



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No. 6306/2020
(SWP No.88/2019)

Monday, this the 19th day of July, 2021

(Through Video Conferencing)

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

Mushtaq Ahmad Sheikh (Aged: 35 years)
S/o Ghulam Mohd. Sheikh.
R/o Arabal Shaimar Srinagar,
Kashmir.

...Applicant

(Ms. Ruqaya Siddiqui, Advocate)

Versus

1. State of Jammu and Kashmir
Through Commissioner/Secretary to Govt.
Home Department Civil Sectt.,
Jammu/Srinagar.
2. Director General of Police,
Jammu and Kashmir,
Jammu /Srinagar
3. Inspector General of Police
Kashmir Range,
4. Sr. Superintendent of Police,
Anantnag.
- 5 Dy. Superintendent of Police DAR,
District Police Lines,
Anantnag.

..Respondents

(Mr. Amit Gupta, Additional Advocate General)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was appointed as a Constable in Jammu & Kashmir Police in the year 1988. He was also confirmed in the post, on completion of probation. It is stated that he developed acute un-tolerable backache in July, 2002 and when he informed the superiors about the same, he was permitted to leave for home and to take proper treatment. Accordingly, he is said to have moved to his native place and got treatment for various ailments. It is stated that when he sought to join the duty after recovery, he was not permitted to join and repeated representations have been made in this behalf and that he was discharged from service in the year 2003. He contends that when he came to know about his discharge, he made a representation to various authorities in the year 2006 and no tangible action was taken thereon. He further contends that having waited sufficiently, he filed SWP No.115/2017 before the Hon'ble High Court of Jammu & Kashmir and the same was disposed of on 03.02.2017, with a direction to the respondents to pass order on representations. Stating to be in compliance with the directions issued in SWP, the respondents passed order dated 28.04.2018, rejecting the representations of the applicant on the ground of delay as well as on merits.



2. The applicant filed SWP No.88/2019 before the Hon'ble High Court, challenging the rejection order dated 28.04.2018. He stated that the order impugned in the SWP was totally untenable and the initial order of discharge was also contrary to law. The applicant has also stated that though the regular inquiry was ordered against him and an Inquiry Officer (IO) was appointed, the inquiry was abandoned halfway through, and the order of discharge, without invoking the relevant provisions, was passed.

3. The respondents filed a detailed counter affidavit, opposing the T.A. They raised serious objection as to delay and laches. It is also stated that the applicant was discharged from service way back in the year 2003 and he did not pursue the remedies. It is also stated that in compliance with the order dated 03.02.2017 passed by the Hon'ble High Court, representations were considered and since they were hopelessly barred by limitation and laches, the impugned order was passed, without expressing any view on merits.

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.6306/2020.



5. Today, we heard Ms. Ruqaya Siddiqui, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General.

6. The applicant was a permanent employee of Jammu & Kashmir Police. Disciplinary proceedings were initiated against him by issuing a charge memo. It appears that on account of his illness or otherwise, the applicant did not take part in the proceedings. The IO dropped the proceedings halfway through. A notice is said to have been issued to the applicant, requiring him to report duty by a particular date. Stating that he did not respond to that notice, the respondents passed order of discharge. The circumstances, under which the present T.A. came to be filed, are already stated in the preceding paragraphs. A serious objection is raised by the respondents as to delay and laches.

7. It is true that the SWP was filed in the year 2017, whereas the order of discharge was passed in 2003. Had it been the first effort made by the applicant without doing anything earlier to that, things would have been different altogether. He went on making representations from 2006 onwards. At one stage, the Director General of Police called for the remarks of the concerned authority and the remarks were also furnished in the year 2006 itself. The record discloses that no final order was passed thereon. The



applicant reposed confidence in the authorities and was waiting.

8. In SWP No.115/2017, the Hon'ble High Court did not find that the case is barred by limitation and that the representations of the applicant need not be considered at all. Obviously on being convinced that there was adequate effort by the applicant in pursuing the remedies, an order came to be passed, directing the respondents to consider the representations. The plea of limitation, if at all, ought to have been taken in that SWP. By inference, it is deemed to have been raised but rejected. Under these circumstances, it cannot be said that there was delay or laches on the part of the applicant, in filing the present SWP. Assuming that there is some laxity in pursuing the remedies in the right earnest, the same can be taken note of, while moulding the relief.

9. Coming to the order of discharge passed against the applicant, it is evident that the applicant was full member of the service of Jammu & Kashmir Police and obviously for that reason, a regular inquiry was ordered by issuing a charge memo and the IO was appointed. Even if the applicant did not respond to the charge memo or did not participate in the proceedings, appropriate order ought to have been passed, as provided for under the relevant Rules. Instead, the inquiry was abandoned halfway through and the



notice was issued to the applicant, requiring him to join duty within two weeks. Just by referring to the notice, he was discharged from service.

10. We are aware that the Article 187 of the Police Manual empowers the authorities to discharge an employee in case he remains absent for the specified length of time. The said provision was not invoked in the case of the applicant, nor any other provision, that enables them to discharge the employee, was referred to. The discharge simplicitor, only on the ground that the applicant did not report to duty within two weeks from the date of notice, cannot be sustained in law. Accordingly, the order of discharge passed against the applicant on 27.01.2003 is set aside.

11. Coming to moulding of the relief to the applicant, we find that the discharge took place way back in the year 2003. It is not known as to whether the applicant is physically fit to resume duty at this stage. We are of the view that in case he is found fit, he can be taken into service without obligation to pay the back-wages. If on the other hand he is not physically fit, he can be paid compensation or retiral benefits, commensurate with the last pay drawn by him.



12. We, therefore, allow the T.A. directing that:

- (a) the order of discharge order 27.01.2003 and rejection order dated 28.04.2008 are set aside,
- (b) the respondents shall get examined the physical fitness of the applicant and if he is otherwise found fit, he shall be reinstated into service as Constable, without the obligation to pay the back-wages, provided he is physically fit and his antecedents during interregnum are free from any complaint. However, on being reinstated, he shall be extended the benefit of continuity in service only for the purpose of pension and nothing else.
- (c) if the applicant is found not physically fit to resume duties, the appointing authority of the applicant shall decide the amount of retirement benefits to be paid and compensation for the wrongful discharge from service. They shall also extend the benefit of provident fund and other amounts, which are due to the applicant for the service already rendered by him.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 19, 2021
/sunil/jyoti/