

(1991) 07 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (W) No. 75 Of 1988

State & Anr.

APPELLANT

Vs

Sudarshan Kumar Abrol

RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:

Civil Services Regulations, 1956 — Article 108(11), 108A, 108B

Citation : (1991) KashLJ 700

Hon'ble Judges : K.K.Gupta, J and V.K.Gupta, J

Bench : Division Bench

Advocate : P.R.Sharma, Advocates appearing for the Parties

Judgement

1. This Letters Patent Appeal is directed against the judgment of learned single Judge dated 11.2.1988 allowing the writ petition of the respondent

herein.

2. The respondent was placed under suspension under an order issued by the Government on 12.12.1973. Thereafter, Deputy Commissioner

Kathua was directed by the Government to hold enquiry against him. The Deputy Commissioner Kathua hold such enquiry and exonerated the

respondent. The operative part of the finding of the Deputy Commissioner is as under :

I found that whole incident is more a fear psychoses on the part of ANN. She should have considered all the factors when she agreed to

accompany the doctor on an official tour at about 8 P. M. If she felt that the doctor had had motives she had every opportunity to refuse to go with

the doctor and rather approach the local vaid at Durang. Besides there is nothing in the conduct of the doctor to show that he really misbehaved

with the said ANM. In view of these facts I do not find that the charges so levelled against the said doctor S.K. Abrol are substantiated.

It seems that the Government on getting report from the Deputy Commissioner Kathua issued order on 4.3.1978 reinstating the respondent, but

the period of his suspension was ordered to be treated as leave of whatever kind due to him.

3. Aggrieved by the second part of the order regarding treating his leave of whatever kind, the respondent filed a writ petition and learned Single

Judge while allowing the writ petition quashed the abovesaid portion of the Govt. order and further directed to treat the period of respondent's

suspension from 12.12.1973 to 4.3.1978 as spent on duty, thereby allowing him all the consequential benefits of drawal of pay and other

emoluments.

4. The respondent herein was proceeded exparte vide order of this Court dated 27.6.1991.

5. We have heard Mr. P.R. Sharma, learned Addl. Advocate General at length and have also perused the record produced before us.

6. Admittedly the respondent was absolved of all the charges levelled against him in an enquiry held by the Deputy Commissioner Kathua. It

appears that the Government accepted that finding of the Deputy Commissioner and reinstated the respondent.

7. The relevant rule which would govern such like case is 108 (A) (B) (ii) of the C.S.R. which reads as under:

Where the authority mentioned in sub rule (I) is of the opinion that the Government servant has been fully exonerated or in case of suspension, it

was wholly unjustified, the Govt. servant shall be given the full pay and allowance to which he would have been entitled had he not been dismissed,

removed, compulsorily retired before attaining the age of superannuation or suspended, as the case may be, the period of absence from duty shall

be treated as period spent on duty.

The wording of this Rule is clear and does not require any interpretation, when a Government servant is fully exonerated of the charges framed

against him, the period of his suspension is to be treated as period spent on duty.

8. Mr. Sharma, learned Addl. A. G. has laid stress that the respondent remained absent during his suspension and also did not cooperate during

the enquiry and according to him such facts did not entitle a government official to claim the benefit of the abovesaid Rule.

9. We do not find any substance in this argument of Mr. Sharma. From the report of the Deputy Commissioner it appears that charges were

framed against the respondent and detailed enquiry conducted. During enquiry there is not an iota of evidence that respondent did not cooperate

with the Enquiry Officer. On the other hand the enquiry report, which is in detail, reveals that the respondent had participated in whole of the

proceedings.

10. For the aforesaid reasons, we find no merit in this appeal, which is dismissed without making any order as to costs.