

(2006) 05 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 303 Of 2005

Bilal Ahmad Bangroo

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Constitution of India, 1950 — Article 311
Constitution of Jammu and Kashmir, 1956 — Section 126
Police Rules, 1960 — Rule 187, 359

Citation : (2006) 3 JKJ 269 : (2006) 2 SriLJ 437

Hon'ble Judges : B.A.Khan, C.J and J.P.Singh, J

Bench : Division Bench

Advocate : S.H.Thakur, M.A.Rathore, Advocates appearing for the Parties

Judgement

J. P. Singh, J.—This original side appeal is directed against judgment dated 25.11.2005 of a learned Single Judge of this Court, whereby

appellant's SWPNo. 1167/2004 questioning order No. 172 of 2002 dated 23.04.2002 of Superintendent of Police, Kulgam, was dismissed.

2. Facts leading to the filing of this appeal, may be summarized thus:

3. Bilal Ahmad Bangroo was appointed as Constable in Jammu and Kashmir Police in District Srinagar, vide Inspector General, Jammu and

Kashmir Police, Kashmir Zone, Srinagar's order No. 66 (c) of 1999 dated March 16, 1999. This does not appear to be a regular appointment.

However, after a gap of few months, appellant appeared and qualified all requisite tests for appointment as Constable and was, accordingly, so

appointed vide Government Order No. 437 of 1999 dated 07.05.1999. The appellant appears to have been transferred after about one and a half

year to District Police Lines, Kulgam. It further appears from the records that the

appellant did not join his new place of posting for a considerable period, where after, Superintendent of Police, Kulgam, issued order No. 172 of 2002 dated 23.04.2002 after recording his satisfaction that the appellant had not proved to be a good police official especially during his probationary period.

4. The appellant filed SWP No. 121/2004 in this Court, seeking a mandamus against (he official respondents to allow him to discharge his duties,

besides seeking arrears of salary from January, 2000 along with interest (a) 24% per annum. This writ petition, on objections by the respondents

that the petitioner stood discharged from service vide order No. 172 of 2002 of SP, Kulgam, was, however, dismissed. It was after the dismissal

of this writ petition that SWP No. 1167/2004 was filed by the appellant questioning order No. 172 of 2002 dated 23rd of April, 2002. This writ

petition was filed on the premise that principles of natural justice had not been followed and opportunity of hearing had not been afforded to the

appellant before passing the order impugned in the writ petition. It was urged by the appellant that protection available under Article 311 of the

Constitution of India and Section 126 of the Constitution of Jammu and Kashmir, had not been provided to him. Appellant further urged that Rule

359 of J and K Police Manual had not been followed by the respondents in passing the order impugned in the writ petition.

5. Appellant's submissions were considered by the learned Single Judge, who, relying upon State of Punjab and others Vs. Sukwinder Singh,

reported as AIR 2005 SCW 3477 (AIR 2005 SC 2960), dismissed the writ petition because no illegality was found in the order impugned in the

writ petition. Learned Single Judge recorded a finding that conclusions reached at by the respondents were based on the ground of prolonged

absence of the petitioner from duty, for which no satisfactory cause had been given by the petitioner.

5 A. Shri S. H. Thakur, learned Advocate for the appellant, has assailed the judgment under appeal on the ground that law laid down by Hon'ble

Supreme Court of India in Sukhwinder Singh's case (supra) was not applicable to the appellants case and that the case of the appellant was

covered by another judgment delivered by a learned Single Judge of this Court in Zahoor Ahmad Shah Vs. State and others', reported as

2005(11) SLJ 593.

6. Shri M. A. Rathore, learned Additional Advocate General appearing for the respondents, on the other hand, urged that the judgment passed by

the writ court does not call for any interference because long absence of the petitioner from service did not warrant his retention in the Police Force

and that order impugned in the writ petition did not suffer from any error of law.

7. We have considered the submissions of learned counsel for the parties and have gone through the records of the case.

8. Order impugned in the writ petition was passed by SP, Kulgam, in exercise of his power under Rule 187 of J and K Police Rules, which, for facility of reference, is reproduced hereunder:

187.DISCHARGO F INEFFICIENTS:

A Constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment.

9. This Rule empowers the competent authority to discharge any Police Officer, who is found by it unlikely to prove an efficient Police Officer. This

power may be exercised by the competent authority within three years of the enrolment of a Policeman. This, in other words, would mean that

during the course of probation, the competent authority may discharge the probationer once it was satisfied that the Officer/Policeman was unlikely

to prove an efficient Police Officer. Rule 187 of the Police Rules, does not contemplate holding of enquiry or providing of opportunity to the police

officer before directing his discharge within a period of three years of enrolment.

10. It is trite that opportunity of hearing may be afforded only if the order of discharge was stigmatic. An order of discharge unless proved to be

mala fide or appearing on the face of it to be stigmatic, would not require issuance of prior notice to the official, who was sought to be discharged

in exercise of power under Rule 187 of J and K Police Rules within the period of his probation.

11. We have waded through the writ petition of the appellant. He has not projected any such case in the petition on the basis whereof the order

may be termed either malafide or stigmatic. A plain reading of the order, does not indicate it to be stigmatic. in any manner, whatsoever. The

finding returned by SP, Kulgam, that the appellant had not proved to be a good police official, has not been questioned by the appellant anywhere in his writ petition.

12. All that the petitioner alleges in his writ petition is that after his posting at Kulgam in the year 2000, he was not allowed to join there, which, according to the petitioner, had forced him to remain at District Police Lines, Srinagar. The petitioner has not placed any material on records in support of this factual assertion and we are not prepared to believe the cock and bull story of the petitioner alleging that he was not permitted to join for a period of about four years after his posting in Kulgam in the year 2000.

13. We do not find any force in yet another submission of learned counsel for the appellant that procedure prescribed under Rule 359 of the J and

K Police Rules, was required to be followed before terminating the service of the petitioner. Rule 359, in our opinion, was not attracted to the facts

and circumstances of the present case because this Rule would be attracted when a misconduct was required to be inquired into. Discharge of a

probationer under Rule 187, does not contemplate employing the provisions of Rule 359 to the case of such probationer. Zahoor Ahmad Shah's

case referred by learned counsel for the appellant, does not have any application to the facts of the present case because in that case, a finding had

been recorded before the discharge of the probationer that he had committed a grave misconduct and an act of indiscipline and on that basis,

probationer had been released by the State functionaries.

14. Learned Single Judge dealing with Zahoor Ahmad Shah's case had relied upon another judgment of this Court in State of J and K *mid others*

Vs. Firdous Ahmad Sheikh and others, reported as 2003(3) JKJ 410[KC], in which it had been held that a constable could be discharged from

service, if the appointing authority was satisfied that he was unlikely to prove an efficient police officer, but in that case no such satisfaction had

been recorded, and in that view of the matter, it had been held that Rule 187 was not applicable to that case.

15. Finding recorded by Superintendent of Police, Kulgam, that appellant had not proved to be a good police official has neither been questioned

by the appellant in his writ petition nor do we find any material on records which may render this finding of the Superintendent of Police unjustified.

Plea raised by learned counsel for the appellant that principles of natural justice were required to be followed before applying Rule 187 of J and K

Police Rules having failed, nothing more survives for our consideration in this appeal.

16. There is thus no merit in this appeal.

17. We, accordingly, dismiss this appeal, without any order as to costs.