



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No. 2171/2021
(SWP No.1807/2012)

Wednesday, this the 7th day of July, 2021

(Through Video Conferencing)

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

Ghulam Mohi-u-Din Rather
S/o Abdul Khaliq Rather,
r/o Wagoora, Tehsil & District Bandipora
aged about 50 years

.Applicant

(Mr. Hamza Prince, Advocate)

Versus

1. State of Jammu and Kashmir,
Through Commissioner/
Secretary to Home Department,
Civil Secretariat, Srinagar
2. Director General of Police Jammu & Kashmir, Srinagar
3. Inspector General of Police, Kashmir Range
4. Deputy Inspector General Home Guards, Kashmir
5. Commandant J & K Auxiliary Police 1st Bn. Srinagar

..Respondents

(Mr. Rajesh Thappa, Deputy Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was appointed as a Constable in the Jammu & Kashmir Auxiliary Police in the year 1997. Alleging that he

remained unauthorizedly absent for certain period, he was discharged from service vide order 18.08.2005. Aggrieved by that, the applicant filed SWP No.715/2006 before the Hon'ble High Court of Jammu & Kashmir. The SWP was allowed on 21.07.2010 mostly on the ground that the procedure prescribed for discharge of Constable was not followed. It was left open to the respondents to conduct an inquiry, in accordance with law and then to take appropriate steps. Accordingly, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO). He submitted the report on 03.01.2011 with certain defects. Thereafter, another IO was appointed, who, in turn, submitted the report on 22.04.2011. Taking the same into account, the DA passed an order dated 04.05.2011 imposing the punishment of forfeiture of one annual increment and directing the period of absence to be treated against leaves. The period between the date of order of reinstatement, i.e., 18.08.2005 to 14.10.2010 was directed to be treated as on leave, without pay on the principles of 'no work no pay'. The applicant filed SWP No.1807/2012 before the Hon'ble High Court, challenging the said order.

2. The applicant pleaded that the appointment of 2nd IO was without any basis and that the impugned order, insofar as it has treated the period between 2005 and 2010 as leave without pay, is contrary to law and the findings recorded by the IO. It is

stated that there was ample justification for him to remain absent for some period and the punishment as well as the directions as to the manner in which the period of five years must be treated, are without any basis.

3. The respondents filed a detailed counter affidavit. It is stated that the applicant remained absent from duty for quite a long time in different spells, without leave and the same amounts to misconduct. It is also stated that after the order of discharge dated 18.08.2005 was set aside by the Hon'ble High Court in SWP No.715/2006, a regular inquiry was ordered by appointing an IO. According to them, the report submitted by the first IO on 03.01.2011 was procedurally incorrect and accordingly, the second IO was appointed. They further submit that the punishment, in fact, was recommended by the IO himself and the applicant cannot be said to have suffered any grievance.

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.2171/2021.

5. Today, we heard Mr. Hamza Prince, learned counsel for applicant and Mr. Rajesh Thappa, learned Deputy Advocate General.

6. The applicant was discharged from service on 18.08.2005 on the ground that he remained unauthorizedly absent in different spells. The respondents no doubt conducted an inquiry but it was found to be defective and inadequate, by the Hon'ble High Court. Accordingly, the order was set aside and it was left open to the respondents to conduct an inquiry, and then to pass orders. The applicant was reinstated into service on 14.10.2010. Though one IO was appointed, he submitted his report on 03.01.2011, it was found to be totally against the provisions of law. Obviously for that reason, the second IO was appointed. In his report dated 22.04.2011, the second IO made the following recommendations:-

“Keeping in view the above facts it is recommended that the constable Ghulam Mohiddeen No.1504/Aux. Police Ist Bn Sgr (suspensee) may be treated after considering law of land, J&K Police Manual and principles of natural justice.

- a) He may be re-instated into service from the date of his suspension i.e. 30.04.2004 in relation to order No.165 of 2004 dated 10.05.2004.
- b) He may be awarded to Censure to serve him a corrective in future for the guilt leaving the Bn office own though on medical reasons and not having treatment at nearby hospitals, further more not informing the department through Fax telegram or by entering report in the P/S diary.
- c) Period of absence from Bn. Hqrs. From 30.04.2004 to 01.10.2004 may be treated as earned leave which falls due to the said constable.
- d) Period from 02.10.2004 to 18.08.2005 the suspension period for which the said constable was facing the said department enquiry may be treated as on duty.

e) Period beyond from 18.08.2005 to 10.10.2010 shall be treated by the competent authority.

f) Period from 16.10.2010 to 27.12.2010 till the conclusion of the above enquiry may be treated as on duty as the said constable remained present during such period, facing the fresh enquiry in the matter.

g) Period beyond 27.12.2010 shall be treated by the competent authority at Bn. Hqrs.

NOTE:

All the above recommendations are subject to alteration, annulling or enhancing and exoneration by the competent authority.”

7. Fairly enough, the DA passed the order dated 04.05.2011 on the lines indicated by the second IO. The punishment of forfeiture of one annual increment was imposed. Directions were issued as to the manner in which the different spells of absence must be treated and the period from 18.08.2005 to 14.10.2010 was directed to be treated as leave, without pay, on the principle of ‘no work no pay’. The immediate grievance of the applicant seems to be with reference to this aspect.

8. This is not a case in which the applicant was exonerated of the charge and despite that the period of absence is directed to be treated in a particular manner. Once the punishment is imposed, the question of applicant being treated as on duty between the spells referred to above, does not arise. It is not in

dispute that the applicant did not work during the period of five years

9. Except that the respondents declined payment of salary for that period, they did not make any observation, which is disadvantageous to the applicant. We also make it clear that the period between 18.08.2005 to 14.10.2010 shall be treated as holding good for all service benefits, including the, promotion, increments and pension.

10. With this clarification, we dispose of the T.A. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 7, 2021
/sunil/vb/