

(1996) 12 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 980 of 1996

R.C.Puri

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 26-12-1996

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31

Citation : (1997) KashLJ 117 : (1997) SriLJ 264

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

Bench : Single Bench

Advocate : R.Shukla, Parmod Kohli, A.Kapoor, Advocates appearing for the Parties

Judgement

1. Petitioner is Block Development Officer and was charged of having misappropriated an amount of Rs.11,720 by alleged misuse of his official position. Accordingly FIR No. 65/94 under Sec. 5(2) of the Prevention of Corruption Act, was registered against him and pursuant thereto he was ordered to be prosecuted vide Govt. order No. 29 of 1996 dated 11.6.1996. This order carried an endorsement to the Add). Chief Secretary, Agriculture Production Deptt., requiring him to take further action against him under rule 31 of the J&K Civil Services (Classification, control & appeal) Rules, 1956, relating to his suspension. In Compliance thereto he was placed under suspension Vide Govt. Order No. 338Agri of 1996 dated 28.6.1996, allegedly passed by the commissioner/ Secretary and not the Government.
2. Petitioner challenges the FIR and two orders. His case is that FIR disclosed no offence against him and that sanction for his prosecution was granted by the Government in the administrative department, Viz. Agriculture

Production Department and so was the order of suspension required to be passed by the Govt. and not the Commissioner/Secretary. According to him, the Whole action was liable to be quashed as it suffered from lack of jurisdiction.

3. In the objections filed by the state respondent, it is asserted that the action taken was competent. It is made out that the suspension order itself indicated that it was passed by the Govt. Mr. Shukla, learned Govt. Advocate, who was asked to produce the relevant record, however, submitted that the order of suspension was passed by the commissioner/Secretary and was later approved by the concerned Advisor. He justified the order granting prosecution and the FIR pursuant where to petitioner was facing trial in the criminal court.

4. At this stage learned counsel for the petitioner, Mr. Kohli submitted that he would withdraw his challenge to FIR and the prosecution sanction order and raise these issues before the criminal court. Therefore, all that remains to be seen is whether the suspension order was validly passed.

For this it became necessary to extract Rule 31 of the J&K Civil Service (classification, Control & Appeal) Rules, 1956 which reads thus

31. (i) The appointing authority or, any authority to which it is subordinate or any other authority empowered by the Government in this behalf may

place a Government servant under suspension where

(a) an inquiry into his conduct is contemplated or is pending : or

(b) a complaint against of any criminal offence is under investigation or trial.

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5 It is elementary that an order of suspension is required to be passed by the appointing Authority or its superior Authority or the delegated

Authority. In the present case, the appointing Authority of the petitioner admittedly is the Government. It is not anybody's case that the Government

had delegated its power to suspend to the commissioner/Secretary or that he was the Government. The Govt. conducts its business according to a

set of Rules called the Business Rules according to which an action has to go through providing channels to fructify into a Govt. Order. For

suspending a gazetted officer, such action requires the approval of the council of Ministers/Administrative Council or perhaps by the

Minister/Advisor in whom the power is delegated.

6. It also deserves notice that suspension of an employee results in putting him off the service and slashing down his salary. Therefore, even if it may not be a punishment technically, but it leads to certain adverse consequences to the employee. Accordingly an order of such suspension cannot be passed in a routine and mechanical manner arbitrarily. It is required to be passed on an application of mind by the Competent Authority and within the boundaries of the Rules which provide for such suspension in case of a contemplated inquiry or in case of an investigation or trial of an offence against him. Since a number of considerations are required to go into the decision, it is the competent prescribed Authority alone who can suspend an employee. No other Authority can do first and then seek the approval of the Competent Authority which action would be exposed to the charge of nonapplication of mind. Therefore, no post facto sanction, can cure the defect of a suspension order passed by the incompetent Authority. In the circumstances I hold that the impugned order of suspension was incompetent and is hereby quashed. This shall, however, leave the state respondent and its competent Authority free to give a second look to the suspension case of the petitioner and to proceed in accordance with rules, if it proposes to pass any further orders. The petitioner shall also be at liberty to raise all available pleas related to the alleged invalidity of the FIR and the other granting sanction to his prosecution and other allied grounds before the trial court where he is facing trial under Sec. 5 (2) of the Prevention of Corruption Act.