

Government of Jammu and Kashmir
Department of Food, Civil Supplies & Consumer Affairs
Civil Secretariat, Jammu.

Subject:- O.A No. 61/1733/2021 in the case titled Ghulam Sarwar Chauhan. V/s UT of J&K and Ors.

Government Order No:- 114 -JK(FCS&CA) of 2023
Dated:- 16 -10-2023

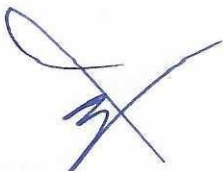
WHEREAS, the applicant Ghulam Sarwar Chauhan, was nominated as Member of District Consumer Forum Jammu vide Notification S.R.O - 27 dated 29.01.2016 for a term of three years or up to 65 years of age whichever was earlier;

AND WHEREAS, the applicant filed an OA bearing No. 1733/2021 before the Hon'ble Central Administrative Tribunal, Jammu and sought the relief as under:-

"So as to command and direct the respondents to release the unpaid honorarium in favour of the applicant to the tune of Rs.41165 PM w.e.f 29.01.2016 to 19.02.2018 alongwith interest on the analogy of Government Order No. 97 CAPD of 2008 dated 08.12.2008, as the applicant has performed his duties with the respondents as Members of the District Consumer Forum Jammu, as such, the applicant is entitled for the same under law in the interest of justice."

AND WHEREAS, the Central Administrative Tribunal, Jammu considered the matter on 07.03.2022 and disposed of the OA as under:-

"Learned counsel for the applicant further submits that in this regard the applicant had submitted representation on 20.11.2017 and then again on 22.02.2019, but they have not yet been decided by



the respondents. Therefore, he seeks a direction to the respondents to decide the pending representation of the applicant for release of honorarium to him.

On considering the above submissions of the counsels for the parties, this O.A. is disposed of, without expressing any opinion on the merits of the case, directing respondents to consider the representation of the applicant dated 22.02.2019 for payment of Honorarium to him as per provisions of relevant applicable rules and binding instructions on the subject and decide it with a reasoned order by 28.04.2022 and within one week thereafter to communicate it to the applicant."

AND WHEREAS, the matter was examined in the department and after perusal of the record, the case was forwarded to the Finance Department for their opinion/advice and the said department returned the case vide their U.O. No.FD- Code/105/2021-03-951 dated 16.09.2022 as under:-

"Returned. The Department is advised to issue consideration order on the basis of rules governing the subject in compliance to the orders of the Hon'ble Court."

AND WHEREAS, the department again examined the matter and it was found that among another, the applicant came to be appointed by way of S.R.O - 27 dated 29.01.2016 without explicitly providing any terms & conditions with respect to rate of payment of honorarium and the applicant has accepted the engagement as Member District Consumer Forum Jammu at the relevant time without objecting to the provisions of the said SRO & thereby completed his full tenure. Besides, the applicant has been paid and accepted the honorarium as a Member at the relevant time.

AND WHEREAS, the applicant purportedly has approached the department by filing representations/applications dated 20.11.2017, 04.01.2018 and 22.02.2019 for payment of enhanced rate of Honorarium.



AND WHEREAS, in relation to payment of honorarium to the persons appointed to Consumer Foras of J&K, the Department at the relevant time has also made amendments to J&K Consumer Protection Rules, 1987 and accordingly, vide Notification SRO 96 dated 19.02.2018, certain amendments were made in the relevant rules, particularly, in rule 6 (b)(i-a), which provided that in case of such member who is a retired Government Servant and sitting on whole time basis, he shall receive an honorarium equivalent to the amount of salary as he was drawing at the time of his retirement minus pension. But this amendment has not been made applicable retrospectively.

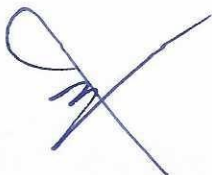
AND WHEREAS, with the coming into effect of SRO-96 dated 19.02.2018, the applicant has been paid the revised benefit of Honorarium on the basis of his last pay drawn minus pension w.e.f 19.02.2018 to February 2019 which stands already admitted by the applicant in the present OA.

AND WHEREAS, the perusal of rules amended vide SRO-96 nowhere provides that any retrospective effect is admissible to any of the member nominated/appointed in the erstwhile Consumer Foras.

AND WHEREAS, the Hon'ble Supreme Court of India in catena of cases has observed that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary. In the absence of express statutory authorities, delegated legislation in the form of rules or regulation cannot operate retrospectively.

AND WHEREAS, so far the claim of the applicant seeking analogy to one old case of Sh. Bhushan Lal Saraf appointed as member of J&K State Consumer Disputes Redressal Commission vide Govt. Order No.97-CAPD of 2008 dated 08.12.2008 is concerned, the said person was Retd. Principal District and Sessions Judge and being so, the benefits provided to him was case specific and therefore, cannot be made or set as a precedent for granting such a concession to any other engagement at this point of time, when neither the relevant Act nor the said rules are in existence/ operation.

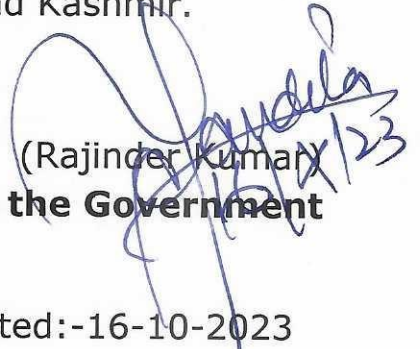
AND WHEREAS, it is amply clear from above that the sole issue raised by the applicant through various representations/ applications has already been addressed by the Department by



amending the relevant rules and providing the revised benefits but benefits under the said rules cannot be extended beyond its limits to create new liabilities/obligations from a past date.

NOW, THEREFORE, in view of the above and in terms of the directions of the Central Administrative Tribunal, Jammu Bench, the claim of the applicant having been considered under rules and is rejected accordingly on the ground that the relevant rules have not created a right in favour of the applicant for providing any retrospective benefits and also there is no similarity of applicant with the case of Sh. Bhushan Lal Saraf, who was member of J&K State Consumer Disputes Redressal Commission vide Govt. Order No.97-CAPD of 2008 dated 08.12.2008

By Order of the Government of Jammu and Kashmir.


(Rajinder Kumar)
16/10/23

Under Secretary to the Government

No.FCS&CA/LegI/87297/2023

Dated:-16-10-2023

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
2. Commissioner/Secretary to the Government, General Administration Department.
3. Additional Secretary to the Government, Department of FCS&CA.
4. Private Secretary to Commissioner/Secretary to the Government, Department of Food, Civil Supplies & Consumer Affairs for information.
5. Website Incharge.
6. Concerned for information.
7. Office Order File(w.2.s.c).