



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 8698/2020
(SWP No.3000/2018)

Thursday, this the 18th day of March, 2021

(Through Video Conferencing)

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

Ab. Rehman Bhat, age 64 years
s/o Mohd. Abdullah Bhat
r/o Chewa Kallan
District Pulwama

..Applicant
(Mr. Syed Riyaz Khawar, Advocate)

Versus

1. State of Jammu & Kashmir through Principal Secretary, Home J & K State, Civil Secretariat, Jammu
2. Inspector General of Police, Kashmir Zone, Karan Nagar, Srinagar
3. Senior Superintendent of Police, District Police Office, Srinagar

..Respondents
(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was working as Head Constable in Jammu & Kashmir Police. The Departmental Promotion Committee (DPC) for promotion to the post of Assistant Sub Inspector (ASI) met in the year 2004. Since departmental inquiry was pending against the applicant, the DPC adopted the sealed

cover procedure. Thereafter, it emerged that the applicant was facing some criminal cases also. In the meanwhile, he retired from service. He was acquitted in the criminal cases and in the departmental proceedings, the punishment of 'censure' was awarded to him. Taking all these aspects into account, the Inspector General of Police, Kashmir Zone passed an order dated 28.07.2018 granting the benefit of promotion to the applicant to the post of ASI on notional basis w.e.f. 01.01.2007. The applicant filed SWP No.3000/2018 before the Hon'ble High Court of Jammu & Kashmir, challenging the said order. He contends that once he was acquitted in the criminal cases, he was entitled to be extended the benefit of actual promotion, and not notional promotion, with effect from the date on which his immediate junior was promoted. He has also prayed for setting aside of the order of 'censure'.

2. The respondents filed a detailed counter affidavit. It is stated that the case of the applicant was considered for promotion from time to time, but it had to be deferred on account of pendency of departmental / criminal cases, as the case may be. According to them, notional promotion was granted w.e.f. 01.01.2007, as provided under Rule 110-A of Jammu & Kashmir Civil Service Regulations. They took objection to the challenge to the order of 'censure'.

3. The SWP has since been transferred to the Tribunal in view of re-organization of the State of Jammu & Kashmir and re-numbered as T.A. No.8698/2020.

4. Today, we heard Mr. Syed Riyaz Khawar, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, through video conferencing.

5. The applicant became eligible to be considered for promotion to the post of ASI in the year 2004. However, ever since then, he faced one block or the other till he retired from service. The sealed cover procedure maintained in his case was opened, once he was acquitted in the criminal cases and the effect of punishment of 'censure' imposed upon him, ceased. The applicant does not dispute the effective date, namely, 01.01.2007. His grievance is only about the notional promotion being given to him and not the actual promotion.

6. Rule 110-A of Jammu & Kashmir Civil Service Regulations is very clear in its purport. It is to the effect that whenever the promotion of an official is deferred on account of the pendency of the criminal case or the disciplinary proceedings, the employee would be extended the benefit of notional promotion in case the proceedings ended in his favour. The applicant does not dispute the purport of this Rule. Once it emerges that the promotion of the applicant was deferred on account of the disciplinary proceedings or criminal cases, he would get only the notional promotion as against the actual benefit, on

conclusion of those proceedings. Though he may not get the actual monetary benefits from the effective date, that would become relevant for reckoning the pensionary benefits, etc. Therefore, no exception can be taken to the impugned order, insofar as it has extended the notional benefit to the applicant from 01.01.2007.

7. So far as challenge to the order of 'censure' is concerned, the T.A. is totally silent about the particulars of the proceedings or the grounds of challenge thereto. When the orders of punishment of 'censure' are not even filed, the question of entertaining any challenge to that, does not arise.

8. We, therefore, dismiss the T.A., affirming the order 28.07.2018. We, however, make it clear that in case the applicant intends to challenge the order of 'censure', it would be open to him to do so, in accordance with law.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 18, 2021
/sunil/jyoti/vb/ankit