



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No. 4898/2021
(SWP No.1600/2020)

Monday, this the 19th day of July, 2021

(Through Video Conferencing)

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

Dr. Suhail Jan Kawoosa,
Aged about 54 years,
S/o Ghulam Qadir Kawoosa,
R/o Firdous Colony Buchpora,
Srinagar

...Applicant

(Mr. R A Jan, Senior Advocate assisted by Mr. Taha Khalil,
Advocate)

Versus

1. Union Territory of Jammu and Kashmir
Through Commissioner/Secretary to Government,
Animal/Sheep Husbandry Department,
Civil Secretariat, Srinagar
2. Commissioner/Secretary to Government,
General Administration Department, (Vigilance),
Civil Secretariat, Srinagar

..Respondents

(Mr. Amit Gupta, Additional Advocate General)

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

The applicant joined the service of Animal/Sheep Husbandry Department in the Government of Jammu & Kashmir, as an Assistant Veterinary Surgeon in the year 1993. In September, 2011, he is said to have been selected for a specialized course in Veterinary Science in the University of Nottingham (United Kingdom), of the duration of one year. Initially, he was granted 90 days of Earned Leave. It is stated that on account of paucity of time, he could not obtain the permission to leave the country, but joined the University in UK. It is stated that after he joined the course, the applicant sought extension of leave, and ultimately reported back to duty.

2. The applicant was issued a charge memo dated 31.03.2018, alleging that he misrepresented the facts in the context of seeking extension of leave and did not inform the Department about his leaving for UK. Various other allegations were made. The applicant submitted his representation, denying the charges. The Disciplinary Authority (DA) took into account, the representation made by the applicant and appointed a Committee, which, in turn, recommended the recovery of the amount of salary paid to



the applicant for the period during which he was in UK, treating the period as *dies non* and imposition of the penalty of withholding of one increment in terms of Rule 30 (iii) of Jammu & Kashmir CCA Rules, 1965. Accepting the recommendations of the Committee, the DA passed an order dated 10.10.2018 directing recovery of the amount, treating the period of unauthorized absence as *dies non* and imposing the penalty of stoppage of one increment.

3. The applicant filed SWP No.1600/2020 before the Hon'ble High Court of Jammu & Kashmir, challenging the order dated 31.07.2018. He pleaded that the circumstances under which he had to join the course at UK were as such that there did not exist much time to obtain necessary permission and all the same, the fact was informed to the concerned authorities. He stated that it is only when a fictitious complaint was submitted against him, that an inquiry was conducted and the Committee found that the allegations against him were not substantiated. The applicant contends that the course studied by him is useful for him as well as to the Department, and there is no basis for the respondents in imposing the punishment or directing other steps, through the impugned order.



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.4898/2021.

5. Earlier, the matter was heard at some length and we granted time to learned counsel for respondents to obtain instructions. Today, we heard Mr. R A Jan, senior counsel assisted by Mr. Taha Khalil, learned counsel for applicant and Mr. Amit Gupta, Additional Advocate General.

6. The applicant was issued a charge memo dated 31.07.2018, alleging certain acts and omissions on his part. It was in the context of his studying a course in the University of Nottingham (United Kingdom). It is not in dispute that the applicant did not obtain the prior permission of the Department. It appears that while seeking extension of leave, it was represented that he is constructing a house at his native place. The fact, however, remains that he was in UK at the relevant point of time. Taking these and other aspects into account, the DA appointed a Committee, which, in turn, suggested the measures, indicated in the preceding paragraphs.

7. We do find that there was some lapse on the part of the applicant in not obtaining the necessary permission and in not stating the correct facts while seeking extension of leave.



Regarding extension, it seems to be the version put forward by his relatives. Be that as it may, the record discloses that the applicant completed the course in the field of Veterinary Science, which naturally would be helpful to him as well as to the Department. The applicant has already paid the amount of about Rs. 5 lacs to the respondents, as directed in the impugned order. Though he seeks refund of the same, we are of the view that once he was out of duty between 01.01.2012 to 10.10.2012, he cannot be paid the salary for that period. The recovery of the amount cannot be said to be wrongful in any manner.

8. Coming to the question of treating the said period as *dies non*, we are of the view that the applicant has already been sanctioned Earned Leave for 90 days and the remaining period of his absence without proper sanction. That can be treated against the leaves, which the applicant is otherwise entitled to, instead of bringing an artificial break, by treating it as *dies non*. Similarly, the imposition of the penalty of stoppage of one increment may not serve any purpose, once the applicant has parted with the substantial amount of Rs.5 lacs.

9. We, therefore, partly allow the T.A. without interfering with the order as to recovery of Rs.5 lacs but setting aside the direction that treated the period between 01.01.2012 to



10.10.2012 as *dies non* and the penalty of stoppage of one increment. The period of absence of the applicant shall be treated as the one, on leave to his credit.

10. Mr. R A Jan, learned senior counsel for applicant submitted that the applicant was denied some of the benefits on account of the pendency of the proceedings or the penalty imposed. If that is so, the applicant can make representation in this behalf to the competent authority, which, in turn, shall take appropriate steps in accordance with law. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 19, 2021
/pj/sunil/daya/