
(2005) 06 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : SWPNo. 3039 of 2001

Jagat Pal Cheema

APPELLANT

Vs

Cantonment Board, Jammu & Ors

RESPONDENT

Date of Decision : 02-06-2005

Acts Referred:

Cantonments Act, 1924 — Section 43, 51, 52

Citation : (2006) KashLJ 247

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : V.K.Magoo, A.Abrol, Advocates appearing for the Parties

Judgement

Nirmal Singh, J.—The facts which are not in dispute are as under :

That the petitioner was working as a Sectional Officer with the respondent. He was subjected to a departmental inquiry. After the completion of

the inquiry, he was removed from service. He challenged the order of removal from service before the Appellate authority. The Appellate authority

dismissed the appeal of the petitioner, vide its order dated 22.11.1998. Petitioner challenged the dismissal order dated 22.11.1998, by way of filing

SWP No. 1960 of 1998, on various grounds, including that the Punishing Authority before imposing the punishment did not furnish him a copy of

the inquiry report. This Court disposed of the aforesaid writ petition by passing the following order ;

this petition as such is allowed. The punishing authority would redecide the matter. The petitioner would be afforded reasonable opportunity of

hearing and this hearing would be prospective in nature. As to what relief the petitioner is entitled to, would depend upon the decision which the

concerned authority takes now. The relationship of master and servant shall stand revived for this limited purpose i.e for giving opportunity of

hearing to the petitioner. As indicated above, what benefit he is to get would depend upon the decision which the respondents may ultimately take.

Let the hearing be given on 2nd May,2001. On this date, the petitioner would appear before the punishing authority. The said authority would take

the decision on this date or on any other date to which the hearing is adjourned. Effort be made to settle the issue before 31st May,2001.

2. In pursuance of the aforesaid order passed by this Court, the matter was placed before the Cantonment Board and the Cantonment Board in its

meeting held on 18/05/2001, afforded an opportunity of hearing to the petitioner. After hearing the petitioner, the members present in the meeting by

majority decision decided to reinstate the petitioner in service. However, the President of the Board and Major Anil Negi, GE, ExOfficio Member

voted against reinstating the petitioner in service by stating that earlier punishment imposed was correct. In the Board meeting, CEO advised the

Board President that the matter be referred to GOCinC, Northern Command. Accordingly, the matter came to be referred to GOCinChief. The

GOCinC, Northern Command, on receipt of the matter, issued a show cause notice dated 06/08/01 to the Cantonment Board, Jammu, while

exercising the powers vested under section 52 of the Cantonment Act, 1924 (hereinafter called the Act) in respect of a decision taken by the Board

by their Cantonment Board Resolution (hereinafter called the CBR) dated 18th May, 2001. The Cantonment Board, filed a reply to the show

cause notice. The GOCinC, vide impugned order set aside the order of CBR dated 18/05/01, re instating the petitioner in service and approved

the earlier penalty of dismissal.

3. The petitioner has filed this petition under article 226 of the Constitution of India read with section 103 of the Constitution of the State of Jammu

& Kashmir for quashing Order No. 6/33/B/Appeal/Cantt./JPS/DE/NC dated 22nd November,2001 passed by General Officer Commanding in

Chief, Northern Command, respondent3. I have heard the learned counsel for the parties and perused the record. \

4. The primary question which falls for determination in this petition is whether the Board President can override the majority decision and GOCin

Chief on reference can set aside the majority view.

5. Before considering the submissions of the learned counsel for the parties, it will be appropriate to notice the relevant provisions of the Statute.

The procedure to hold the meeting has been laid down in sections 37,39,40,43 and 51 of the Act. These are reproduced below:

Section 37. Meetings

1. Every Board shall ordinarily hold at least one meeting in every month on such day as may be fixed, and of which notice shall be given in such

manner as may be provided, by regulations made by the Board under this chapter.

2. The President may, whenever he thinks fit, and shall, upon a requisition in writing by not less than one-fourth of the members of the Board,

convene a special meeting.

3. Any meeting may be adjourned until the next of any subsequent day, and an adjourned meeting may be further adjourned in like manner.

Section 38

Section 39. Quorum :

1. The quorum necessary for the transaction of business at a meeting of a Board (in which there is more than one elected member) shall be five or

one half of the number of members of the Board actually holding office at the time, whichever is the greater number ;

(1A) The quorum necessary for the transaction of the business at a meeting of a Board constituted under subsection (5) of Sec 13 or under

subsection (1) of Sec. 14 shall be two)

(2) If a quorum is not present, the President (or in the absence of the President, the VicePresident or in the absence of both the President and

VicePresident, the Secretary) shall adjourn the meeting and the business which would have been brought before the original meeting if there had

been a quorum present thereat shall be brought before, and may be transacted at an adjourned meeting, whether there is a quorum present or not.

Section 40. Presiding Officer: In the absence of

a. both the President and the VicePresident from any meeting of a

Board in which there is more than one elected member.

b. the President from a meeting of a Board constituted under subsection (5) of

Sec. 13 or subsection (1) of Sec. 14, the members present shall elect one from among their own number to preside.

Section 43 Methods of deciding questions:

1. All questions coming before a ""meeting shall be decided by the majority of the votes of the members present and voting.
2. In the case of equality of votes, the (person presiding over the meeting) shall have a second or casting vote.
3. The dissent of any member from any decision of the Board shall, if the member so requests, be entered in the minutes, together with a short statement of the grounds for such dissent.

Section 51. Power to override decision of BoardIf the President dissents from any decision of the Board, which he considers prejudicial to (the

health, welfare, discipline or security of the Forces) in the cantonment, he may, for reasons to be recorded in the minutes by order in writing, direct

the suspension of action thereon for any period not exceeding one month and, if he does so, shall forthwith refer the matter to the Officer

CommandinginChief, the Command, (the reference being made, save in cases where the Officer Commanding the (Area) is himself the Officer

CommandinginChief, the Command for the purposes of this Act), through the Officer Commanding the (Area) who may make such

recommendation thereon as he thinks fit.

6. A perusal of section43, noticed above, makes it clear that all the questions coming in the Board meeting shall be decided by majority of the

votes of the members present and voting. In the case of equality of votes, the person presiding over the meeting shall have a second or casting vote

and in case of dissent of any member from any decision of the Board, it shall, at the request, be entered in the minutes, together with a short

statement of the grounds for such dissent.

7. When the President dissents from the decision of the Board which he considers prejudicial to the health, welfare, discipline or security of the

Forces, the procedure which he has to follow has been laid down in section51 of the Act.

8. A perusal of section51 of the Act, noticed above, shows that it is incumbent upon the President who has to preside over the meeting, if he

dissents that he should record the reasons in the minutes of the meeting and also direct suspension of the action and refer the matter to the Officer

CommandinginChief.

9. The power of General Officer Commanding in Chief on a reference has been laid down under section52 of the Act, which reads as under:

Section 52. Powers of Officer"" CommandinginChief, the Command, on reference under Sec. 51 or otherwise:

1. The Officer Commandinginchief, the Command, may at any time

a. direct that any matter or any specific proposal other than which has been referred to the (Central Government) under section (2) of Sec. 51 be

considered or reconsidered by the (Board); or

b. direct the suspension, for such period as may be stated in the order of action on any decision of a (Board), other than a decision which has been

referred to him under subsection (1) of Sec. 51, and thereafter cancel the suspension or (after giving the Board a reasonable opportunity of

showing cause why such direction should not be made), direct that the decision shall not be carried into effect, or that it shall be carried into effect

with such modifications as he may specify.

2. When any decision of a Board has been referred to him under sub section (1) of Sec. 51, the Officer Commandinginchief, the Command, may

by order in writing;

a. cancel the order given by the President directing the suspension of action; or

b. extend the duration of the order for such period as he thinks fit; or

c. after giving the Board a reasonable opportunity of showing cause why such direction should not be made, direct that the decision shall not be

carried into effect or that it shall be carried into effect by the Board with such modifications as he may specify.

10. When a reference is made under subsection (1) of Section51, the General Officer Commanding in Chief has a limited power to the extent that

the General Officer Commanding inChief can direct the Board to consider or re consider the matter, but he has no absolute power to set aside the

decision of the Board which has been taken by the majority in the meeting as per section 43 of the Act. The object of section52 of the Act is to

give powers to General Officer Commandinginchief to suspend the operation of

any decision or regulation of the Board considering the same as

adverse to the Military interest and that would also include any policy decision taken by the Central Government.

11. In the instant case, the General Officer Commanding in Chief has not recorded any reason for setting aside the decision of the Board. The

General Officer Commanding in Chief, has simply observed as under;

NOW THEREFORE, I Lt.Gen.RK Nanavatty, PVSM, UYSM, AVSM, GOC in C, Northern Command, in exercise of the powers vested in

me under section 52(1) of the Cantonment Act, 1942 do hereby make absolute the revocation of the decision taken by the Cantonment Board,

Jammu in their meeting on 18th May, 2001 in so far as it relates to the reinstatement of Shri JPS Cheema, Ex S.O. The original decision of

Cantonment Board, Jammu imposing the major penalty of dismissal on Sh. JPS Cheema shall stand.

12. It is also to be noticed that when the reference was made, the President in I hi' meeting has not applied his mind before making a reference to

the General Officer Commanding in Chief under section 51 of the Act. It is clear from the following observation made in the minutes of the meeting;

CEO advised the Board that the earlier enquiry conducted by the

Board was a proper enquiry as per the rules and the High Court vide order dated 04042001 has directed the punishing authority to re decide the

matter, and the petitioner would be afforded reasonable opportunity of hearing and this hearing would be prospective in nature

In the minutes of the meeting, it has been further observed as under;

At this stage CEO advised the President that since matter was referred to the appellate authority i.e, GOCinC, Northern Command. The matter

be referred to them for necessary directions.

13. This shows that the President has acted under the advice of the CEO. When the Board meeting is to be held, the members and the President

have to apply their own minds, but they have not to act under the advice of the CEO.

14. For the reasons mentioned above, this petition is accepted, the impugned Order No. 6/33/B/Appeal/Cantt./JPS/DE/NC dated 22nd

November, 2001 passed by General Officer Commanding in Chief, Northern Command, respondent3 is set aside and the resolution dated

18052001 of the CBR is restored.

15. Parties are left free to bear their own costs.