
(1996) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 531/95

Bachhiter Singh

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31(2)

Citation : (1996) KashLJ 75 : (1996) SriLJ 122

Hon'ble Judges : V.K.Gupta, J

Bench : Single Bench

Advocate : R.N.Sharma, Abhinav Sharma , Advocates appearing for the Parties

Judgement

A very short point is involved for consideration in this case. The petitioner is a Peon working in the Office of Deputy Director J and K Funds

Organisation, Jammu At the relevant time it is alleged that he was performing the duties of a Chowkidar. The impugned communication No.

DDFJ/8284 dated 541995 was sent by respondent No. 4 to respondent No 3 whereby respondent No. 3 was informed that the petitioner is

deemed to have been placed under suspension w. e. f. 1721995 in terms of Rule 31 (2) of the J and K Civil Services (Classification, Control and

Appeal) Rules 1956. For ready reference, the text of this communication is reproduced as under :

Since Sh. Bachhiter Ringh, Orderly is deemed to have been placed under suspension w. e. f. 1721995 with ref, to Rule 31 (2) of Classification

Control and Appeal Rules 1956, you are advised to pay subsistence allowance to the official as admissible under rules with an intimation to this

office.

The petitioner's case is if the petitioner was in custody for a period longer than 48 hours, as is contemplated under SubRule (2) of Rule 31 of 1956

Rules, the Authority competent as prescribed under Rule 31 was required to pass a formal order placing the petitioner under suspension because of

the stipulations contained in Rule 31 itself. Even though, according to Mr. Abhinav Sharma, the expression used in SubRule (2) is that the petitioner

should be deemed to have been suspended by the competent Authority, yet a formal order placing him under suspension was required to be

passed by the appointing Authority. Mr. R. N. Sharma, learned counsel appearing for the respondents, on the other hand, has controverted this

submission of Mr. A. Sharma. According to

Mr. R. N. Sharma, the fact that a Govt. servant has been in custody for a period longer than 48 hours by itself should ipso facto mean that he is

deemed to have been placed under suspension and that the issuance or passing of a formal order to this effect is not required.

After hearing learned counsel for the parties at length, I am of the opinion that the submission made by Mr. Abhinav Sharma, learned counsel

appearing for the petitioner deserves to be accepted. For ready reference SubRule (2,) of rule 31 of 1956 Rules is reproduced here rider ;

V'A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than fortyeight hours shall be

deemed to have been suspended by the appointing authority under this rule.

Whether a Government servant was or was not detained in custody* on a criminal charge or otherwise and, if he was actually detained whether his

detention was for a period longer than 48 hours are such facts which have to be recorded somewhere in order to show that this Government

servant has attracted the liability of being placed under suspension in terms of this SubRule. Not only that, a record of such an event has to be

maintained but, on factual aspects the appointing Authority has also to be satisfied itself that actually also the Government servant was detained in

custody on a criminal charge or otherwise and, for a period longer than 49 hours and only after such a satisfaction is recorded, can the appointing

Authority pass an order suspending such a Government servant? The nonrecording of this fact and the nonsatisfaction of the appointing Authority

are two factors which can vitiate the suspension of the Government servant

under Rule 31 (2). Rather, it can be said that unless a formal order is issued, despite a Government servant having remained in custody for 48 hours or more, his suspension cannot be deemed to have come into effect.

The expression ""shall be deemed to have been suspended"" in the context in which it is used in SubRule 2 can only mean that, once it is established and found that the Government servant was detained in custody for more than 48 hours on a criminal charge or otherwise, Ms appointing Authority has no option but to put him under suspension. Nothing more or nothing further is required to be established or found for placing a Government servant under suspension under SubRule (2). The mere fact that he was detained in custody on a criminal charge or otherwise, and for a period exceeding 48 hours would be enough and sufficient for passing the suspension order. In this view of the matter, therefore, it becomes necessary that a formal order is issued by the appointing Authority. Unless and until such an order is passed and issued, the suspension cannot be deemed to have come about nor would it mean that the Government servant has actually been suspended. In other words, it also means that despite a Government servant having been detained in custody for more than 48 hours, if his appointing Authority does not pass an order suspending him from service, he continues to remain in service and is supposed not to have been suspended. I am saying so because the intention to suspend can be gathered only after the order is passed by the appointing Authority.

In the present case since admittedly the appointing Authority has not passed the suspension order, it can safely be said that the petitioner has not been placed under suspension. For the above reasons, therefore, this petition is allowed. The impugned communication dated 541995 is quashed and set aside. It is held and declared that the petitioner, was not placed under suspension and is not deemed to have been suspended till date. All the consequences shall follow. No costs.