

(1997) 07 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : 117/94 & 118/94 & 114/94 & 115/94 & 116/94

Rajinder Singh & Ors

APPELLANT

Vs

State of J&K through & Ors.

RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 126(2)(b)

Citation : (1997) KashLJ 524

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : S.T.Hussain, M.I.Qadiri, Advocates appearing for the Parties

Judgement

1. All these petitions are identical in nature and are disposed of by this common judgment.

2. Petitioners were on guard duty at Police Hospital, Srinagar, where some militants were allegedly undergoing treatment. It seems that militants

escaped from custody and they were charged of facilitating such escape and eventually dismissed from service by respondent No.1 in exercise of

power under Sec. 126(2)(b) of the State Constitution.

3. Petitioners have filed these petitions assailing their impugned removal from service amongst others on the ground that the power under Sec.

126(2)(b) was exerciseable only by the Governor and could not be delegated to any subordinate officer of the Government and that it was bad as

they were not heard on the quantum of punishment. It is also submitted that once they were booked in FIR No. 186/93 under Sees. 223, 224

RPC and 3 & 5 of TADA, they could not be removed from service after dispensing with the inquiry and, on the contrary, were required to be

proceeded against in accordance with the procedure established by the police rules.

4. Lastly it is projected that their dismissal and violative of the principles of natural justice as they were not granted a personal hearing nor was the suitability of punishment determined.

5 In the reply filed by the respondents, the order impugned is justified on the plea that respondent No. 1 was competent to pass this order and that

it was not practicable to hold inquiry against the petitioners in view of the extraordinary circumstances prevailing in the valley and due to terrorism.

It is also pointed out that the police was a disciplined force entrusted with the task of combating terrorism but the petitioners had failed to carry out

their duty assigned to them which had led to the escape of three hard core militants from the police hospital.

6. Petitioners first plea that the power to dispense with the inquiry was exerciseable by the Governor alone under Sec. 126(2)(b) of the State

Constitution and that this power could not be delegated to any subordinate authority, was misdirected on the face of it. This is apparent on the face

of the provisions itself which reads thus:

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by

that authority in writing, it is not reasonably practicable to hold such inquiry;

Cl(b)of Sec. 126(2) itself vests power of dispensing with the inquiry in the authority empowered to dismiss or remove a person or to reduce him in

rank. The question of any delagation by the Governor in this behalf, therefore, does not arise. Where an authority is competent to dismiss or

remove a person from service or to reduce him in rank, he could also discard the inquiry after recording reasons that it was impracticable to hold it.

7. Similarly, it is also a misconception that an employee was required to be heard on the quantum of punishment before he was removed from

service on dismissal. Because the exercise of power to do away with the inquiry by itself implies that no opportunity of hearing was to be granted

to the delinquent for resisting punishment or for determining the quantum of punishment.

8. Petitioner's case that once the police investigating process was set in motion against them, the competent authority has no basis available for

doing away with the inquiry on the ground of impracticability, is also misconceived because investigating process and departmental enquiry are two different processes and it is open to an employer to resort to either or both against a delinquent employee. It is also settled that resort to one would not bar the other. An ongoing investigation is not suggestive of impracticability or otherwise of the enquiry. Such enquiry may be impracticable to be held even in the face of an ongoing investigation. Consequently it cannot be said that the Authority had no basis to do away with the inquiry because of the registration of FIR against the petitioner.

9. But all this does not detract from the fact that a disciplinary authority was to satisfy the requirements of Sec. 126(2)(b) while dismissing or removing a delinquent employee from service or reducing him in rank. He was required to record reasons to show that it was impracticable to hold inquiry against the employee in the facts and circumstances of the given case. He may advance whatever reason but it must be relevant and germane to the discarding of the inquiry. Where such reasons were extraneous or irrelevant and had no nexus with the object sought to be achieved, the action would be vitiated.

10. It has already been held by this court that the reason projected by the authority in generalised terms and based on conjectures could not form a valid basis for doing away with the inquiry. In the present case also a reference to the general conditions in the valley at the relevant time, could not be pleaded as a reason for this purpose because it was further required to be shown that such general conditions had rendered it impracticable to hold inquiry against the petitioners. It could as well be that in spite of the disturbed conditions in the valley or the prevailing terrorism, an inquiry was possible to be held against the petitioners who were the employees of the police department and were already facing investigation on the same allegations.

11. It is not the gravity and the seriousness of the allegations which constitute a basis for doing away with the constitutional guarantee of inquiry. A delinquent employee may be accused of a very heinous offence and yet it may not be impracticable to hold an inquiry against him.

12. In any case it all comes to holding or otherwise of the inquiry. It is not that the petitioners could not be ousted from service in any event or

circumstances. They were surely liable to be thrown out but only for satisfying the requirements of the constitutional guarantees available to them.

Therefore, it would still be open to the authority concerned to proceed against them in accordance with law.

13. In the result, this batch of petitions, is disposed of on the analogy of other identical petitions and taking cue from a Division Bench judgment of

this Court in Shaffi Sayden's case (1997 SLJ178) by providing as under:

The impugned orders removing the petitioners from service are quashed. But, it shall be open to the Competent Authority to conduct a

departmental inquiry against the petitioners which is required to be completed within six months from the date of receipt of this order. If no inquiry

is conducted against them within the stipulated period, they shall be entitled to reinstatement in service. They shall also be so entitled prospectively

and without any back wages, where they succeed in the inquiry. But, if they fail and charges are proved against them, the disciplinary authority shall

be free to take any action against them including their removal from service.