
(2008) 11 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1526/2001

Raj Kumar

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Civil Service (Temporary Service) Rules, 1961 — Rule 5

Citation : (2009) 1 JKJ 38 : (2009) LIC 507 : (2009) 1 SCT 732 : (2009) 3 SLR 512 : (2009) 2 SriLJ 594

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Sunil Sethi, P.S.Chandel, Advocates appearing for the Parties

Judgement

1. The order of discharge of the petitioner from service on account of being absent from duty was passed by the respondents on 19th September,

1988. This order came to be challenged by the petitioner in the writ petition bearing SWP No. 313/1989. The said writ petition was dismissed

vide order dated 30.12.1996, against which LPA (S W) No.69/1997 was preferred by the petitioner. The Division Bench vide its order dated

10.11.2000 directed the respondents to pass a fresh order after hearing the petitioner. The respondents were directed to dispose of the appeal of

the petitioner after affording him an opportunity of being heard.

2. In pursuance to said direction, the respondents issued an order dated 17.05.2000, whereby they have dismissed the appeal of the petitioner. It

is this order which is subject matter of challenge in this writ petition.

3. I have heard learned counsel for the parties and perused the record.

4. The petitioner has raised two pleas in this petition.

(a) That the appellate authority has decided the appeal without affording him an opportunity of being heard and no reason has been given by the appellate authority while passing the order;

(b) That the petitioner was a member of the CRPF and was required to be given one month's notice by the appointing authority before issuing the order of discharge. Instead respondents invoked Rule 5 of Central Services (Temporary Services) Rules, 1965 which entitles the Government Servant of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing.

5. So far as the first contention of the petitioner is concerned, the direction given to the respondents was to pass a fresh order only after affording an opportunity of being heard. The words opportunity of being heard do not have any constructive meaning, but it encompass all such requirements which are required to be followed by observing the rules of natural justice. It is not an ideal formality. Hearing entails that the petitioner should have been allowed to make representation and canvass the issue raised by him during the course of hearing which was afforded to him. Mere filing of appeal and its dismissal without giving any reason or observing rules of natural justice in my opinion would not be a sufficient compliance of the order. The order impugned has only given narration of facts, but no reasons have been recorded by the appellate authority while dismissing the appeal. In other words, the appellate authority was required to give sufficient reasons for rejecting the appeal. It appears that the petitioner was not heard as is revealed from the order impugned. I accordingly hold that the present appeal has been disposed of without affording an opportunity of being heard to the petitioner.

6. Now coming to the 2nd question that the respondents have invoked Rule 5 of Central Services (Temporary Services) Rules, 1965 and Rule 16 of CRPF Rules. It is a settled proposition of law that special rules will always override the general law. The general law can only be invoked once the rules are silent. Admittedly, the petitioner was governed by Rule 16 of CRPF Rules for the purpose of ordering his discharge. Rule 16 of CRPF Rules contemplates that all the members of the force shall be enrolled for a period of three years and during this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing

authority. In this case the petitioner has yet to complete three years and he could be discharged by invoking Rule 16 of the CRPF Rules provided he was given one month's notice. The respondents instead have invoked Rule 5 of Central Services (Temporary Services) Rules, 1965 by giving pay and allowance for the period of notice. This in my opinion could not be done by the respondents. The petitioner is strictly governed by Rule 16 of CRPF Rules which envisages one month's prior notice before ordering his discharge. This has not been followed in the present case.

7. In view of the above, I allow the petition and quash the order of discharge. The respondents are, accordingly, directed to reinstate the petitioner from the date he was discharged. He shall also be entitled to all emoluments for which he is entitled under the rules.

8. Disposed of along with connected CMP(s), if any.