

(2014) 12 J&K CK 0041
In the Jammu And Kashmir High Court
Case No : SWP No. 2068 Of 2013

Aijaz Ahmad Ahangar

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 31-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 305

Hon'ble Judges : Hasnain Massodi, J.

Bench : Single Bench

Advocate : Aijaz, Advocate, for the Appellant; R.A. Khan, AAG, for the Respondent

Final Decision : Allowed

Judgement

Hasnain Massodi, J.â?"Petitioner appointed as Constable in respondent Police Force in the year 2001, is aggrieved with order No. 367 of 2012

dated 18.07.2012, whereby he has been removed from service and struck off from the rolls of Battalion w.e.f. 21st of February, 2012, i.e. from

the date of his absence from battalion. He assails aforementioned order in writ petition on hand on the grounds set-out in the petition. Petitioner is

aggrieved with order primarily on the ground that he has not been afforded an opportunity to explain and justify his absence from duty. It is

pleaded that respondents in violation of constitutional and statutory mandate have opted not to hold any enquiry before the order, impugned in the

petition was made. It is insisted that respondents were under an obligation to hold an enquiry into the matter, follow the procedure mapped-out in

Rule 359 of Jammu and Kashmir Police Rules 1956, and respect petitioners' right of being heard at different stages of enquiry.

2. It is stated that petitioner after his posting in Special Operation Group (SOG), Srinagar vide ZPHQ order No. 611 of 2005 dated 29.12.2005,

received threats from militants and was forced to migrate from his place of residence to another village. In this regard a certificate is placed on

record, issued by Tehsildar Pattan on 28.06.2006, indicating that as per enquiry petitioner was compelled to migrate from his place of actual

residence. It is next pleaded that because of militant threats petitioner developed psychiatric disorder and was under treatment at Government

Psychiatric Diseases Hospital, Srinagar. Petitioners posting at SOG, Srinagar and subsequent developments are said to have resulted in death of

Sh. Khazir Mohammad Ahanger--father of petitioner, compounding petitioners' agony.

3. Respondents oppose writ petition on the grounds that petitioner is habitual absentee and as his repeated indiscipline was likely to have adverse

effect on overall discipline of the force, respondents were left with no option but to remove him from service. It is pleaded that despite repeated

communications including one published in Local Daily, petitioner failed to report to duty and therefore cannot complain of having been denied an

opportunity to put forth his stand.

4. Heard and considered.

5. Facts are by and large admitted. Petitioner is admitted to have been enrolled in Jammu and Kashmir Armed Police Force (IRP) in the year

2001 and to have served the police free from any blemish for next five years. He as discernable for order impugned in the petition started showing

abnormal behaviour from the year 2006. If petitioner is to be believed his abnormal behaviour and repeated instances of absence from duty were

attributable to his posting in SOG, Srinagar. Be that as it may, it is required to be seen whether an enquiry was warranted into the matter and if so

whether such enquiry has been conducted in the prescribed manner.

6. Rule 334(1) of Jammu and Kashmir Police Rules lays down that ""no police officer shall be departmentally punished otherwise than as

prescribed in these rules"". Rule 334(2) categorizes the punishment that may be inflicted departmentally on Police officers. Removal from services is

one of such punishment. In terms of Rule 335, Commandant or Superintendent of Police has power to order removal from services of a constable.

Rule 339 provides that removal should be the punishment where it is not thought necessary to bar future re-employment under Government in another department for which the person may be suited.

7. In the present case, order impugned in the petition satisfies requirements of Rules as regards nature of punishment as well as authority imposing penalty. However impugned order has been passed without an inquiry and after affording petitioner an opportunity to put forth his stand. It is next to be seen whether procedure prescribed under rules has been followed while awarding punishment for removal from services.

8. Rule 359 prescribes the procedure in departmental enquiries. In the present case allegation against the petitioner is that he has more than once remained unauthorisedly absent. Last such spell being one w.e.f. 21.02.2012 till 18.07.2012. In terms of Rule 359, the Competent Authority had

ordinarily to follow procedure laid down while dealing with the matter. The respondents admittedly have not followed the procedure laid down in

Rule 359 Sub-rule 1 to 11. The respondents could avoid to procedure laid down in Rule 359 Sub-rule 1 to 11, provided the Competent Authority

was satisfied that for some reason it was not reasonably practicable to hold an enquiry. It is pertinent to point-out that in terms of Rule 359-Sub-

rule 11(2) no police officer can be removed or reduced in rank until he has been given a reasonable opportunity of showing cause orally and also in

writing against the action proposed to be taken against him. In the case at hand, neither an opportunity was given to petitioner to put forth his stand

as regards allegation levelled against him or punishment proposed to be slapped on him.

9. A bare look at the order impugned would reveal that disciplinary authority did not record satisfaction as required under Rule 359(11)(2)(b) to

the effect that it was not reasonably practicable to provide petitioner an opportunity to show cause against the action proposed to be taken against

him. The plea raised in reply affidavit that petitioner did not responded to repeated notices, requiring him to attend his duty and therefore an

enquiry contemplated under Rule 359 was unwarranted cannot be accepted.

10. The respondents, as record made available by learned AAG, would reveal at no decided to direct an inquiry into the matter or inform the

petitioner that an enquiry was contemplated, indicating to him the allegations

levelled. Merely because petitioner did not respond to the notices requiring him to resume duty would not absolve respondents of their statutory duty to hold an enquiry into the matter, so that petitioner was given adequate and reasonable opportunity to explain his unauthorized absence. It is pertinent to point out that the notices even if taken to have been served on the petitioner did not inform him that an enquiry was proposed to be conducted and he had right to participate in such enquiry and project his stand. It is well settled that mere unauthorized absence would not lead to dismissal or removal of service unless such absence is found to be without any cause.

11. Cases can be visualised when a Government employee is compelled by reasons beyond his control, to stay away from duty. In such cases he is to be given an opportunity to explain such reasons before dismissal or removal order is slapped on him.

12. For the reasons discussed, Writ petition is allowed and order No. 367 of 2012 dated 18.07.2012, whereby petitioner has been removed from services is quashed. Resultantly petitioner shall be allowed to resume his duty. The period from his absence till petitioner is allowed to resume, shall be decided in light of out of enquiry, if any, directed against petitioner. Disposed of along with connected CMPs.