

**Central Administrative Tribunal
Jammu Bench, Jammu**



T.A. No.552/2021
(S.W.P. No.978/2010)

Tuesday, this the 25th day of May, 2021

(Through Video Conferencing)

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

Joginder Lal Bhagat

..Applicant

(Mr.Ashok Sharma, Advocate)

VERSUS

State of Jammu and Kashmir& Ors.

..Respondents

(Mr.Rajesh Thappa, Deputy Advocate General)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was initially appointed as an Accountant in the Ravi Tawi Command Area Farmers Service Cooperative Society Limited (for short 'Society') between 1976 and 1984. He took part in Combined Competitive Examination held for Kashmir Administrative Service (KAS) in the year 1984. He attained the age of superannuation on 31.03.2010. At that stage, just before his retirement, he submitted a representation to the Government, with a request to add the service rendered by him in Society, for the purpose of pension. That request was rejected, through an order dated 20.01.2010 followed by another order dated 19.02.2010. The applicant filed SWP No.978/2010 before the Hon'ble High Court of Jammu & Kashmir, challenging the orders dated 20.01.2010 and 19.02.2010.

2. The applicant contends that there are several instances of the services rendered in Non-Government Organizations being counted in other Government service as and when the persons were selected to KAS and in his case, the benefit was denied. He cited the examples of Mr. Kuldeep Raj Sharma, Mr. Ram Paul Gupta and two others. The applicant contends that there was a clear case of discrimination on the part of the respondents.



3. The respondents filed a detailed counter affidavit. According to them, the claim itself is made at a belated stage and that the facts do not support the reliefs claimed in the SWP. It is stated that the applicant has availed all the terminal benefits from the Society and secondly, the service in the Society are not pensionable. As regards the comparison, the respondents state that the wrongs committed earlier cannot be cited as precedent or example.

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.552/2021.

5. Today, we heard Mr. Ashok Sharma, learned counsel for applicant and Mr. Rajesh Thappa, learned Deputy Advocate General.

6. The facts, as presented in the pleadings and the annexures in this case, reflect a lack of clarity and consistency on the part of the Government. Orders were passed discriminately extending the benefit of counting the past service of the officers selected to KAS, in certain cases, by relaxing the Rules and in other cases, by citing some other reasons. The applicant expected the same treatment, but the respondents denied him such benefit. The whole episode reflects the unsatisfactory way of functioning of



the Government, in the context of treating the officers of the level of KAS.

7. It is not uncommon that whenever a person is selected and appointed in the Government service, the past service rendered by him earlier to that, is counted, subject to certain conditions. Much would depend upon the nature of employment, which the concerned official had before joining the Government service. Firstly, the earlier service must be in a Government Department or Government Undertaking or establishment, and secondly, there must be a parity of duties or even the pay structure. The applicant was in the service of a Society where the facility of pension was not available. Secondly, he received all the terminal benefits from the Society before he joined the Government service. Such cases can no doubt, be rejected.

8. The applicant, however, filed orders dated 15.10.2008 issued in favour of Mr. Shri Kuldeep Raj Sharma, Member of the J&K Secretariat (Gazetted) Service-I (under Secretaries cadre) and another order dated 12.12.2006, issued in favour of Mr. Ram Paul Gupta, KAS. In their cases, the sanction was accorded for relaxation of Rules, so much so, the terminal benefits, that were received by Mr. Kuldeep Raj Sharma from the earlier employment, were required to be returned and the service rendered therein was added to his Government service. In the



case of Mr. Ram Paul Gupta, a condition was imposed to the effect that he should not have availed the terminal benefits from the Bank where he worked. Two other orders are also filed, which are on the same lines.

9. A close scrutiny of the orders reveals that the higher administration of the State was twisting and bending the Rules, to benefit the officers of their choice, whereas it stuck to the Rules in case of the persons, like the applicant. It is not as if there was a long time gap between the dates on which the orders were passed or that there was change in the law. It is a clear cut case of discrimination in the context of granting relaxation. The applicant contends that he was discriminated simply because he belongs to scheduled caste community and one cannot ignore the plea, if one takes into account, the text and context of the orders passed in favour of others officers.

10. The Government is required to be consistent, particularly when it deals with the services of its top and senior officers in the administration. Discrimination of this nature would send a wrong signal and in a way, would reflect the method of functioning of the Government.

11. The best thing for the Government, even at this stage, is either to withdraw the benefits, which were granted to other



officers, contrary to law, in favour of officers, similarly situated as the applicant, or to grant the same benefits to the applicant.

12. We, therefore, allow the OA and set aside the impugned order. We direct the Chief Secretary of the State of Jammu & Kashmir to take into account, all the cases in which the past service of KAS officers in other organizations were added and that of the applicant; and to pass a consistent order, strictly in accordance with law, if it is proposed to withdraw the benefit granted to any officer, notice shall be issued. An exercise in this behalf shall be completed 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.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 25, 2021
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