



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No.3592/2020
(S.W.P. No.2996/2002)

Wednesday, this the 16th day of December, 2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Azmat Begum, age 35 years, W/o late. Const. Mohd Younis R/o Bhera, Tehsil Mendhar, Distt. Poonch.
2. Bashart Younis, age 14 years, S/o late Const. Mohd. Younis.
3. Shazia Sultana, age 12 years, D/o late Const. Mohd. Younis.
4. Tahira Jabeen, age 10 years, D/o late, Const. Mohd. Younis.
5. Shagufta Younis, age 8 years, D/o late. Const. Mohd Younis

Petitioner no.2 to 5 are minors through real mother petition no.1

...Applicants

(Mr. M R Qureshi, Advocate)

Versus

1. State of J&K through Commissioner Secretary Home Civil Sectt. Sgr/Jammu at Jammu
2. D.G. Armed, J&K.
3. Commandant 5th BN, JKAP, Sgr/Jmu.

..Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

O R D E R (ORAL)**Mr. Justice L. Narasimha Reddy:**

The husband of applicant No.1, Mohd. Younis was employed as a Constable in Jammu & Kashmir Police in the year 1991. He was working in Coy A of 5th Battalion. It is stated that he suffered serious illness in August, 1991 and proceeded on leave for one month and could not join the duty on expiry of leave. He died in the year 1995. The wife, one son and three daughters of Mohd. Younis filed S.W.P. No.2996/2002 before the Hon'ble High Court of Jammu & Kashmir, with a prayer to declare the termination of the service of Mohd. Younis as illegal and arbitrary and to quash the order of termination. They have also prayed for a direction to the respondents to sanction the pension and release the GPF, welfare fund, gratuity, etc. payable to said Mohd. Younis.

2. The applicants contend that the absence and failure to join the duties by Mr.Younis, was on account of his serious illness and the same is evident from the very fact that he died of cancer in the year 1995. According to the applicants, the respondents were under obligation to conduct the inquiry before any order of termination was passed. It is also stated that the respondents have unlawfully withheld the various benefits payable to them.

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3. The respondents filed a detailed counter affidavit. They did not dispute that Mohd. Younis was employed as a Constable. It is, however, stated that he was sanctioned the leave for one month in the year 1991, but he did not join the duty despite repeated reminders. It is, also stated that certain benefits have been extended to the family.

4. In view of re-organization of the State of Jammu & Kashmir, the S.W.P. has been transferred to this Tribunal and renumbered as T.A. No.3592/2020.

5. Today, we heard Mr. M R Qureshi, learned counsel for applicants and Mr. Sudesh Magotra, learned Deputy Advocate General, through video conferencing.

6. The basic facts are not in dispute. Mohd. Younis was working as Constable in the Jammu & Kashmir Armed Police and he went on leave in the year 1991. The applicants state that Mohd. Younis was suffering from serious illness and on account of the same, he could not join the duties. The respondents, on the other hand, stated that repeated reminders were sent to him, but when he did not join the duties, and accordingly the order of discharge from service was passed on 26.05.1992.

7. The necessity for us to examine as to whether it was a case for conducting inquiry or otherwise, is obviated on account of

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the fact that Mohd. Younis is no more. The order of discharge dated 26.05.1992 reads:



“Const. Mohd. Younis No.16 of this Bn proceeded ten days C/leave with permission to avail two days Station leave on 16-8-91 and was scheduled to report back for duty on 29-8-91 but he failed to report for duty on scheduled date. As per DYSP APCR Jammu Signal No. log 8/APCR dated 30-08-91 Genpol A J & K cam Jammu has sanctioned more ten days leave in favour of the above named Const. Thus the Const. was to report for duty on 8-9-91, but constable again failed to report for duty on 8-9-91. Const. was informed Vide this office No.14175/V dated 26-10-91 No.15277 /V dated 19-11-91, No. 16225/V dated 10-12-91 No.1692 dated 27-12-91 and notice under registered cover No 8257-58 dated 9-5-92 to report for duty but not reported for duty and is still at house. It clearly indicates that the Const. is not willing to serve in police department.

On perusal of his service records it reveals that the Const. is habitual of absentee and has already earned punishments for similar reasons.

For his prolonged absence from duty Const. Mohd. Younis No.16 of this Unit is hereby discharged from service w.e.f. 8-9-91 ie the date he absented from leave. Const. will deposit all Uniform Articles in Unit Clothing Store within 15 days after receipt of this order, failing which case under section 409 will be registered against him.”

8. No provision of law is indicated for passing such an order nor was it preceded by any inquiry. Conducting of inquiry before terminating the services of the employee is a constitutional requirement. The inquiry can be dispensed with only in extreme cases where the disciplinary authority feels that it is not possible to examine any witness. Here, it is a simple case of unauthorized absence of the Constable. The discharge is not referable to any provision of law. Its effect is one of

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termination from service. It cannot be inflicted, except by conducting any inquiry. Therefore, the order dated 26.05.1992 is *non-est* in the eye of law.

9. Hence, we allow the OA and direct that Mohd. Younis shall be deemed to have been in service till the date of his death, i.e., 1995. In case he had, to his credit, pensionable service, the family pension shall be granted. On the other hand, if the service is not adequate, the other benefits, such, GPF, gratuity, etc. shall be extended to the applicants with interest @ 7% per annum from 31.12.1995. The appointment of the benefits among the applicants shall be on consent failing which, as per the relevant personal law. The exercise in this behalf shall be completed within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

December 16, 2020

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