
(2008) 05 J&K CK 0013
In the Jammu And Kashmir High Court

Bashir Ahmend Khan

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 31-05-2008

Acts Referred:

Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 31

Citation : (2009) 2 JKJ 192

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hakim Imtiyaz Hussain, J.—Petitioner Bashir Ahmed Khan is working as Assistant Director, Stores Consumer Affairs and Public

Distribution Department (for short the CAPD). Vide Government Order NO. 108-CA & PD of 2006, he was transferred and posted as Assistant

Director, CAPD Stores, Srinagar. By means of Order No. 133 DCAPDK of 2007 dated 28.11.2007 Joint Director (Adm.) CAPD, Srinagar has

placed the petitioner under suspension and directed his attachment with the direction office.

2. Petitioner is aggrieved of the order of suspension and has through the medium of the present petition challenged it on the various grounds inter

alia that he being a gazetted officer, Joint Director (Adm.) had no powers to place him under suspension. He has prayed for quashment of order

impugned no: 133 DCAPDK of 2007 dated 28.11.2007 issued by the Joint Director Administration.

3. Respondents have, in their reply, given the factual background of-the case and have stated that as per the rules, the official can be placed under

suspension if an enquiry into the conduct of such Govt, servant is contemplated or is pending. The order of suspension, according to the

respondents, has been passed in accordance with Rule 31 Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 (for

short the Rules) as such the petitioner has got no ground to challenge the suspension order.

4. The respondents have further stated that suspension pending enquiry is not a punishment and that there is no scope for interference in this behalf

because it does not effect any of the rights of the petitioner.

5. Heard. I have considered the matter.

6. Learned Counsel for the petitioner has submitted that the order impugned is without jurisdiction as the petitioner being an officer of the gazetted

rank has been placed under suspension by the Joint Director (Adm) who is neither his appointing authority nor the disciplinary authority. Learned

Counsel further submits that an employee can be placed under suspension only when there are sufficient grounds for the same. Gravity of

misconduct sought to be investigated/enquired into and nature of evidence placed before appointing authority should be considered before passing

the suspension order as the order of suspension is not to be passed in a routine or automatic manner. In support of his contentions the Learned

Counsel has placed reliance on State of Orissa Vs. Bimal Kumar Mohanty, , Krishna Kumar Vs. Divisional Assistant Electrical Engineer and

Others, and R.S. Manhas v. District Development commissioner, Udhampur 1986 SLJ 382. He has also referred to a recent judgment of this

Court in Abdul Rashid Bhat and Ors. v. State of J & K and Ors. SWP No. 1626/07 decided on 9.4.2008.

7. Per contra, Mr. M. A. Ward submits that though the order of suspension has been passed by the Joint Director (Adm.) CA & PD, the Director

CAPD, Srinagar has confirmed the said order vide order No. 134 DCAPDK of 2007 dated 1.12.2007, as such the order is very much legal and

does not suffer from any jurisdictional error. Learned Counsel has referred to Schedule I-B note-2 CSR, Vol. II read with Classification of

Officers as contained in the Book of Financial Powers, to show that the Director, is a Major Head of the Department as his name figures at

Section No. 66 in the list of Major HODs, while as Assistant Director Food &

Supplies is a class III officer, as such the Director has the powers to place an Assistant Director under suspension. Since the order of Joint Director (Adm.) has been confirmed by the Director, the petitioner has been validly placed under suspension under the provisions of the rules and the order impugned can not be interfered with on this ground in view of the law laid down by the Apex Court in Maharashtra State Mining Corporation Vs. Sunil Pathak, . The Learned Counsel has also referred to and relied on Gh. Rasool Shah v. State and Ors. 2004 (II) SLJ 507 and Mohd. Aslam Laiguroo v. State of J & K and Ors. 1999 SLJ 429.

8. The issue which arises for consideration in the present case therefore is that whether the order placing petitioner under suspension is a proper and legal order in the eye of law.

9. The object and purpose of placing an employee on suspension and the requirements a competent authority has to follow while directing the suspension, have been given by the Apex Court in State of Orissa Vs. Bimal Kumar Mohanty, as under:

It is thus settled law that normally when an appointed authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct of defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office of post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service

that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegation, gravity of the situation and indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in and to the ultimate result of the investigation of enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

10. In *R.S. Manhas v. District Development Commissioner, Udhampur* 1986 SLJ 382, this Court observed that suspension carries a stigma with respect of concerned civil servant and definitely lowers him in the estimation of the society, his friends, relations and colleagues. The Court held that an order of suspension can be challenged and the court has the right to set it aside, if it is proved that it has been passed by a person other than the one authorised to suspend. The Court observed as under:

Suspension means debarring usually, for a time from any privilege, from the execution of an office or from the enjoyment of an income according] to the ordinary dictionary meaning. It is a temporary privation of office or a privilege. However, by reason of mere suspension the person concerned does not loose his office not does he suffer any degradation but he ceases to exercise the powers and to discharge the duties of the office for the time being. Though his rank remains the same, yet he cannot draw his salary during the period of suspension. The powers, functions and privileges of a civil servant during Suspension remain in abeyance and he continues to be subject to the same discipline and penalties and to the same authorities as any other civil servant. Suspension under the present set up attaches a stigma to the concerned public servant and cannot be treated as a normal routine order with respect to a civil servant which allegedly do not effect his rights. A suspended civil servant looses the respect

and dignity which he enjoys before such an order is passed. Suspension may not amount to punishment within the meaning of Article 311 of the constitution of India, or within the meaning of the punishments prescribed under any rules governing service conditions of the civil servants, even then it carries a stigma with respect to the concerned civil servant definitely lowers him in the estimation of the society, his friends, relations and colleagues. It is true that the principal as enumerated in AIR 1949 118 (Nagpur) to the effect that when a man is suspended, he is in our opinion reduced in rank is no more good law in view of numerous judgments of different High Courts wherein the said decision has been dissented from. It is also not acceptable that suspension, as a matter of general rule is not justifiable by the courts of law. The construction, the statute and the statutory rules which govern the service conditions have to be kept in mind while adjudicating the order of suspension. We do not agree with the objection raised that in no case suspension was justifiable.

In our view the order of suspension can be challenged and the court has the right to set it aside, if it is proved that the order of suspension is:

- a) In violation of any statute;
- b) Contravenes any statutory rules;
- c) Is the result, of mala fide exercise of power by the superior authority;
- d) is motivated for the extraneous consideration;
- e) is by itself in the given circumstances of a case as a measure of punishment.
- f) Or has been passed by a person other than the one authorized to suspend even without getting such an order confirmed by the competent authority.

Again the circumstances enumerated hereinabove are not exhaustive and there may arise other occasion as well when the conscience of the court may be shocked and forced to interfere if excess is done to a public servant. It is however true that if an order of suspension is passed by the competent authority in accordance with the provisions of law without malice, ill-will or extraneous reasons, the Court would not interfere with such an order.

11. Provisions relating to the suspension are contained in Rule 31 of the rules which provides as under:

31. (1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf,

may place a Government servant under suspension where:

(a) An inquiry into his conduct is contemplated or is pending or

(b) A complaint against him of any criminal offence is under investigation or trial

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be

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

(3) An order of suspension under Sub-rule (1) may be revoked at any time by the authority maintain the order or by an authority to which it is

subordinate.

(4) Where a penalty of dismissal or removal from service imposed upon a Government servant under suspension is set aside in appeal or on review

under these rules and the case is remitted for further inquiry or action or with any other dictions, the order of his suspension shall be deemed to

have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(5) Where a penalty of dismissal or removal from service imposed upon a Government servant is set aside or declared or rendered void in

consequence of or by a decision of a Court of law and the competent authority a consideration of the circumstances of the case, decides to hold a

further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the Government servant shall be

deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal or removal and shall

continue to remain under suspension until further orders.

12. Under the said rule appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this

behalf, has got the powers to place an employee under suspension where an inquiry into his conduct is contemplated or is pending or a complaint

against him of any criminal offence is under investigation or trial. Thus the authorities recognized by the rule for placing an employee under

suspension are:

a) Appointing authority;

- b) An higher authority (to which such appointing authority is subordinate);
- c) Authority empowered by the Govt. in this behalf.

13. In the present case Joint Director (Adm.) is admittedly not the appointing authority of the petitioner. He is not a higher authority nor has any authorization been placed on record to show that the Government has authorised him to place the petitioner under suspension.

14. This Court while dealing with a similar matter observed in *Ab. Rashid Bhat v. State and Ors.* SWP No. 1626/07 decided on 9.4.2008 as

under:

There is no dispute on the principle that it is only appointing authority who can place an employee under suspension. It is only appointing/punishing

authority who has got the powers to order suspension of an employee. Reference in this behalf may be made to *Pradyat Kumar Bose Vs. The*

Hon'ble The Chief Justice of Calcutta High Court, . Assistant Director is a Gazetted Officer and the authority to appoint him or impose a penalty

on him lies with the Govt. and not with the Director. The Director, therefore, has got no jurisdiction and competence to place the Assistant

Director under suspension.

15. An order of suspension passed by an incompetent authority can be validated by a higher authority but such an authority must himself be

competent to pass such order. The submission of Mr. Wani that the order of suspension made by the Joint Director (Adm....), impugned in the

present petition has been ratified by the Director will not help the respondents and the authority of *Maharashtra State Mining Corporation v. Sunil*

(*Supra*) cited is of no assistance to them, as the Director himself is not the appointing authority/superior authority nor has the Govt., authorised the

Director in this behalf, so the ratification by the Director can not validate the order. That the Director has been shown as Head of the Department

of the petitioner or the Joint Director, will not vest the Director with powers to place an Assistant Director under suspension. Reference in this

behalf may again be made to *Ab. Rashid Bhat v. State and Ors.* SWP No. 1626/07 (*supra*).

16. This Court in *Mohd. Aslam Laiguroo v. State of J & K* 1999 SLJ 429 has observed that the order of suspension need not to be a speaking

order and Govt. Instructions appended to Rule 31 are not statutory in nature and

enforceable but the case and other authorities cited by the

Learned Counsel for the respondents, are not relevant in the present case for the reason that the impugned order suffers from the basic infirmity of

want of jurisdiction.

17. In the circumstances since the order impugned has been passed by an authority that had no powers to issue the same and the confirmation

made by the Director will not validate the order as the Director himself is not competent to place the petitioner under suspension, the present

petition is allowed.

18. Order accordingly.