

**Central Administrative Tribunal
Jammu Bench, Jammu**



T.A. No. 6805/2020
(S.W.P. No.629/2017)

Friday, this the 23rd day of April, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Mtr. Rafiqa Nissar Wani (age 60 years)
r/o 310-Alamdar Colony near Charyaar Masjid,
Lal Bazaar, Srinagar

..Applicant
(Mr. Zahid Khan, Advocate)

VERSUS

1. State of J&K through
Commissioner-cum-Secretary to Housing &
Urban Development,
Civil Secretariat, Jammu/Srinagar
2. Accountant General J & K, Jammu/Srinagar
3. Chief Town Planner, Srinagar
4. Chairman, J & K Public Service Commission
Srinagar/Jammu
5. Shri Pushkar Nath Safaya
s/o Pandith Sham Lal Safaya
r/o Chinkra Mohalla Habba Kadal Srinagar
at present D-140, Guggal Colony Khanpur
New Delhi

..Respondents
(Mr. Amit Gupta, Additional Advocate General for respondent
No.1, Mr. Raghu Mehta, Senior CGSC for respondent No.2, Mr.
Azahar Ul Amin, Advocate for respondent Nos. 3 & 4 – None for
respondent No.5)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The husband of the applicant, by name Nissar Ahmad Wani, joined the Town Planning Department of Jammu & Kashmir in the year 1972 as Draftsman. In the year 1976, he was transferred to State Editor Gazetteer Unit, Srinagar. However, he was repatriated to his parent organization in the year 1994. In the seniority list, for the post of Assistant Town Planning (ATP), one Mr. Pushkar Nath Safaya (respondent No.5) was shown as senior to him. He made a representation stating that Respondent No.5 was his junior and the seniority list needs to be corrected. Consequential reliefs were also prayed for.

2. On a consideration of the representation of Mr. Wani, the Government passed an order dated 01.12.2003, extending him certain notional benefits. That however, were corrected through an order dated 03.08.2004. While in the earlier order the benefit of promotion was granted on notional basis, in the subsequent order, it was mentioned that it shall be subject to the selection, by the Departmental Promotion Committee (DPC). Mr. Nissar Ahmad Wani died in the year 2008. The orders issued in the year 2004 were implemented. After the death of Mr. Wani, the DPC met and the consequential proceedings were issued on 28.12.2016. He was extended the benefit of promotion to the post of ATP w.e.f 19.03.1993. However, his name was not shown in the list of selected candidates for the post of Town Planner.





Since Mr. Wani died, his wife Mrs. RafiqaNissarWani filed SWP No.629/2017 before the Hon'ble High Court of Jammu & Kashmir, claiming the relief in relation of declaration to the effect that late Mr. Wani was senior to Respondent No.5 and that his promotion should have been treated as earlier to that of Mr. PushkarNathSafaya. She also prayed for re-fixation of the pensionary benefits. It is also pleaded that the seniority of late Mr. Wani was overlooked without any basis and the same is liable to be rectified in all respects.

2. Separate counter affidavits are filed by respondent No.3 &respondent No.4. According to them, the orders were issued in the year 2004 for rectification of the anomaly and the DPC contemplated in the order dated 03.08.2004 was held only in the year 2016 and the consequential benefits were also extended.
3. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu &Kashmir and renumbered as TA No.6805/2020.
4. Today, we heard Mr. Jahid Khan, learned counsel for applicant, Mr. Amit Gupta, learned Additional Advocate General for respondent No.1, Mr. Raghu Mehta, learned senior CGSC for respondent No.2 and Mr. AzaharUl Amin, learned counsel for respondent Nos.3&4. There is no representation for respondent No.5.



5. The claim in respect of the seniority of Mr.Wani was made in the year 2008. Certain anomalies occurred in the service of late Mr. Wani, on account of the fact that he was transferred to another Department and he came back to the former Department, after about 18 years. One cannot expect the state of affairs in the organization to remain static, all along. After he came back to Town Planning Department in the year 1994, the seniority of Mr.Wani was fixed in the post of ATP. Though he was shown junior to respondent No.5, that anomaly was corrected, through order dated 01.12.2003. In the context of extending the consequential benefits, the following observations were made:-

“1. Promoted as planning Assistant Wef: 16.8.1978 to 23.4.1984 on notional basis.

2. Promoted as Assistant Town Planner Wef: 24.4.1984 to 28.7.1999 on notional basis.”

6. In other words, benefit of notional promotion was granted straightway. However, it was noticed that the promotion was to be on the basis of selection. Therefore, an order was passed on 03.08.2004, providing for the selection by DPC. That ultimately met and the consequential orders were issued on 28.12.2016, extending the benefit of promotion to the post of ATP w.e.f. 19.03.1993. He was not extended the benefit of promotion to the post of Town Planner, obviously because he did not have the

requisite service in the feeder post. Under these circumstances, it cannot be said that any illegality has crept into the matter.

7. We, therefore dispose of the T.A., directing that in case the Death-cum-Retirement benefits of late Mr. Nissar Ahmad Wani were not re-determined on the basis of his notional promotion extended, through order dated 01.12.2003, 03.08.2004 and 28.12.2016 the necessary steps in this behalf shall be taken within a period of two months from the date of receipt of order.



There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 23, 2021
/sunil/rk/sd/