
(1998) 07 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 489 of 1991

Des Raj

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 27-07-1998

Acts Referred:

Constitution of India, 1950 — Article 211

Citation : (1998) 3 SCT 789

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Baldev Singh, Anil Sethi, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—Petitioner who was constable in the police Department was deputed for undergoing training course at Manigam. He was

directed to report for duty at the above place. He was to report for duty on 2nd of July 1986. Petitioner did not report for duty on 2nd of July

1986. Petitioner did not report at Manigam Training School. He thus remained absent. He not only remained absent but drew his salary for the

period of absence. This period of absence was from July 1986 to Oct. 1986. The petitioner reported to Police Lines on 18th December 1987.

For this, departmental proceedings were initiated against him. Inquiry Officer came to the conclusion that the petitioner was on unauthorised

absence. He recommended that the petitioner be reduced to minimum of scale for five years. Disciplinary authority namely Senior Superintendent

of Police however did not agree with the course proposed by the enquiry officer. Senior Superintendent of Police was of the view that the

petitioner should be removed from service. The petitioner was accordingly served with a show notice. After due compliance of procedural

requirement, the petitioner was removed from service.

An appeal was preferred and appeal stands dismissed.

2. Appellate authority came to the conclusion that explanation given by the petitioner, deserved to be rejected and it was accordingly rejected. The

appellate authority found no lacuna in departmental enquiry held against the petitioner. Appeal was accordingly dismissed.

It is the order of removal as well as order by which appeal was dismissed which are subject matter of challenge in this petition. The arguments

raised by the petitioner are :

(i) that the enquiry officer was not appointed by the competent authority.

(ii) that the period of absence from July 1986 to Oct. 1986 could not be treated as absence, as petitioner was paid his wages.

(iii) that the fact is that petitioner was not maintaining good health was within knowledge of the respondent authorities,

(iv) that the petitioner did not go to Manigram Training School, as he was unable to continue there on account of ill health.

(v) that the observations made in the order that the petitioner remained absent for 5 years and 30 days, is not correct.

3. Argument raised by the petitioner that the enquiry officer was not appointed by competent authority and that proceedings are added (vitiated ?)

on that account is merely to be noticed and rejected. In case reported as State of Madhya Pradesh v. Shardul Singh, 1970(1) SCC 108, the

Supreme Court of India has held in no uncertain terms that short of dismissal, removal or reduction in rank, all other steps can be taken by an

authority which need not be the appointing authority. This view has been reiterated in latter decision. See:

1. Commissioner of Police v. Jayasuman, 1997(6) SCC 75.

2. Inspector General of Police v. Thavasiappan, 1996(2) SCC 145 : 1996(3) SCT 681 (SC) .

4. In view of above the argument raised by the petitioner cannot be accepted. With regard to other plea it be seen that positive findings have been

recorded to the effect that the petitioner was absent. Petitioner is not within his rights to contend that since he got his salary, he should be deemed

to be on duty. As a matter of fact, charge against the petitioner was that even though he was absent he drew his salary. As such no ground has

been made for interference. The petitioner may if so advised prefer representation with a prayer that order of removal is too harsh a punishment and that it is not commensurate with the alleged lapse. If a representation is preferred the State authorities may consider the same.

5. Otherwise there is no merit in this petition.

This is dismissed.