

(2011) 12 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 511 of 2008

Nazir Ahmad Kathoo

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 126

Citation : (2011) 4 JKJ 562

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. The petitioner, appointed as constable in the J&K Police Department vide order No. 860 of 1997 dated 13.11.1997, has been removed from service w.e.f 30.5.2007 vide order No. 173 of 2007 dated 25.6.2007 read with order No. 174 of 2007 dated 28.6.2007. The aforesaid orders were questioned in appeal before Dy. Inspector General of Police, Police Range Anantnag. The Appellate Authority dismissed the appeal and upheld the removal order passed by Superintendent of Police Awantipora.
2. The order Nos. 173 of 2007 and 174 of 2007 dated 25.6.2007 and 28.6.2007 as also order of the appellate authority dated 26.2.2008 (order 79 of 2008) are questioned in this writ petition on the grounds that the Inquiry Officer did not comply with the mandate of Rule 359, J&K Police Rules, 1960 (for short ""Police Rules"") and section 126 Constitution of J&K while conducting inquiry against the petitioner and that the orders impugned in the petition, resultantly were liable to be set aside.

3. The respondents opposed the writ petition on the ground that the petitioner raised disputed question of facts that cannot be dealt with in exercise

of writ jurisdiction. It is pleaded that the petitioner has suppressed material facts and is not entitled to an equitable relief. The respondents deny that

any of the petitioner's Constitutional or Statutory rights has been infringed while passing impugned orders. The respondents emphatically deny that

the procedure laid down under Rule 359 of the Police Rules, have not been adhered to while conducting inquiry in the matter. It is pleaded that the

petitioner, by unauthorisedly absenting himself from duty, has lost right to continue in service.

4. I have gone through the pleadings and the record available on the file. I have also heard Ld. Counsel for the parties.

5. From perusal of record it transpires that the petitioner while posted in Police Division Kulgam, allegedly remained unauthorisedly absent w.e.f

1.7.2005 and was placed under suspension vide order No. 263 of 2005 dated 10.10.2005. A departmental enquiry was ordered and conducted

by Dy. S.P Operations, Kulgam. The petitioner was repeatedly asked to resume his duty and a notice was also got published in a local daily. The

petitioner appeared before the Dy. Inspector General of Police, Police Range Anantnag, who vide order No. 45 of 2006 dated 6.3.2006

reinstated the petitioner, pending enquiry to his unauthorised absence and transferred the petitioner from Police Division Kulgam to Police Division

Awantipora. The enquiry against the petitioner was entrusted to Sub Divisional Police Officer, Awantipora. The Inquiry officer got served the

Summary of Allegation on the petitioner. The petitioner pleaded not guilty whereafter charge sheet was issued to the petitioner and the petitioner

asked to file his reply to the charge sheet. The reply was accordingly filed on 8.7.2005. The petitioner sought to explain the reasons that compelled

the him to stay away from his duty after he, with the permission of his immediate officer, went to his residence to deliver his monthly salary to his

dependents. However, the explanation tendered, did not find favour with the Inquiry Officer and the Inquiry Officer recommended the period of

absence to be treated as dies non and annual increment to be stopped for two years and the petitioner to be asked to remain vigilant in future. The

Disciplinary Authority on going through the report of the Inquiry Officer and the previous service record of the petitioner, did not agree with the

recommendations made by the Inquiry Officer and instead proceeded to remove the petitioner from the service vide order impugned in the petition.

6. After a brief survey of background facts, focus is now to shift to the petitioner's case and effort to find out whether the Inquiry Officer,

Disciplinary Authority and thereafter Appellate authority have adhered to the procedure laid down under J&K Police Rules 1960, while removing

the petitioner from service.

7. Chapter X J&K Police Rules 1960 deals with the punishment that may be imposed on a police officer subject to Police Act and the Rules made

thereunder, if found to have been guilty of misconduct. Removal from service in terms of Rule 334(2) is one of the punishment that may be

imposed on a Police Officer. However, the punishment is to be imposed only after an enquiry is conducted into the alleged misconduct and the

officer given an opportunity to project his case, refute the allegations levelled and convince the Inquiry Officer and the Disciplinary Authority that

the allegation levelled, are devoid of any substance. Rule 359 of the Police Rules lays down the procedure to be followed by in departmental

enquiries. It would be advantageous to summaries the mode and manner in which the enquiry is to be conducted step by step without going to the

text of Rule 359.

(7) Whenever a definite complaint of misconduct is received against a Police officer, the officer receiving the complaint is to immediately record

statements, if any, in support of the complaint and through usual channels forward the complaint with the statements, if any, to the Superintendent

of Police or other gazetted officer under whose immediate control the officer receiving the complaint, is serving. The police or other officer if

satisfied that a prima facie case for enquiry is made out, is to entrust the enquiry as far as possible to a Gazetted Officer empowered to inflict a

major punishment upon the delinquent officer.

(8) The officer conducting the enquiry is to summon the delinquent police officer, read out to him the statements summarising the alleged

misconduct so as to give notice to such police officer of the circumstance in regard to which evidence is to be recorded. In case the delinquent

police officer admits the misconduct alleged against him, the officer conducting enquiry may then and there record a final order if it is within his

power to do so or forward the matter to an officer empowered to pass a final order.

(9) If the delinquent police officer does not admit the alleged misconduct, the enquiry officer is required to record such evidence oral and

documentary in proof of accusation as is available and necessary to support the charge. Whenever possible, witnesses are to be examined in

presence of the delinquent police officer and such officer given opportunity to examine the witnesses unless he is of the opinion that the presence of

the witness can not be secured without undue delay and expense or inconvenience. In later case the statement of the witness recorded and attested

by Magistrate, may be considered though not recorded in presence of the delinquent officer and without opportunity to cross examine the witness

to such officer.

(10) When the evidence is recorded and it is found not to substantiate the accusation or recommend his discharge to the Superintendent of Police

or other officer so empowered. However, if the evidence collected substantiate the acquisition of misconduct, the officer is to frame a formal

charge/charges in writing explain the charges to the delinquent police officer and call upon him to answer the charge.

(11) The Inquiry officer after the charge/charges are framed in writing explain it to the delinquent officer, ask the delinquent police officer to furnish

list of the defence witnesses whom he wishes to call alongwith summary of the facts as to which such witnesses are testified. The Inquiry officer

thereafter has to record the statement of the defence witnesses whom he decides to admit in presence of the delinquent police officer who is also to

be allowed to address/put questions to the witnesses as he may deem fit. The delinquent police officer is also to be given opportunity to file

documentary evidence and in this regard to have access to official files and papers except such as form part of the confidential record. The Inquiry

Officer has to allow the delinquent police officer to make a statement in reply to the charge and if he so chooses to file his written statement, the

Inquiry Officer independent of the option exercised by the delinquent police official to file a written statement would be competent to put all such

questions to him which he may see fit to be put arising out of the charge.

(12) The Inquiry officer after the delinquent police officer closes his case and

answers questions, if any, put by the Inquiry officer, shall pass order as may be warranted under facts and circumstances of the case or forward the case with his recommendations to an officer empowered to pass such order. However, no officer is to be dismissed or removed by an authority subordinate to that by which he was appointed.

(13) The punishment of dismissal, removal or reduction in rank is not to be imposed unless a delinquent police officer has been given a reasonable opportunity of showing cause orally and also in writing against the action proposed to be taken against him unless he is dismissed, removed or reduced in rank of his convicting of criminal charge or the authority is of the opinion that it is reasonably practicable to give the delinquent police officer an opportunity of showing cause or where the Governor is satisfied that in the interest of the security of the State it is not expedient to give that officer such an opportunity.

(14) The authority competent to order dismissal, removal or reduce in rank, the delinquent police officer is not merely to give an opportunity to the delinquent police officer to show cause against the proposed action but provide the officer copy of the enquiry report and the record, so as to enable the delinquent police officer to exercise his right to show cause against the proposed action in a meaningful manner.

8. In the case in hand, perusal of record reveals that the procedure envisaged under Rule 359 of Police Rules was ignored with impunity and observed in breach. The record does not indicate that the Dy. S.P Operations Kulgam and thereafter Sub Divisional Police Officer, Awantipora recorded the evidence in presence of the petitioner or afforded the petitioner an opportunity to cross examine the witness. True that the Inquiry officer is not under statutory obligations invariably to record statements of witnesses in presence of the delinquent police officer or allow such officer to cross examine each and every witness, yet in case the Inquiry Officer decided to depart from usual procedure least that is expected to him, is to record reasons in support of such decision. The record also does not indicate that the petitioner after the charges were framed by Sub Divisional Police Officer Awantipora vide No. SDPO/06/Enq/766 dated 1.7.2006 asked the petitioner to furnish list of defence witnesses whom the petitioner proposes to call or did as a matter of fact record statement of any

witnesses. The petitioner was not also informed that he was free to file documentary evidence, if any, in his defence or that he was competent to make a statement in reply to the charge immediately after the charges were framed or after the defence evidence was concluded. The record also does not reveal that the disciplinary authority while serving final show cause notice vide No. Estt/13194 dated 4.10.2006 furnished the petitioner a copy of the enquiry report or copies of relevant documents, so as to enable the petitioner to convince the Disciplinary Authority that the punishment proposed, was unwarranted, disproportionate and uncalled for in the facts and circumstances of the case. The duty to provide copy of the enquiry report and other relevant material to the petitioner was more onerous in the present case in as much as the Inquiry Officer did not recommend petitioner's removal from service and the Disciplinary Authority ignoring the recommendations made by the Inquiry Officer, decided to impose major punishment on the petitioner. The petitioner in case he was provided copy of the enquiry report and copies of relevant material, would have been in a better position to persuade the Disciplinary Authority to agree that the Inquiry Officer was in better position to appreciate the material collected during the enquiry and his recommendations deserved to be accepted.

9. For the reasons discussed, neither the enquiry has been conducted in accordance with Rule 359 J&K Police Rules nor do the orders impugned in the writ petition- outcome of the enquiry conducted, stand legal scrutiny.

10. So viewed, the petition is allowed and the order No. 173 of 2007 dated 25.6.2007 and order No. 174 of 2007 dated 28.6.2007 quashed.

Resultantly the respondents shall permit the petitioner to resume his duty. Needless to mention the respondents would be at liberty to initiate fresh enquiry in the alleged misconduct in accordance with the Rules. The period w.e.f the date of impugned removal order till the petitioner is allowed to resume his duty, shall be dealt with having regard to the outcome of enquiry, if any, conducted and subject to rules. Disposed of.