
(1962) 01 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Appeal No. 47 of 1961

A.N.Raina

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 01-01-1962

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31(1)
Civil Services Regulations, 1956 — Regulation 108(B)(I), 109
Jammu and Kashmir Civil Services (Disciplinary Proceedings Tribunals) Rules, 1958 — Rule 8

Citation : AIR 1964 J&K 16 : AIR 1962 J&K 68 : (1962) KashLJ 70

Hon'ble Judges : K.V.Gopalakrishnan Nair, J

Bench : Single Bench

Advocate : Inder Das, Advocates appearing for the Parties

Judgement

The petitioner asks for a writ of certiorari to quash the order of the respondentGovernment dated 17th October 1959. The respondentGovernment resists the petition on the grounds that the order impugned is perfectly valid and that the petition is misconceived and untenable.

The following are the salient facts of the case. The petitioner, a lecturer in a Government College, was appointed Superintendent of a University

examination centre in connection with the B. A. degree supplementary examination held in 1956. One of the candidates writing the examination at

that centre, managed to import clandestinely into the examination hall answer papers written for her by an outsider, and submitted them to the

Superintendent as her own. This unusually daring malpractice was discovered much after the examinations and the University held an investigation

into it. The petitioner who was the Superintendent at the particular examination centre came in for adverse criticism and the Registrar of the

University wrote to the Government against the petitioner. This led the Government to frame certain charges against the petitioner and institute a departmental inquiry against him. He was placed under suspension on 9/10/58 pending the disciplinary proceedings. The inquiry was entrusted to the Tribunal for disciplinary proceedings constituted under the Jammu and Kashmir Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, (hereinafter referred to as the "Tribunal Rules"). The Tribunal acquitted the petitioner of the charges and recommended that the 'suspension period be admitted in his favour.' The Government to which the Tribunal submitted its report, accepted the Tribunal's recommendation regarding the reinstatement of the petitioner, but it did not see its way to accept the Tribunal's advice relating to the period of the petitioner's suspension. The Government considered that the recommendation of the Tribunal that "the suspension period be admitted in petitioner's favour" did not accord with the Tribunal's view that the petitioner was "responsible for negligence or dereliction of duty in having failed to get hold of the unfair means adopted by the examinee." So, the Government wrote to the Tribunal that it proposed to deviate from its advice relating to the period of petitioner's suspension, and invited the remarks of the Tribunal in that regard. The Tribunal thereupon wrote to the Government thus :

The official (Mr Raina) has been held responsible for negligence or dereliction of duty in having failed to get hold of the unfair means adopted by the examinee. As such I see no objection if the Government order the period of suspension to be treated as leave whatever due.

The next day the Government passed the impugned order which reads :

It is ordered that Shri A. N. Raina, Reader in Geography, G. G. M. Science College, Jammu, placed under suspension vide Government order No 488C of 1958 dated 9/10/58 be reinstated and the period of suspension be treated as leave of whatever kind due to him.'

The grievance of the petitioner against this order is that the Government ought to have accepted the original advice of the Tribunal and granted him for the period of suspension the full salary to which he would have been entitled if he had not been suspended. He has sought to reinforce his case for quashing the impugned order by pointing out that under rule 8 (b) of the Tribunal Rules, the Government was bound to call upon him to show

cause against its proposal to treat the period of his suspension as period of leave. According to him, the order treating the suspension period as

leave period is a penalty inflicted on him within the meaning of rule 8 (b) of the Tribunal Rules. Pursuing this line of reasoning, the petitioner goes

further and says that the conclusion that he was responsible for negligence or dereliction of duty in having failed to detect the unfair means adopted

by the examinee was a finding reached behind his back and as such opposed to the canons of natural Justice. And if this finding is eschewed from

consideration, it is argued, the Government order in question will be devoid of any basis or justification. All these arguments are admittedly

addressed for the purpose of enabling the petitioner to get his full salary for the period of his suspension.

I shall first examine the contentions based on the Tribunal Rules. Rule 8 is devoted to inquiries in cases of corruption. 'Corruption' is defined in rule

2 (a) as meaning 'Criminal misconduct in the discharge of official duties' under S. 5 (1) of the Prevention of Corruption Act, S. 2006. S. 5 (i) of the

Prevention of Corruption Act does not by any stretch of reasoning comprehend any of the charges which were levelled against the petitioner and

which were inquired into by the Tribunal in the instant case. Therefore, the entire argument founded upon rule 8 (b) of the Tribunal Rules falls to the

ground. Under rule 4 (2) of the Tribunal Rules the Government is empowered to refer to the Tribunal any case other than a corruption case.

Therefore, it was competent for the Government to refer the instant case to the Tribunal despite the fact that it did not involve corruption. The

Tribunal Rules expressly provide that in regard to cases other than those of corruption and in regard to any other matter for which no specific

provision has been made in those rules, the provisions of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956,

shall apply. It is therefore apparent that disciplinary proceedings against the petitioner were governed by the Classification, Control and Appeal

Rules, 1956. Nothing has been brought to my notice to indicate any contravention of these rules.

But this does not dispose of the contention that a penalty has been imposed upon the petitioner by treating the period of his suspension as period of

leave and that this penalty was inflicted without an opportunity being afforded to him to show cause against it Rule 30 of the Jammu and Kashmir

Civil Services (Classification, Control and Appeal) Rules, 1956, enumerates the penalties which may be imposed upon members of the civil

services to whom those rules apply. Treating the period of suspension as period of leave is not one of the penalties mentioned in that rule. Indeed,

suspension of an officer pending an inquiry into his conduct is not a penalty under any of the Service Rules. It is only an incident of the disciplinary

proceedings, depending upon the view the authority takes of the gravity of the alleged misconduct to be inquired into. Specific rules deal with the

period of suspension. Regulation 107 of the Jammu and Kashmir Civil Service Regulations, 1956, says :

Save as provided in Article 108 (b) an officer under suspension is entitled to no salary while he is absent from duty, and the salary of an officer

who is dismissed ceases absolutely from the date of his dismissal ; no allowance may be granted for any period occupied in the prosecution of

appeals against the orders of dismissal.

Regulation 108 (b) runs :

If the suspension of an officer as a penalty for misconduct is, upon reconsideration or appeal, held to have been unjustifiable or not wholly

justifiable, or if an officer dismissed from office or suspended pending enquiry into his alleged misconduct is, after enquiry or upon reconsideration

or appeal, reinstated, then the revising or appellate authority may grant to the officer for the period of his absence from duty:

(i) if the officer is honourably acquitted, an allowance equal to the full salary to which he would have been entitled if he had continued to hold the

appointment from which he was suspended or dismissed.

(ii) otherwise, an allowance equal to such proportion of the full salary as aforesaid as to the revising or appellate authority may seem expedient.

These provisions show that an officer cannot claim as of right salary or allowance equal to salary for the period of his suspension. This is not a

matter of penalty, but one of the conditions of service governing a civil servant. It seems to me therefore idle to contend that a penalty was imposed

on the petitioner by treating the period of his suspension as period of leave of whatever kind was due to him.

The case of the petitioner that the Tribunal's observation that he was responsible for negligence or dereliction of duty in having failed to detect the

unfair means adopted by the examiner was made without giving him an opportunity to defend himself also appears to be somewhat misconceived.

The charges enquired into were much more serious than negligence or dereliction of duty. The petitioner was charged with collusion, connivance or

with having been privy to planned fraud. This in a few words represents the gravamen of the charges. The petitioner was given adequate

opportunity to defend himself against the charges, to correct or contradict the evidence against him and to adduce evidence to establish his

innocence. As a result of the enquiry, the Tribunal had before it all the relevant material and all the circumstances of the case The Tribunal was

bound to assess the evidence marshalled on both sides and consider all the reasonable probabilities of the case. It had, in the light of these, to

scrutinize the conduct of the petitioner as Superintendent at the University examination centre. This involved a consideration of the degree of care

and caution, the standard of vigilance and the nature of the duties a Superintendent at an examination centre has ordinarily to exercise. Judging from

the nature of the enquiry, it was impossible for the Tribunal to keep his mind closed to this broad aspect of the matter. It was a basic aspect, not

merely a kindred aspect. The Tribunal was therefore within its rights in observing that the petitioner as Superintendent at the examination centre

was negligent or failed in his duty in not having detected the fraud committed by the examinee. It is not uncommon that a Tribunal while acquitting a

person points out that the enquiry discloses some blame attaching to him. This is legitimate for a Tribunal to say. It seems fantastic to contend that

before the Tribunal says so, it should frame a fresh charge and conduct a fresh enquiry. The true position is that the statement of the Tribunal as

based on a fair and proper enquiry at which both sides are duly represented. From all the facts of the case and all the material on the record, it was

open to the Tribunal, while exonerating the petitioner of the charges, to say that he was nevertheless to blame in some manner however slight. This

is far different from finding him guilty of a charge.

This takes us to the question of 'honourable acquittal' made mention of in Civil Service Regulation 108 (b) (i). Speaking of criminal trials,

Regulation 109 uses the expression 'acquittal of blame.' It seems to me that both these expressions connote nearly the same thing. A person may

be acquitted in a disciplinary proceeding or at a trial by a criminal court. An acquittal may be based on different bases. The court of the Tribunal may give the accused the benefit of the doubt and acquit him. The exoneration may in certain cases be based on purely technical grounds wholly unconnected with the merits of the case as to the guilt or innocence of the accused. In these two classes of cases it cannot be said that the accused was 'honourably acquitted' or was 'acquitted of blame' within the meaning of Regulations 107 and 103, as 'acquitted.' So also 'honourable acquittal' cannot mean the same thing as 'acquitted of blame' is not just the same thing as mere 'acquittal'. When Regulations 108 and 109 employ these expressions, reasonable meaning and significance must be given to them for the purpose of giving effect to the Regulations. The circumstance that these expressions are not defined in any of the Service Rules or Regulations or that they constitute a somewhat vague or difficult concept when taken in the abstract cannot be a good ground to refuse to assign to them a reasonable meaning and import. In my opinion these two expressions 'honourably acquitted' and 'acquitted of blame' are used to describe an acquittal based on the positive innocence of the accused. If the Tribunal or the court expressly holds that the accused is innocent or that the charge against him is false, that will be a case of 'honourable acquittal' or 'acquittal of blame' contemplated by Regulations 108 and 109. There may be a case where a Tribunal or court may neither say that the charge against the accused is false nor does it say that he has been acquitted on the ground of benefit of the doubt, and it is clear the acquittal has not been for technical defects. In such a case it is for the authority giving effect to Regulation 108 or 109 to read the Tribunal's report or the Court's judgment and arrive bonafide at its own conclusion whether or not it is a case of honourable acquittal or acquittal of blame.

The situation which apparently confronted the Government in the case of the petitioner was a more or less difficult one. The Tribunal had in two different paragraphs of its report made observations which were rather hard to reconcile. There was something vague, something lacking in precision, something which seemed to indicate an amount of confused or blurred thinking in the Tribunal's report. I shall illustrate this by quoting the two paragraphs from the Tribunal's report.

In para (A) (b) at page 29 of the Tribunal's report it is observed :

Giving him the benefit of other possibility and doubt and palpable defects in the inquiry which has been considered as biased and discriminatory,

this charge has also not been held as proved to the hilt. The official is held responsible for negligence or dereliction of duty in having failed to get

hold of the unfair means adopted by the examinee. He has apparently been let down by the staff working under him, especially when the Registrar

took no timely action on a complaint, even if anonymous, but actually received by him days before the examination was due to begin.

In another paragraph which is greatly relief on by the petitioner the Tribunal says :

"I have come painfully to the conclusion that the inquiry so far as this officer is concerned has not been fair, and has been prejudicial and

discriminatory. In view of no action having been proposed or taken against any other Government official whose share has been palpably clear I

recommend that the official be acquitted and even the suspension period i admitted in his favour. The punishment already inflicted by the University

would seem ample, whether there was sufficient justification for it or not is not for this Tribunal to say.

One finds it difficult, on a reading of these two paragraphs, to predicate with any degree of certainty whether the acquittal of the petitioner was

honourable or not. I think the Government was therefore justified in seeking clarification from the Tribunal itself, and as I already stated, the

Tribunal agreed that the period of suspension of the officer may be treated as period of leave. In other words, the Tribunal agreed that the

petitioner was not honourably acquitted. This being the position, I am unable, as a matter of law, to see any substance in the grievance of the

petitioner.

The petitioner has complained of violation of natural justice in finding behind his back that there was negligence or dereliction of duty on his party.

But this complaint loses point when it is considered that no penalty was imposed upon the petitioner as a result of this finding within the meaning of

the Service Rules. Moreover, such an observation was incidental to the inquiry and was of importance to decide the action to be taken with regard

to the period of suspension under Regulation 108 (b). Even if the Tribunal had

not made any such observation, it would have been open to the Government to form its own opinion as to whether the acquittal was honourable or not for purposes of Regulation 108 (b). I find it hard to appreciate how any question of natural justice can appropriately arise in this context. Regulation 107 categorically says that a Government servant under suspension is not entitled to salary. Regulation 108 (b) is only a provision in extenuation of Regulation 107. I find it difficult to say that the Government was wrong in view of the circumstances already detailed in the view that the acquittal of the petitioner was not honourable. It follows he cannot as a matter of law complain against the order in question by which he was granted allowance equal to about one half of his salary for the period of his suspension.

It is however strenuously urged that when an officer has been reinstated as a result of a departmental inquiry, he ought to be restored to the position which he occupied before the inquiry started. The contention in other words is that when the petitioner was ordered to be reinstated, he should have been paid the full salary for the period of his suspension. This contention seems to overlook the law governing master and servant. At common law, the master is not entitled to suspend his servant unless the master has power to do so under the terms of the contract. If without such power a servant is suspended, he will be entitled to his full wages during the period of his suspension, A master cannot, by merely preventing his servant from working, deprive him of his salary for the period during which he was not allowed to work. But the position becomes entirely different, if the employer has the power to suspend the employee under the terms of the contract or under some statutory rules. In *Wallwork V.*

Fielding and others, (1922) 2 K. B. 66 at page 71 Lord Sterndale M. R. said :

That disposes of the first point, but a second is taken namely, that granted the power to suspend, that does not import the power to withhold pay during the suspension. I should have thought that power to suspend the operation of a contract necessarily suspended its whole operation including not only the performance of duty but also the right to pay during the period of suspension.

The Master of the Rolls proceeded to discuss the decision in *Hanley V. Pease and Partners* (1915) 1 K. B. 698 which was a decision of three

learned Judges Lush J., Rowlatt J. and Atkin J. and concluded as follows at page 72 :

All these learned judges treat it, it seems to me, as indisputable that if there is a power of suspension which is exercised, the whole contract is

suspended, the obligations on both sides are suspended. It seems to me that is the inevitable meaning of suspension, and if there be any power

necessary, there was express statutory power here to suspend the man from duty and that involves the suspension of payment for the discharge of

the duty. The contract is suspended with regard to its performance by both sides, not only by one; therefore, I think that point also fails.

I may also refer to the decision of the Supreme Court in *Hotel Imperial V. Hotel Workers' Union*, A. I. R. 1959 S. C. 1342 where the position is

neatly stated in the following words :

"The power of the employer to suspend an employee under the ordinary law of master and servant in the sense of a right to forbid a servant to

work, is not an implied term in an ordinary contract between master and servant, and such a power can only be the creature either of a statute

governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the

contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so

he will have to pay wages during the so called period of suspension. Where, however, there is power to suspend either in the contract of

employment or in the statute or the rules framed there under, the suspension has the effect of temporarily suspending the relation of master and

servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

It is not necessary to burden this judgment with more citations on a point which seems to me to be wellsettled.

In the case on hand, the respondent Government is expressly empowered by rule 31 (D of the Jammu and Kashmir Civil Services (Classification,

Control and Appeal) Rules to place a Government servant under suspension, where an inquiry into his conduct is contemplated or is pending The

Government acted under this statutory rule in suspending the petitioner. The effect of this suspension was to put an end during the period of

suspension, to the right of the Government to call upon the petitioner to work and to the right of the petitioner to ask the Government to pay him

his salary for that period. The provisions of Regulation 107 of the Jammu and Kashmir Civil Service Regulations are in conformity with this legal

position. The petitioner's claim that on reinstatement he should be paid his entire salary for the period of suspension cannot therefore be sustained

in law.

Before concluding, I must say that it is even now open to the Government to review the case of the petitioner suo moto and give him a higher rate

of allowances for the period of his suspension. I state this because the petitioner's learned counsel has pressed upon me that I should make it clear

that anything I say in this judgment will not preclude the Government from reconsidering the petitioner's case. I should like to add that considering

the long period of suspension which the petitioner suffered and the absence of any guilt involving moral turpitude attaching to him and the possibility

of his having been outwitted by the superior cleverness and skilfully planned efforts of the examinee, his case seems to deserve a little more

sympathetic consideration at the hands of his employer, the Government.

The writ petition is dismissed but without making any order as to cost in the circumstances of the case.