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**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.35/2020
(SWP No. 143/2019)

with

T.A. No.117/2020
(SWP No. 1921/2019)

(Through Video Conferencing)

Thursday, this the 15th day of July, 2021

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

TA No.35/2020

Dr. Sujay Mahajan, Aged 56 Years
S/o Dr. J. K. Gupta
R/o 33-E, C/C Gandhi Nagar
Jammu.

...Applicant

(Mr. Sachin Dogra, Advocate)

Versus

1. State of J&K,
Through Commissioner/Secretary to Govt.
Health & Medical Education Department,
J&K Government, Civil Secretariat,
Jammu.
2. Principal,
Govt. Medical College, Jammu
3. Medical Superintendent,
Govt. Medical College Hospital Jammu

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4. Director Health Services, Jammu
...Respondents

(Mr. Amit Gupta, Additional Advocate General)

TA No. 117/2020

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4. Director Health Services
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(Mr. Amit Gupta, Deputy Advocate General)

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ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

These two T.As. arise out of two SWPs filed by the same individual. Hence, they are disposed of through this common order.

2. The applicant was appointed as Assistant Surgeon in the Health & Medical Department (HMD), Jammu & Kashmir in the year 1986. Through order dated 27.02.1994, he was sent to Medical Education Department (MED) by re-designating the post of Assistant Professor as Resident Medical Officer (RMO). An order was passed on 06.02.1998, permanently absorbing the applicant as RMO in MED and he continued to work thereunder. It is stated that he ceased to be a member of HMD on being absorbed in the MED.

3. Through an order dated 28.01.2019, the respondents sought to repatriate the applicant to the HMD. Aggrieved by that, the applicant filed SWP No. 143/2019 before the Hon'ble High Court of Jammu & Kashmir. He pleaded that once he was absorbed in the MED, there was absolutely no basis for the respondents to repatriate him to the HMD. An interim order

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was passed by the Hon'ble High Court, staying the operation of the order dated 28.01.2019; and on the basis of that, the applicant continued to work in that Department.

4. On 14.05.2019, the respondents passed an order, stating that the absorption of the applicant is rescinded as *ab initio* and directed him to report to the Director, Health Services. Challenging that order, the applicant filed SWP No. 1921/2019 before the Hon'ble High Court. He contends that the respondents tried to overcome the interim order passed by the Hon'ble High Court in the earlier SWP and raised several grounds. That also was stayed by the Hon'ble High Court through an interim order.

5. The respondents filed separate counter affidavits in the T.As. According to them, there did not exist any provision for absorption of an employee of HMD in MED, and the whole exercise was contrary not only to the relevant Rules but also to the judgment of the Hon'ble High Court in SWP No.870/2005. It was stated that once the mistake was realised, the corrective steps were taken and no prejudice can be said to have been

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caused to the applicant. He had retired from service on 28.02.2021, on attaining the age of superannuation.

6. Both the SWPs have since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as T.A. Nos. 35/2020 & 117/2020, respectively.

7. Today, we heard Mr. Sachin Dogra, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General.

8. For all practical purposes, the discussion in these two T.As. would be academic. The reason is that the applicant retired from service and it makes no difference whether the pension is being paid by the HMD or MED. Assuming that there did not exist any provision for permanent absorption of the applicant or the necessary steps were taken, in accordance with law, the fact remains that the applicant was on the rolls of the MED for about quarter of a century. Even if he were to have been in a different Department or establishment, he would have got permanently absorbed in the MED, on account of such a long

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service and standing. In the instant case, the shifting was from one wing of the Medical Department to another wing. Shifting the applicant to the HMD at the last stage of his service was totally uncalled for. It is also stated that his name was struck off from the cadre of the MED.

9. Therefore, the T.As. are allowed and the orders impugned therein shall stand set aside, so that the future complications in the payment of pension to the applicant are avoided. If any amount payable to the applicant was withheld, the same shall be released, within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 15, 2021
/sunil/jyoti/daya