

(2009) 09 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1328 Of 2005

Mohammad Ashraf Lone

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Police Rules, 1960 — Rule 187, 359

Citation : (2009) JKJ 596 Supp

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : N.H.Shah,Dy.AG, I.Sofi, Advocates appearing for the Parties

Judgement

1. Petitioner has questioned Order No. 136 of 2003 dated 10th of September, 2003 passed by SP Handwara respondent No.4 on the grounds

taken in the petition.

2. Respondents have filed the reply. Petitioner has also filed the rejoinder.

3. Admittedly the petitioner came to be appointed as constable vide Order No. 942/97 dated 27.10.1997. He had to undergo training at Training

School Manigam and came to be relieved by respondent No.4SP Handwara but he failed to report to the Training Institute. Thereafter he came to

be recorded as absent from duty. Later on he was repatriated to District Police Lines Handwara by the authorities of Training Institute but he failed

to report there also. Thereafter the impugned order came to be passed.

4. Feeling aggrieved petitioner availed the remedy and filed appeal before Appellate Authorityrespondent No.2. Respondent No.3 failed to

consider the said appealrepresentation constraining the petitioner to file the writ petition in hand.

5. The petitioner has averred in the writ petition that he was suffering from ailment and that is why he could not report either in the Training Institute or before the authorities of District Police Lines Handwara.

6. The moot question involved in this writ petition is whether respondent No.4 had the power and jurisdiction to discharge the petitioner in terms of Rule/Regulation 187 of Police Rules/Manual? The answer is negative for the following reasons:

It is apt to reproduce said rule/regulation herein:

187. DISCHARGE OF INEFFICIENTS:

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.

7. This provision can be pressed into service when a police constable is on probation. The period of probation is prescribed three years from the date of selection/appointment. Admittedly the petitioner came to be appointed on 27th of October, 1997 and came to be discharged vide impugned order dated 10th of September, 2003. More than six years have elapsed from the date of selection till the passing of impugned order.

Thus the said rule was not applicable at all. The respondents were under legal obligation to conduct enquiry in terms of Rule/Regulation 359 which they have failed to do but discharged him without conducting any enquiry.

8. The impugned order, otherwise, merits to be quashed for a simple reason that the petitioner came to be discharged from service on account of unauthorized absence. Thus the order is punitive in nature. It was the duty of respondent No.4 to determine by conducting an enquiry and to make a decision as to what were the reasons of the absence of the petitioner.

9 In the given circumstances the writ petition merits to be allowed. Accordingly it is allowed. Impugned order is quashed with the liberty to

respondents to conduct enquiry as per the rules occupying the field within three months from the date copy of the order is served upon respondent

No.4. The period from 10.5.2003 date of relieving till today is subject to result of enquiry.