
(2006) 04 J&K CK 0024
In the Jammu And Kashmir High Court

Abdul Rehman Wani

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Jammu and Kashmir Police Rules, 1960 — Rule 390, 392

Citation : (2007) 1 JKJ 156

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—While posted as an ASI in police Department, petitioner was placed under suspension by SP, Budgam on

31.07.1987 after conduct of inquiry, Dy. SP, HQ suggested forfeiture of his two annual increments but the SSP did not agree and instead

recommended his removal from service to concerned Dy. Inspector General of Police whereupon Director General Police issued a show cause

notice to him on 15.09.1988 to show cause as to why he may not be removed from service, which was challenged by him in this Court through a

writ petition bearing No. 1687/88 which was allowed vide order dated: 3.8.1995 with quashment of charge sheet and show cause notice dated:

31.12.1987 asking respondents to restore petitioner back to the position obtaining prior to 30.07.1987 and reinstate him accordingly alongwith all

consequential benefits whereafter petitioner was so reinstated but however a denovo inquiry was directed against him and SP HQs appointed as

Inquiry Officer. Challenging the order of denovo inquiry as incompetent the petitioner challenged the same through another writ petition being SWP

No. 1487/98 wherein the inquiry proceedings were stayed. During pendency of said petition, respondents issued order No. 348 of 1997 whereby

eligible officers of executive police brought on promotion list ""E"" from the year 1991 but the petitioner not given benefit of order dated: 11.11.1997

which prompted him to file CMP No. 2819/2002 to challenge the same which was however dismissed by this Court on 11.04.2002 with an

observation that said order i.e. No. 3478 of 1997 dated: 11.11.1997 provided the petitioner with a fresh cause of action and hence this petition

for impugning the same on the ground that even though not brought on promotion list ""E"" under said order at his appropriate place in terms of

seniority the petitioner has no been given independent charge of a Police station as was required to be done in terms of Rules 390 and 392 of

Police Rules which practically would mean that promotion list aforesaid in respect of petitioner has not become operative. Other part of the

grievance is that the promotion list contains a mention that petitioner's promotion to the rank of SI would be subject to the outcome of denovo

inquiry if and when conducted, and the writ petition No. 1485/96 presently pending in the court. Accordingly the petitioner prays for a direction for

implementation of aforesaid promotion list in accordance with Rules 390 and 392 aforementioned. Materials appended with the petition include

copies of relevant administrative and court orders.

2. In their reply respondents while stating that while posted in Police Station, Budgam and investigating a criminal case under FIR No. 160/87 and

161/87 registered respectively under Sections 380 and 392 RFC, the petitioner as Investigating Officer Police, was found to have returned 57

seized Golden Coins to one Gh. Qadir Sofi after retaining 13 out of 70 recovered from him and seized under a memo, and also committed

pilferage of Rs. 800/- while reflecting the quantum of seized cash as Rs. 4050/- only instead of Rs. 4805/- and misappropriating the same. Taking

as a serious note of said misconduct on his part, authorities had placed him under suspension vide order No. 481 of 1987 dated: 31.07.1987 and

the inquiry entrusted to Dy.SP HQs who recommended forfeiture of two annual increments against him to which as already said, the SSP did not

agree and he forwarded the case to higher authorities for petitioners removal from service which ultimately culminated in issuance of charge sheet

against petitioner which was later quashed by this Court in SWP No. 689/88 consequent whereupon denovo inquiry was ordered against

petitioner which is in abeyance under a stay order purporting to have been passed by this Court in writ petition No. 1485/96. Meanwhile it is

admitted that petitioner has been brought on promotion list ""E"" as claimed by him vide order No. 3478 of 1997 dated: 11.11.1997. During course

of threshold submissions the counsels for parties have reiterated the contents of their pleadings.

3. In so far as facts and circumstances attending the matter are concerned they are all matters of record and well documented, right from first

suspension of petitioner in 1987, consequent inquiry and the following charge sheet, institution of writ petition and quashment of chargesheet, and

consequent reinstatement of petitioner with all consequential benefits, denovo inquiry after disposal of first writ petition and institution of second

one against denovo inquiry, stay of proceedings thereupon and the order bringing petitioner on promotion list ""E"" and admitted by both sides.

Within that admitted circumstantial backdrop arises petitioners claim of giving consequential effect in terms of Rules 390 and 392 of Police Rules to

the promotion list ""E"" for giving him independent charge of a police station etc.

4. Perusal of the order dated: 11.11.1997 directing placement of petitioner into promotion list ""E"" as aforesaid, reveals that it is in three parts.

Under first and third the petitioner has been brought on promotion list, ""E"" of executive of Kashmir zone for the year 1991 in continuation of PHQs

order No. 672 of 1991 dated: 05.06.1991 at the appropriate place of seniority and placed below one Ghulam Hyder No. 943/NGO and above

Nazir Ahmad No. 1100/NGO in order of seniority; and in the second his promotion to the rank of SI has been kept subject to outcome of

denovo inquiry if and when conducted in pursuance of decisions of this Court in his pending writ petition No. 1485/96. In so far as the second part

is concerned, the grievance projected by petitioner is that in terms of disposal of his earlier writ petition being No. 1689/1988, the denovo inquiry

could not have been ordered; but that part is pending in other writ petition aforesaid being No. 1485/96 and cannot be simultaneously agitated in

this petition which to that extent accordingly appears to be barred.

5. In respect of first and third parts of the order as aforesaid the petitioner has admittedly been given liberty by this Court vide order dated:

11.04.2002 purporting to have been passed in his CMP No. 2819/2000 connected

with pending writ petition No. 1485/96 aforesaid, to agitate

the same through separate writ petition on the ground that it was beyond the scope of other petition and could not be granted thereunder in the

CMP. That reduces the whole area of controversy to the exact import of the part first and third of the order aforesaid whereunder petitioner has

been brought on promotion list ""E"" for the year 1991 and his seniority also fixed. The question, therefore, would be as to what more the petitioner

can claim thereunder. At this stage in view of the claim projected reference to Police Rules relied upon appears to become imperative, which for

the sake of reference are quoted herein verbatim:

390. List E promotion to Sub-Inspector: - (1) A list of all Assistant Sub-Inspectors who have been approved by Inspector General of Police as fit

for trial in independent charge of a Police Station or for a specialist posts on the establishment of Sub-Inspectors, shall be maintained.

Half yearly reports on all men entered in the list maintained under this Rule shall be furnished in the form and on the dates prescribed in Rule 389(

3).

(2) No Assistant Sub-Inspector shall be confirmed in a substantive vacancy in the rank of Sub-Inspector unless he has been tested for at least a

year as an officiating Sub-Inspector in independent charge of a Police Station.

392. Method of filling up temporary vacancies in the rank of Sub-Inspector: - (1) in filling up temporary vacancies in the rank of Sub-Inspector the

object shall be to test all men on list E as fully as possible in independent charges. The order in which names occur in the list should be disregarded,

the opportunities of officiating in the higher rank being distributed as evenly as possible.

(2) The conduct and efficiency of the men on lists D and E shall at all times be watched with special care. Any Officer who whether in his

substantive rank or while officiating as an Assistant Sub-Inspector or Sub-Inspector, is guilty of grave misconduct of a nature reflecting upon his

character or fitness for responsibility or who shows either by specific acts or by his record as a whole, that he is unfit for promotion to higher rank

shall be reported to the Inspector General of Police for removal from list D and E as the case may be.

In interpreting this rule discrimination shall be shown between faults which are

capable of elimination by experience and further training, and those which indicate definite incompetence and defects of character. Officers whose names have been removed from either list D or list E may be restored by an order of the Inspector General in recognition of Subsequent work or conduct of outstanding merit.

6. A cumulative perusal of the relevant paras of these rules with reference to their practical implication, regarding present controversy, it appears that under Sub-rule (1) of Rule 390 and Rule 392, an Assistant Sub-Inspector brought on promotion list "E" would be confirmed in substantive capacity in the rank of Sub-Inspector only after he has been tested for at least one year as officiating Sub-Inspector in independent charge of a Police Station and placement of an officer on promotion the temporary rank of Sub-Inspector would only be meant for testing him on an independent charge while all the time he would be watched with special care and thereafter, only after successful completion of one year period as such he would be confirmed in the rank of Sub-Inspector on substantive basis. In other words, therefore, by necessary implication an officer brought on promotion list "E" and not watched while functioning in independent charge of Police Station perhaps lose the prospect of confirmation in the rank of Sub-Inspector for want of requisites in terms of Sub-rule (2) of Rule 390 as above quoted. Similarly and as necessary consequence the period of delay involved in putting an officer placed in promotion list "E" in independent charge of Police Station would automatically delay the commencement and conclusion of one year as such and resultantly, delay his confirmation in the substantive rank of Sub-Inspector. In totality of the import/implication, as such, therefore, the same cause unjustifiable hardship upon concerned official, and thus strict compliance/observance of the aforementioned rules becomes obligatory on concerned authorities, and placement of promoted officer in charge of a Police Station after he is brought on promotion list "E" appears to be a necessary corollary without which it would perhaps practically not mean anything to him for the reason of rendering his confirmation in substantive rank of Sub-Inspector impossible. That being so, the petitioner's complaint of being prejudiced by non-compliance of aforesaid rules by respondent/department even after having been brought on promotion list "E" does not appear to be wholly

without substances.

7. Accordingly the petition is admitted, partially allowed and disposed of with a direction to respondents to give effect to order of petitioners

placement in promotion list ""E"" in strict accordance with Rules 390 and 392 of Police Rules in light of the contents of foregoing Paras, as

reportedly given in respect of others brought on the said list alongwith him. In so far as petitioners challenge to denovo trial is concerned, that being

subjudice in earlier writ petition i.e. SWP No. 1485/96 appears to be barred in the present writ petition and is, therefore, accordingly turned

down.

8. The petition stands accordingly disposed of alongwith connected CMPs.