

Item No.7



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.6480/2020
(S.W.P. No.880/2005)

Wednesday, this the 3rd day of March, 2021

(Through Video Conferencing)

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

Smt. Santosh Devi
w/o Late Shri Roshan Lal

.. Applicant

(*Nemo* for applicant)

Versus

The Accountant General (A&E),
J & K Srinagar,
Jammu

.. Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

O R D E R (ORAL)**Justice L. Narasimha Reddy:**

The applicant joined the Jammu & Kashmir Police as Constable and by the year 2005, he was working as Sub Inspector in the Vigilance Organization. The Accounts Wing of the Office of Senior Superintendent of Police, Jammu has undertaken the verification of service books of the employees, who were about to retire within 7 years. In the case of the applicant & 3 others, it was noticed that some anomalies have taken place. Through an order dated 10.03.2004, the Assistant Accounts Officer directed the recovery of the amount indicated against the employees. The applicant filed SWP No.880/2005 before the Hon'ble High Court of Jammu & Kashmir challenging the same. He pleaded that the recovery was being effected without any inquiry or notice. An interim order was passed by the Hon'ble High Court on 27.06.2005, staying the operation of the impugned order. During the period of the SWP, the applicant died and his legal representatives came on record.

2. The respondents filed a counter affidavit stating that the pay of the applicant was stepped up on par with that of his junior, without obtaining the approval of the competent authority.

3. 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.6480/2020.



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

5. The only basis on which the recovery was sought to be effected against the applicant was that his pay was stepped up to be on par with that of his junior, without obtaining the approval of the competent authority. Even if that is true, the respondents were under obligation to issue notice before ordering recovery. Further, the question as to whether there was any misrepresentation on the part of the applicant, was also an issue to be examined. The applicant not only retired from service but also is no more. At this length of time, it would be difficult to undertake any inquiry into that aspect.

6. The principle laid down by the Hon'ble Supreme Court in **State of Punjab & others etc. v. Rafiq Masih (White Washer) etc.** (Civil Appeal No.11527/2014 – arising out of SLP (C) No.11684/2012) decided on 18.12.2014, also gets attracted.

7. We, therefore, allow the T.A. and set aside the impugned order, insofar as it relates to the applicant. In case, the death-cum-retirement benefits of the applicant were not released on account of pendency of the SWP, they shall be released within a

period of two months from the date of receipt of a copy of this order, along with interest @6% interest from the date it became due till the date of payment.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 3, 2021
/dkm/sd/sunil/jyoti/