
(1997) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : 505 Of 1988 & S. Writ Petition No. 505 Of 1988

Jahangir Ahmad Mir

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:

Constitution of India, 1950 — Article 311
Police Rules, 1960 — Rule 337, 359

Citation : (1997) KashLJ 413 : (1998) SriLJ 134

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

Bench : Single Bench

Advocate : M.M.Dar , J.A.Kawoosa, Advocates appearing for the Parties

Judgement

1. Petitioner was appointed constable in the Police Department in June 1986. He was placed under suspension by order dated 29.6.1987 passed

by respondent No.3 on his alleged involvement in HR No. 92 of 1987 under section 379 RPC and 6 Forest Act. While he was under suspension,

he was transferred from Budgam to Leh by order dated 1.8.1987 passed by respondent no.2 and was ordered to be relieved on 10.8.1987 and

to join new place of posting at Leh. Instead of doing so, it seems, his father approached the Chief Minister for cancellation of his transfer to Leh

and it is claimed that his prayer was granted and the transfer was ordered to be cancelled on 13.8.1987 pursuant to which he was attached to Range

Police Office where he would attend to his duties regularly.

2. On Petitioner's own admission, orders passed by the Chief Minister were eventually implemented by respondent No.2 on 26.9.1987 by issuing

a corrigendum to the transfer order dated 1.8.1987 and attached him to Kashmir Police Office, Srinagar, There after he was ordered to remain

present to face departmental enquiry vide order dated 30.9.1987. He was charge sheeted by respondent No.4 and the charge levelled against him

was that he had remained unauthorisedly absent for 29 days from 10.8.1987 to 26.9.1987 and thus had committed breach of the development

norms.

3. Petitioner asserts that he replied to the charge sheet on 31.10.1987 denying that he had remained absent from duty and explaining that he had

attended his duties at Police Range Office Srinagar after the Chief Minister had cancelled his transfer from 10.8.1987. He claims to have attached

requisite attendance certificate alongwith the reply.

4. Petitioner alleges that there after no enquiry was conducted in to the matter, but a show cause notice was issued to him by respondent No.2 on

11.12.1987 informing him of his proposed dismissal from service. In reply to this notice also, he reiterated his earlier stand that he had no

proceeded to Leh consequent to cancellation of his transfer by the Chief Minister. He is said to have also asked for the report of the enquiry said

to have been conducted by respondent No.4 in the matter. But all the same respondent no.4 passed order No. 172 dated 19.3.1988, dismissing

him from service. It is this order which is under challenge in the present petition.

5. Petitioner has questioned impugned order primarily on the ground that he was removed from service in breach of the procedure prescribed in

Rule 359 of the Police Rules. It is also submitted that he was not afforded reasonable opportunity of being heard and was not provided the

purported report of the enquiry officer. He further alleges that action taken against him emanated from malafide considerations and that he could

not have been transferred to Leh during his suspension, more so when he was not paid any TA/DA.

6. Respondents have filed reply to this petition but in a routine manner. It is submitted by them that the petitioner was transferred to Leh as

repeated complaints were received against him"" and as there was no bar for transferring him during suspension). It is further claimed that he was

dealt with in accordance with the established procedure and was associated with enquiry and that he had full knowledge of the recommendations

of the enquiry officer. It is also projected that the enquiry against him was conducted in accordance with law. But curiously it is no where stated

whether he was furnished the report of the enquiry officer and the averment made in para 15 'b' in the writ petition goes un answered.

7. That apart, the impugned order which is duly a reasoned order makes an interesting reading and talks about the petitioner's involvement in

timber smuggling and his consequent suspension from service and his involvement in HR No: 92 of 1987 and charged him for ""going from one

politician to another"". This order also talks of some baseless allegations having been made by the petitioner against senior officers of the Police

Department to show that the action taken against him was vindictive.

8. The rival counsel advanced their arguments on the expected lines. While petitioner's counsel submitted that the impugned order was arbitrarily

passed in violation of the procedure established by law, respondents' counsel Mr. Kawoosa justified the order on the ground that the petitioner's

conduct and his unauthorised absence could not be put up in the disciplined force by police. Petitioner's counsel relied upon AIR 1992 SC 937

and AIR 1986 SC 118 and the other side on AIR 1996 SC 736 and 1500.

9. In this back drop, all that remained to be seen was whether the petitioner was removed from service in disregard of the protection available to

him under section 126(2) of the State Constitution and the relevant Police Rules.

10. It is a matter of common knowledge by now that no member of a State service or a person holding post under the State can be removed from

service save otherwise in accordance with the requirements of Section 126(2) of the State Constitution read with Article 311 of the Indian

Constitution which contemplates conveying the specific charges to the delinquent and providing him a reasonable and adequate opportunity of

being heard and then his removal from service after an enquiry. Section 126(2) of the State Constitution provides for an additional safeguard of a

second show cause notice regarding the proposed punishment to be imposed.

11. This position is supplemented by the police Rules, Rule 359 whereof prescribes procedure for conducting departmental enquiry against police

personnel. Similarly Rule 336 lays emphasis on the suitability of punishment and cautions the Authority to be careful by taking in regard the

character of the delinquent and his past service. Similarly Rule 337 places a constraint on the exercise of the power of dismissal and illustrates the

cases though not exhaustively wherein this power was exercised, regard being

had to the length of service of the offender and his claim to pension.

All this pointed to the checks imposed by law for exercise of the power of dismissal against a delinquent police employee.

12. Under Rule 359, the enquiry officer is required to summon the delinquent officer before him and read out a statement summarising his alleged

mis conduct in such a way as to give him full notice of the circumstances in regard to which evidence was required to be recorded in the matter.

There after depending upon the denial if any made by the delinquent, the enquiry officer was required to proceed to record such evidence as would

be available and necessary to support the charge. The witnesses were required to be examined in presence of the delinquent and after this he was

to be granted an opportunity to lead his defence evidence or to file his documentary evidence and to state his own answer to the charge. The

enquiry officer was then to submit the recommendations or topics order of acquittal or punishment, if he was competent to do so.

13. The over all circumstances of the present case show that none of the requirements laid down in the prescribed procedure under law were

satisfied while passing the impugned order terminating the services of the petitioner. It may as well be that charge was served on him but there is no

clue that any enquiry was conducted into his unauthorised absence for 29 days or that his stand in the matter was accorded any consideration.

Firstly it remains to be seen whether he could have been transferred to Leh during his suspension as a measure of punishment which is writ large on

the record. But even assuming that this action was available, it is again common ground that his transfer to Leh was ordered to be cancelled by the

Chief Minister and that it fructified into a corrigendum to the transfer order some days latter. It is also not denied by the respondents that petitioner

during the intervening period was attached to Police Kashmir Range and had produced the attendance certificate to show that he was there

pursuant to the orders of the Chief Minister. In the circumstances he could not be strictly said to be unauthorisedly absent because his staying back

at Srinagar was authorised by no less an authority than the Chief Minister himself.

14. Looking at it from the other way, it becomes doubtful whether petitioner could be awarded such a harsh and severe punishment for his

approaching the Chief Minister for cancellation of his transfer in disregard of the

mandate of Rules 336 and 337 of the Police Rules which restrains competent authority to exercise a power of dismissal, save otherwise taking in regard the length of the service of the offender and his claim to the pension etc. and the suitability of the punishment. All this was overlooked by the respondent No.2 in the present case who seems to have been irked by the petitioner's approaching the Chief Minister. Above all a reading of the impugned order leaves little scope for doubt that respondent No. 2 had made the petitioner's removal from service an issue of prestige in the context of some allegations of vindictiveness levelled against him.

Therefore, the bias of respondent No. 2 is reflected in his order also.

15. It may as well be that the police was a disciplined force and that no negligence or remissness could be taken lightly, but that usually would not vest any right or power in the disciplinary authority to give a go by to the procedure established by law. The principle announced by the Supreme Court in this regard is applicable to a particular fact situation and not to all circumstances.

16. All things considered and taking in regard the disproportionality of the punishment meted out to the petitioner and the waywardness of the action taken against him, I deem it appropriate to strike down the order No. 172 dated 1931988 passed by respondent No.2 and to direct the respondents to reinstate him in service with consequential benefits.

At this stage it transpired that the petitioner was also acquitted by the trial Magistrate by order dated 861989 in case FIR No.92 of 1987 which constituted the basis of his suspension from service. As such, after his dismissal was set aside; the foundation of his suspension also goes. It shall, however, be open to the competent authority to deal with his period of suspension in accordance with rules, Cases referred

1. AIR 1992 SC 937.
2. AIR 1986 SC 118.
3. AIR 1996 SC 736 and 1500.