



**Central Administrative Tribunal
Jammu Bench, Jammu**

**TA No. 84/2021
SWP No. 899/2017**

Monday, this the 22nd day of March, 2021

(Through Video Conferencing)

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

1. Ghulam Mohammad Magray, Age 43 years
S/o Mohammad Ramzan Magray
R/o Kangan Kachnambal Ganderbal
Belt No. 1237/P1.
2. Farooq Ahmed Mir, Age 43 years
S/o Gh. Mohd. Mir
R/o Lasipora Pulwama
Belt No. 693/P1.
3. Mohd. Maqbool Sofi, Age 40 years
S/o Ab. Rehman Sofi
R/o Wandakpora Pulwama
Belt No. 181/P1.
4. Ishfaq Ahmed Rather, Age 25 years
S/o Gulzar Ahmed Rather
R/o Rangar Chadoora, Budgam
Belt no. 1137/P1.

...Applicants

(Mr. Bhat Fayaz Ahmad, Advocate)

VERSUS

1. State of J & K through
Commissioner/Secretary to Govt.
Home Department
Civil Sectt., Srinagar/Jammu.
2. Director General of Police
J&K Srinagar/Jammu.



3. Superintending of Police
District Pulwama.

...Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER (Oral)

Mr. Justice L. Narasimha Reddy:

The applicants were working as Senior Grade Constables and Constables in the Jammu & Kashmir Police. Disciplinary proceedings were initiated against them, alleging that when posted as Guards at Minority Guard, Tumlihal, in Pulwama District; they acted negligently on 08.10.2016 and meekly surrendered to the militants by permitting them to take away the arms and ammunitions. Since the applicants denied their complicity, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO). The IO submitted report, stating that the charges framed against the applicants are proved. The applicants were issued a notice and not satisfied with the explanation offered therein, the DA passed an order dated 16.02.2017, directing removal of the applicants from service. Challenging the same, the applicants filed SWP No.899/2017 before the Hon'ble High Court of Jammu & Kashmir.

Item No. 14



2. The applicants contend that the prescribed procedure was not followed by the respondents during the course of inquiry and even the report of the IO was not furnished to them. It is also stated that though the appeal was preferred, it was not being entertained and that they prayed for quashing of the order of removal.

3. The respondents filed a counter affidavit, denying the allegations. It is stated that the prescribed procedure was followed at every stage of proceedings, and on finding that the lapses on the part of the applicants are serious, the DA passed the impugned order. An objection has also been raised for not availing the remedy of appeal.

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.899/2017.

5. Today, we heard Mr. Bhat Fayaz Ahmad, learned counsel for applicants and Mr. Amit Gupta, learned Additional Advocate General.

6. It appears that a common set of proceedings were initiated against the applicants, maybe on account of the fact that the nature of allegations is similar. A detailed departmental inquiry was conducted by appointing the IO. The applicants contend that they were not given



opportunity during the course of inquiry, and were not permitted to examine the witnesses on their behalf. Another main contention is that the report of the IO was not furnished to them.

7. In their counter affidavit, the respondents have, no doubt, pleaded that the inquiry was conducted strictly in accordance with the prescribed procedure. However, it is silent about the plea of the applicants that the report of the IO was not furnished. While the applicants pleaded that they availed the remedy of filing an appeal, the respondents stated that it was not in proper form.

8. We are of the view that the alternative remedy of preferring an appeal needs to be availed by the applicants. In a way, it would in the interest of the applicants, that such a remedy is availed. The reason is that the scope of interference by the Appellate Authority is far wider, compared to that of the Tribunal/Court. Without standing on the technicalities as to the forum or timing, the applicants can be permitted to present fresh appeal, so that the issue can be addressed by the concerned authority. If the plea of the applicants that the report of the IO was not furnished to them is true; the Appellate Authority needs to take that into account, obviously because it would be a

Item No. 14



serious lapse. We do not propose to observe anything on merits, at this stage.

9. We, therefore, dispose of the T.A.:-

- (a) Leaving it open to the applicants to prefer an appeal before the concerned authority, within four weeks from today, raising all the pleas that are available to them;
- (b) Directing that the Appellate Authority shall entertain the same, without raising any objection as to limitation and decide the matter on merits, on various issues, including the one as to the alleged failure to furnish the report of the Inquiry Officer, and other grounds, which the applicants may urge, within a period of two months from the date of its receipt.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 22, 2021
/sunil/jyoti/vb/anvit