
(2011) 04 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : SWP 1304 of 2006 and CMP No. 2282 of 2006

Nazir Ahmad Gujri

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Citation : (2011) 2 JKJ 913

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Challenge is to order No. 1614/2'005 dated 10th August, 2005 of Senior Superintendent of Police, Srinagar -

Respondent No. 4 herein, whereby the Respondent No. 4 has dismissed the Petitioner from service and his period of absence from 1.10.2000 to

16.04.2002 treated as ""dies non"".

2. First an overview of facts.

3. The Petitioner, a Constable in Jammu and Kashmir Police Department while posted at Police Station, Kothibagh, absented himself from duty

w.e.f. 1st of October, 2000. The unauthorized absence led to suspension order No. S-5/01/385-90 dated 19th of January, 2001. However, the

Petitioner was vide DPO order No. 421/2002 permitted to resume his duties. A departmental inquiry was initiated vide DPO No. 513/2002 dated

1.5.2002. The Petitioner was reinstated pending inquiry vide DPO No. 302/2005 dated 22.3.2005. The inquiry officer recommended Petitioner's

dismissal from service. The show cause notice was issued to the Petitioner on 15th of July, 2005, requiring the Petitioner to show cause why the

punishment (dismissal from service) recommended by inquiry officer should not be confirmed. The show cause notice was followed by order No.

1614/2005 dated 10.8.2005, whereby Petitioner was dismissed from service.

4. The Petitioner questions the dismissal order on the following grounds:

(i) That the Petitioner was not associated with the inquiry though Petitioner, having been permitted vide DPO No. 421/2002 dated 16.4.2002, was

available after the inquiry was directed vide DPO No. 513/2002 dated 01.05.2002 and his presence during inquiry could have been ensured with

least difficulty. The inquiry report thus violated the principles of natural justice and is otherwise not in accordance with rules.

(ii) That Respondent No. 4, while issuing show cause notice dated 15th of July, '2005, requiring the Petitioner to show cause against the

recommended punishment (dismissal from service) was not handed over the copy of the exparte inquiry report and thus was deprived of an

adequate opportunity to show cause against the proposed punishment.

(iii) That the Respondent No. 4 failed to accord consideration to the submissions made by the Petitioner in his reply to the show cause notice, to

explain his unauthorized absence from service, as was evident from the impugned order, wherein the grounds urged were not dealt with.

(iv) That the impugned order was made after the Petitioner was reinstated vide DPO order No. 320/2005 dated 23.03.2005 - a course not

permitted under rules and thus the impugned order was not maintainable and liable to be set a side.

5. The petition is opposed on the grounds that the Petitioner wilfully avoided to associate with the inquiry, leaving no option to the inquiry officer

but to proceed with the inquiry in absence of the Petitioner. It is insisted that Petitioner was served summary of allegations and that the Petitioner

after acknowledging its receipt, failed to appear before the inquiry officer during inquiry proceedings.

6. The inquiry officer, it is pleaded was constrained to proceed with the inquiry in exparte because of wilful failure to cooperate with the inquiry

officer and conclude inquiry without Petitioner's participation. It is insisted that the order dismissing the service of the Petitioner has been passed

strictly in accordance with law and does not admit any interference.

7. Heard and considered.

8. From the perusal of record, it transpires that the Petitioner unauthorizedly absented himself from duty w.e.f. 1-10-2000, was placed on suspension w.e.f. 19th January, 2001. The Petitioner, surprisingly, was permitted to resume duties on 16th April, 2002; it remains to be known in what circumstances the Petitioner, who had gone absconding on 1st October, 2000, was allowed to resume duties, 563 days after he allegedly absented himself from duty, the Respondents, thereafter, vide DPO order No. 513/2002 dated 01-05-2002, initiated departmental inquiry against the Petitioner. The Petitioner is thus expected to have been available during inquiry leaving no justification for inquiry officer to proceed in the matter ex parte. In case the Petitioner, though permitted to resume duty on 16th April, 2002 did not resume duty, report the office concerned and appeared before the inquiry officer, there was no occasion for the Respondents to reinstate the Petitioner vide DPO order No. 320/2005 dated 22nd March, 2005. The reinstatement of the Petitioner, five years after he was placed on suspension and three years after he was asked to resume duty, implies that his suspension was unjustified, that his conduct during period of suspension was satisfactory. The Respondents cannot set up the case of wilful disobedience against the Petitioner after his suspension ordered on 19th January, 2001. In case of decision to reinstate the Petitioner into service w.e.f. 22nd March, 2005, Rule 359 J&K Police Rules 1960 laid down in procedure, is to be followed in departmental inquiries, Rule 359(2) makes obligatory for the officer to conduct the inquiry, to summon the accused Police officer, record and read out to him the statement summarising the alleged misconduct in such a way to give full notice of the circumstances in regard to which evidence is to be recorded, in the event the accused Police officer does not admit the misconduct, attributed to him. The Police officer conducting the inquiry is to produce such evidence oral as documentary in proof of the acquisition as is available and necessary to support the charge. The witnesses, whenever possible to be examined in presence of the accused Police officer and the officer to be given an opportunity to cross examine the witnesses where are going through the evidence a formal charge is framed such charge is to be read and explained to the accused Police officer and the officer given an opportunity to examine the witnesses and file documentary evidence in his defence.

9. In the present case, the record does not reveal that the Petitioner was summoned in terms of Rule 359(2) and associated with the inquiry in the manner delineated in Rule 359. The contention, that the Petitioner of his own decided not to appear before the inquiry officer and get associated with the inquiry does not inspire confidence in view of the views that have taken place after the Petitioner authorizedly absented himself from duty.

It may be stated, at the cost of repetition that the Petitioner was not only permitted to resume duty but reinstated into service w.e.f. 22nd March, 2005 i.e. during pendency of inquiry. The Petitioner, obviously, could not have been rewarded for his disobedience and appears to have been all the time available for the inquiry. The inquiry that has culminated in the inquiry report and led to dismissal from service of the Petitioner, in the circumstances has not been conducted in accordance with Rule 359 J&K Police Rules.1960.

10. It is pertinent to point out that in terms of Rule 378 J&K Police Rules; the reinstatement is to be ordered on conclusion of the inquiry only, after the inquiring officer finds that no misconduct is attached to the Police Officer. It follows that reinstatement of the Petitioner three years after the inquiry was initiated and a few months before dismissal from service was ordered, directed only after the inquiry officer was satisfied that no misconduct was established against the Petitioner.

11. The disciplinary authority after the inquiry was concluded and the Petitioner proposed to be visited that penalty of dismissal from service, was required give reasonable opportunity of show cause oral and also in written against the action proposed to be taken against the Petitioner. In other words the Petitioner was to be asked to show cause against the dismissal from service on account of misconduct proved against the Petitioner. It is well settled that the disciplinary authority, while giving reasonable opportunity to show cause to the delinquent official against the proposed action, is duty bound to provide copy of the inquiry report to the delinquent official so that he can make meaningful use of the opportunity and try to convince the inquiry Officer, identifying the loopholes, if any, in the inquiry report that the punishment proposed was too harsh and severe, or there were any extenuating/mitigating circumstances in his favour. The duty to furnish a copy of the inquiry report to the delinquent officer is to be more

strictly observed when the inquiry, as in the present case is conducted in exparte, on the back of the delinquent officer. In the present case, the

record does not reveal that a copy of the inquiry report was provided to the Petitioner that the show cause notice claimed to have been served on

the Petitioner. The Petitioner, in this circumstance has been deprived of an opportunity to show cause against the proposed punishment.

12. The punishment of dismissal from service has been concluded by the Disciplinary Authority oblivious to mandate of Rule 336 and 337 J&K

Police Rules 1960. It would be advantageous to extract Rules 336 and 337 here under:

336. Suitability of punishment: the suitability of a punishment should be carefully considered. Punishment should fit the default and be deterrent

without being harsh. In inflicting punishment, the general character of the officer affected and his past services should be taken into consideration.

337. Dismissal: Dismissal shall be awarded only for the acts of misconduct e.g. fraud and dishonesty, corruption and all offences involving moral

disgrace as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for Police service. In making such award

regard shall be had to the length of service of the offender and his claims to pension.

13. In the present case, the disciplinary authority appears to have paid almost no attention to the mandate of Rules 336 and 337 while awarding

punishment of dismissal from service against the Petitioner. The disciplinary Authority has failed to notice that not only were the punishment

awarded disproportionate to the lapse attributed to the Petitioner but that the misconduct alleged against the Petitioner was not of the kind

envisaged by Rule 337 Police Rules.

14. For the reasons discussed above, the writ petition is allowed and the order of dismissal No. 1614/2005 dated 10th August, 2005 set aside.

The Respondents are directed to consider the matter afresh in light of J&K Police Rules. The Respondents shall be at liberty to initiate fresh inquiry

against the Petitioner in accordance with Rules and in the event the Petitioner shall be permitted to allow to resume his duty and in the event

departmental inquiry is initiated, the period w.e.f. date of dismissal from service the date the Petitioner resumes duty shall be subject to outcome of

the inquiry. In case, the Respondents decide not to hold a departmental inquiry, the aforesaid period shall be settled in accordance with rules.