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(2005) 06 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 61 Of 2005

Rajinder Singh Hundai — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 04-06-2005

Acts Referred:

Citation : (2005) JKJ 312 Supp : (2005) 2 SriLJ 515 : (2005) SriLJ 515

Hon'ble Judges : S.N.Jha, C.J and Mansoor Ahmad Mir, J

Bench : Division Bench

Advocate : S.A.Naik, A.M.Dar, Advocates appearing for the Parties

Judgement

S.N.Jha.CJ.

1. Appellant, an Inspector in the Border Security Force was attached with the Intelligence Bureau (IB) on deputation from 23121991 to 2261997.

During this period from 1 41997 he was posted at Indira Gandhi International Airport, New Delhi. He remained on active duty from 1 41997 to

2161997 but absented from 2241997. On the basis of reports alleging that the appellant had issued fake visas on receipt of illegal gratification

followed by unauthorized absence, the Reporting Officer rated him ""below average"". After the remark was communicated to him the appellant filed

writ petition, S WP No. 2052/2001 for quashing of the remark. By the order under appeal, the learned Single Judge dismissed the petition and he

has come in letters patent appeal.

2. Mr. A. M. Dar appearing for the appellant submitted that in terms of instructions contained in para 28 of Annual Confidential Report Procedure

Booklet, 199091 of the Ministry of Home Affairs, the Reporting Officer can write the remark/ACR only if the officer under his command has worked for 90 days during the relevant period. In the instant case, as the appellant worked under the Reporting Officer only for 83 days, the latter

was not competent to write the remark/ACR.

3. A similar submission was made before the learned Single Judge which the learned Judge rejected observing that by reason of absence from duty

the Reporting Officer does not lose control over his subordinate. Absence from duty whether unauthorized does not divest him of the command

and the authority to proceed against him even during the absence period. We endorse the opinion of the learned Single Judge.

4. It is not in dispute that the appellant was posted during the period of his deputation with the IB at the Indira Gandhi International Airport, New

Delhi from 141997. On 2261997, according to him he proceeded on leave; according to the respondents on the other hand, the absence was

unauthorized. It is not necessary to go into this controversy for the purposes of this case. The point for consideration is whether or not the

Reporting Officer was competent to write remark/ACR for the period of appellant's posting at the Indira Gandhi International airport.

5. The period of posting as seen above is not in dispute. What is in dispute is that since the appellant was not on active duty for a period of 90

days, the Reporting Officer did not have the opportunity to watch his performance during the period of absence, and he therefore, could not write

the remark/ACR. In support of the contention, support is sought to be drawn from para 28 of the ACR Procedure Booklet 199091. The object

underlying the instruction in para 28 is that if the Reporting Officer did not have the opportunity to watch the performance of a person, he should

not write remark/ACR, but where during this period the Reporting Officer comes in possession of positive materials having bearing on the integrity,

character, reputation or performance of the person, we find no reason why he should desist from writing the remark/ACR. The instructions

contained in para 28 of the ACR Procedure and Booklet in our opinion is directory. It is an enabling provision which does not prevent the

Reporting Officer from writing remark/ ACR even if he did not have the occasion to watch his work for 90 days in an appropriate case. As a

matter of fact, the present case stands on a different footing.

6. As seen above, the ground on which the appellant was rated ""below

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average"" was the allegation of receiving illegal gratification as consideration

for issuance of fake visas as well as unauthorized absence from duty from 2261997. The absence being the foundation of the remark, among other

things it can not be excluded. It is clear that if the period were to be excluded, the appellant would be indirectly getting benefit of his own default.

The period of 90 days as provided by rule 28 of the Booklet in our opinion must include the period of unauthorized absence too. If the period of

absence is counted, it would be much more than 90 days. In any view of the matter, excluding the period of absence on technical ground would

not be in the interest of administration considering nature of the allegation which led to the remark. In the facts and circumstances of this case, this

Court would not like to interfere.

7. We find thus no merit in the appeal which is accordingly dismissed.

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