

(2008) 07 J&K CK 0006
In the Jammu And Kashmir High Court

Farooq Ahmad Lone

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Citation : (2008) 3 JKJ 173

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Petitioner has questioned the order No. 874/2002 dated 30.10.2002 passed by Sr. Superintendent of Police,

Baramulla, whereby the petitioner came to be removed from service, on the grounds taken in the writ petition.

2. It appears that writ petitioner came to be appointed as Constable vide order No. 951/2000 dated 03.10.2000 on probation for a period of

three years. He had to undergo training at STC Sheeri. Removal order came to be passed on the grounds that he remained absent unauthorisedly

during training. No doubt the impugned order came to be passed during the period of probation but without enquiry. Police constable can be

discharged from service during probation in terms of Regulation 187 of Police Regulations. It is apt to reproduce Regulation 187 of the Police

Regulations herein:

187. DISCHARGE OF INEFFICEINT: 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.

3. This Regulation enables the competent authority to discharge a constable

during probation without conducting enquiry on the ground he is not likely to become a good police officer. But the impugned order is punitive one and cannot be said to have been passed while invoking the provisions of Regulation 187.

4. The respondents have passed the removal order without conducting enquiry. Regulation 187 nowhere enables the competent authority to remove a constable from service without conducting enquiry. The impugned order is not only order of removal but the annual increment of the petitioner also came to be forfeited and period came to be treated as dies-non. Thus, respondents had to conduct regular enquiry in order to pass such an order.

5. In the given circumstances, the writ petition is allowed and the impugned order is quashed. Respondents are at liberty to conduct enquiry and pass appropriate orders after conducting enquiry in terms of the rules occupying the field. It goes without saying that period from the date of absence till today is subject to the orders of respondents or subject to the enquiry, if conducted. It is made clear that in case enquiry is not conducted, the petitioner is not entitled to any salary from the date of absence till today. However, the said period is to be counted for other service benefits.