



Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 1138/2021
(SWP No. 165/2010)

With

O. A. No. 1221/2020
M.A. No.1621/2020

T.A. No. 7055/2020
(SWP No. 166/2020)

Wednesday, this the 28th day of July, 2021

(Through Video Conferencing)

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

T.A. No. 1138/2021

Abdul Hamid Mantoo (Aged 43 yrs.)
S/o Ghulam Rasool Mantoo
R/o Mantipora, Chattergul, Anantnag
Selection Grade Constable
No. 191/IRP 12th Bn, ARP No. 992270

...Applicant

(Mr. S.A. Makroo, Advocate)

Versus

1. Union Territory of Jammu & Kashmir
Through Commissioner/ Secretary to Government
Home Department, Civil Secretariat
Jammu/Srinagar
2. Director General of Police
Police Headquarters J&K,
Jammu/Srinagar
3. Inspector General of Police Armed/IRP
Jammu Zone, Jammu
4. Deputy Inspector General of Police
IRP Jammu Range, Jammu
5. Commandant
IRP-12th Bn, Nud Samba

...Respondents



(Mr. Amit Gupta, Additional Advocate General)

O.A. No. 1221/2020

1. Abdul Hamid Malik (Age 43 Years)
Ex. SgCt No. 667/SPN
PID No. EXK 981772
S/o Ghulam Mohi-ud-din Malik
R/o Hydergund, Shopian (J&K)
PIN-192124
2. Farooq Ahmad Rather (Age: 32 Years)
Ex Constable No. 823/SPN
PID No. EXK 111824
S/o Ghulam Mohammad Rather
R/o Kreshbal, Safa Kadal,
Srinagar (J&K)
PIN-190009
3. Manzoor Ahmad Kurdoo (Age:43 Yrs.)
Ex Constable No. 604/SPN
PID No. EXK 982808
S/o Abdul Ahad Kurdoo
R/o Anchar, Soura, Srinagar (J&K)
PIN 190009

...Applicants

(Mr. S.A. Makroo, Advocate)

Versus

1. Union Territory of Jammu & Kashmir
Through Commissioner/ Secretary to Government
Home Department,
J&K Civil Secretariat
Srinagar (J&K)
PIN=-190009
E-Mail: jkhome.nic.in
2. Director General of Police
J&K Police Headquarters,
Peerbagh, Srinagar
PIN-190014
E-Mail: phqjk@jkpolice.gov.in
3. Deputy Inspector General of Police
South Kashmir Range, Anantnag
PIN – 192101
Email : digskrange@gmail.com



4. Senior Superintendent of Police
District Shopian
District Police Headquarters Shopian
Email: dposhopian@kpolice.gov.in

.. Respondents

(Mr. Amit Gupta, Additional Advocate General)

T.A. No. 7055/2020

1. Lateef Ahmad Dar (Aged: 47 Yrs.)
S/o Late Ghulam Mohammad Dar
R/o Kakapora, District Pulwama
Selection Grade Constable
No. 327/11th (Now in AP 13th)
PID No. ARP971760
2. Bilal Ahmad Bhat (Aged: 48 Yrs.)
S/o Ghulam Mohammad Bhat
R/o Katpora, Yaripora, Kulgam
Selection Grade Constable
No. 507/KGM-AWP (with Sec. Kmr)
PID No. EXK983810
3. Showkat Ahmad Sheikh (Aged: 40 Yrs.)
S/o Ghulam Hassan Sheikh
R/o Trapoo, Achabal, Anantnag
Selection Grade Constable
No. 699/3rd Sec.
PID No. ARPO13069

...Applicants

(Mr. Bilal Ahmad Mala, Advocate)

Versus

1. Union Territory of Jammu & Kashmir
Through Commissioner /Secretary to Government
Home Department,
Civil Secretariat
Jammu/Srinagar
2. Director General of Police
Police Headquarters J&K,
Jammu/Srinagar
3. Additional Director General of Police (Security)
Security Headquarters J&K,
Jammu/Srinagar



4. Inspector General of Police
Kashmir Zone, Srinagar
5. Senior Superintendent of Police (Security)
J&K, Jammu/Srinagar
6. Commandant
JKAP-13th Bn,
Humhama, Srinagar

..Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

Common questions of fact and law arise for consideration, in these 3 cases. Hence they are disposed of through this common order.

2. The applicants were working as Selection Grade Constables in the Armed Wing of Jammu & Kashmir Police. All of them were put on duty, for protection of an ex-MLA, by name Azaz Ahmad, at Srinagar. It is alleged that on 28.09.2018, the ex-MLA was out of station and instead of depositing their arms and ammunitions in nearby Police Station, the applicants kept them in the premises of the ex-MLA; and that one of the SPOs, attached to the ex-MLA, has stolen all of them and joined the militants. The applicants were issued individual charge memoranda and summary of allegations. They filed their explanation to the charge memoranda, denying the charges.



3. According to applicants, the residence of the ex-MLA was far away from the Police Station and with a view to have full protection, they kept the arms and ammunitions at a guarded place in his house itself. It is stated that the SPOs were working for about two years in the premises and have surreptitiously stolen the arms. Not satisfied with the explanation, the Disciplinary Authority (DA) appointed the Inquiry Officer (IO), who in turn, submitted the individual reports, holding the charges against the applicants as 'proved'. Two show cause notices (SCN) were issued to the applicants, indicating the punishment. On a consideration of reply submitted by the applicants, the DA passed an order dated 25.11.2019, imposing the punishment of removal from service.

4. Aggrieved by the orders of punishment, the applicants filed appeals and within short time thereafter, they filed SWP No. 165/2010 and SWP No.7055/2020 before the Hon'ble High Court of Jammu & Kashmir. One of them filed O.A. No.1221/2020 before the Tribunal, challenging the orders of punishment. They pleaded that the very initiation of the proceedings was contrary to law and they were not given an opportunity to cross-examine the witnesses or to lead their evidence. It is also stated that the copy of the report of the IO was not furnished to the applicants and thereby, a serious illegality has crept in. The



applicants have also denied the charges levelled against them.

5. The respondents filed detailed counter affidavits. It is stated that the applicants are guilty of gross negligence of duty, which resulted in theft of highly sophisticated weapons and handing over of the same to the militants. They contend that the prescribed procedure was followed and adequate opportunity was given to the applicants, at every stage. They further contend that the punishment imposed against the applicants is commensurate with the gravity of the charge, held proved against them.

6. The SWP Nos.165/2010 and 166/2020 have since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as T.A Nos. 1138/2021 and 7055/2020, respectively.

7. Today, we heard Mr. Showkat Ahmad Makroo, learned Senior Advocate assisted by Mr. Danish & Mr. Bilal Ahmad Mala, learned counsel for applicants, and Mr. Amit Gupta, learned Additional Advocate General, at length.

8. The applicants were removed from service through individual orders dated 25.11.2019, 30.03.2020, 14.10.2019 respectively. The allegation against them is that they were



negligent in protecting and preserving the arms given to them and that has resulted in their being stolen away.

9. The charges framed against the applicants are very serious and the IO has found the charges as proved. At this stage, we are not inclined to go into the correctness or otherwise of the findings of the IO. The reason is that a serious flaw is noticed in the proceedings inasmuch as the report of the IO was not furnished to them. A specific plea was made in paragraph 11 of SWP No. 1138/2021 and the only answer given by the respondents is that the applicants did not make any request for furnishing of the report of the IO.

10. Whether it is under the relevant CCA Rules or under the settled principles of service law, it is essential that the report of the IO must be furnished to the delinquent employees. As a matter of fact, the only person, who is immediately concerned about the findings, is the delinquent official and denial of report to him, would result in serious lapse in the proceedings.

11. At some point of time, the law used to be that the failure to furnish the copy of the report of the IO must entail in annulment of the entire proceedings and the punishment being set aside. After reviewing the judgments rendered up



to that stage, their Lordships in **Managing Director, ECIL v. B Karunakar & others**, 1993 SCC (L&S) 1184 took the view that the reinstatement of removed or dismissed employee need not entail for any infraction in the disciplinary proceedings. It was held that if the report of the IO was not furnished, the order of punishment can be set aside only for the limited purpose of requiring the DA to furnish such a report and then, to continue the proceedings from that stage. The reinstatement of the employee can be relegated to the stage where the DA passes fresh order, after considering the explanation of the delinquent employee, on being furnished the copy of the report of IO.

12. It would not be necessary or essential for us to deal with the other contentions having regard to the course of action indicated. The applicants can point out all those aspects in their explanation, after perusal of the report of the IO.

13. We, therefore, partly allow these T.As. and O.A., setting aside the individual impugned orders dated 25.11.2019, 30.03.2020, 14.10.2019, for the limited purpose of requiring the disciplinary authority to furnish the copies of the inquiry officer's reports to the respective applicants, within two weeks from the date of receipt of a copy of this order. The applicants, in turn, shall be entitled to submit



their remarks thereto, within four weeks thereafter. The disciplinary authority shall pass final orders thereon, within another four weeks thereafter. The question as to whether the applicants shall be reinstated into service or the manner in which the various periods must be dealt with, would depend upon the nature of the orders, which the disciplinary authority may pass.

14. All the pending M.As. shall stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 28, 2021
/sunil/lg/daya/shilpi/