

(2008) 12 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1351 Of 2008

Abdul Rashid Sheikh

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31, 33, 34

Constitution of India, 1950 — Article 226, 311

Citation : (2009) JKJ 80 Supp : (2009) 1 SriLJ 177

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Advocate : T.Khawaja, A.M.Magray, M.A.Qayoom, Advocates appearing for the Parties

Judgement

Admit.

1. Petitioner is taken up for final disposal.

2. Petitioner Abdul Rashid Sheikh is working as Senior Assistant in the Sate Forest Department. Vide order No. 266 of 2005 dated 17.8.2005,

he was posted in the office of (Head Quarter) Project Coordinator, North Jehlum Vide Order No. 348 of 2006 dated 17.10.2006, he was posted

at North Jehlum Project, Baramulla in place of one Mohammad Shafi Khan, who was posted as Senior Assistant Project Coordinator, North

Jehlum Office.

3. Vide Order No. 1 of 200708 dated 20.11.2007, the petitioner was placed under suspension by the Project Officer, ERDC North Jehlum1

Baramulla on the ground of noncompliance of the orders and an enquiry was initiated against him in which charge sheet was also framed. The

petitioner replied the charges vide reply dated 8.3.2008. The petitioner was attached in the office of CF, Srinagar circle vide order No. 58 of

2008 dated 27.2.2008. The order further provided that CCF, Kashmir shall propose the name of Senior Assistant for his posting in the North

Jehlum Project, Baramulla. Vide Order No. 2 of 200708 dated 12.3.2008, the petitioner was reinstated with immediate effect pending final

outcome of the enquiry and was retrieved from Baramulla but vide Order No. 239 of 2008 dated 29.9.2008 he was again transferred and

attached in the office of CCF, Kashmir till further orders. In his place one Mohammad Maqbool, Senior Assistant, CCFs office,

Kashmirrespondent No.6 was transferred and posted to Sindh Forest Division. Ganderbal. The petitioner is aggrieved of the same. He states that

the inquiry initiated against him vide order dated 20.11.2007 is not in accordance with the rules, as the Project Officer had no competence to place

the petitioner under suspension and direct an inquiry against him. The petitioner has also challenged the order dated 29.9.2008 on the ground that

the attachment of the petitioner in the office of CCF, Kashmir is not in accordance with the law. He states that the respondents have attached him

prematurely in the office of respondent No.3 and there is no law which provides for attaching an employee in any office without giving him work

commensurate of the status.

4. Respondents have in their reply stated that the petitioner was posted as Senior Assistant in ERDC North Jehlum Project. The petitioner was

placed under suspension by the project officer North Jehlum vide order dated 20.11.2007 for nondisturbusement of Rs. 1.50 lacs to the Range

Officer as Forest advance for which they had furnished form 44, the petitioner kept the money illegally with him without any reason and authority

and nonrelease of the same created various kinds of problems. It was also reported that the petitioner does not behave properly with his superior

officer. In order to ascertain true and correct facts an inquiry was ordered vide order dated 4.12.2007, the Project Coordinator of the North

Jehlum was appointed as an inquiry officer, however, in the meanwhile the petitioner being very close to the then Forest Minister and also

belonging to his constituency managed his posting in the Sindh Forest Division. The respondents further state that the petitioner did not cooperate

with the inquiry officer as reported, therefore, he was attached with the office of Chief Conservator of Forests Kashmir. The respondents further

state that while the petitioner was posted in Sindh Forest Division in the year 2005, he had committed theft of form 25 books and also sale of

permit books to smugglers and for that he was placed under suspension and attached to the office of Conservator of Forests, Srinagar. It is

submitted that Mohd. Maqbool respondent No.6 has already assumed the charge of Senior Assistant in Sindh Forest Division as back as on

30.9.2008. The petitioner was aware about this tacit but on incorrect facts he got an interim direction from the court on 13.10.2008.

Heard. I have consider the matter.

5. The petitioner's counsel has referred to Rule 24 of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 and submitted officer

that the petitioner's attachment in the office of CF, Srinagar circle is not in accordance with the rules, as the transfer can be only against a post and

not to an office. The transfer order does not indicate the post against which the petitioner has to work. Learned counsel also assails the order of

placing the petitioner under suspension by the Project Officer on the ground that the Project Officer being not an appointing or disciplinary

authority of the petitioner was not competent to direct suspension of the petitioner and initiate a departmental enquiry against him. Learned counsel

relying on AIR 1986 SC 1955 submits that the frequent transfers is not permissible and such a practice has been disapproved by the Supreme

Court. Learned counsel urges that the attachment order is by way of punishment, the petitioner has been placed under suspension on the

complaints. Copies of which have been placed on file, which appear to be prototype therefore this is a clear case of victimization which needs

interference by this court.

6. Learned counsel has relied on 1981 JKL 126, 1984 SLJ 311, 1986 JKL 1051, 1994 SLJ 539 and 1996 SLJ 288 in support of his

contention that the charge can be framed by the appointing authority only.

7. Learned counsel for the official respondents and learned counsel for respondent No.2 have on the other hand vehemently defended the order of

attachment and submitted that since an enquiry was pending against the petitioner, the respondents could attach the petitioner with the office of

CCF for completion of the enquiry.

8. Learned counsel for the private respondent No.6 would rely on the State of U.P., and another Vs. Chandrapal Singh and another (2003) 4

SCC 670. Steel Authority of India and another Vs. Dr. R. K. Diwakar and others (1997) 11 SCC 17; Director General, ESI and another Vs. T.

Abdul Razak (1996) 4 SCC 708 and Inspector General of Police and another Vs. Thovasiappan (1996) 2 SCC 145 and contend that the charge

framed by the Project Officer was well within the competence of the officer as he is the controlling officer of the petitioner.

9. On consideration of the matter, I find due force in the pleas raised by the petitioner that the enquiry has been initiated and the suspension was

directed by an officer who was not competent to do so.

In Inspector General of Police Vs. Thavasiappan (1996) 2 SCC 145, it was held that generally speaking it is not necessary that the charges should

be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority.

In T. Abdul Razak's case (1996) 4 SCC 708 the Apex Court observed:

... With regard to initiation of disciplinary proceedings by the Regional Director, we find that the legal position is well settled that it is not necessary

that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any

superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority.

In Steel Authority of India and another Vs. Dr. R. K. Diwakar and others (1997) 11 SCC 17, T. Abdul Razak's case was cited, the court found

that even the controlling authority could issue the chargesheet.

In State of U.P. and another Vs. Chandrapal Singh and another (2003) 4 SCC 670 it was held that looking to the terms and content of Article 311

(1) of the Constitution, it does not follow that even initiation or conduct of inquiry proceedings should be by that authority itself, which is

empowered to dismiss or remove an official under the said article, unless there is an express rule governing the official requiring it to be so.

10. These authorities relied upon by Mr. T. Khwaja, would show that it is not necessary that only the disciplinary authority, competent to award

the penalty, should initiate or conduct inquiry and frame the charge, even the

controlling authority could issue the chargesheet and conduct inquiry unless there is an express rule to the contrary.

11. In this State departmental inquiries against civil servants are governed by Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956, (for short the rules), Sub rule 4 of which provides as under.

(4) The competent authority may inquire into the charge itself or if it considers it necessary so to do, it may appoint an inquiry officer for the purpose.

12. Thus under the subrule the inquiry can be conducted either by the competent authority itself or it may appoint an inquiry officer for the purpose.

Since a specific rule regarding conduct of inquiry by the competent authority itself (or his appointee) exists in the State, the authorities cited by Mr.

Khawaja would not apply to the present case and in terms of the observations in Chandrapal's case, the initiation and conduct of the inquiry should

be either by the competent authority itself or its nominee.

In T. Abdul Razak's case (supra), cited by Mr. Khawaja it is specifically provided that in accordance with the maxim *delegatus non protest*

delegatee, a statutory power must be exercised only by the body or officer in whom it has been confided.

13. That the power to initiate and conduct an inquiry, frame the chargesheet and impose penalty vests in the appointing authority under the rules is

well settled now. Reference in this behalf may be made to 1981 JKLR 126, 1984 SLJ 311, 1986 JKLR 1051, 1994 SLJ 539 and 1996 SLJ

288.

14. In a recent judgment reported as Dr. Showkat Ali Zargar Vs. State and ors. 2006 (1) SLJ 312 this Court on interpretation of Rules 33(4) and

34 of the Rules and section 126(1) of the State Constitution held that competent authority referred to in Rule 33(4) means the appointing authority

of the employee:

15. Since the Project Officer is admittedly not the appointing authority of the petitioner, I find the order by the Officer placing the petitioner under

suspension, initiating enquiry against him and framing charge sheet is not in accordance with the rules.

16. There is however another aspect of the case regarding attachment of the

petitioner in the CCF office. Mr. Qayoom vehemently submitted that since the attachment was not in accordance with the law, the respondents could not have attached the petitioner in the office of CCF.

17. I do not find any force in the submissions for the reason that an employer is not powerless to direct attachment of an employee in the office if the administrative exigencies require such an action. The respondents could direct attachment of the petitioner in the office of CCF when they received complaints against the petitioner.

18. Attachment does not amount to any punishment. It is only an incident of service and does not effect the service conditions of the employee. As such an order of attachment is not open to challenge.

19. In these circumstances, I do not find any fault with the order of attachment dated 29.9.2008, impugned in the present petition.

20. This petition is therefore, partly allowed and the order initiating inquiry by the Project Officer against the petitioner is set aside with an

observation that the respondents may initiate a proper enquiry against the petitioner, if the facts and circumstances warrant. The action in this behalf

be taken by the competent authority within two weeks. In case the respondents find that such an enquiry was required they may keep the petitioner

attached with the office but if the respondents find that an inquiry in the matter was not required they shall post the petitioner against a proper post

commensurating his status.

21. Disposed of accordingly.