

(2011) 05 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 91 of 2009

High Court of J and K

APPELLANT

Vs

V.K. Attri and Another

RESPONDENT

Date of Decision : 24-05-2011

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 126

Citation : (2011) 2 JKJ 321

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Yaqoob Mir, J.—Two separate judgments have been pronounced by two Hon'ble Judges constituting the Division Bench and

have differed on the following point:

Whether in the facts and circumstances of this case, the matter pertaining to disciplinary action against the writ Petitioner-Respondent is to be

referred back to the disciplinary authority or not?

So in terms of Rule 36(2) of J & K High Court Rules, 1999 matter has been assigned to this Bench for hearing upon above referred point.

2. For appropriate determination of the point in question, it shall be quite relevant to give the precise flashback of the case:

(I) Respondent Mr. Vijay Kumar Attri, a Judicial Officer of the rank of Sub Judge, on the recommendation of the competent authority (High

Court) has been removed from service vide Govt., order No. 1343-LD(A) of 2000 dated 29.8.2000. Aggrieved thereof, said Mr. Attri filed writ

petition which has been allowed by the learned Writ Court vide detailed judgment

dated 2.6.2009. The order of removal from service has been quashed and the writ Petitioner held entitled to reinstatement with all consequential benefits minus monetary benefits after the period of his overstay of leave with effect from 18th of February, 1994 to 3rd of March, 1994 is settled by the competent authority. In terms of the said judgment, it has also been ordered that the copy of the order be communicated to the Registrar General for placing the same on the personal file of Shri A. K.

Shan, the then District & Sessions Judge, Leh.

(II) Two appeals, i.e. LPA No. 91/2009 by State of J & K and LPA No. 99/2009 by Mr. A. K. Shan, were filed against the said judgment. Mr.

A. K. Shan during the pendency of writ petition was arrayed as party/Respondent. The said order of impleadment was challenged by medium of

LPA No. 176 of 2007, same was set aside while disposing of said LPA on 16.12.2008. Therefore, Mr. A. K. Shan being not party/Respondent

to the writ petition, had no occasion to respond to the averments made in the writ petition against him. Both the Hon'ble Judges constituting the

Division Bench have opined that the learned Writ Court erred in holding that Mr. A. K. Shan has not chosen to file any response to the allegations

levelled against him and, therefore, observations made in the judgment against Mr. A. K. Shan have been expunged, which would mean that LPA

No. 99/2009 as filed by Mr. A. K. Shan stand disposed of accordingly.

(III) The complaints against the Respondent (writ Petitioner) on preliminary enquiry were found to have substance, as a result thereof, Full Court

ordered for regular enquiry. Resultantly vide order No. 359 dated 28.7.1994 passed by the High Court, Respondent (writ Petitioner) was placed

under suspension.

(IV) As per memorandum, enquiry in respect of imputations of misconduct, irresponsible behavior, breach of judicial discipline and conduct

unbecoming of a judicial officer, violation of provisions of law and rules, moral turpitude, negligence, lack of control, misuse of power and

authority, unauthorized absence and unauthorisedly leaving the station, violation of Codal provisions, acceptance of illegal gratification, dereliction

of duty and the acts of omission and commission as set out in the statement of articles of charge, was proposed. Memorandum along with three

enclosures containing the statement of articles of charge, statement of

imputations of misconduct, list of documents and oral evidence to sustain the articles of charge were provided to the Respondent (Writ Petitioner). In response thereto, Respondent (writ Petitioner) submitted a detailed written statement of his defence. The enquiry conducted by the learned Judge of the High Court culminated in the recommendation to the effect that the Charges No. 1 to 7, 9 and 10 have not been proved whereas charge No. 8 and 11 were proved.

(V) The Full Court while considering the enquiry report came to the conclusion that the charge No. 1 is also proved, therefore, second show cause

notice came to be issued on 10.4.1998 wherein it is specifically mentioned that the Court has agreed with the report of the enquiry officer that the

charge No. 8 and 11 stand proved and Court has further come to the conclusion that the charge No. 1 is also proved on evidence. It is also

mentioned that the Court has provisionally come to the conclusion that Mr. Attri is not a fit person to be retained in service and that a major

penalty of removal from service should be imposed. Accordingly Court proposed to impose on him the penalty of removal from service under Rule

30(VII) of the J & K Civil Services Classification, Control and Appeal Rules, 1956.

(VI) The enquiry report along with show cause notice has been furnished to the delinquent official (writ Petitioner) and has been given opportunity

of making representation against the penalty proposed. In response thereto, Respondent (writ Petitioner) has submitted a detailed representation.

On consideration thereof, the Court recommended removal of Respondent (writ Petitioner) from service and same recommendation was accepted

by the Government.

3. The charge Nos. 1, 8 and 11, based on which removal from service of the Respondent (writ Petitioner) was ordered, are reproduced herein-

below:

1. That in a challan covering Mini Bus with Registration Mark and No. JK01-6507, a fine of Rs. 2500/has been imposed and Receipt No.

051083 dated 2.11.1993 issued for the amount to the Driver. Whereas, the counter foil of the receipt in the receipt book reveals that only fine of

Rs. 1300/has been shown to have been imposed and remitted in Treasury. The amount of Rs. 1200/has been either misappropriated or the amount

has been received as illegal gratification.

8. That after convicting and punishing one Gopal Singh with a fine of Rs. 350/on 7.6.1994, for driving the Scooter No. 3508 without RC, IC and

DC, you assisted by your PSO, appeared at the shop of Gopal Singh seized the scooter for non-payment of the fine and carried the scooter and

Gopal Singh to the Police Station with instructions to concerned Police Officer to keep the shop keeper said Gopal Singh in Police Station till he

comes back or rings them up. Your acts of visiting the shop of Gopal Singh to receive the fine, seized the scooter, arrest Gopal Singh and then to

keep the scooter and Gopal Singh at the Police Station, amounts to violation of provisions of law with regard to recovery of fine and wrongful

confinement, besides display of conduct unbecoming of a Judge.

11. That after availing leave for 15 days ending 1st Feb. 1994, you failed to apply for extension of leave in time (from 2.2.1994 to 17.2.1994) and

no leave whatsoever was applied for from 18.2.1994 to 3.3.1994 and again failed to apply for further leave from time and through proper channel.

You left the station Leh without seeking permission from the competent authority and your un-authorized absence is in violation of leave rules and

breach of judicial discipline.

4. The Hon'ble Chief Justice in the judgment pronounced has taken a view ""that since no reason was furnished by the disciplinary authority while

indicating in the second show cause notice that charge No. 1 stands proved on evidence on record, the disciplinary authority denied justice to

which the Respondent was entitled and accordingly in law the order of removal cannot be sustained on the basis of charge No. 1."" While noticing

evidence vis-a-vis charge No. 8, His Lordship opined that the court not being a fact finding authority, could not substitute its views with that of the

views expressed by the enquiring authority and the disciplinary authority, therefore, charge No. 8 was proved. His Lordship while considering the

findings recorded on charge No. 11 has opined ""it cannot be said that misconduct of such unauthorized absence cannot be punished by way of an

order of removal, inasmuch as, the said state of affairs clearly depict total apathy and casualness on the part of the Respondent in the matter of

obtaining permission to remain absent from duty."" Then His Lordship concluded ""the cumulative effect of proven misconduct pertaining to charges

No. 8 and 11 could be taken note of while awarding punishment. I do not think

that punishment of removal from service, taking into account the cumulative effect thereof, can be said to be disproportionate to the proven misconduct." His Lordship has also taken the view "that it is now well settled that if a finding on a charge is interfereable by the Writ Court, but not the other charges, punishment cannot be interfered unless the punishment is totally disproportionate to the charges. Further it has been concluded that I do not think that the Writ Court was competent to interfere with the order of punishment on non-interfereable charges No. 8 and 11 which stand proved against the Respondent. Finally appeal was allowed, judgment under appeal was set aside and the writ petition dismissed.

5. In the detailed judgment, brother Justice Hali has also concurred vis-a-vis findings on charge No. 8 and 11 and has taken a view that the show cause notice issued to Respondent No. 1 by the authority was not accompanied with the copy of proceedings prepared under Rule 33 which is requirement of law and also the mandate of Rule 34 of the Rules, furthermore, proposed conclusion arrived at by the authority while differing with the enquiry officer vis-a-vis charge No. 1 was not communicated to the Respondent(writ Petitioner). Finally has concluded that neither copy of the proceedings prepared under Rule 33 of the Rules nor the tentative conclusions of the authority in respect of charge No. 1 were served on Respondent No. 1. Non-supply of such proceedings constitutes violation of Rule 33 and 34 and also the principles of natural justice, so serious prejudice is caused to the rights of the Respondent. Finally appeal has been disposed of on the following terms:

1/That the impugned so far as it directs setting aside of the order or removal from service passed against Respondent No. 1, is upheld with a direction to the authority that the inquiry proceedings shall continue afresh from the stage of issuance of a fresh show cause notice by the said authority; 2/That the Respondent No. 1 shall be provided a copy of the proceedings which shall include the inquiry report, record of evidence, statement of the findings and the grounds thereof along with the reasons of the authority for differing with the recommendations of inquiry officer so far as charge No. 1 is concerned; 3/That the Respondent No. 1 shall stand reinstated only for the purposes of inquiry as stated above, and his status as a suspended employee shall

continue till the inquiry is completed and appropriate orders are passed by the authority concerned;

4/That the observations of the learned Single Judge regarding the conduct of Sh. A. K. Shan, the then District & Sessions Judge, Leh, and for

placing the same on his personal file are set aside;

5/That the final order to be passed by Respondent-State shall be subject to the outcome of the recommendation of the authority after taking into

consideration the reply of Respondent No. 1 to the second show cause notice which shall be issued to him along with the material referred to

above.

6. Now coming to the point of reference i.e. as to whether matter is required to be referred back to the disciplinary authority. It is no more res

integra that Article 311, which prior to 42nd amendment is para-material to Section 126 of the Constitution of State of J & K, requirement of

furnishing the enquiry report and the disciplinary proceedings are to be spelt out in two stages. First stage relates to collection of evidence, enquiry

officers report and then reply of the delinquent official, based on which if the disciplinary authority proposes to impose penalty, the delinquent has a

right to show cause against the findings to prove his innocence. The second right i.e. after the disciplinary authority proposes the punishment,

delinquent can plead either for no penalty or lesser penalty. Denial of reasonable opportunity is violative of Article 14 and 21 of the Constitution

which takes into its sweep non-supply of copy of enquiry report. The second right in view of 42nd amendment is not now available but the said

amendment as yet is not applicable as the Section 126 of the State Constitution, to that effect, has not been amended. Therefore, delinquent has a

right of being furnished the enquiry report so as to enable him to represent. It is in this backdrop brother Justice Hali while referring to Rule 33 and

34 of Classification, Control and Appeal Rules has opined that non-supply of the proceedings as prepared under Rule 33 of the said Rules violates

the rights of the delinquent as the same is a mandatory requirement as enjoined upon by Rule 34 of the Rules but the view taken, with respects, is

not correct because while testing the case of the Respondent (writ Petitioner) on the doctrine of prejudice, no violation to his right is forthcoming.

The records as available negate violation of prejudice to the rights of the

delinquent (writ Petitioner). Referring of the matter back to the disciplinary authority is totally uncalled for because no prejudice at all is caused to the Respondent (writ Petitioner). The position can more better be answered, as stated above, that at the first instance when the regular enquiry was proposed, articles of charge and documents/evidence in detail were furnished to the delinquent and on conclusion of enquiry when Court accepted the report of the enquiry and proposed the punishment, second show cause notice dated 10.4.1998 was served along with report of the enquiry officer to the delinquent, against which delinquent has filed a very very detailed reply and has attempted and tried to project his innocence. There was no deprivation of proper representation. The requirement of serving second show cause notice and furnishing of report of enquiry officer has been complied with.

7. The other aspect of the case i.e. disagreement of the disciplinary authority vis-a-vis findings relatable to the charge No. 1, has also been taken note of and the brother Hali has in his judgment categorically indicated that the three charges i.e. charge No. 1, 8 and 11 are independent so are not inter-dependent and it is this position which is properly taken care of by the judgment prepared by Hon'ble Chief Justice wherein His Lordship has disagreed with the action of disciplinary authority vis-a-vis charge No. 1 and the charge being independent has been excluded from the zone of consideration by His Lordship and it is only on charge No. 8 and 11, His Lordship has maintained the removal of Respondent (writ Petitioner) from service.

8. In the aforesaid backdrop I fully agree with the judgment as proposed by His Lordship and there is no question of referring the matter back to the disciplinary authority.

9. Now the question is as to whether removal from service based on proof of three charges can be maintained on exclusion of finding on one charge. In this connection it shall be quite apt to quote the judgment rendered in State of U.P. and others Vs. Nand Kishore Shukla and another, .

In the reported judgment, the contention of the counsel for the Respondent was that in view of the finding given by the enquiry officer that five charges have been held proved and in view of the fact that charges 1,3,4 and 5 could not be gone into due to non-availment of opportunity on the

part of Respondent, it would not be predicted with certainty that the disciplinary authority would have passed the order of removal from service on

the basis of charge No. 2 alone. The said contention was answered by the Hon'ble Apex Court by holding as under:

...The only question is whether the disciplinary authority would have passed such order. It is settled law that even one of the charges, if held proved

and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part

of the order

10. In the judgment SBI and Ors. v. Arvind K. Shukla AIR 2001 SC 2398, the disciplinary authority had disagreed with the conclusions and

findings arrived by the enquiry officer. It was held that the authority was required to record its tentative reasons for disagreement and such reasons

should be given to the delinquent officer to represent before ultimate finding is recorded. Non-furnishing of such reasons is fatal.

11. The facts of the reported case were different as the enquiry officer had concluded that out of five charges one charge was proved and rest of

charges were partly proved. The disciplinary authority re-examined the material and did not agree with the conclusion, instead came to the

conclusion that charges 1 (a), 1 (b) and 1(d) were fully proved, based on which major punishment of termination was imposed. It is in this

background it was held that since the disciplinary authority had disagreed with the conclusion and finding arrived at by the enquiry officer, so

tentative reasons were required to be recorded and supplied to the delinquent officer so as to enable him to represent. In the instant case vis-a-vis

one charge there was disagreement but that has been excluded from the zone of consideration by His Lordship in his detailed judgment and has

sustained the removal from service on the basis of other two charges which were fully proved and were totally independent to that of charge No.

1.

12. In the judgment- Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the enquiry report was in favour of the delinquent but the

disciplinary authority proposed to differ, for so doing was required to give opportunity of hearing to the delinquent before recording its conclusions

so as to satisfy the requirement of rule of natural justice. The case in hand is the

one wherein all precautions and the requirements of the rules have been taken proper care of right from the initiation of proceedings until final conclusions. The disciplinary authority on proper analysis of the entire gamut of the facts, allegations and circumstances has deemed it fit to order removal from service though based on the findings recorded on charge No. 8 and 11 and after disagreement with charge No. 1 but since the enquiry report and second show cause notice has been served upon the delinquent who consciously with all precautions has in detail represented against the punishment. The exclusion of charge No. 1 from consideration in any case is not to defeat the action of removal from service based on the proof of charge No. 8 and 11.

13. The judicial officers have a divine job to discharge therefore, by conduct are required to supply light so as to embrace into its fold respect to the faith and confidence reposed in the system by the public. Conviction and commitment must be inherent to do the justice. When the trust and confidence is reposed in the system, what is expected of a judicial officer is to be exemplary both in and outside the Court. Maintaining the highest standard of integrity can be more fragrant/cherished by maintaining the highest standard of sophistication, behavior and attitude. Small deviation will make it ugly. When such deviation is noticed to be dangerous, removal of deviation becomes imperative so as to maintain the magnificence of the institution, lest tremendous faith reposed by the public in it will get eroded.

14. In the final analysis I have no reason to take a view different to that of His Lordship Hon'ble Chief Justice. For the stated reasons there is no requirement of referring the matter back to the disciplinary authority. As a necessary corollary, writ petition of the Respondent (writ Petitioner) is dismissed. Order of removal from service in terms of Govt., order No. 1343-LD(A) of 2000 dated 29.8.2000 is maintained.

15. The appeal succeeds so shall stand accordingly disposed of.