

Item No. 1



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 215/2020
M.A. No.363/2020
(SWP No.862/2020)

Monday, this the 1st day of March, 2021

(Through Video Conferencing)

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

Abdul Qayoom Chalkoo
Aged about 52 years
s/o Haji Ghulam Nabi Chalkoo,
R/o Delina, Baramulla

..Applicant

(Mr. R A Jan, Senior Advocate and (Mr. Taha Khalil, Advocate)
with him)

Versus

1. Union Territory of Jammu & Kashmir,
Through Chief Secretary, Civil Secretariat,
Jammu/Srinagar
2. Secretary to Government, Rural Development
Department, Civil Secretariat, Jammu/Srinagar
3. Director, Rural Development Department
Kashmir, Srinagar
4. Shri Abdul Hamid Kumar, (Inquiry Officer)
The then Financial Advisor / CEO, presently
Director Finance, Civil Secretariat
Jammu/Srinagar

..Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

The applicant was initially engaged as daily wage worker in the Department of Rural Development and Panchayati Raj in the year 1993. It is stated that the Government framed a policy of regularization of the daily wage workers vide SRO No.64 of 1994. Through order dated 06.11.2000, his services were regularized as Works Supervisor. Under order dated 21.12.2000, he was permitted to work against a vacancy of Junior Engineer and was placed in the pay scale of Rs.3050-4910. Thereafter, the applicant was appointed as Junior Engineer on regular basis on 24.09.2008, but w.e.f. 28.12.2000. He was also promoted to the post of Assistant Engineer on 19.06.2013 and two months thereafter, he was placed as In-charge Assistant Executive Engineer.

2. Certain news were published in the local Daily Newspaper of Jammu & Kashmir, stating that serious irregularities have taken place in the context of regularisation of services of daily wage workers, and in according promotions to them. A preliminary inquiry was conducted in this behalf, and it was noticed that the progression of the applicant from the stage of daily wage worker, was not in accordance with the relevant

provisions of law. Thereafter, a regular inquiry is said to have been conducted. Taking the findings into account, the Government passed an order dated 12.03.2020 rescinding all the orders of promotions, and reverting the applicant back to the original post of daily wage worker in the District of Baramulla.



3. The applicant filed SWP No.862/2020 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 12.03.2020. The Hon'ble High Court passed an interim order dated 23.04.2020 in favour of the applicant.

4. The applicant contends that the impugned order is not only violative of principles of natural justice, but also is contrary to the policy framed by the Government. According to him, the initial regularization and subsequent promotions have taken place strictly in accordance with the prescribed procedure; and there was absolutely no basis for the respondents, to pass the impugned order, that too, without conducting any inquiry.

5. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the issue pertaining to irregularities in the regularization of services of the daily wage employees and their promotions came into light, in the recent past and immediately thereafter, a detailed inquiry was conducted by involving senior officials. It is also stated that the report has clearly mentioned the

instances of deviation of the procedure and accordingly, the impugned order was passed.



6. The respondents further contend that subsequent to the impugned order dated 12.03.2020, a Committee was constituted on 08.05.2020 to look into the matter and the Committee has also issued notice to the applicant and that he has also submitted his reply on 20.06.2020. The competent authority is said to have passed an order on 07.07.2020, observing that no irregularity has taken place in the process of passing the impugned order.

7. 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.215/2020.

8. Today, we heard Mr. R A Jan, learned senior counsel for applicant, and Mr. Amit Gupta, learned Additional Advocate General, in detail.

9. The basic facts are not in dispute. The applicant was initially engaged as daily wage worker way back in the year 1993. Thereafter, the benefit under SRO No.64 of 1994 was extended to him and he was regularized as Works Supervisor on 06.11.2000, duly taking into account, the fact that he held the qualification of Graduation in Engineering. That was followed by promotions to the posts of Junior Engineer and Assistant Engineer. By the year

2020, the applicant was holding the post of Executive Engineer (REW) on in-charge basis.



10. The respondents initiated certain steps by taking into account, the news items, alleging irregularities in the regularization of daily wage workers and their promotions. There cannot be any plausible objection for conducting any preliminary inquiry or for taking other steps to ascertain the facts. However, once they intended to reduce the position of the applicant to his detriment, it was obligatory on their part to put him on notice. Here again, two aspects become relevant. If the reduction in rank or reversion is by way of any penal action, departmental inquiry is required to be conducted. If, on the other hand, the inquiry or examination is as regards the administrative steps, without attributing any malice or misconduct to the applicant, it would be sufficient, if a notice, duly indicating the relevant facts and the proposed action, is issued. In the instant case, none of that sort has happened, and straightway, the impugned order dated 12.03.2020 was passed, indicating the following action:-

“Now, therefore, it is hereby ordered that:-

- (I) The following promotion orders issued from time to time in favour of Sh. Abdul Qayoom Chalkoo are hereby rescinded abinitio:
 - (i) Regularization as Works Supervisor ordered vide Order No.G-Misc of 2000 dated – 21.12.2000 issued by Director, Rural Development Kashmir (Camp Jammu)



- (ii) Confirmation as Junior Engineer ordered vide Govt. Order No.138-RD of 2005 dated 30/06/2005 & release of grade of Junior Engineer w.e.f. 28/12/2000 vide Govt. Order No.250-RD of 2008 dated 24.09.2008.
- (iii) Placement as Assistant Engineer in OPG vide Govt. Order No.226-RD of 2011 dated 17/10/2011 & regularization as Assistant Engineer vide Govt. Order No.165-RD&PR of 2013 dated 19/06/2013.
- (iv) Placement as Assistant Executive Engineer and Executive Engineer respectively ordered vide Govt. Order No.211-RD&PR of 2013 dated 2017 dated 02/03/2017.

(II) It is further ordered that Shri Abdul Qayoom Chalkoo is reverted back to his original position as the Daily Rated Worker in district Baramulla with the directions to report in the Office of Assistant Commissioner (Development) Baramulla for further duties.”

11. Such a course of action cannot be sustained in law. May be, as a measure of fire fighting, the respondents constituted a Committee on 08.05.2020 to examine the legality or otherwise of the steps that culminated in the order dated 12.03.2020. A notice is said to have been issued to the applicant, and thereafter it was followed by order dated 07.07.2020. Once the impugned order dated 12.03.2020 was passed in violation of the principles of natural justice and prescribed procedure, any amount of exercise to bring about the legality to it, would be of no help. The so-called constitution of the Committee on 08.05.2020, or the

notice said to have been issued to the applicant, cannot improve the situation.



12. We, therefore, allow the T.A. and set aside the impugned order dated 12.03.2020. It is, however, left open to the respondents to take necessary steps in accordance with law. We make it clear that in case the respondents intend to attribute any misconduct and propose to impose any punishment, they shall be under obligation to conduct a detailed inquiry in accordance with the Conduct Rules. If on the other hand, it is verification of the administrative steps and the relevant facts, it would suffice, if a notice, containing the relevant facts and the proposed action, is issued. Final order shall be passed strictly in accordance with law, after taking into account, the explanation, which the applicant may submit.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 1, 2021
/dkm/sd/sunil/jyoti/