



Central Administrative Tribunal Jammu Bench, Jammu

TA No. 7874/2020
(SWP No. 2671/2018)

This the 8th day of September, 2021

Through Video Conferencing

Hon'ble Ms. Manjula Das, Chairman

Smt. Vidya Devi, Age 58 years,
W/o Late Sh. Chain Singh,
R/o Village MaitraGovindpura,
Tehsil and District Ramban.

...Applicant

(Through Mr. VikramArora, Advocate)

Versus

1. State of Jammu and Kashmir through
Commissioner/Secretary,
Public Health Engineering Department J&K Govt.,
Civil Secretariat Jammu/Srinagar.
2. Chief Engineer PHE BC Road Jammu.
3. Executive Engineer PHE Division Doda.
4. Executive Engineer Hydraulic,
Division Ramban.
5. Accountant General,
Canal Road, Jammu.

...Respondents

(Through Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)

The husband of the applicant was engaged as daily wager in the year 1979 and has rendered continuous service without any interruption on daily wage basis for the period of 15 years, i.e., from 09.08.1979 to 31.03.1994. Thereafter, his services were converted from PDL to regular establishment as Helper Mechanical w.e.f. 23.12.1994. In the year 1997, he was granted first *in situ* promotion and was placed in the pay scale of Rs.775-955 w.e.f. 01.02.1996. In the year 2008, the employee was accorded the 2nd *in situ* promotion as Assistant Motorman w.e.f. 01.02.2005. The employee was further granted the 3rd *in situ* promotion in the year 2014, in terms of SRO No.14 of 1996. On 11.09.2017, the employee died and at the time of his death, he was in the pay scale of Rs.5200-20200. The applicant preferred a representation to respondent Nos. 1 to 3 for settling the family pension. In response thereto, the respondent No.5 issued a letter dated 05.10.2018 and directed respondent No.4 for settling the family pension of the applicant. However, till date, no action has been taken by the respondents, despite giving representations and reminders.



Feeling aggrieved, the applicant filed SWP No.2671/2018 before the Hon'ble High Court of Jammu & Kashmir seeking a direction to the respondents to settle the pension as per the last pay drawn by the employee.

3. On the other hand, the respondents filed detailed counter affidavit. It is submitted that while processing the pension case of the applicant by the respondents, it was noticed that the husband of the applicant was granted higher pay scale of Rs.950-1500 w.e.f. 01.04.1997 vide letter dated 16.06.2017.

4. The respondents contended that a series of SWPs were filed before the Hon'ble High Court of Jammu & Kashmir and ultimately, in compliance with the directions issued by the Hon'ble High Court in W.P. (C) No. 2679/2017, the respondents passed an order dated 06.06.2018, asserting their decision to recover the amount. It is stated that the deceased employee was extended the benefit of higher scale of pay on account of misinterpretation of SROs.

5. The SWP has since been transferred to this Tribunal in terms of Notification No. GSR 317 (E) dated 28.05.2020 issued by the Central Government and renumbered as T.A. No.7874/2020.



6. Today, we heard Mr. Vikram Arora, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, in detail.

7. It is fairly well settled that when an employee, particularly those in class IV, is extended some financial benefits, the Government cannot recover the same unless there exists any element of fraud on the part of the employee. Though Mr. Amit Gupta, learned Additional Advocate General strongly opposed, we are convinced that the law does not permit the recovery in the facts of the case.

8. I, therefore, allow the T.A. and direct the respondents to settle the family pension of the deceased employee without recovering the amount, already paid. In case any component was recovered, the same shall be refunded to the applicant without interest, 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 8, 2021
/sunil/jyoti/dd/