



**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU**

Hearing through video conferencing

**T.A.62/4646/2020**

**(SWP/WP No. 673/2014)**

This the 19<sup>th</sup> day of January, 2021

**HON'BLE MR. JUSTICE L. NARASIMHA REDDY, CHAIRMAN  
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

Sounullah Wani, Age: 69 yrs, S/o Gula Wani,  
R/o Zasoo, Pulwama. .... Applicant

(Advocate: Shri Arshad Andrabi, Advocate )

**Versus**

1. State of J&K through Commissioner/Secretary to Govt, Rural Development Deptt.; Civil Sectt; Srinagar/Jammu.
2. Director, Rural Development Deptt. Kashmir Srinagar.
3. Block Development Officer, Kakapora Pulwama.

.... Respondents

(Advocate:- Mr Rajesh Thapa, D.A.G.)



## **ORDER [ORAL]**

**Justice L. Narasimha Reddy, Chairman: -**

The applicant retired from service of Rural Development Department of Jammu & Kashmir, as Junior Engineer in the year 2000. At the stage of calculating his retirement benefits and sanctioning pension, an FIR No.24 of 2000 was registered against him, alleging that he got his date of birth changed from 08.06.1940 to 08.06.1945, and over stayed in service. A criminal case is said to be pending against the applicant. The applicant was sanctioned only provisional pension. He filed SWP No. 673/2014 before the Hon'ble High Court of Jammu and Kashmir, for a direction to the respondents to release all the withheld retirement benefits like gratuity, leave salary, arrears of pay difference etc., with interest, and for other ancillary reliefs.

2. The applicant contends that an FIR was registered at the verge of his retirement with a malafide intention only to deprive him all retirement benefits. It is also stated that he worked in the respondent-Department, till he attained the age of superannuation, as per the date of birth entered in the record, and it cannot be said that there is any illegality or fraud on his part.

3. The respondents filed a detailed counter affidavit stating that though the Office of the Accountant General, calculated the retiral



benefits of the applicant, the release was not made on account of pendency of the criminal case.

4. The SWP has since been transferred to this Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as TA.No.62/4646/2020.

5. We heard Shri Arshad Andrabi, learned counsel for the applicant, and Shri Rajesh Thappa, learned Deputy Advocate General, for the respondents, at some length.

6. The applicant retired from service way back in the year 2000. The only basis for withholding the retirement benefits is that the registration of FIR No.24 of 2000. There again, the allegation was that the date of birth of the applicant was altered from 08.06.1940 to 08.06.1945. Assuming that there was any illegality in alteration of those date of births in concerned records, the fact remains that the respondents extracted the work from the applicant till he retired in the year 2000. For one reason or the other, the criminal case is pending for the past two decades. Time and again, the Hon'ble Supreme Court held that the pension is a right to property of an employee and it is an accumulated wealth, which an employee gathers by saving the entire length of service for the benefit of his post retirement life. It is only when substantial grounds exist and the provisions of law permits that the benefits can be denied to him.



7. From a perusal of counter affidavit, it is evident that the loss to the State exchequer on account of change of date of birth is Rs.2,62,760/- . There again a serious question arises as to whether the salary paid to an employee for any period subsequent to the actual date of retirement, can be recovered at all. Assuming all the factors are in favour of the respondents, they cannot withhold an amount more than Rs.2,62,760/- . Here itself, we may, with a note of caution, opined that in case it becomes necessary to initiate proceedings on the basis of the adjudication in the criminal case, it shall always be open to the respondents to do so. The applicant cannot be made to deny the benefit of service retirement benefits.

8. We, therefore, partly allow the TA, directing the respondents to release all the retirement benefits to the applicant except the sum of Rs. 2,62,760/- . The rate of interest at which the amount shall be paid would depend upon the outcome of the criminal case. We further direct that as and when the applicant is acquitted in the criminal case, he shall be paid interest at the rates that are stipulated under the relevant rules for the delayed payment of benefits within four weeks from today, and the amount of Rs. 2,62,760/- , shall be refunded, if, on the other hand, he is acquitted. Much would depend upon the nature of directions issued therein and the decision the Government may take in that behalf. There shall be no order as to costs.

(PRADEEP KUMAR)  
MEMBER (A)

(JUSTICE L. NARASIMHA REDDY)  
CHAIRMAN