 1, Channi Himmat
Jammu, Commandant, IRP Vth Bn.

.. Applicant

(Mr. Govind Raina, Advocate)

Versus

1. The State of Jammu & Kashmir,
Through its Chief Secretary
Civil Secretariat, Jammu
2. The Financial Commissioner (Home)
J & K Govt. Civil Secretariat,
Srinagar/Jammu
3. The Principal Secretary to Govt. of
Jammu & Kashmir
General Administration Department
Civil Secretariat, Jammu
4. The Principal Secretary to Govt. of
Jammu & Kashmir,
ARI/Inspections/Trainings
Civil Secretariat, Jammu
5. The Director General of Police
Police Headquarters, Jammu



6. Union of India through Ministry of Home Affairs, New Delhi
7. Union Public Service Commission through its Chairman, New Delhi
8. Sh. Gulzar Singh, IPS
9. Sh. Ruf-ul-Hassan, IPS
10. Sh. Mohd. Sulaman Salaria, IPS
11. Sh. Sunil Kumar Sharma, IPS
12. Sh. Farooq Khan, IPS
13. Sh. Kamal Kishore Saini, IPS
14. Sh. Avtar Singh Bali, IPS
15. Sh. Sham Lal Sharma, IPS
16. Sh. Prithvi Raj, IPS
17. Sh. Youginder Kaul, IPS
18. Sh. Alok Puri, IPS
19. Sh. Munir Ahmed Khan, IPS
20. Sh. Abdul Qyaoom Manhas, IPS
21. Sh. Jagjit Kumar, IPS
22. Sh. Naseer-ud-din Mani, IPS
23. Sh. Shafaqat Ali Wattali, IPS
24. Sh. Mubarak Ahmed Goni, IPS
25. Sh. Joginder Pal Singh, IPS
26. Sh. T Phunchok, IPS

All through respondent No.5

.. Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as Deputy Superintendent of Police (DSP) in the Jammu & Kashmir Police on 09.02.1984. He belongs to scheduled caste category. In the State of Jammu & Kashmir, the policy for providing reservation in promotions was formulated, through SRO No.126 of 1994 dated 28.06.1994. It

provided for the reservation in promotions for the post carrying a pay scale, maximum of which is Rs.3800/- or below. The applicant and three other DSPs submitted a representation to the Government with a request to extend them, the benefit of reservation in promotions, with retrospective effect. The reason is that by 1994, the scale of pay for the post of DSP seems to have exceeded to Rs.3800/-. The representation made by the applicant to the Home Department was forwarded to General Administration Department, seeking clarification as to whether the reservation in promotions can be made retrospectively. On the answer coming in the negative, the Home Department passed an order dated 27.02.2001, rejecting the claim of the applicant. He filed SWP No.43/2005 before the Hon'ble High Court of Jammu & Kashmir, challenging the said order.

2. According to the applicant, the very purpose of providing reservation in promotions is to ensure social justice contemplated under Articles 15 (4) & 16 (4) of the Constitution of India and there was absolutely no basis to restrict such benefit with effect from a particular date. Other grounds are also pleaded.

3. The respondents filed separate counter affidavits. According to them, the SRO No. 126 of 1994 is prospective in

operation and the question of its being applied with retrospective effect, does not arise. It is stated that the applicant has since retired from service.

4. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.6383/2020.

5. Today, we heard Mr. Govind Raina, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General, at length, through video conferencing.

6. The facility of reservation in promotion is provided under the Constitution through successive amendments. However, it can be claimed only when specific Rules are framed in the respective Services.

7. In the State of Jammu & Kashmir, SRO No.126 of 1994 was issued on 28.06.1994 in this behalf. Even while providing reservation in promotions, it restricted the benefit to only those posts, which carry the pay scale of Rs.3800/- or below. In other words, the posts, which carry the pay scale of more than Rs.3800/-, are not covered by the SRO. By the time the SRO came into force, the pay scale for the post of DSP crossed Rs.3800/-. Obviously for this reason, the applicant and three other DSPs, hailing from scheduled caste category, made a

representation to extend them, the benefit with retrospective effect, so that they would be covered by the SRO. The matter was referred to the General Administration Department, which, in turn, answered in negative. It asserted that the implementation can be only prospectively. Taking the same into account, the impugned order was passed.

8. Once the SRO was issued on a particular date, the question of its being implemented retrospectively does not arise. Further, the retrospective implementation would unsettle several things. The promotions, which have already taken place, would be disturbed. In certain cases, the persons already promoted need to be reverted to accommodate those under the reserved category. When such is the devastating effect, the retrospective promotion cannot be ordered. Further, the reason must also justify the retrospective operation, wherever it is resorted to. The only reason pleaded by the applicant is that he would be within the ambit of aforesaid SRO, if it is implemented with retrospective effect. He wanted to come out of ceiling of pay scale stipulated under the SRO. In a way, it would be surreptitious exercise, if permitted.

9. The respondents have taken correct view of the matter, which is strictly in accordance with law. At any rate, the applicant

retired from service more than 10 years ago, and nothing can be done at this stage.

8. The T.A. is accordingly dismissed. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 4, 2021
/dkm/sd/sunil/jyoti/