

(2008) 02 J&K CK 0002
In the Jammu And Kashmir High Court

Abdul Rehman Wani

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 02-02-2008

Acts Referred:

Citation : (2008) 2 JKJ 348

Hon'ble Judges : Bashir A. Kirmani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bashir A. Kirmani, J.—Briefly stated, petitioner's case is that while posted in Police Station Budgam he was placed under suspension on

31.07.1987 on the charge that during investigation of criminal cases registered under FIRs 160 and 161 of 1987 he misappropriated an amount of

Rs. 800/- from out of the total amount of Rs. 4850/-recovered during investigation of the case under FIR No. 161 and 13 gold sovereigns during

investigation of the case under FIR No. 160/87, taken from one Gh. Qadir Sofi of Srinagar alongwith 57 more which were latter returned to him

without any mention of the same in the case diaries. After his suspension a departmental enquiry was initiated in the matter which resulted in

issuance of notice to him to show cause against his proposed dismissal by the then Director endorsement No. Pros-GB-162/85/3428 dated

15.09.88 which he challenged through writ petition SWP 1689/88 ultimately allowed by this Court on 03.08.1995 by quashrntent thereof for the

reason that enquiry against petitioner had been conducted by an incompetent officer appointed as such by another officer without competence and

a direction for re-instating petitioner back into service and to pay him all

consequential benefits under rules. This order appear to have been complied with by respondent department vide order No. 433 of 1996 dated 01.05.1996 by re-instating petitioner into service with an observation that a denovo enquiry would be initiated against him under relevant rules which as a matter of fact appears to have been initiated by the then Director General of Police under order No. 1111 of 96 dated 11.06.1996 wherein the then Deputy Superintendent of Police, Headquarters namely Shri Javed Riya was appointed as Enquiry Officer to submit his findings within two months from the date of order.

2. Aggrieved by the denovo enquiry ordered, as aforesaid, petitioner has instituted this writ petition to impugn the same chiefly on the ground that

having been re-instated after quashment of enquiry under Court orders the respondent department would not be competent to initiate a fresh

enquiry in the matter against him, which is met by other side by pleading that, in circumstances of the case, respondent department would not be

debarred from conducting the fresh enquiry against petitioner in view of the fact that earlier enquiry could not be completed, which is further

contested by petitioner through his rejoinder by pleading that while quashing the earlier enquiry the Court did not grant leave to initiate a denovo

enquiry which as such was totally wrong particularly because under Police Rules the Superintendent of Police concerned was bound to refer the

matter to District Magistrate because the allegations against petitioner revealed commission of a criminal offence due to which the enquiry was bad

in law. It has also been stated that during pendency of the matter petitioner has been brought on promotion list 'E' of the executive police under

order No. 3478 of 97 dated 11.11.1997 but the promotion has been kept subject to outcome of this petition. During course of submissions,

appearing counsel have re-terated the contents of their respective pleadings as summarized above with reference to annexures on record and

certain precedents which, if necessary, would be quoted in due course.

3. I have heard learned Counsel and considered the matter. Before anything else, it may be mentioned that the order of denovo enquiry impugned

in this petition appears to have been stayed way back on 06.08.1996 with the stay confirmed on 25.05.1999 when writ petition was admitted to

hearing. Central theme of the controversy, in given circumstances, however, is

whether or not respondent No. 2 - Director General of Police was competent in law to order the impugned enquiry against petitioner even while the previous one conducted against him was quashed by this Court alongwith the initial charge sheet. It would be appropriate to notice that case of petitioner previously has been that the officer who conducted enquiry against him was not competent in law to conduct the same which was accepted by this Court with an observation that even the officer who appointed the enquiry officer was not competent to do so. On that ground alone and none else, petitioner's plea for quashment of the earlier enquiry proceeding was allowed and so far as the substance of allegations leveled against petitioner previously is concerned, that neither came up nor was, as a matter of fact, considered by this Court. It can, therefore, be safely said that the veracity of allegations was not at all opined upon by this Court. That being so, the findings arrived upon by previous enquiry officer, could not prevail due to a certain technicalities and not for the reason of being wanting in substance. That being so, substance of the allegations of misconduct stands undenied at any competent level whatsoever.

4. In that backdrop, the question as to whether or not the right of initiating denovo enquiry is saved to the department despite quashment of earlier proceedings in circumstances catalogued above falls for consideration which, in my opinion, has to be applied in affirmative for the simple reason that there is nothing in the rules to debar the department from initiating the denovo enquiry the way it has been done. A view contrary thereto would automatically mean a negation of the allegations and their substance as leveled against petitioner way back in 1987 without having been considered, assessed or tried at any competent departmental or judicial level which, in other words, means that incompetence of the enquiry officer to act as such would automatically operate as a washing machine to wash off the allegations which appears to be quite serious in nature to the extent that previously the Director General of Police was convinced albeit on an incompetent enquiry to issue a dismissal notice to petitioner. In that view of the matter, I feel that in given set of circumstances the power to initiate a denovo enquiry against the delinquent must be deemed to always vest in the department because otherwise mere technical defects in

enquiry proceedings and afflux of time would render the official's misconduct, even in an organization like police department, not amenable to any sort of departmental proceedings. Further, if the arguments that has been put forth on behalf of petitioner is accepted that would automatically close the door on any initiative to have the factum of grave allegations leveled against petitioner re-opened for assessment and departmental action which, in my opinion, cannot be countenanced.

5. Before concluding the matter, it would be appropriate to address the contention regarding incompetence of respondent department to initiate the denovo enquiry against petitioner in given circumstances in view of the Supreme Court judgment quoted by petitioner's counsel as Amir Hussain

Vs. State of U.P., . On the face of it, the said judgment appears to be distinguishable on facts because in that case the delinquent official had been exonerated by Head of the Department on final consideration of the matter and after a prolonged period of time department had tried to reopen the same regarding which the Hon'ble Apex Court ruled that, in given circumstances of that case, it could not have been done. Instantly, the case is entirely different because the petitioner herein has not been exonerated of the charges or substance of allegations at any level whatsoever either departmentally or in writ proceedings.

6. Needless to say that delay in completing denovo proceedings appears to have occurred only due to the stay ordered by this Court way back in 1996 at the time of institution of the writ petition and cannot in any way be attributed to respondent department, in view whereof the plea of laches in initiation of denovo proceedings which as a matter of fact have been initiated only after a month after re-instatement of petitioner, is not acceptable.

7. For all that has been discussed above, the petition is dismissed alongwith all CMPs.