
(2008) 07 J&K CK 0026
In the Jammu And Kashmir High Court

Qasim Nabi Mir	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Citation : (2008) 3 JKJ 76

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Petitioner has questioned the order No. 351 of 2001 dated 27.04.2001 passed by SSP, Srinagar, respondent

No. 5, whereby and whereunder petitioner came to be discharged from the services with effect from 12th of March, 2001, on the grounds taken in the writ petition.

2. Respondents have filed counter and resisted the petition. Petitioner has filed the rejoinder.

3. Petitioner came to be appointed as Constable vide order No. 1260 of 2000 dated 02.11.2000 passed by Sr. Superintendent of Police,

Srinagar on probation for a period of three years. He was deputed to STC, Talwara, on 15th of November, 2000 and remained un-authorizedly

absent right from 12th of March, 2001 the date from which the training started and came to be reverted back by Principal STC, Talwara, vide

order dated 31st of March, 2001 with effect from 12th of March, 2001. He came to be discharged vide impugned order, he is apt to reproduce

the impugned order herein:

Whereas Shri Qasim Nabi S/O Ghulam Nabi Mir R/O Barsoo Ganderbal was

appointed as Constable in District Srinagar vide DPO Order No:

1260 of 2000 dated: 02.11.2000 on probation for a period of three years and Reg. No:4151/s was allotted to him.

Whereas the said recruit Constable was nominated/deputed to STC Talwara alongwith other recruit Constables for undergoing RTC in the month

of 15.11.2000.

Whereas he absented himself unauthorisedly with effect from 12.03.2001 from STC Talwara and was reverted back by Principal STC Talwara

vide order No:58/2001 dated 31.3.2001 issued under endtt. No: Esu 2001-1122-34/T dated: 31.3.2001.

Whereas unauthorized absence of the recruit Constable during period of probation involves loss of appointment as envisaged under .art. 108 J&K

CSR. His absence clearly depicts that he is not likely to become a good police official.

Therefore, by virtue of powers vested in me under Article 126(B) of j&K CSR read with Article 187 of J&K Police Mannual, I Sr.

Superintendent of Police District Srinagar hereby discharge recruit Constable Qasim Nabi No: 4151/S from the services with effect from

12.03.2001 i.e. the date he has absented himself from STC Talwara as he has no himself proved a good Police Official.

4. Learned Counsel for the petitioner argued that impugned order came to be passed in terms of Article 126(b) of J&K CSR read with Regulation

187 J&K Police Manual without hearing the petitioner and conducting enquiry. He further argued that order on the face of it is punitive.

5. While going through the impugned order, one comes to an inescapable conclusion that impugned order came to be passed while exercising

powers in terms of Regulation 187 of Police Regulations. It hardly matters that if a wrong provision is quoted in the order. One has to understand

the sum and substance of the impugned order. Constable can be discharged from service during probation without conducting enquiry. It is apt to

reproduce Regulation 187 of the Police Regulations herein:

187. DISCHARGE OF INEFFICEINT: 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.

6. Regulation 187 nowhere provides for conducting of enquiry. The words used in

the impugned order are ""he has not proved himself to be a good police officer"" cannot be said to be punitive in any way. No allegation is leveled against the petitioner. He came to be discharged from service within the four corners of said regulation.

7. Division Bench of this Court in LPA No. 218/2005 and connected matters titled State and Ors. v. Ghulam Nabi Bhat, has taken the same view.

It is profitable to reproduce relevant para of the said judgment herein:

The writ petitions of Ghulam Nabi Bhat and Mohammad Majnoon were also liable to be dismissed on the count that both of them were also

probation when their orders of discharge/termination/removal came to be passed. In terms of Rule 187 of the J&K Police Rules, they were neither

required to be served with any notice nor were they entitled to be afforded an opportunity of being heard. It is profitable to reproduce Rule 187,

so as far it is relevant for the present, is reproduced hereunder:

Applying the rest to the cases at hand, both the writ petitioners came to be discharged and the orders of discharge are in no way punitive, but are

simpliciter orders of discharge.

8. The Apex Court also in case titled State of Punjab and Ors. v. Sukhwin-der Singh 2005 AIR SCW 3477, has held that when a probationer is

discharged from service on the ground of absence from duty as he is not likely to become an efficient police officer it cannot be said that the said

order was based upon misconduct and was thus punitive in nature.

9. This Court in case titled Mohammad Shafi v. State and Ors. 2000 SLJ 603, has held that when a probationer remain absent, no enquiry is

required enabling the competent authority to pass order of discharge. It is profitable to reproduce relevant portion of para-17 of the said judgment

herein:

17. ...A trainee who unauthorisedly absents from the training course and remain untraced for more than nine months cannot claim to be a suitable

constable for the police force where discipline is a prerequisite. In case he could not undergo the training, how can he be said to be a suitable

candidate to serve in the police force where physical fitness is in demand for discharge of the duties....

10. A Division Bench of this Court in LPA No. 74/2005, titled Rias Ahmad Khan v.

State and Ors. has held that when the facts simply provide

motive to the employer to dispense with the services of a probationer, that cannot be said to be stigmatic.

11. The police officer who fails to undergo the requisite training and chooses to remain absent cannot become a good police official. Only on that count he can be discharged from service.

12. The Apex Court while dealing with an identical case titled Commandant, 11th Battalion, A.P. Special Police (IR), Cuddapah, Cuddapah

District Vs. B. Shankar Naik, , has held that when a probationer fails to pass training course, he can be terminated from service during probation.

13. A Division Bench of this Court in LPA Nos. 218/2005, 219/2005, 109/2006, 100/2006 and 246/2005 has taken the same view.

14. This Court in the case titled Naseer Ahmad Khan v. State and Ors. 2008 (3) JKJ : SWP No. 1744/2003 decided on 03.05.2008 has laid down the same principle.

15. In the instant case, the competent authority observed that the petitioner had failed to undergo training course and has remained absent and

observed that he cannot become an efficient officer and accordingly passed the impugned order. Thus misconduct is not the foundation of the impugned order.

Keeping in view the aforesaid facts, the writ petition merits to be dismissed, as such/is dismissed along with all connected CMPs. Interim direction,

if any, shall stand vacated.