

Item No.1

**Central Administrative Tribunal
Jammu Bench, Jammu**T.A. No. 1580/2020
(S.W.P. No.15/2019)**With**

O.A. No.668/2021

Wednesday, this the 28th day of April, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**T.A. No.1580/2020**

Muzammal Shah & others

(Mr. Sheikh Najeeb, Advocate)

..Applicants

VERSUS

The State of Jammu & Kashmir & others

(Mr. Amit Gupta, Additional Advocate General and
Mr. Raghu Mehta, Senior CGSC)

..Respondents

O.A. No.668/2021

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..Respondents

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

The applicants were employed as Class IV of Public Health Engineering (PHE) (Jan Shakti) Department of Jammu & Kashmir. They were extended benefit of higher scale of pay in the year 2017, stating to be as a measure of implementing certain SROs. At a later stage, it was realized by the Government that the applicants are not entitled for that benefit. Accordingly, they started recovery of the amounts that are paid in the form of higher scales of pay. While in some cases, the applicants have retired and the deductions were made from their gratuity and other benefits, whereas in the case of those in service, the recoveries were made from the salary.

2. 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.

3. The applicants filed SWP No.15/2019 before the Hon'ble High Court, challenging the same. They filed O.A. No.668/2021 before the Tribunal questioning re-fixation of some of the retired employees, who too felt aggrieved by the same order. The

Hon'ble High Court passed an interim order, staying the recovery.

4. The SWP No.15/2019 has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as TA No.1580/2020.



5. The applicants contend that there was absolutely no basis for the respondents to recover the amount, particularly when it was sanctioned on their own accord.

6. The respondents filed a detailed counter affidavit. It is stated that the applicants were extended the benefit of higher scale of pay on account of misinterpretation of SROs and once it is realized, the impugned order was passed.

7. Today, we heard Mr. Sheikh Najeeb, learned counsel for applicants, Mr. Amit Gupta, learned Additional Advocate General and Mr. Raghu Mehta, learned senior CGSC.

8. The issue in these matters is about the legality or otherwise of the recovery that is sought to be made by the respondents. It is not in dispute that the benefit was extended to the applicants in the year 2017 by placing a type of interpretation. The record does not disclose that the applicants claimed the amount by placing any distorted facts. It is fairly well settled that 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. It is a different matter that the denial of benefit prospectively cannot be interfered with. Though Mr. Amit Gupta, learned Additional Advocate General strongly imposed the direction as to the setting aside the order of recovery, we are convinced that the law does not permit of the recovery in the facts of the case. Learned counsel for respondents did not object to the course of action, namely, upholding of re-fixation of the salary, setting aside the order as to recovery.

9. We, therefore, we partly allow the T.A. & O.A. and direct that the respondents shall be entitled to re-fix the pay structure of the applicants by denying the benefit of higher scale of pay but they shall not recover the amount already paid. In case any component was recovered, the same shall be refunded 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.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 28, 2021
/sunil/maya/dsn/