

Central Administrative Tribunal Jammu Bench, Jammu



T.A. No.1303/2020
(SWP No.1526/2003)

Tuesday, this the 2nd day of February, 2021

(Through Video Conferencing)

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

K Bahadur Singh, age 49 years
s/o Sh. Narinder Singh
R/o H.No. 51, Lane 3, Greater Kailash, Jammu

..Applicant
(Ms. Surinder Kour, Senior Advocate assisted by Ms.
Manpreet Kour, Advocate)

Versus

1. State of J&K through Chief Secretary
Govt. of J & K, Civil Secretariat, Jammu/Srinagar.
2. Financial Commissioner & Secretary to Govt.,
Home Department, Govt. of J & K, Civil Secretariat,
Jammu/Srinagar
3. Director General, Fire Services & Prisons
Govt. of J & K, Jammu/Srinagar
4. Mr. G A Bhat, Director, Fire Services,
J & K Srinagar,

5. Mr. R K Hak,
Deputy Director, Command Sopore, Kashmir
..Respondents
(Mr. Sudesh Magotra, Deputy Advocate General)

ORDER (ORAL)



Mr. Justice L. Narasimha Reddy:

The applicant was appointed as Divisional Fire Officer in the year 1979. After working for about a decade, he sought permission to go out of the country to meet his sister, and the same was accorded on 11.08.1989. Initially leave of 50 days was sanctioned to him on 30.10.1989. In addition to that, he had, at his credit, 52 earned leave by that time. As required under the prescribed procedure, he furnished the address in USA and proceeded to that place. However, he did not return to India after expiry of the leave. It is stated that the applicant suffered injury in two accidents while in USA, and he came to India only in February 1995. Thereafter, he is said to have received treatment at Chandigarh for another five years. When

he reported to duty on 01.07.1995, he was informed that his services were terminated vide order dated 04.05.1992.



2. The applicant filed SWP No.1606/1997 before the Hon'ble High Court of Jammu & Kashmir, challenging the said order. That was dismissed on 27.11.1998. Thereafter, he filed LPA No.597/1999 before the Hon'ble High Court. Vide order dated 11.10.1999, the Hon'ble High Court disposed of the LPA and the applicant was directed to appear before the concerned authority, who, in turn, was directed to take decision either to reinstate the applicant or to issue charge memo and complete the proceedings within four months. The disciplinary authority issued a charge memo to the applicant on 08.06.2000, alleging mainly that the applicant failed to report for duty after expiry of the leave, and did not respond to various notices that were issued and published in 1992. The applicant submitted an explanation. Not satisfied with that, the disciplinary authority appointed an inquiry officer. A report was submitted by the inquiry officer. Taking the same into account, the disciplinary authority issued a notice dated



21.01.2003 imposing the punishment of dismissal from service. The applicant submitted his explanation to the same. On consideration of the explanation, the disciplinary authority passed an order dated 10.02.2003 dismissing the applicant from service and directing that he would be presumed to be out of State employment on account of his being absent for more than five years. Challenging the said order, the applicant filed SWP No.1303/2020 before the Hon'ble High Court.

3. The SWP has since been transferred to the Tribunal in view of the reorganization of State of Jammu & Kashmir, and renumbered as T.A. No.1303/2020.

4. Today, we heard Ms. Surinder Kour, learned senior counsel, assisted by Ms. Manpreet Kour, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.

5. This is the second round of litigation by the applicant, feeling aggrieved by the order passed by the respondents, that



has the effect of terminating the relationship with the Department. It is not in dispute that the applicant proceeded to USA by obtaining permission and leave, but did not return to India and report for duty on expiry thereof. Though it is stated that he went on making representations for extension of leave, the fact remains that it was in February, 1995, he came and reported for duty. By that time, the order of discharge/termination was passed in 1992. The said order was set aside by the Division Bench of Hon'ble High Court in LPA No.597/1999 on the ground that it was issued without conducting inquiry. The Department was given opportunity either to reinstate the applicant into service, or to conduct departmental proceedings. It is in that context, that the charge memo was issued and ultimately, the applicant was treated as not being in service of the Department.

6. It is strongly argued that the disciplinary authority has committed certain irregularities, and there are several inconsistencies in the impugned order. It is pointed out that at one place, the disciplinary authority observed that he confirms

the order of discharge passed in 1992, and on the other hand, brought into existence another order by taking into account the subsequent period.



7. The aspects mentioned above are mostly hyper technical. Though the order of discharge was passed in 1992, it was set aside by the Hon'ble High Court in LPA No.597/1999 on the ground that it was not preceded by the inquiry. That order came to be passed at a time when the applicant was still in USA. It is three years thereafter, that he reported for duty. Once the order of discharge passed in 1992 is set aside, the charge memo was issued covering the entire period of absence.

Allegations in the charge memo read:-

“1. That on 26.9.1989 you had applied the sanction of 90 days earned leave on the ground that you had to attend function at your sister's house in U.S.A. but their being only 52 days earned leave at your credit till 31.12.89, only 50 days earned leave was sanctioned in your favour vide this office order No.285/89 dated 30.10.89. However in the above said order it was made clear that no further extension will be granted because there were only 52 days earned leave at your credit till 31.12.89.



2. That after availing of 50 days earned leave you failed to report back for duty on due date i.e. 21.12.89 FN, as such you were marked absent for your unauthorized absence.

3. That after being marked absent for unauthorized absence you had sought extension of leave through telegram received from Punjab India at first instance for 90 days and thereafter through various telegrams No's Estt/DFS/1801, Estt/3849 and Estt/6695 dated 8.3.90, 28.5.90 and 7.8.90 respectively in view of the standing Govt. instructions of 1990 and also on the ground that the telegrams did not disclose any justifiable ground for grant of extension of leave sought by you. The above said telegrams whereunder your extension of leave sought by you was rejected, came to be published in Govt. Gazette dated 23rd May, 1991 in terms of this Directorate communication No.P-Case/Estt/2717-18 dated 25.4.91. Through above said communications duly served upon you, you were informed that extension of leave sought by you stands rejected and you were asked to report back for your duties within a stipulated period, failing which disciplinary action under rules shall be initiated against you.

4. That notices of resuming duties within a stipulated period in terms of communication No.'s P-case/Estt.27817-18 dated 25.4.91, addressed to you was also published in Government Gazetted on May 23rd 1991 but you failed to resume duties. The Department enclosed the govt. Gazette publication dated 23rd May, 1991 with communication No.Estt/6010-11 dated 20.7.91 addressed to you and copy of which was endorsed and dispatched upon your Srinagar residential address through above communications and you were asked



again to resume duties within 15 days failing which action under Art,128 of J&K CSR, shall be initiated against you.

5. That you after hearing nothing from the department regarding extension of leave sought by you should have returned and resumed duties. You failed to resume duties, therefore, a show cause notice of termination was issued vide this Directorate communication No.Estt/7825-30 dated 13.9.91. However, you again failed to submit your reply to the show cause notice. The said show cause notice copy was dispatched upon your Srinagar residential as well as USA addresses. This show cause notice of termination was also published through local news papers "Alsafa", Srinagar Times" on 25.9.91 and 24.9.91 respectively. However, this directorate failed to receive any reply to the show cause notice within the stipulated period.

6. That on failing to received any reply to the show cause notice of termination, Department again issued a final attendance notice addressed to you and copy which was endorsed and dispatched upon your Srinagar residential address in terms of communication Estt/423-28 dated 10.1.92, whereunder you were directed to resume duties within the stipulated time, failing which it will be considered that you are not interested in joining duties and accordingly you will be removed from the rolls of department bu you again failed to resumed duties. The copy of communication dated 10.1.92 was served upon you through registered post and besides it came to be published in Govt. Gazette on 9.4.92 and daily "Dhanic KT" and "Excelsior" on 16.3.92 and "Aftab" on 20.3.92.



7. That despite above mentioned communications, show cause notice of termination, final attendance notice and notices of rejection of extension of leave sought by you, copies dispatched upon your Srinagar as well as USA addresses and even published in daily locals and Govt. Gazette, you failed to resumed duties and as such your wilful and deliberate attitude of remaining unauthorizably absent was sufficient to reach to conclusion that you have were absconding.

8. That you had failed to resumed back for duties despite numerous opportunities granted to you from time to time in the interest of justice. The J&K Fire Services Organization being emergent nature of services could not afford to keep the important post of DFO vacant keeping in view the exigency of work. Hence, the then Director J&K Fire Services had deemed it fit to terminate your services w.e.f. 21.12.89 FN, by utilizing the powers vested in him under Art.128 of J&K CSR vide this Directorate order No.138 of 1992 dated 4.5.1992 bearing endorsement No.Estt/3079-88 dated 4-5-92, copy of which was endorsed and dispatched upon your Srinagar residential as well as USA addresses. In addition to it, this order came to be published in Govt. Gazette on 25.6.92.”

8. Most of the allegations are matter of record. It is not in dispute that the applicant remained out of service for a period exceeding five years. There is provision in Article 128 of Jammu & Kashmir Civil Service Regulations to the effect that



if an employee remains absent for a period exceeding five years without accord of leave, he ceases to be in employment of the State. Except that, a notice in this behalf was issued. The provision hardly contemplates any detailed inquiry. In the instant case, a detailed charge memo was issued and the inquiry officer was also appointed.

9. During the course of inquiry, the applicant failed to prove the veracity of the medical bills and other related documents. Even otherwise, when an employee is out of duty for a period exceeding five years, he ceases to be in employment of the State. The case of the applicant stands on worse footing. Except for a small fraction, the entire period was not covered by any leave whatever. It is further alleged by the respondents that in spite of repeated efforts to contact the applicant and served notice upon him, the effort did not fructify.

10. Under these circumstances, we find it difficult to interfere with the impugned order. The T.A. is accordingly dismissed. There shall be no order as to costs.



(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 2, 2021
/sunil/