

(2016) 3 JKJ 705

Jammu & Kashmir High Court

Case No: SWP No. 658 of 2000

Mohammad Iqbal
Badhama

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision: Nov. 16, 2015

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 3 JKJ 705

Hon'ble Judges: Mr. Muzaffar Hussain Attar, J.

Bench: Single Bench

Advocate: Mr. B.A. Dar, AAG, for the Respondent; Mr. S.A. Makroo, Advocate, for the Petitioner

Final Decision: Disposed off

Judgement

Mr. Muzaffar Hussain Attar, J.(Oral) - Petitioner was removed from services vide Order No. 787/1993 dated 6th August, 1993 passed by

Commandant JK AP 12th Battalion Manigam, Kashmir, on the ground that petitioner had remained unauthorisedly absent from service from 4th

June, 1993 till the date of passing of the order. Petitioner challenged the said order in SWP No. 930/1995. The Court vide Judgment dated 25th

August, 1993, allowed the writ petition and the impugned order was quashed. Respondents were directed to allow the petitioner to join back his

duties. Respondents were given liberty to hold a regular departmental enquiry against the petitioner in accordance with the mandate contained in

Article 311 of the Constitution of India. It was also provided that petitioner will be entitled to all service benefits depending upon the outcome of the enquiry, if any conducted.

2. Respondent-Commandant framed a charge sheet which was served on the petitioner. Petitioner has filed reply to the charge sheet. Immediately

thereafter the Respondent-Commandant issued Order No. 1561/1999 dated 19th November, 1999. In terms of the said order petitioner was

reinstated into services as he was under suspension. The period of absence from 4th June, 1993 to 6th August, 1993 was treated as an earned

leave which was earned by him as per his service record. The period of removal from service w.e.f. 6th August, 1993 till 9th October, 1999 was

treated as DIESNON, for the reason that he had not rendered any service to the Government. The period of suspension from 11th October, 1999

till 19th November, 1999 was treated as on duty. Petitioner is aggrieved of the impugned order to the extent, the period w.e.f. 6th August, 1993

up to 9th October, 1999 has been treated as DIESNON.

3. Learned counsel for the petitioner submitted that respondents have not complied with the directions contained in the earlier Judgment of the

Court passed in SWP No. 930/1995 and it is further submitted that without complying with the mandate contained under Article 311 of

Constitution of India, Para 3 of the impugned order has been passed.

4. Learned counsel further submitted that no reasonable opportunity has been granted to the petitioner before passing Para 3 of the impugned

order. Learned counsel further submitted that during the course of hearing of this case at one point of time it was agreed that the period which has

been treated as DIESNON would be treated to have been spent as on duty without grant of any monetary benefits that would be considered for

the grant of other service benefits.

5. Mr. B.A. Dar, learned AAG, submitted that in terms of 334(2) of Police Rules, DIESNON is not a punishment and there was no requirement

of conducting the regular enquiry in terms of Rule 359 of the Police Rules.

6. It is not in dispute that the wife of the petitioner was suffering from fatal disease and remained admitted as an inpatient for a longer period of

time. Petitioner as per his reply to the show cause notice and the pleadings in the writ petition had informed through a telegram about this fact

situation to his immediate officer.

7. The record would show that in reply to the charge sheet, the petitioner has given details about the ailment of his wife. He has also mentioned that

she remained admitted as an inpatient from 2nd June, 1993 to 10th August, 1993 and on that date she was dis-charged from the hospital. He has

referred to the medical record also in his reply.

8. This specific averment in the reply to the charge sheet has not been denied by the Competent Authority while passing of the impugned order.

9. In this fact situation the petitioner did not deliberately remained away from services and did not dis-charge his duties for the period which has

been treated as DIESNON. Petitioner has been prevented by a genuine and sufficient cause from not attending his duties for the period which has

been treated as DIESNON. DIESNON will effect some of the service rights for the petitioner, the benefits can be taken away only after a

reasoned order is passed. The period from 6th August, 1993 up to 9th October, 1999 has been mechanically treated as DIESNON. The

impugned order to this extent suffers from complete non-application of mind and is rendered arbitrary.

10. Since the petitioner has not rendered service for this period, he will not be entitled to any monitory benefits.

11. Learned counsel for the petitioner also admitted at Bar that for this period petitioner does not claim any monitory benefit but the said period

shall be considered for grant of otherwise of service benefits.

12. For the above stated reason this writ petition along with connected MPs is disposed of in the following manner:

13. By issuance of writ of certiorari, Para 3 of the Order No. 1561/1999 dated 19th November, 1999 which provides for treating the period from

6th August, 1993 up to 9th October, 1999 as DIESNON is quashed.

14. Respondents are directed to treat the aforesaid period of the petitioner for grant of all service benefits/retiral benefits which would include his

fixation of seniority by treating him to have been in uninterrupted service for the aforesaid period and for grant of promotion to the next higher rank.

However, the petitioner will not be entitled to any monitory benefits for the aforesaid period.