



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.5541/2020
(S.W.P. No.1905/2017)

Wednesday, this the 24th day of February, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

Muneera Bano (Aged 56 years)
W/o Late Abdul Majeed Naikoo
R/o Chandipora Pulwama J&K.

.. Applicant

(Through Mr. Aamir Latoo, Advocate)

Versus

1. State of Jammu and Kashmir
Through Commissioner/Secretary to Govt.
Food, Civil Supplies & Consumer Affairs Department
Civil Secretariat, Srinagar/Jammu.
2. Director
Food, Civil Supplies & Consumer Affairs Department
Kashmir Srinagar.
3. Joint Director
Food, Civil Supplies & Consumer Affairs Department
Kashmir Srinagar.
4. Assistant Director
Food, Civil Supplies & Consumer Affairs Department
Pulwama.

.. Respondents

(Through Mr. Amit Gupta, Additional Advocate General)

O R D E R (ORAL)

**Justice L. Narasimha Reddy:**

The husband of the applicant was appointed as Class-IV employee in the Department of Food, Civil Supplies and Consumer Affairs in the year 1985. He was placed under suspension in the year 1997, on the allegation of misappropriation of food grains in the unit where he was working, estimated to about Rs.5.17 lacs. Later on, the Government took a policy decision to reinstate the employees, suspended on the ground of misappropriation, subject to their filing an undertaking to refund the amount by way of deduction from their salaries.

2. The husband of the applicant expressed his willingness in that behalf and, accordingly, an order was passed on 23.08.2007, reinstating him into service and directing recovery of the amount @ 70% of his monthly salary. He died on 07.11.2012. Thereupon, the competent authority sanctioned family pension to the applicant, i.e., the wife of the deceased employee. Regarding the manner in which the period of suspension must be treated, the competent authority passed an order dated 21.02.2014, directing that it shall be treated as on leave of whatever kind due to the employee.

3. The applicant filed SWP No. 1905/2017 with a prayer to quash the order dated 21.02.2014, as well as the order dated

23.08.2007. Prayer is also made to direct the respondents to treat the period of suspension as on duty. Other ancillary reliefs are also claimed.

4. The applicant contends that once her husband was reinstated into service, without there being any departmental inquiry or proceedings, the period of suspension deserves to be treated as on duty. It is also stated that the respondents have unauthorizedly deducted the left over amount of Rs.1,72,725/- from her family pension.

5. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as TA No. 5541/2020.

6. Today, we heard Mr. Aamir Latoo, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, through video conferencing.

7. The husband of the applicant was placed under suspension way back in the year 1997. Almost after a decade, he was reinstated into service. Had it been a case where the reinstatement was without reference to any penal consequences, the period of suspension deserved to be treated as on duty. In the instant case, the reinstatement was on the filing of an undertaking by the employee for refunding the misappropriated

amount of Rs.5,17,361/-, in monthly installments @ 70% from his salary. In other words, the employee has admitted his guilt and agreed for recovery of misappropriated amount. Under the Conduct Rules, the recovery of misappropriated amount is one of the punishments. Therefore, a reinstatement, as a sequel to the admission of guilt and furnishing of an undertaking to refund the misappropriated amount, cannot be said to be the one without reference to any disciplinary proceedings. Obviously, keeping this in view, the competent authority passed an order dated 21.02.2014, directing that the period of suspension shall be treated as on duty whatever, the employee was entitled to. Therefore, no exception can be taken to it.

8. Coming to the question of recovery, it is stated that by the time the husband of the applicant died, a sum of Rs.1,72,725/- remained unpaid. The respondents are stated to have recovered that amount. Whatever be the right of the Government to recover the amount from the benefits referable to the deceased employee, deduction cannot be made from the family pension sanctioned to the widow of the employee. If any amount was deducted from the family pension of the applicant, the same deserves to be refunded.

9. We, therefore, dispose of the T.A. directing that:

- (a) No deduction shall be made from the family pension of the applicant and in case any amount was deducted, the same shall be refunded to the applicant within two months from the date of receipt of a copy of this order; and
- (b) It shall be open to the respondents to deduct the otherwise due amount from the death-cum-retirement benefits of the deceased employee, other than the family pension.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 24, 2021
/sunil/jyoti/dsn