

**Central Administrative Tribunal
Jammu Bench, Jammu**



T.A. No.1058/2021
(SWP No.1727/2018)

Thursday, this the 22nd day of April, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Abdul Hamid Malik (Aged : 52 years),
S/o Abdul Gaffar Malik,
R/o Hardumadam, Tehsil Tangmarg,
District Baramulla.

..Applicant

(Mr. S A Makroo, Senior Advocate)

VERSUS

1. State of Jammu Kashmir Through
Commissioner/Secretary to Government
Food, Civil Supplies & Consumer Affairs Department
Civil Secretariat Srinagar/Jammu.
2. Director,
Food Civil Supplies & Consumer Affairs Department,
Kashmir, Srinagar.
3. Joint Director (Administration),
Food, Civil Supplies & Consumer Affairs Department
Kashmir, Srinagar.
4. Assistant Director,
Food, Civil Supplies & Consumer Affairs,
Baramulla.
5. Ali Mohammad Ganie,
S/o Abdul Aziz Ganie,
R/o Hariwatloo, Tehsil Tangmarg,
District Baramulla.

..Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

The applicant is working as Assistant Store Keeper-cum-Clerk in the Food, Civil Supplies & Consumer Affairs Department of Jammu & Kashmir. A criminal case was registered against him when he was working as Helper and In-charge Store Keeper in the year 1997. He was also placed under suspension. Similar action was taken against another official, by name, Ali Mohammad Ganie (respondent No.5), who was working as Helper and In-charge Store Keeper. Both of them were acquitted in the criminal case and were also reinstated into service. Certain amounts were also ordered to be recovered from them. As regards the manner in which the period of suspension must be treated, a common order was passed on 09.02.2018 in respect of both the employees. In case of the applicant, it was directed that 100 days shall be treated as earned leave, 60 days as half pay leave, 5 years as extraordinary leave and 3 years, 3 months & 4 days; as *dies non*.

2. The applicant contends that the other employee, against whom a higher amount was directed to be recovered, was extended the facility of the period of suspension being treated as on duty, whereas he was discriminated in this behalf. The applicant filed SWP No.1727/2018 before the Hon'ble High Court

of Jammu & Kashmir, claiming various reliefs. He submits that there was absolutely no basis for the respondents in treating him in a different and disadvantageous manner compared to Ali Mohammad Ganie.

3. The respondents filed a detailed reply, narrating the circumstances that led to passing of the impugned order dated 09.02.2018.

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as TA No.1058/2021.

5. Today, we heard Mr. S A Makroo, learned Senior Advocate for applicant and Mr. Amit Gupta, Additional Advocate General.

6. The applicant as well as the other employee was suspended in the light of initiation of the criminal proceedings against them. The criminal case ended in acquittal and thereafter, the employees were reinstated into service. Notwithstanding the acquittal, the respondents have apportioned the amount to be recovered from the applicant as well as Ali Mohammad Ganie. In the case of the applicant, it was Rs.72,000/- as against which he has paid Rs.50,000/-, and Rs.12,061/- was yet to be recovered. In the case of Ali Mohammad Ganie, the amount was mentioned as Rs.2,07,404/-. The manner in which the period of suspension



must be treated is contained in paragraph 10 in respect of the applicant and paragraph 4 in respect of Ali Mohammad Ganie.

They read as under:-



“10. The official approached the Assistant Director Baramulla requesting for treatment of suspension period as on duty and in view of liquidation of outstanding amount and on the recommendations of Assistant Director Baramulloa, the period of suspension w.e.f. 07.08.1997 to 19.04.2006 was treated as leave whatever kind due vide order dated 29.11.2013 read with order dated 21.07.2017 in the following manner:-

- a) Earned leave w.e.f.
07.08.1997 to 14.11.1997 = 100 days
- b) Half pay leave w.e.f. 15.11.1997
to 13.01.1998 = 60 days
- c) Extra Ordinary leave w.e.f.
14.01.1998 to 14.01.2003 = 5 years
- d) Dies non w.e.f. 15.01.2003
to 19.04.2006 = 3 years
3 months & 4 days

xxx

xxx

xxx

4. The official approached the Assistant Director Baramulla requesting for treatment of suspension period as on duty and on the recommendations of Assistant Director Baramulla, the period of suspension w.e.f. 07.08.1997 to 13.03.2006 was treated as leave whatever kind due vide order dated 15.05.2006 in the following manner :-

- a) Earned leave w.e.f. 07.08.1997 to 11.11.1997 3 months & 7 days
- b) Half Pay leave w.e.f. 12.11.1997 to 15.01.1998 2 months and 5 days
- c) Extra Ordinary leave w.e.f. 16.01.1998 to 13.03.2006 8 yrs, 1 month & 27 days.

The arrears on this account, if any, were ordered to be adjusted towards the balance amount of Rs.1,19562.00”



7. A perusal of the same discloses that in case of the applicant, substantial period was directed to be treated as dies *non*, whereas in the case of Ali Mohammad Ganie, no such direction was issued. Another difference is that, at a later point of time, the extraordinary leave, covering the suspension of five years in respect of Ali Mohammad Ganie was treated as on duty, whereas similar facility was not extended to the applicant. We do not find any strong reason as to why the applicant can be discriminated in this regard.

8. We, therefore, allow the T.A., directing that the respondents shall accord the same treatment to the applicant as was extended to Ali Mohammad Ganie, as regards the manner in which the period of suspension must be treated. The consequential benefits, such as promotion or upgradation in the pay scale, shall be extended to the applicant, within a period of two months from the date of receipt of a copy of this order. However, he shall not be entitled to any arrears, nor shall he be refunded any amount, that has been recovered.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 22, 2021
/sunil/rk/dsn/