

**Central Administrative Tribunal  
Jammu Bench, Jammu**

T.A. No.4973/2021  
(S.W.P. No.584/2009)

Thursday, this the 20<sup>th</sup> day of May, 2021

(Through Video Conferencing)

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

Khem Raj s/o Shanker Lal r/o Gowri Teh. Gandoh,  
Bhellessa, District Doda,  
Age 35 years

..Applicant

(Mr. P N Bhat, Advocate)

VERSUS

1. State of J & K through  
Commissioner-cum-Secretary  
Home Department, J & K, Jammu
2. Director General of Police, J & K, Jammu
3. Deputy Inspector General of Police, Doda, Kishtwar  
Ramban Range, Headquarter Camp Batote
4. Senior Superintendent of Police, Doda

..Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)

**ORDER (ORAL)**

**Mr. Justice L. Narasimha Reddy:**

The applicant was employed as a Constable in the Police Department of Jammu & Kashmir and became Selection Grade Constable. He states that while on duty in the year 2007, he suffered serious illness and on the advice given by the Doctors, he availed the treatment, duly applying for leave. It is also stated



that he resumed duties in the year 2007 but shortly thereafter, he was hospitalized in Doda District. According to him, when he reported to duty, he was informed that he will be issued a charge memo for unauthorized absence and at a time when he was waiting for the proceedings of that nature, he was served with an order dated 05.02.2008, through which he was dismissed from service. He filed SWP No.584/2009 before the Hon'ble High Court of Jammu & Kashmir, challenging the order of dismissal dated 05.02.2008.

2. The applicant pleaded that no charge memo was issued to him and the order of dismissal is contrary to law. It is also stated that the absence attributed to him is on account of prolonged illness and though the treatment was within the knowledge of the concerned authority, the same was not taken into account. Other grounds were also urged.

3. The respondents filed a detailed counter opposing the SWP. It is stated that the applicant is a habitual absentee and in his 13 years of service, he was imposed certain punishments and it is not at all advisable to continue such person in a disciplined force, like Police. It is stated that the impugned order was passed duly following the prescribed procedure.

4. 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.4973/2021.



5. Today, We heard Mr. P N Bhat, learned counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.

6. The applicant was dismissed from service, through an order dated 05.02.2008. The reason mentioned therein is that he remained absent in two spells, i.e., 141 days and 330 days respectively. It was also directed that the entire period of 471 days shall be treated as *dies non*.

7. The applicant has categorically stated that he did not receive any charge memo, much less any inquiry was conducted. The respondents, on the other hand, stated that though the applicant was issued notice, he did not respond to it and the concerned authority had to file an *ex parte* report.

8. The applicant was a full member of the cadre of Selection Grade Constable in the Police. He could have been removed or dismissed from service only by following the prescribed procedure, namely, issuance of charge memo, conducting of departmental inquiry, furnishing of report of the inquiry officer;

and passing of final order, duly taking into account the explanation, which the applicant could have offered. While the applicant stated that he was not issued any charge memo at all, the reply filed by the respondents is a bit vague.



9. A perusal of the impugned order discloses that for the first spell of 141 days absence, the District Police Officer, Doda directed initiation of the disciplinary proceedings against the applicant and conducting of inquiry vide order dated 21.02.2007. However, we find reference to an *ex parte* report of the inquiry officer and recommendations for removal from service. There is no reference to any charge memo or even mention of an attempt to serve the copy of the inquiry report to the applicant.

10. The second set of proceedings is said to have been initiated vide the order dated 19.07.2007 issued by the District Police Officer, Doda. The Additional Superintendent of Police, Doda is said to have ordered notice on 27.11.2007 to the applicant to his known address as well as home address. Here again, there is no reference for issuance of charge memo or furnishing of the report of the inquiry officer.

11. Once the very basic requirement of issuance of charge memo and furnishing of copy of inquiry report is missing in the entire proceedings, the impugned order dated 05.02.2008 cannot be said to be legally valid. On the one hand, reference is made to two sets of disciplinary proceedings and on the other, a common order is passed dismissing the applicant from service.

The net result is that the prescribed procedure was violated and the punishment of dismissal from service was imposed. That cannot be sustained in law.



12. In the normal course it would have not have been necessary to set aside the impugned order, and the respondents were to resume the proceedings from the stage where the lapse took place and to conclude them in accordance with law. However, we are of the view that the evidence or other record, which is referable to the year 2007-08, may not be available at this stage and no useful purpose would be served, if the matter is remanded. A balancing act can be chosen by setting aside the impugned order and directing the reinstatement of the applicant but denying him the benefits of back wages or promotion. The reason is that the record of the applicant is not clean and he is said to be a habitual absentee.

13. We, therefore, allow the T.A. and set aside the impugned order dated 05.02.2008. We direct reinstatement of the applicant as Selection Grade Constable, but the benefits of back wages as well as promotion are denied to him. To be precise, we direct that the applicant shall be reinstated into service as Selection Grade Constable in the same status in which he was there, as on 01.01.2008, in terms of emoluments and the seniority, within a period of four weeks from the date of receipt of a copy of this order. On reinstatement, he shall not be entitled

for any back wages and promotion, but the period between the date of the impugned order and the date of reinstatement shall be reckoned only for the purpose of determining the pension, and not for any other purpose. We also direct that in future, if the applicant remains absent for a period exceeding one week within a span of six months, it shall be open to the respondents to dismiss him from service without taking recourse to any other proceedings. There shall be no order as to costs.



**( Tarun Shridhar )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

**May 20, 2021**  
**/sunil/rk/sd/**