



**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A.62/7712/2020 (SWP.No.242/2016)

This the 18th day of February, 2021

**HON'BLE MR. JUSTICE L. NARASIMHA REDDY, CHAIRMAN
HON'BLE MR. MOHD JAMSHED, MEMBER (A)**

Ghulam Mohammad Mir, Aged 36 years, S/o Mohammad Subhan
Mir, R/o Mehrajpora, Kungamdara, Pattan.

.....Applicant

(By Advocate: Mr.Hakim Suhail Ishtiaq)

Versus

1. State of J&K through Commissioner/Secretary to Government,
Revenue Department, Civil Secretariat, Jammu/Srinagar.
2. Deputy Commissioner, Baramulla, Kashmir.
3. Tehsildar, Pattan.

.....Respondents

(Advocate:-Mr.Sudesh Magotra, Deputy Advocate General)

ORDER
[O R A L]

Justice L. Narasimha Reddy, Chairman: -

The applicant is working as Lumberdar of Mahrajpora Kungamdara Village, in the Tehsil Pattan of Baramullah Distric. The Tehsildar of Pattan, the 3rd respondent herein, passed an order dated 13.02.2016, directing that the applicant is placed under suspension and he be put in Jail until further orders. The allegation was that he helped one Hilal Ahmad Mir to construct a School building in Kacharaie land in the estate of Mahrajpora Kungamdara bearing Khasra No.477. The Tehsildar is said to have visited the spot on 12.02.2016 and passed order, then and there.

2. Challenging the order dated 13.02.2016, the applicant filed SWP.No.242/2016 before the Hon'ble High Court of Jammu and Kashmir at Srinagar.

3. The applicant stated that under Rule 10 of the Jammu and Kashmir Lambardari Rules, 1980, the suspension is an independent punishment and the same can be imposed only after conducting an inquiry. He contends that the order of punishment, in the form of suspension, was passed without conducting any inquiry and a direction was issued to put him in Jail. The Hon'ble High Court stayed the impugned order dated 13.02.2016, on 17.02.2016.

4. The respondents did not file any reply.

5. The Writ Petition has since been transferred to this Tribunal in view of reorganization of the State of Jammu and Kashmir and renumbered as TA.No.7712/2020.

6. Today, we heard Mr.Hakim Suhail Ishtiaq, learned counsel for the Applicant and Mr.Sudesh Magotra, learned Deputy Advocate General, for the Respondents.

7. Whenever any acts of misconduct are noticed on the part of a Government employee, the appointing authority is very much competent to place him under suspension. However, that would be in contemplation of regular disciplinary proceedings, and in public interest. In certain cases, though rarely, suspension is stipulated as a punishment.

8. The applicant is working as Lumberdar. The post is some what typical. It appears not part of the civil administration and at the same time governed by the State Rules viz., Jammu and Kashmir Lambardari Rules, 1980. Rule 10 thereof reads as under:

“10. Punishment: - Where a Lambardar contravened any of the provisions of these rules or neglects to perform the duties imposed upon him by these rules or any other law for the time being in force, the Collector may direct –

- (a) That the remunerations to which he is entitled to be withheld or forfeited to the Government for a period not exceeding one year or ;
- (b) That he shall be placed under suspension for a period not exceeding one year.”

9. From this, it is evident that the suspension is treated as an independent punishment. When the concerned authority chooses to impose the punishment of suspension, it is natural and essential that inquiry must be conducted or at least a show cause notice must be issued. In the instant case, neither any show cause notice was issued nor inquiry was conducted. The operative portion of the impugned order reads as under:

“Keeping in view the above, Sh.Gh. Mohd Mir, Lumberdar, Mahrajpora Kungamdara, is placed under suspension with immediate effect and incharge Superintendent Sub-Jail, Baramulla, is ordered to detain the above accused person in Jail till further orders and produce him before the undersigned on 24.02.2016”.

10. The action taken by the 3rd respondent is totally unsustainable and is clearly violative of Rule 10, extracted above. Further, it is just un-understandable as to how he can direct a person to be kept in Jail. It is nothing short of highhanded action and it is deplorable.

11. We allow the TA and set aside the impugned order dated 13.02.2016, passed by the 3rd respondent. We, however, make it clear that if the applicant has resorted to any acts of misconduct, it shall be open to the concerned authority to take steps in accordance with law. There shall be no order as to costs.

(MOHD JAMSHED)
MEMBER (A)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

Dsn/vb