



Central Administrative Tribunal

Jammu Bench, Jammu

Hearing through video conferencing
Order Pronounced on : 13.10.2020
Order Reserved on : 18.08.2020

OA No. 062/524/2020

Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Mohd Jamshed, Member (A)

Shahnawaza Akhter Age 45 years W/o Abdul Ganie Padder,
R/o Fateh Pora, District Anantnag

.....Applicant

(Advocate: Mr. Qazi Ayaz)

Versus

1. Union Territory of J&K through Commissioner Secretary,
Home Department, Civil Secretariat, Jammu/Srinagar
2. Director General of Police, Jammu & Kashmir,
Jammu/Srinagar
3. Inspector General of Police, Railways J&K,
Jammu/Srinagar
4. Senior Superintendent of Police, Railway Kashmir,
Srinagar.

.....Respondents

(Advocate: Mr. Rajesh Thapa, DAG)

ORDER**Mr. Rakesh Sagar Jain, Member (A):**

1. Applicant Shahnawaza Akhter in the present O.A. has challenged the impugned order No. 58 of 2020 dated 26.02.2020 passed by Senior Superintendent of Police, Railway Kashmir, Srinagar whereby on conviction of the applicant by Judicial Magistrate 1st Class, Doru for offence u/s 138 Negotiable Instrument Act, the applicant has been removed from police service. Applicant by way of interim relief seeks the stay of operation of the impugned order and the respondents be directed to allow the applicant to resume her duties till the disposal of the O.A.
2. We have heard and considered the arguments of the learned counsel for applicant and Learned DAG for state and gone through the material on record.
3. It has been submitted by the applicant that the impugned order of removal from service has been passed in violation of the J&K Police Rules as well as Article 311 of the Constitution of India, as such, the interim relief sought by the applicant be granted in her favour.
4. On the other hand, learned DAG while opposing the prayer for interim relief placed reliance upon State of UP v/s Sandeep Kumar

Balmiki, (2009) 17 SCC 555 and submitted that no interim relief can be given to the applicant.

5. In the case of Sandeep Kumar Balmiki (supra), an appeal was filed in the Hon'ble Apex Court against the interim order of the Hon'ble High Court whereby the order of termination of service was stayed. Setting aside the order, the Hon'ble Apex Court held that:

“Having heard the learned senior counsel for the parties and after considering the impugned orders as well as the nature of relief claimed in the writ petition by the respondents, we are of the view that the High Court had fallen in grave error in staying the order of termination during the pendency of the writ petition. In our view, the interim order granted by the High Court staying the order of termination could not be passed at this stage in view of the fact that if such relief is granted at this stage, the writ petition shall stand automatically allowed without permitting the parties to place their respective cases at the time of final hearing of the writ petition. In this case also, the appellants have not yet filed counter affidavit to the writ petition of the respondents.

That being the position and in view of the fact that the final relief could not be granted at the interim stage, we set aside the impugned order and vacate the interim order passed by the High Court.”

6. In view of the law laid down by the Hon'ble Apex Court which is squarely applicable to the facts of the present case insofar as the interim relief is concerned, we are of the view that no prima facie case is made out by the applicant for issuance of interim relief. The prayer of applicant for interim relief is rejected. Learned AAG to file counter affidavit within two weeks. Learned counsel for applicant to file rejoinder affidavit, if any, within one week thereafter. Put up file for further orders on 18.11.2020.

(Hon'ble Mohd Jamshed)
Member (A)

(Rakesh Sagar Jain)
Member (J)

ND*