



Central Administrative Tribunal Jammu Bench, Jammu

**T.A. No.6808/2020
(S.W.P. No.2466/2017)**

Wednesday, this the 24th day of February, 2021

(Through Video Conferencing)

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

Lady Constable Shamshada Akhter No.337/B
D/o Assadullah Ganie
r/o Palapora, Pattan
District Baramulla, age 46 years

.. Applicant
(Mr. Aijaz Bedar, Advocate)

Versus

1. State of J & K through
Principal Secretary to Government
Home Department, Civil Secretariat,
Srinagar/Jammu
2. Director General of Police
J & K, Srinagar/Jammu
3. Senior Superintendent of Police
Baramulla
4. Deputy Superintendent of Police
DAR, Baramulla

.. Respondents

(Mr. Amit Gupta, Additional Advocate General)

O R D E R (ORAL)

**Justice L. Narasimha Reddy:**

The applicant was appointed as a Lady Constable in the Jammu & Kashmir Police (Executive) on 07.07.1992 and was allotted to Baramulla District. She was also subjected to training at PTC, Udhampur on 24.08.1992 to 23.04.1993. It is stated that the applicant fell ill in the year 1994, and in the course of treatment, she was diagnosed as cancer patient, so much so her right breast was removed through operation. Thereafter, she is said to have made an attempt to join her duties in July, 1997 but shortly thereafter, the cancer recurred in her left breast and even that was removed.

2. The applicant was placed under suspension, followed by a charge memo, for unauthorized absence. The Inquiry Officer (IO) submitted a report directing the discharge of the applicant. The report of the IO was furnished to the applicant and she, in turn, submitted her reply, stating that the absence was on account of her illness. Taking the same into account, the Senior Superintendent of Police, Baramulla, passed an order dated 31.12.1997, discharging the applicant from duty. The applicant filed SWP No.2466/2017 before the Hon'ble High Court of Jammu & Kashmir, challenging the order of discharge date 31.12.1997. She made reference to the documents dealing with

the treatment till 2017 and stated that she was undergoing treatment at various hospitals for different kinds of ailments. She pleaded that no inquiry was ordered or conducted and the order of discharge was passed without the explanation of the applicant being taken into account.

3. The respondents filed a detailed counter affidavit. They took strong exception for the delay in filing the SWP. It is stated that by any standard, the two decades delay cannot be countenanced, much less can it be condoned. It is also stated that the applicant was given an opportunity and since there was no denial of her remaining absent without leave, the impugned order was passed.

4. The applicant filed a rejoinder, once again explaining the delay in filing the SWP. She has also filed a bunch of medical prescriptions, treatment sheets and other connected documents. The applicant submitted that her absence was neither wilful nor wanton, but was on account of serious illness.

5. The SWP has since been transferred to the Tribunal in view of re-organization of the State of Jammu & Kashmir and renumbered as T.A. No.6808/2020.

6. Today, we heard Mr. Aijaz Bedar, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, in detail, through video conferencing.

7. The challenge in the T.A. is to an order dated 31.12.1997. The SWP was filed almost two decades after the said order. By any standard, such a delay cannot be ignored or condoned. What, however, makes the semblance of difference in this case is that the applicant has undergone operation twice for cancer. The first operation was conducted to remove her right breast in March, 1997. She made the efforts to join the duties, soon thereafter, but the cancer recurred on the left side. That, in turn, resulted in another operation for removal of the breast. The bunch of medical prescriptions, treatment sheets and other documents filed as Annexure-P filed along with rejoinder, disclose that the applicant was undergoing treatment continuously till the year 2017. It was not even a case of intermittent treatment for ordinary ailment. Even after the operations, the effects of cancer as well as operations persisted. When such is the unfortunate plight, we do not feel it appropriate to apply strict rules of limitation.

8. The Courts are not divorced from humanitarian considerations. Wherever possible and in the interest of justice, such consideration need to be taken into account. We are

satisfied that there was no willful default or negligence on the part of the applicant in pursuing the remedy. We are also compelled to observe that it is only the will power of the applicant to overcome from dreaded disease and to resume duties, that made her to file the SWP, *albeit* at a belated stage. It must not be forgotten that her first priority was to be alive. It is only when she was successful, that she thought of her livelihood. The respondents cannot afford to be unkind to such a woman, who is facing such a miserable situation, at a time, when crores of rupees are spent to meet the menace of militancy and antisocial elements.

9. Coming to the legality of the order, it is not disputed that the applicant is absent from the year 1994 onwards. That, however, was on account of her illness due to cancer. By 1997, one operation was conducted on her in relation to cancer. The effort made by her to join the duties did not fructify. We find a serious lapse in the nature of inquiry, said to have been conducted in the matter. The Inquiry Officer was supposed to record a finding after ensuring that the reasons for absence of the applicant are ascertained. However, no such effort was made and he recommended the punishment. That was none of his function. The disciplinary authority has also treated the matter just on technical parlance and discharged the applicant from service.



10. We are of the view that a decent balance needs to be struck here. One the one hand, the livelihood of the applicant, who suffered the dreaded disease for full two decades, needs to be protected and on the other, the State cannot be burdened by awarding back-wages or other benefits. When we verified from the learned counsel for applicant whether it will be agreeable to him and his client for denial of any back-wages or other service benefits for the period during which the applicant was absent, he readily agreed for such a course of action.

11. We, therefore, allow the T.A. and set aside the impugned order. We direct that the applicant shall be taken on duty if she reports within six weeks from today. The applicant shall not be entitled to any back-wages, nor shall be entitled to any service benefits for the period during which she was absent, but the continuity of service shall be maintained for the limited purpose of pension. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 24, 2021
/sunil/jyoti/dsn