

**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No. 5148/2021
(S.W.P. No.1112/2017)

Friday, this the 16th day of April, 2021

(Through Video Conferencing)

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

1. Talib Hussain, age 45 years
s/o Abdul Star
2. Tuphail Ahmed, age 42 years
s/o Mohd. Shafi Parray
3. Reyaz Ahmed, age 45 years
s/o Mohd. Shafi

All r/o village Mangotra, Tehsil & District Doda

..Applicants

(Mr. M A Bhat, Advocate)

VERSUS

1. State of J&K through
Commissioner/Secretary to Govt.
Education Department, Civil Sectt., Jammu
2. Director School Education, Jammu
3. District Development Commissioner, Doda
4. Chief Education Officer, Doda
5. Imtiaz Hussain s/o Gh. Hussain r/o Jathi Doda
6. Shahnaz Bano d/o Gh. Hussain r/o Jathi Doda
7. Yasmeen Bano d/o Gh. Hussain r/o Jathi, Doda
8. Ejaz Ahmed s/o Gh. Hussain r/o Jathi, Doda
9. Nusrat Bano d/o Atta Mohd. r/o Jathi, Doda
10. Zulaf John d/o Abdul Rashid r/o Jathi, Doda



11. Mushtaq Ahmed s/o Abdul Rashid r/o Jathi, Doda
12. Basharat Hussain s/o Mohd. Sharif r/o Jathi, Doda

..Respondents

(Mr. Amit Gupta, Additional Advocate General)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicants responded to the advertisement notice No.01/98 dated 21.04.1998 issued by the Director School Education, Jammu, for appointment to the posts of Lab. Bearer/ Lib. Bearer/ Gasman/ Orderly and Safaiwala. Initially, the selections were made, but that was withdrawn by the Government in the year 1999. Aggrieved by that, the applicants filed SWP No.2663/1999 before the Hon'ble High Court of Jammu & Kashmir. That was disposed of by the Hon'ble High Court by issuing a set of directions. Litigation persisted and ultimately, the applicants came to be appointed on 29.05.2014 as Class IV employees.

2. The applicants filed SWP No.1112/2017 before the Hon'ble High Court with a prayer to direct the respondents to give retrospective effect to their appointment, to be on par with the petitioners in SWP No.961/2003 and to extend the benefit of promotion to the next higher grade of Rs.5200-20200 + Grade Pay of Rs.1900/-, with other consequential benefits.

3. The applicants contend that once they stand on the same footing as do the petitioners in SWP No.961/2003, they are entitled to be extended the same benefits. Reference is also made to the order passed in SWP No.1989/2007 by the Hon'ble High Court.



4. 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.5148/2021.

5. Today, we heard Mr. M A Bhatt, learned counsel for applicants and Mr. Amit Gupta, learned Additional Advocate General.

6. The reliefs claimed in the SWP are as under:-

“Writ of Mandamus: directing the respondents for giving retrospective effect to the appointment orders of the petitioners from the date the proforma respondents and the others who were party petitioners in the batch of writ petitions with lead case as Adil Akhter Shah and others (SWP No.961/2003) were appointed and also to grant the benefit of promotion to the next higher grade of Rs.5200 – 20200 + 1900 GP from the date the same has been given to the proforma respondents; and may also issue –

A further direction to the respondents to accord consideration to the representations of the petitioners and pass appropriate orders in the light of the judgment passed in SWP No.1989/2007; and for the issue of –

Any other writ, order or direction deemed just and proper in the circumstances of the case in the interest of justice.”



In other words, the applicants want their appointment to be effective from 21.06.2007, the date on which the private respondents were appointed.

7. It is not uncommon that the appointments in any particular recruitment, as a whole or some of the candidates, are delayed. Earlier, the law used to be that when the recruitment process begins or supposed to begin, the delay caused in issuing orders of appointment should not defeat the rights of the candidates and appointment shall be treated as having been made on the dates on which the vacancies are either notified or have arisen. The Hon'ble Supreme Court in **Union of India and others v. N R Parmar**, (2012) 13 SCC 340, held that in the process of direct recruitment irrespective of the date on which an order of appointment issued, it relates back to the date on which the vacancy was notified. However, the said law was reversed by the Hon'ble Supreme Court in **K. Meghachandra Singh v. Ningam Siro** (Civil Appeal Nos.8833-8835/2019) decided on 19.11.2019. In paragraphs 35 and 36 of the judgment, their Lordships held as under :-



“35. The judgment in N.R. Parmar (Supra) is now to be considered in some detail as this is heavily relied by the appellants’ counsel. At the outset it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central Government OMs (dated 22.12.1959, 07.02.1986, 03.07.1986 and 03.03.2008). The judgment was rendered in respect of Central Government employees having their own Service Rules. The applicable Rules for the litigants in the present case however provide that the seniority in the service shall be determined by the order in which appointments are made to the service. Therefore, the concerned Memorandums referred to in N.R. Parmar (Supra) which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur.

36. After the judgment in N.R. Parmar (Supra) was delivered, the Union of India issued the Office Memorandum on 04.03.2014 defining the recruitment year to be the year of initiating the recruitment process against the vacancy year and that the rotation of quota, would continue to operate for determination of inter-se seniority between direct recruits and promotees. This Memo was not made applicable to the State of Manipur till the issuance of the OM dated 21.12.2017, adopting the OM dated 04.03.2014 prospectively with effect from 01.01.2018. Significantly, the said OM specifically provided that “.....appointments/promotions made before the issue of this OM will not be covered by this OM. The seniority already fixed as per existing rules followed earlier in the State prior to the issue of this OM may not be reopened.” It was also specifically stated therein that “this OM will come into effect from 01.01.2018 with the publication in the Gazette.....”

In Smt. Reeta Mattoo v. State of Jammu & Kashmir & others [T.A. No. 8631/2020 (SWP No.2889/2014)] decided on 07.04.2021, similar issues were decided and we rejected the similar claim.

8. We do not find any merit in the T.A. It is accordingly dismissed. There shall be no order as to costs.



(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/sunil/dsn/sd/