



## **Central Administrative Tribunal Jammu Bench, Jammu**

T.A. No. 6067/2021  
(SWP No.1035/2011)

Tuesday, this the 20<sup>th</sup> day of July, 2021

(Through Video Conferencing)

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

Hidayat Iqbal, Age 33 yrs  
S/o Iqbal Khan  
R/o H. No. 112, Ustad Mohalla  
Jammu

...Applicant

(Mr. M R Qureshi, Advocate with Mr. Z.A. Mughal,  
Advocate)

### **Versus**

1. State of Jammu and Kashmir  
Through Commissioner/Secretary to Govt.  
Home Department  
Civil Secretariat  
Jammu/Srinagar
2. Director General ,  
Jammu and Kashmir Police, Jammu
3. Deputy Inspector General of Police  
Rajouri Poonch Range  
H. Qtrs. Rajouri
4. Superintendent of Police, Poonch

...Respondents

(Mr. Rajesh Thappa, Deputy Advocate General)



## ORDER (ORAL)

### Mr. Justice L. Narasimha Reddy:

The applicant was selected and appointed as Constable in Executive Police of Jammu & Kashmir and was allotted to Poonch District. He was sent for training to the Police Training School, Kathua in April, 2002. Stating that the applicant remained absent on certain spells and was thereafter repatriated to Unit at Poonch, the Deputy Superintendent of Police issued a notice to the applicant to explain as to why disciplinary action be not be initiated against him. It is stated that the applicant neither reported to duty nor responded to the notice. Two such exercises were issued and thereafter an order was passed on 15.02.2003, removing the applicant from service w.e.f. 15.07.2002, the date of his absence in Poonch.

2. The applicant contends that during the course of training, he went to his parents with prior permission and returned. He contends that in July, 2002, he fell ill so much so that he was hospitalized and was sent to the hospital at Chandigarh also and thereby, could not report to duty. He submits that when he went to the establishment where he was to report for duty, he was informed that the order of removal was passed on 15.02.2003 and that he submitted a



representation, duly enclosing the medical certificates. It is stated that though the respondents assured that the representation would be considered, they did not take any steps, and ultimately, he filed SWP No. 1035/2011 before the Hon'ble High Court of Jammu & Kashmir, challenging the order of removal.

3. The applicant contends that he was unable to attend the duties in July, 2002 on account of ill health problem and as soon as he recovered, he reported to duty. It is stated that the impugned order was passed without conducting any inquiry and none of the notices mentioned therein, were served upon him at the address furnished to the respondents.

4. The respondents filed a detailed counter affidavit. According to them, the SWP itself was not maintainable due to long delay and that various contentions urged by the applicant are incorrect. They stated that adequate opportunities were given to the applicant at every stage and left with no alternative, the impugned order was passed. It is further stated that the case of the applicant fits into the Article 187 of Police Manual and no interference is warranted with it.



5. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as T.A. No. 6067/2021.
  
6. Today, we heard Mr. M R Qureshi, learned counsel for applicant and Mr. Rajesh Thappa, learned Deputy Advocate General.
  
7. It is no doubt true that there is much gap between the date of order of removal and the date of filing of the SWP. The fact, however, remains that the applicant specifically pleaded in his grounds that the representation made by him, duly enclosing the medical certificates, was not considered, and, therefore, he filed this T.A. as a last resort.
  
8. Copy of the representation is not made part of the record. When the same is pointed out, learned counsel for applicant submitted that being so not well-informed, the applicant did not preserve a personal copy for himself and on that account, he cannot be doubted. In the counter affidavit also, the respondents did not deny the factum of the applicant making a representation.



9. In the order of removal, reference is made to the notices said to have been issued to the applicant. Out of them, one is published in the local press. Being a resident of remote area, the applicant was not able to receive them. Though it would have been proper for him to undergo treatment under the specific orders of the Department, he remained absent for quite some time.

10. There is some ambiguity on the side of the respondents also. While the impugned order is the one, through which the applicant was removed from service, the respondents have referred to Article 187 of the Police Manual, which provides for discharge simplicitor. There is phenomenal difference between the discharge and removal. Under these circumstances, we are of the view that the competent authority needs to address the issue on the basis of the representation submitted by the applicant.

11. Hence, we dispose of the T.A., directing that the applicant can make a representation to the competent authority, duly enclosing the medical certificates as well as making reference to the earlier representation, within four weeks from the date of receipt of a copy of this order. The concerned authority shall pass appropriate orders thereon,



within six weeks thereafter. It is made clear that we did not express any view on the merit of the matter.

There shall be no order as to costs.

**( Mohd. Jamshed ) ( Justice L. Narasimha Reddy )**  
**Member (A) Chairman**

**July 20, 2021**  
/sunil/ankit/