

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)

WP(C) No. 492/2025
CM No. 1177/2025
CAV No. 132/2025

1. UT of J&K, through Secretary to Government, Commissioner/Forest Department, Civil Secretariat, At present at Srinagar/Jammu-180001. Appellant/Petitioner(s)
2. Principal Chief Conservator of Forest, (HoFF) Jammu & Kashmir.
3. Additional Principal Conservator of Forests/ Chief Conservator of Forests, Kashmir, Jammu & Kashmir, J&K-190001.
4. Chief Conservator of Forests, Settlement & Demarcation.
5. Divisional Forest Officer, Demarcation Forest Division-I, Jammu-180001.

Through: Mr. Vishal Bharti, Dy. AG.

Vs

1. Satish Kumar Bhat S/O Late Sh. Sham Lal Bhat, R/O House No.544, Subash Nagar, Jammu. Pin Code-180005. Respondent(s)
2. Principal Accountant General (A&E), Jammu and Kashmir, Jammu-180001.

Through: Mr. C M Koul, Senior Advocate with
Mr. A R Bhat, Advocate for R-1.
Ms. Monika Thakur, Advocate for R-2.

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

ORDER
12.03.2025

With the appearance of Mr. CM Koul, learned senior counsel assisted by Mr. A R Bhat, learned counsel for the caveator, **CAV No.132/2005** shall stand discharged.

WP(C) No. 492/2025 & CM No. 1177/2025

1. In this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

a) An appropriate writ, order or direction in the nature of writ of certiorari quashing order/judgment dated 17.09.2024 passed by the Hon'ble Central Administrative Tribunal Jammu whereby the impugned order No.267 of 2021, 25 of 2022, PCCF/NG/Estt/64/477-78 dated 20.09.2021, 07.02.2022 and 07.03.2022 respectively are hereby quashed and set aside. The amount recovered from the pensionary benefits of the applicant, shall be refunded and all the pensionary benefits to which the applicant is entitled to shall be released preferably within a period of eight weeks from the date of receipt of certified copy of this order. In case, amount recovered from the applicant and the pensionary benefits is not released in favour of the applicant within the stipulated period, the applicant will be entitled to interest at the rate of 7% per annum to the respondent herein the writ petition.

b) An appropriate order or direction in the nature of ad-interim relief to stay the operation of order/judgment dated 17.09.2024 passed by the Hon'ble Central Administrative Bench Jammu whereby the impugned order No.267 of 2021, 25 of 2022, PCCF/NG/Estt/64/477-78 dated 20.09.2021, 07.02.2022 and 07.03.2022 respectively are hereby quashed and set aside. The amount recovered from the pensionary benefits of the applicant, shall be refunded and all the pensionary benefits to which the applicant is entitled to shall be released preferably within a period of eight weeks from the date of receipt of certified copy of this order. In case, amount recovered from the applicant and the pensionary benefits is not released in favour of the applicant within the stipulated period, the applicant will be entitled to interest at the rate of 7% per annum to the respondent herein the writ petition.

Alternatively to exercise the powers under Article 227 of the Constitution of India to set aside the impugned orders in exercise of the Superintendence and Control Powers of the Hon'ble High Court over Ld. CAT

Bench Jammu as the order so passed is contrary to facts of law and led to grave miscarriage of justice.

2. Facts which give rise to the filing of this writ petition are stated infra:

2.1 Sh. Satish Kumar Bhat, S/O Late Sh. Sham Lal Bhat R/O House No.544, Subash Nagar, Jammu (respondent herein) was initially appointed as Watcher in the pay 345-450 in the JV Forest Division, Baramulla vide Forest Order No.32 of 1982-83 dated 07.08.1982. He was then posted in the Social Forestry Project in the year 1983. He was promoted from Mali to Junior Assistant in the pay scale of Rs.410-700 for 3 months on 14.07.1983 in vogue of Rules in the Social Forestry Project which was extended from time to time and allowed to continue on the same scale till he remained posted in the Social Forestry Project up to 1986. He was promoted as Forest Guard on 06.08.1986 and again his pay was protected and fixed as of Junior Assistant. On the repatriation of the respondent from Social Forestry Project to the Forest Department, he was reverted to his original cadre of Watcher, however, he managed through Forest Order No.573 of 1986 dated 20.12.1986 to protect his salary of Junior Assistant while fixing his pay. The CCF, Kashmir vide Forest Order No.40 of 1996, promoted him as Deputy Forester retrospectively w.e.f 22.11.1986, however, his seniority was fixed prospectively w.e.f.25.08.1995.

2.2. In the year 1997, the respondent was promoted as Forest Protection Inspector in the pay scale of Rs. 1400-2300 and then notionally promoted as Forester in the year 1996 retrospectively from the year 1994; that in the year 2009, the immediate junior and senior to the respondent in Forest Guard cadre

were promoted as Deputy Forester w.e.f. 18.11.2009 and as Forester w.e.f. 04.04.2012 respectively.

2.3. A large number of complaints were received against the respondent with regard to his promotion on the basis of Graduate Certificate. An enquiry committee was constituted under the chairmanship of CCF, Jammu, vide Forest Order No. 249 of 2020 dated 02.12.2020 which submitted its report to the Administrative Department vide PCCF letter dated 15.03.2020. The PCCF Office vide order dated 20.09.2021, ordered that the salary of respondent should be fixed afresh in compliance to Communication received by the DFO Demarcation Div-I Jammu, considering his seniority as recommended by APCCF Kashmir, vide his communication dated 28.08.2021 and accordingly his pension papers be prepared and submitted to the Principal Accountant General J&K Jammu.

3. The respondent approached the Central Administrative Tribunal, Jammu Bench by way of filing OA No. 61/1613/2021 titled Satish Kumar Bhat v. State & Others, wherein the learned CAT Jammu Bench, vide order dated 01.12.2021 observed that looking to the facts and circumstances of the case, the impugned order dated 20.09.2021, be kept in abeyance. The Tribunal further observed that the applicant would file his objections to the re-fixing of his seniority and consequent recalculation of his pension within a period of three weeks before respondents from that date and respondent would consider his objections and pass a reasoned and speaking order on the question of re-fixing of his seniority and consequent re-calculation of pension within a period of four weeks from the date of receipt of certified copy of the order.

4. By a speaking order, it is conveyed that as the respondent-retiree is drawing provisional pension and has not been paid gratuity yet, it is permissible to make the recovery of government dues from the gratuity, even without his consent in terms of the government instructions (ii) below Article 240-B. Further the PCCF office vide communication no. PCCF/NG/Ea/64/477-78 dated 07.03.2022, the DFO Demarcation-I, Jammu was directed to work out the excess amount drawn by respondent as Deputy Forester and Forester from the due and drawn statement for taking further necessary action in the matter.

5. Aggrieved of the said order, the respondent again approached the learned Tribunal through OA No.412/2022 titled Satish Kumar Bhat v. State & others, whereby the learned Tribunal vide its order dated 17.09.2024 has stayed the orders impugned therein.

6. By way of this writ petition, the petitioners challenge the order dated 17.09.2024 passed by the learned Tribunal on the grounds enumerated supra.

7. Heard learned counsel for the parties at length and perused the judgment passed by the learned Tribunal which is impugned herein.

8. The law is well settled that no recoveries against any benefit by an employee can be initiated, if the same has been provided by the department on their own and there is no malafide or foul play on the part of the employees. (See: **State of Punjab v. Rafiq Masih**, AIR 2015 SC 696).

9. After giving our thoughtful consideration to the submissions made by the learned counsel for the parties and having regard to the various pronouncements of the Supreme Court on the issue and also after perusing the judgment impugned, we are of the view that the refixing of the seniority of the respondent

and initiating recovery and also refixing his pay after three decades is illegal and arbitrary. In our view, the judgment passed by the learned Tribunal is well reasoned judgment and is in conformity with the law as the Tribunal has dealt with the issues squarely, succinctly and elaborately.

10. The impugned judgment does not suffer from any illegality or perversity which would persuade this court to take a view, other than the view, taken by the learned Administrative Tribunal.

11. In view of the preceding analysis, the writ petition fails and is accordingly dismissed along with connected CM(s), if any.

**(MA Chowdhary)
Judge**

**(Tashi Rabstan)
Chief Justice**

Jammu
12.03.2025
Raj Kumar

