
(1997) 07 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1483/94

Ghulam Ahmad Paul

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)(C)

Citation : (1997) KashLJ 501 : (1998) SriLJ 131

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : N.A.Baba , M.I.Qadiri, Advocates appearing for the Parties

Judgement

1. All these petitions are being disposed of by this common judgment.
2. Petitioners were working as constables/SG constable/ Head Constable in the police Department. They were on guard duty at Yaripora Bridge which was allegedly damaged by militants on 30th and 31st March, 1994. They were consequently charged of negligence.
3. Petitioners version is that they had done their bit and had fired 437 rounds of ammunition and had also reported the matter to the police station, Anantnag on 31.3.1994. But all the same respondent No.3 directed respondent No.4 to dismiss them from service. They were later suspended from 1.4.1994 and were also directed to remain available in District Police, Anantnag to face the inquiry. But in the meanwhile respondent No.4 and 5 in compliance to the directions of respondent No.3 passed order No's 277 and 36 of 1994 dated: 11.4.1994 discharging them from service in exercise of the powers under section 126 of the State Constitution.
4. Petitioners case is that the order impugned suffered from nonapplication of

mind as it was passed at the instance of respondent No.3. So much so that it did not even indicate the relevant provision under which respondent No.4 had exercised the power. It is also submitted that the reasons given in the impugned order were not relevant and germane for dispensing with the inquiry and had no nexus with the impracticability of conducting such enquiry. Reliance in this regard is placed on AIR 1991 SC 1043 and AIR 1996 SC 1790.

5. In the reply filed by the respondents it is disclosed that the order impugned was passed under section 126(2Xb) of the state constitution for valid reasons. It is pointed that the petitioners were assigned on onerous duty of guarding the bridge in a far flung area which provided life line for the people of the area and that they had failed in their duty. It is contended that it was not practicable to hold inquiry against them because no person would be willing to give a statement against a police personnel for fear of future reprisals and no civil witness would be available to depose against the militants and that it was not possible to identify militants. It is also projected that process of normal departmental inquiry would result in delay which in turn would promote negligence and dereliction of duty in the police force.

6. Respondents counsel Mr. Qadri, high lighted the situation prevailing at the time impugned order was passed and submitted that respondent No.5 was justified in dispensing with the inquiry as it would not have been practicable to hold it at that time. According to him it was not for the court to put itself in place of disciplinary authority and consider whether the action was warranted under the present prevailing situation, but whether the authority was justified in taking the action in the light of the then prevailing situation.

7. It is by now settled that the Constitution provides certain guarantees and safeguards to an employee who is a member of the civil service or holds a civil post under the State. He cannot be dismissed or removed from service or reduced in rank by any authority subordinate to the appointing authority and without an inquiry in which he is to be informed of the charges against him and is to be afforded a reasonable opportunity of being heard in respect of such charges. These safeguards are contained in Article 311 of the Federal Constitution and section 126 of the State Constitution. The later section provides an additional safeguard of giving a

second show cause notice to the delinquent employee informing him of the punishment proposed to be imposed to him.

8. Clauses (a, b, and c) of section 126(2) provides certain exceptions to this general rule and allow doing away with the inquiry in certain cases.

Clause (b) permits so where it is impracticable to hold such inquiry but for this the competent authority is required to record reasons to show that it

was not practicable to hold inquiry in the facts and circumstances of the case. Where the 3 authority fails to do so, the action taken cannot sustain

and would be invalidated.

9. Clause (c) permits dispensing with such inquiry where the Governor feels satisfied that it is inexpedient to hold such inquiry in the interests of the

security of the state. But the Governor's satisfaction is to proceed on some material or basis. Where his action is questioned on the lack of material

or its irrelevance or frivolousness, the Government is obliged to produce the record to satisfy the court that the requisite satisfaction was not drawn

in air and if Government defaults in doing so, it would only render the action vulnerable to quashment. (See AIR 1985 SC 1416, AIR 1995 SC

1403, AIR 1991 SC 385, 1995 SLJ 19 and 1993 SLJ 171.)

10. All that remains to be seen in the present cases in the light of the settled legal position was whether reasons disclosed by respondent No.5 in

the impugned order and in the reply could be said to be relevant reasons germane to dispensing with the inquiry on the ground that it was

impracticable to hold it.

11. It is true that the court is not required to sit in judgment on the satisfaction reached by the disciplinary authority in the matter. Nor would it be

competent to go into its sufficiency or otherwise. But the court in exercise of its judicial review would certainly be within its boundaries to scrutinise

and examine whether the recorded reasons are relevant and germane for discarding the inquiry and whether these furnish a nexus with the object. If

the reasons given the extraneous and are the outcome of any caprice or ipsi dixit of the authority, the court would certainly interfere to strike down

the action. As such it all comes to whether reasons advanced disclose the relevant basis for doing away with the inquiry. Where such basis lacks in

relevance or proximity to the object viz: impracticability for holding an inquiry, the action cannot sustain.

12. The disciplinary authority may advance whatever reason but that by itself is not enough to validate the action unless it is further shown that such

reason emanated from a valid basis rendering the holding of the inquiry impracticable notwithstanding.

13. Tested thus, none of the reasons stated in the impugned order in the present case stand scrutiny and cannot be said to have any nexus with

doing away with the inquiry. For instance it is not good a reason to say that holding of inquiry would result in delay and in turn encourage

negligence and dereliction of duty in the police force. An inquiry may take sometime but it cannot be discarded for that to take away a

constitutional right and moreover it is for the authority concerned to ensure expeditious conduct of inquiry and to eliminate the scope for delay.

14. Similarly it is again a matter of conjecture that ho civil witness would depose against the police personnel. Firstly it was not known whether any

witness was required to be examined and then how could his willingness or otherwise to depose be anticipated. A witness may even be willing to

incur risk and come forward to depose. Therefore non availability of witness cannot be suggested as a possible circumstance to do away with the

inquiry. This does not suggest that the authority is handicapped in projecting a good circumstance. All that is required to be explained is that the

authority must disclose a valid basis as distinct from his/her imaginary exercise or brain wave, to take away with the constitutional safeguard of

inquiry.

14. In the circumstances it is difficult to hold that respondent No.5 had valid reasons for dispensing with the inquiry. It appears that he was not

even conscious of the nature of the power exercised by him.

15. In any case it all comes to holding or otherwise of the inquiry. It is not that petitioners could not be ousted in any event or circumstance. They

were surely liable to be thrown out but on satisfying the available to them. Therefore, it would be still open to respondents to proceed against them

in accordance with law.

16. In the result, these petitions are disposed of on the analogy of identical petitions by providing as under:

The impugned order Nos. 277 and 36 of 1994 dated 11.4.1994 shall stand quashed. But it shall be open to respondents to decide to reinstate

petitioners in service and to place them under suspension with a view to subject them to a departmental inquiry, if any intended, into the charges/allegations against them in accordance with law and rules. This is in tune with a view taken by a Division Bench of this court in *Rias Ahmad Gazi Vs. State* (1997 SLJ 178). Any such, inquiry initiated shall be concluded within six months from the date of receipt of this order. If petitioners succeed in it and come out unscathed or where no inquiry is held, they shall be reinstated in service retrospectively though without any pecuniary benefits. But if they are again found in the dock, respondents shall be free to take appropriate disciplinary action against them under rules which may even involve their removal from service.