

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved On: 19th of April, 2024
Pronounced On: 8th of May, 2024.

WP (C) No. 2502/2022

Mohammad Shafi, Age: 60 Years
S/O Mohammad Ramzan Wani
R/O Sharshali Khrew, Pampore,
Tehsil Pampore, District Pulwama.

... Petitioner(s)

Through: -

Mr Areeb Javed Kawoosa, Advocate.

V/s

- 1. Union of India through**
Secretary to Ministry of Defense,
101-A South Block, New Delhi.
- 2. Managing Director General of Staff Duties,**
SD-7 (ADM CIV), General Staff Branch,
Integrated Headquarter, MOD (Army),
Sena Bhawan, New Delhi.
- 3. Deputy Director, SD-7 (ADM CIV),**
General Staff Branch, Integrated Headquarter,
MOD (Army) Sena Bhawan, New Delhi.
- 4. General Officer Commanding,**
Headquarter Northern Command,
Udhampur, Jammu & Kashmir.
- 5. General Officer Commanding,**
Headquarter 15 Corps, B.B. Cantt., Srinagar.
- 6. General Officer Commanding, Headquarter 31 Sub Area,**
B.B. Cantt., Srinagar.
- 7. Station Commander, Station Headquarter,**
Khrew, Pampore, District Pulwama.
- 8. Administrative Commandant, Station Headquarter,**
Khrew, Pampore, District Pulwama.

9. Principal Collector of Defense Accounts (PCDA) (P),
Draupatighat, Allahabad.

... Respondent(s)

Through: -

Mr Tahir Majid Shamsi, DSGI.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

(JUDGMENT)

01. The Petitioner, through the medium of the present Petition, seeks quashment of communication No. C/60548/SPARSH/GS/SD-7 (Adm Civ) dated 15th of June, 2022 issued by the Respondent No.3, communication No. C/60548/SPARSH/GS/SD-7 (Adm Civ) dated 30th of September, 2022 issued by Respondent No.2 and communication No. 18010/5/Addl/GS/SD/Mohd Shafi Wani dated 7th of October, 2022 issued by the Respondent No.4, directing the conduct of review DPC and recovery to be made from the pension/ gratuity of the Petitioner, with further direction to the Respondents to accept the documents and accord sanction to the recommendations dated 20th of July, 2022, 12th of August, 2022 and 12th of September, 2022 made by Respondent No.6 and not to conduct review DPC, so as to demote the Petitioner with further direction to the Respondents to release the pensionary benefits in favour of the Petitioner, including gratuity as per the last pay drawn by the Petitioner as Sanitary Inspector and not to make any recovery from the pensionary benefits, including gratuity of the Petitioner.

02. The Petitioner has pleaded that he came to be recruited in the establishment of Respondent No.8 against the post of Sanitary Mate on temporary basis in the year 1980 and was regularized as such in the year 1992; that he rendered his services to the Respondents with honesty, dedication and to the satisfaction of his superiors and had received various certificates of appreciation for his unblemished, honest and dedicated service from various higher officials of the Respondent-Elite Force; that he came to be promoted to the post of General Supervisor vide Order dated 8th

of May, 1998; that he was considered for grant of promotion to the post of Sanitary Inspector as this additional post came to be created vide Order No. 18010/5/Addl/GS(SD)(I) dated 7th of July, 2001 by the Respondent No.4 and that the newly created posts were continued latest by Order dated 10th of November, 2020, wherein sanction was accorded for the continued employment of 106 Conservancy and Administrative Staff, including Sanitary Inspector, against which the Petitioner was promoted; that the Respondents promoted the Petitioner to the post of Sanitary Inspector as he was the only eligible person as cleared by the DPC vide Order dated 12th of September, 2001 and was approved by the competent authority in terms of Order dated 27th of September, 2001, as such, the Petitioner came to be promoted to the post of Sanitary Inspector w.e.f. 13th of September, 2001 in the pay scale of Rs.5000-150-8000; that the Petitioner continued on the post of Sanitary Inspector having been duly promoted till 31st of March, 2022, when he attained the age of superannuation.

03. It has been further pleaded that post superannuation, the Petitioner submitted his documents for the grant and release of pensionary benefits in his favour, and that on account of the digitization of various services since August, 2021, the documents for grant of pensionary benefits in favour of the retired personnel were to be uploaded as the Respondents had established and maintained an online digital database portal, commonly known as SPARASH, however, while assessing the online digital database, the Respondent No.8 was not able to upload the necessary details and documents of the Petitioner for the release and grant of his pensionary benefits on the said portal. Consequently, the Respondent No.8 approached the higher officers, i.e., other Respondents, underlining the difficulties faced in uploading the necessary details of the Petitioner on the online portal. It was further submitted that after superannuation on 31st of March, 2022, the date sheet and other relevant documents were approved by the concerned Controller of Defense Accounts, Srinagar, but while uploading the details on the project SPARASH, the database was not accessible as the

post of Sanitary Inspector was not available in the category of the “POST LAST HELD” and cadre on the SPARASH portal and the Petitioner was, accordingly, informed that the said difficulty is faced on account of non-existence of the post of Sanitary Inspector on the SPARASH portal.

04. It is being alleged that instead of rectifying the error on the portal or accepting the documents of the Petitioner, the Respondent No.3 issued the communication dated 15th of June, 2022 to the Respondent No.4, stating that there was no post of Sanitary Inspector and, thereafter, directions have also been issued for conducting DPC review after more than two decades and for making recovery of the alleged additional pay grade drawn by the Petitioner from the retirement gratuity account of the Petitioner; that vide communication dated 4th of July, 2022, the Respondent No.3 directed the Respondent No.7 to conduct DPC review immediately. The Petitioner claims to have brought it to the knowledge of the Respondents that the Petitioner had been promoted to the post of Sanitary Inspector on 13th of September, 2001, after sanction of the Respondent No.4/ GOC-in-C, Northern Command, as such, the Petitioner had continuously served at the Station for 20 ½ years on the post of Sanitary Inspector and had drawn uninterrupted salary, which was also fixed by the Northern Command HQ; that the Respondent Nos. 6, 7 and 8 had strongly recommended the case of the Petitioner for release of the pensionary benefits in his favour against the post of Sanitary Inspector; that the Respondent No.4 had also recommended that sanction of the competent authority be accorded and necessary directions be passed to PCDA (P) Allahabad, for release of the pensionary benefits in favour of the Petitioner by carrying out the necessary changes in the database on the SPARASH portal; that instead of releasing the pensionary benefits and carrying out the necessary changes on the portal SPARASH, the impugned communications were issued to conduct the review DPC for reversion of the Petitioner to the post of General Supervisor from the post of Sanitary Inspector, against

which the Petitioner had superannuated after serving for more than two decades.

05. The impugned communications have been challenged by the Petitioner, *inter alia*, on the grounds that the hard-earned benefit which accrues to an employee, being in the nature of property, cannot be denied to him and the terminal emoluments, including gratuity, etc., cannot be withheld under any circumstance whatsoever, as has been held by the Hon'ble Apex Court in a case titled '**Dr. Hira Lal v. State of Bihar & Ors.**', reported as '**(2020) 4 SCC 346**'; that the benefits given to the Petitioner pursuant to his promotion had been given to him without any misrepresentation on his part or any fraud committed by him nor any incorrect information furnished; that the post of Sanitary Inspector came to be created by the competent authority vide Order dated 7th of July, 2001 and was referred to the Departmental Promotion Committee, which cleared the promotion of the Petitioner against this post; that the Respondents had already granted pensionary benefits in favour of a similarly situated superannuated employee, namely, Ashok Kumar of HQ 71 Sub Area Station Headquarters, who also superannuated from the post of Sanitary Inspector in the year 2021, who has been receiving the pensionary benefits without any hindrance, while as, the case of the Petitioner has been singled out and is violative of the scheme of the law as contained under Article 14 of the Constitution of India; that after extracting work from the Petitioner for more than two decades, the conducting of review DPC so as to demote the status of the Petitioner is not permissible, without any fault on his part and without even issuing any notice to him is also violative of the fundamental and legal rights of the Petitioner; that the recovery as has been directed from the terminal emoluments/ gratuity of the Petitioner is impermissible in law as such a recourse will be illegal in view of the law laid down by the Apex Court in many of the cases.

06. Pursuant to notice, the Respondents have filed reply/objections to the Petition, asserting therein that the Petitioner was

admittedly promoted from the post of General Supervisor to the post of Sanitary Inspector as per the sanction issued vide Northern Command HQ letter No. 18010/5/Addl/GS/SD(1) dated 7th of July, 2001, however, the Northern Command was not competent to issue any sanction as the sanctioning authority is IHQ of MoD (Army), as such, the review DPC was being carried out within the rules governing the field. It has been admitted that the Petitioner was eligible at the time of creation of post of Sanitary Inspector and was subsequently promoted to this post from the post of General Supervisor by the DPC, however, the process was carried out without following proper rules and regulations framed by the higher Headquarters notified vide SRO No. 128/1980, amended vide SRO 158/2003. It was also admitted that the Petitioner's DPC was accepted and approved by the Northern Command w.e.f. 13th of September, 2001, but the creation of any new post was within the domain of IHQ of MoD (Army) as competent authority, and that the process for creation of the post of Sanitary Inspector was carried out without taking into consideration the rules and regulations already framed by the higher headquarters vide the aforesaid SROs. Admitting that the Petitioner had continued his services for over two decades till his superannuation on 31st of March, 2022, however, his promotion from the post of General Supervisor to the post of Sanitary Inspector was not carried out as per the rules and regulations framed for Conservancy Staff. It has also been pleaded that the SPARASH pension portal was formed in August, 2021 and all the posts of Conservancy Staff as per recruitment rules and SROs are available in the database of SPARASH pension portal, except the post of Sanitary Inspector, which is not authorized as per the recruitment rules of Conservatory Staff issued vide the afore-stated SROs; that the review DPC is being carried out as per the directions of the IHQ of MoD (Army) vide its communication dated 15th of June, 2022 as there is neither any post of Sanitary Inspector in the promotional hierarchy nor there is any relevant SRO available for direct recruitment of Sanitary Inspector, as such, the review DPC is to be carried out within the rules governing the field.

07. Mr Kawoosa, the learned Counsel for the Petitioner, argued that the Petitioner initially having been appointed as Sanitary Mate was promoted to the post of General Supervisor in the year 1998 and a post of Sanitary Inspector was created by the Respondents on 7th of July, 2001 and the Petitioner, being eligible, was promoted against that post on 12th of October, 2001 w.e.f. 13th of September, 2001 and that he reached the age of superannuation on 31st of March, 2022. He has further argued that while uploading his documents for the grant of pensionary benefits on the SPARASH pension portal, the post of Sanitary Inspector was not found in that portal in the column of “LAST POST HELD” and that the Respondent-Officers of the Northern Command made recommendations that an arrangement be made in the SPARASH pension portal and also strongly recommended that, as a one-time measure, steps be taken for release of pensionary benefits in favour of the Petitioner. He has further argued that in a similarly situated superannuated Sanitary Inspector, Ashok Kumar, the pensionary/ terminal emoluments/ benefits were released and he continues to receive the same, though in his case also the post had not been sanctioned by the Army Headquarters, as such, on the basis of parity, the Petitioner is also entitled to receive pensionary benefits as the said Ashok Kumar has been receiving. He has finally prayed that the Petition be allowed and the impugned communications directing to hold review DPC so as to revert the Petitioner from the post of Sanitary Inspector to that of General Supervisor be quashed and the Respondents be directed to release all the pensionary benefits in his favour and restrained from making any recovery from him.

08. Mr Shamsi, the learned Deputy Solicitor General of India (DSGI), appearing on behalf of the Respondents, *ex adverso*, argued that the promotion of the Petitioner to the post of Sanitary Inspector was against the rules, as such, he is not entitled to the pensionary benefits/ terminal emoluments against the post of Sanitary Inspector, against which he has been shown to have superannuated. He has also argued that as per rules a Board of Officers proposes and a recommendation is made to the Northern

Command and the case for creation of a new post is to be processed at the Army Headquarters which was competent, however, in the case on hand, no such exercise has been made by the Army Headquarters and the decision has been taken by the Northern Command only. He has further argued that though the pension is a right for the post last held, but since the last position held by the Petitioner was not as per the authority of law having been promoted by an incompetent authority, the Petitioner cannot be stated to be entitled to the pensionary benefits for the post of Sanitary Inspector.

09. Heard learned Counsel for the parties, perused the record and considered the matter.

10. A Constitution Bench of the Hon'ble Apex Court in a case titled '**Deokinandan Prasad v. State of Bihar**', reported as '**(1971) 2 SCC 330**', held that the right to receive pension by public servants was to be covered under the right to property as per Article 31 (1) of the Constitution. Paragraph Nos. 30, 31 and 33 of the said Judgment, being relevant, are extracted hereinbelow:

“30. The question whether the pension granted to a public servant is property attracting [Article 31\(1\)](#) came up for consideration before the Punjab High Court in [Bhagwant Singh v. Union of India](#) [AIR 1962 Punj 503] . It was held that such a right constitutes “property” and any interference will be a breach of [Article 31\(1\)](#) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. Letters Patent Bench in its decision in [Union of India v. Bhagwant Singh](#) [ILR 1965 Punj 1] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is “property” within the meaning of [Article 31\(1\)](#) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as “property” cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K. R. Erry v. State of Punjab* [ILR 1967 Punj & Har 278]. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted

with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show-cause in that regard must be given to the officer. This view regarding the giving of further (1971) 2 SCC 330 opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show-cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence, we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under [Article 31\(1\)](#) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under [Article 19\(1\)\(f\)](#) and it is not saved by sub-article (5) of [Article 19](#). Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under [Articles 19\(1\)\(f\)](#) and [31\(1\)](#) of the Constitution, and as such the writ petition under [Article 32](#) is maintainable.”

11. The Judgment enunciated by the Hon’ble Supreme Court in Deokinandan Prasad’s case **supra** was again followed by the Apex Court in case titled ‘**D. S. Nakara v. Union of India**’, reported as ‘(1983) 1 SCC

305', wherein the Constitution Bench, in Paragraph Nos. 20, 29 and 31, has held as follows:

“20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in [Deoki Nandan Prasad v. State of Bihar and Ors.](#): wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in [State of Punjab and Anr. v. Iqbal Singh.](#)

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus, the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to (1983) 1 SCC 305 (1971) Supp. S.C.R. 634 (1976) II LLJ 377 SC be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to [Article 309](#) and clause (5) of [Article 148](#) of the Constitution; (ii) that the pension is not an *ex gratia* payment but it is a payment for the past service rendered; and (iii) it is a

social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch..” [emphasis supplied]

12. Again, the Hon’ble Apex Court in case titled ‘**Dr. Hiral Lal v. State of Bihar & Ors.**’, reported as ‘**(2020) 4 Supreme Court Cases 346**’, while setting aside the withholding of 10% of the pension of the Appellant therein under administrative circulars and Government resolution, held that it is settled that the right of pension cannot be taken away by a mere executive *fiat* or administrative instruction. Besides, it was also held that pension and gratuity are not mere bounties or given out of generosity by the employer, but the employee earns these benefits by virtue of his long, continuous, faithful and unblemished service.

13. Keeping in view the aforesaid law laid down by the Hon’ble Apex Court in the aforementioned cases and reverting back to the facts of the case on hand, the Petitioner herein, after having served as Sanitary Inspector for more than 20 years, had superannuated and, vide impugned communications, was being denied pension for the post last held by him with further direction of review of his DPC and recovery from the pension/gratuity, on the plea that the post of Sanitary Inspector that he held for over two decades had not been sanctioned by the competent authority. The Respondents’ case is that this post which had been held by the Petitioner had been created by way of a sanction issued by the Northern Command, Headquarters and not by the Army Headquarters from Delhi, when the fact of the matter is that the Northern Command was not competent to sanction this post.

14. The Respondents seem to have slept over the matter for a period of more than two decades and had taken services of the Petitioner as Sanitary Inspector and, now, they cannot be permitted to take a U-turn by saying that the post held by the Petitioner was not sanctioned by the competent authority, as such, the Petitioner was not entitled to receive pension for the post of Sanitary Inspector, lastly held by him for over 20

years. The Petitioner had nothing to do with the creation of the post of Sanitary Inspector, to which the Petitioner had been promoted way back in the year 2001 when a post of Sanitary Inspector had been created, having been sanctioned by Respondent No.4-General Officer Commanding, Headquarter, Northern Command. The Respondents, though claim that the post of Sanitary Inspector had not been sanctioned by the competent authority, however, they had not taken any steps for abolition of the said post at any stage before the Petitioner attained the age of superannuation while holding that post.

15. It is also an admitted case that another employee, namely, Ashok Kumar, who was also holding the post of Sanitary Inspector in 71 Sub Area Station Headquarters, had also superannuated in the year 2021 and that he had been receiving pensionary benefits without any hindrance. The Petitioner, on this ground and with a view to maintain parity in terms of Article 14 of the Constitution of India, also deserves to be given the same treatment that had been given to the other similarly situated employee, namely, Ashok Kumar, having retired from the post of Sanitary Inspector.

16. It appears that the Petitioner's trouble erupted as the pension portal named as 'SPARASH' was not showing the post of Sanitary Inspector as 'last held post' while feeding the database of the Petitioner for grant of pension. Instead of removing that difficulty at the official level, as had been duly recommended by the Northern Command, directions were issued from the Headquarters for conducting of review of the DPC, so as to revert the Petitioner from the post of Sanitary Inspector, that he had lastly held for over two decades, to the post of General Supervisor. The Petitioner, in view of the services rendered with the Respondents for such a long period of over two decades to the satisfaction of his superiors and his unblemished career, in the opinion of this Court, is entitled to receive pension for the post of Sanitary Inspector that he had lastly held at the time of attaining his superannuation. In this view of the matter, the impugned communications made by the Respondents against the interests of the

Petitioner for conducting of review of the DPC, so as to revert his position and also to recover the payment of pension/ gratuity, are not sustainable in the eyes of law, being wrong, illegal and arbitrary in nature.

17. For the foregoing reasons and observations made hereinabove, the instant Petition is **allowed** and, by a 'Writ of Certiorari', the impugned communication No. C/60548/SPARSH/GS/SD-7 (Adm Civ) dated 15th of June, 2022 issued by the Respondent No.3, communication No. C/60548/SPARSH/GS/SD-7 (Adm Civ) dated 30th of September, 2022 issued by Respondent No.2 and communication No. 18010/5/Addl/GS/SD/Mohd Shafi Wani dated 7th of October, 2022 issued by the Respondent No.4 are quashed. The Respondents, by a 'Writ of Mandamus', are directed to release the pensionary benefits in favour of the Petitioner, including gratuity, on the basis of the post of Sanitary Inspector lastly held by him before attaining the age of superannuation.

18. Writ Petition is, thus, **disposed** of on the above terms, along with the connected CM(s). No order as to costs.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
May 8th, 2024
"TAHIR"

- | | | |
|-----|------------------------------------|-------------|
| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |