
(1999) 03 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : L.P.A(W) No. 14/1987

Mohd.Ayaz Clerk	Vs	APPELLANT
J & K High Court		RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Jammu and Kashmir Civil Courts Act, 1977 — Section 30

Citation : (2000) 3 SCT 223 : (2000) 1 SriLJ 71 : (2000) SriLJ 71

Hon'ble Judges : A.M.Mir, J and O.P.Sharma, J

Bench : Division Bench

Judgement

Sharma, J.—The facts of the case in brief are these. The appellant was suspended by the District Judge. Kathua on the report of Munsiff

Basohli who complained about his negligence. After holding a departmental enquiry, the District Judge Kathua exonerated him by treating the

period of suspension as on duty. The Chief Justice, it appears, did not agree with the enquiry report and directed the Vigilance Commissioner

(Judicial) to hold fresh enquiry. On enquiry, the Vigilance Commissioner (Judicial) found both the appellant as well as one Sudarshan Kumar guilty

of negligence. The report was accepted by the then Chief Justice and the appellant was asked to show cause why a penalty of dismissal from

service should not be imposed upon him for negligence in respect of loss of two Criminal files pending in the court of Munsiff. Basohli in February.

1974. After considering his explanation, penalty of fine equivalent to one month's pay was imposed upon the appellant by order dated 20081976

and the period of suspension of near about two years was treated on leave of whatever kind was due to him and the other delinquent. This order

was challenged by the petitioner/appellant in writ petition No: 25 of 1978 which

was dismissed on 164)21987 by a learned Single Bench of this court.

2. The appellant challenges the judgment impugned on the ground that the District Judge, Kathua being a disciplinary authority having exonerated the appellant, a fresh inquiry by the Vigilance Commissioner (Judicial) was incompetent and the order of punishment illegal being contrary to law and the rules.

3. Mr. Dutta, learned advocate appearing for the appellant, argued that the Chief Justice being the appellate authority could not have exercised disciplinary powers which has the effect of depriving the appellant of the remedy of appeal.

Mr. PC Sharma, appearing for the respondents, however, contends that the order impugned is valid because the petitioner had challenged the order in a Review which was also dismissed. He also pointed out that no appeal was provided under the rules and, therefore, the appellant is in noway prejudiced by the impugned order.

4. The questions involved for consideration are: i) who is the disciplinary authority in case of the appellant; and (ii) whether the powers of disciplinary authority can be exercised by the Chief Justice in case he is the appellate authority?

The appellant at the relevant time was holding the post of ministerial officer in the court of Munsiff Basohli. Subject to such rules as the High Court

may prescribe, the power of appointment of ministerial officers of all the courts subordinate in the District vests in the District court under Section

30 of the Civil Courts Act (for short the Act). Sub Section (3) of Section 30 of the Act empowers the High Court to make rules regulating the

manner in which such powers including the power of suspension and removal of the ministerial officers by the District court. In exercise of this

power, the High Court framed rules which are published by Notification No: 87 of 1968 dated 28th March, 1968. Rule 5 of these rules reads as

under:

An appeal against the order of punishment passed by a District Judge in his original or appellate jurisdiction in respect of a ministerial officer shall

lie to the Chief Justice whose orders shall be final, subject to further appeal against the order of the Chief Justice imposing or upholding a penalty of

dismissal or removal from service which shall lie to a Committee of two judges to constituted by the Chief Justice." So while the District Judge is the disciplinary authority, the Chief Justice is the appellate authority against the order of punishment imposed by the District Judge. The order of punishment has thus been passed by the appellate authority thereby defeating the right of appeal made available to the appellant in terms of the rules framed under Section 30 of the Act. Such exercise of power by the appellate authority results in discrimination against the employee concerned, as laid down in Surjit Gosh Vs. Chairman & M.D. United Commercial Bank. AIR 1995 SC 1053. which reads as follows:"The respondent Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz, the Divisional Manager/AGM (Personnel). According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight. Its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the Disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercise the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher

authority or the appellate authority should exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondentBank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is not right of appeal provided under the Regulations cannot be accepted .

5. The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside."" In view of this, the appellant has been deprived of the statutory remedy of appeal provided to him under the rules framed under Section 30 of the Act. The order impugned, therefore, suffers from vice of discrimination and as such is liable to be quashed. We make the order accordingly. No order is to costs.