

**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.6341/2020
(S.W.P. No.481/2004)

Thursday, this the 4th day of March, 2021

(Through Video Conferencing)

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

Mohammad Rafiq Laway
s/o Abdul Gani Laway
r/o Batapora, Hazrathbal
Tehsil Khas Distt. Srinagar
(Age 34 years)

.. Applicant

(Mr. Tasaduq Hussain Khawaja, Advocate)

Versus

1. State of J & K through
Commissioner-cum-Secretary to Govt.
Agriculture Production and Animal/
Sheep Husbandry Department, Civil
Sectt. Jammu/Srinagar
2. Director, Sheep Husbandry Deptt
Kashmir, Srinagar
3. Joint Director, Farms
Sheep Husbandry Deptt. Srinagar

.. Respondents

(Mr. Sudesh Magotra, Deputy Advocate General)



O R D E R (ORAL)**Justice L. Narasimha Reddy:**

The applicant was taken on duty as stop gap arrangement, as cleaner in the Directorate of Sheep Husbandry, Kashmir, through an order dated 31.05.1994. Thereafter, a proposal was mooted for regularization of the persons working on stop gap arrangement, vide order dated 24.05.1999, subject to approval by the Government.

2. The applicant is said to have applied for two days' leave on 14.02.2003. However, he did not turn up after expiry of two days and he was issued a notice dated 19.3.2003, requiring him to resume the duties and to explain the reasons for unauthorized absence. Repeated reminders are said to have been issued on 09.04.2003 and 10.04.2003. Notices are also said to have been published in the local dailies also. Ultimately, an order was passed on 06.03.2004, stating that he shall be deemed to have been dismissed from service w.e.f. 14.02.2003. Challenging the said order, the applicant filed SWP No.481/2004 before the Hon'ble High Court of Jammu & Kashmir. He pleaded that the order of dismissal was passed by the Joint Director, Farms, Sheep Husbandry Department, Srinagar, who is inferior to the appointing authority. Another plea of the applicant was that no regular inquiry, as contemplated under the Jammu & Kashmir

Civil Service Regulations (Classification, Central & Appeal) Rules, 1956 (for short “Rules, 1956”), was held. He stated that the absence was on account of serious illness and that there was no justification for the respondents in dismissing him from service.

3. The respondents filed a detailed counter affidavit. It is stated that the applicant was habitual absconder and as and when the absence was noticed, he came forward with a notarized affidavit, undertaking to be regular in duties. It is also stated that though he pretended to join duty on 18.04.2003, he did not attend physically, and that he was also placed under suspension. The respondents contend that the regularization of the applicant did not take place since it was subject to approval on administrative level. They further contend that the Joint Director, Farms, being the class-I officer, is competent to pass the order, particularly when the applicant was only on stop gap arrangement.

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.6341/2020.

5. Mr. Tasaduq Hussain Khawaja, learned counsel for applicant submitted that the impugned order is patently illegal, inasmuch as it was passed by an authority, who is below the rank of appointing authority. He contends that when the applicant

was taken on stop gap arrangement, the appointing authority was the Director, whereas the impugned order was passed by the Joint Director, Farms.

6. The second contention of learned counsel for applicant is that the order of dismissal is passed without conducting any regular inquiry. He placed reliance upon the judgment of Hon'ble Supreme Court in **Jai Shankar v. State of Rajasthan & others**, 1996 AR 492 and judgments of Hon'ble High Court of Jammu & Kashmir in **State v. S. Qamar Ali**, 1994 Srinagar Law Journal 373, **Ghulam Ahmad Bhat v. State of Jammu & Kashmir**, 1999 SLJ 560 & **State of Jammu & Kashmir & others v. Mohammad Khalil Hajam**, (2003) 1 Srinagar Law Journal 95.

7. Mr. Sudesh Magotra, learned Deputy Advocate General, on the other hand, submits that the applicant was yet to be regularized and since he was working on stop gap arrangement, the Joint Director, Farms was very much competent to pass the impugned order. He further submits that though the reference was made to Rule 30 of the Rules, 1956 in the impugned order, it is not applicable to the case of the applicant since he is not a civil servant of the State.

8. Learned Deputy Advocate General further submits that the unauthorized absence was for months and years together and the Department cannot afford to put up with such employees.

9. The applicant was initially taken on stop gap arrangement on 31.05.1994. Though an attempt was made in 1999 to continue such employees and to regularize them, it was subject to approval by the Government. There is nothing on record to show that the services of the applicant were regularized. The result is that he continued to be under the stop gap arrangement and he did not become civil servant of the State.

10. The applicant is said to have remained absent ever since he applied for leave on 14.02.2003. The notices, either directly issued to him or published in the newspaper, did not evoke much response. At one stage, he pretended to be joining duty by submitting a letter dated 18.04.2003. However, he was not physically present. It only shows that the applicant was living elsewhere and the letter dated 19.03.2003 was sought to be submitted just to show that he is very much available. The impugned order came to be passed on 06.03.2004, i.e., exactly one year ever since he remained absent. Any person, interested to be in service, would not have ventured to remain unauthorizedly absent for such a long time. The SWP is silent as to the nature of ailment undergone by the applicant. Further, if

the ailment was so serious, he would have got the benefit from the Government hospitals.

11. The plea of the applicant that the Joint Director, Farms is not the competent authority, deserves to be rejected, on account of the fact that he is yet to become a regular member of service and the Joint Director, Farms, being a class-I officer, is very much competent to deal with the employees, who are working on *ad hoc* or stop gap arrangement.

12. So far as conducting of inquiry is concerned, it would arise only in the case of regular member of service. Though reference is made to Rule 30 of the Rules, 1956, we are of the view that it was almost casual. We have put a specific question to learned counsel for applicant as to whether the four judgments relied upon by him dealt with the cases of the employees taken on stop gap arrangement or those, who are yet to be regularized. The answer is that they were in relation to regular members of service. Therefore, the ratio laid down therein does not apply to the facts of the present case.

13. On account of the unauthorized absence of the applicant for one year, the very purpose of his being engaged was defeated. Added to that, there were aggravating circumstances, such as, he was absent from duty on several occasions for such a long time.

14. We do not find any merit in this T.A. It is accordingly dismissed. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 4, 2021
/dkm/sd/sunil/jyoti/