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**(1998) 12 J&K CK 0036**  
**In the Jammu And Kashmir High Court**  
**Case No : LPA(SW) No. 244 of 1997**

State of J & K

APPELLANT

Vs

Tilak Raj

RESPONDENT

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**Date of Decision :** 02-12-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Jammu and Kashmir Police Manual — Regulation 187

**Citation :** (2000) 3 SCT 135

**Hon'ble Judges :** T.S.Doabia, J and M.Y.Kawoosa, J

**Bench :** Division Bench

**Advocate :** Rupinder Singh, Baldev Singh, Advocates appearing for the Parties

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## Judgement

T.S. Doabia, J.—The respondent Tilak Raj came to be visited with an order of discharge on 08071988. This order was passed in terms of

regulation 187 of the J&K Police Manual. This short order for facility or reference is being reproduced below :

In exercise of power vested in me vide 187 Police Manual, Constable Tilak Raj No. 208/U is hereby discharged from service with immediate

effect. He will deposit his uniform articles in DPL Store Udhampur forthwith.

2. It is this order which was subject matter of challenge in the writ petition. A learned Single Judge of this Court came to conclusion that the

respondentwrit petitioner was entitled to the requisite relief. This was on the reasoning that similar orders came to be passed in the case of two

other employees namely Sanjay Kumar and Chaman Lal. These orders came to be challenged in a writ petition (being WP No. 1009 of 1988).

This writ petition was decided on 23.8.1989. The order of discharge of the two constables was set aside. They were ordered to be reinstated.

3. The learned Single Judge while dealing with the case of respondent writ petitioner, formed an opinion that no ground existed for differentiating the case of the respondent writ petitioner visavis Sanjay Kumar and Chaman Lal. Accordingly, the order of discharge in the case of the writ petitioner, which order has been noticed above, was set aside, It is this judgment of the learned Single Judge, which is subject matter of challenge in this appeal.

4. The learned counsel for the State submits that merely because relief was granted to other Constables by this Court, in writ petition No.

1009/1988, should not have been made a ground for granting the same relief to the respondent writ petitioner. It is urged that the case of the

respondent writ petitioner was different. He had come to the Court belatedly. It is urged that most probably in the other case counter affidavit was

not filed. In this case, counter affidavit was filed and a specific plea was taken that the writ petition is belated. It was also urged that the order of

discharge is a simple order of discharge and, therefore, it could not be said that the order in question has visited the respondent writ petitioner with

penal consequences. It is also urged that merely because relief is granted to two of the co Constables and simply because an appeal was not

preferred against the judgment so given, it cannot be made a ground for coming to a conclusion that the respondent writ petitioner be treated in the

same manner. Concept of equality as contained in Article 14 of the Constitution as per the counsel for the State should not be attracted in this

case.

5. It be seen that the order in question was passed in the exercise of powers conferred under Regulation 187 of the Police Manual. For facility of

reference this regulation is being reproduced below :

#### 187. DISCHARGE OF INEFFICIENTS :

A constable who is found unlikely to prove an efficient police Officer may be discharged by the Superintendent at any time within three years of

enrolment.

6. It is the above rule which was subject matter of interpretation in WP No. 1009/1988. The learned Single Judge of this Court came to the

conclusion that the word ""found"" as used in the said Rule is very categoric. It was observed that some significance has to be attached to the above

word.

7. We are of the opinion that the word "found" as used in Rule 197 does indicate that some fault has to be found in a person whose services are

sought to be brought to an end in terms of Rule 187 of the Police Manual. It is only when something is found against a person, only in that

eventuality, his services could be terminated. In the present case, though it is not apparent from the order, it was urged that the respondentwrit

petitioner was never selected, but somehow or the other he got his name included in the select list. Same was the case visavis Sanjay Kumar and

Chaman Lal, the writ petitioners of WP No. 1009/1988. If above be the situation, and if a conclusion was to be arrived at that there was some

manipulation in the select list of Constables, then it was all the more essential that there was some semblance of observing the principles of natural

justice. If something was found against the petitioner, the petitioner should have been made aware of the same. As this thing did not happen in this

case, therefore, the learned Single Judge has rightly placed reliance on the earlier view expressed by this Court. To the same effect is the view

expressed by this Court in another case reported as 1998 KLJ 115.

8. Independently of above, it be seen that whole deciding WP No. 1009/1998 leave was granted to the State to hold a further enquiry if it so

liked. The operative portion of the judgment in the aforementioned writ petition is clear in the regard. It be seen that inspite of the fact that leave

was granted to the State to hold an enquiry, no such enquiry was ever held and the petitioners of SWP No. 1009/1998 continue to be in service.

In these circumstances, it cannot be said that the view expressed by the learned Single Judge of this Court is a view which requires to be modified

in this appeal.

9. In *Sengara Singh v. State of Punjab*, AIR 1984 SC 1499 the State of Punjab initiated disciplinary action and dismissed about 1100 members of

the Police Force on the ground that they had participated in an agitation which was impermissible under the rules governing the discipline in the

Police Force of the State of Punjab. A number of criminal prosecutions were filed against the participants in the agitation. Some of the members of

the Police Force who were dismissed from service filed writ petitions in the High Court of Punjab and Haryana. These were dismissed.

After the dismissal of the writ petitions about 1000 former members of the Police force were reinstated and criminal cases pending against some of them were withdrawn. A committee consisting of members of the superior rank of the Police Force was constituted by the State Government to review the cases of the dismissed agitators and reinstatement followed on the recommendations of the Committee. It was conceded that of the 1100 dismissed agitators 1000 were reinstated and the rest were left to fend for themselves. Those who were thus weeded out by the Committee filed writ petitions in the High Court. The High Court dismissed the writ petitions. The Supreme Court of India was of the opinion that the order of the High Court dismissing the petitions was not correct. It was observed that delinquents must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly the delinquent petitioners were held entitled to reinstatement. It was observed that if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them they could be reinstated, there was no justification in treating the petitioners differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. It was accordingly held that the treatment meted to the delinquent petitioners suffered from the vice of arbitrariness. Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by the above Article. The position in this case is similar. Two of the co Constables were granted relief by this Court. That decision was not challenged.

10. When the State has condoned the alleged lapse of writ petitioner in SWP No. 1009/1998 then there is no justification to not to grant the same treatment to the respondentwrit petitioner.

11. With regard to delay and laches, the petitioner in the writ petition had given an explanation. He stated that he had applied for a copy of the impugned order. This copy was not made available to him. The specific plea is taken in paragraph ""8"" of the writ petition. He further stated that he had been representing in this behalf to the respondentauthorities. One such representation has been placed on the record of the writ petition as Annexure ""A"". No doubt the respondents in the counter affidavit have denied

this assertion of the writ petitioner and it is submitted that application seeking copy was never made by the writ petitioner, there is however, no assertion that the copy of the order of discharge was in fact made available to the respondentwrit petitioner. It was the duty of the appellants to furnish a copy of the impugned order at the first instance. The respondentwrit petitioner applied for it. His assertion was that he was not made available a copy of the order. There is no proof anywhere that the copy was in fact made available to him. Coupled with the above, the further factual position is that the petitioner had been representing in this regard, therefore, the question of delay and laches would not be of any significance.

12. The learned counsel for the State has placed reliance on a decision given by the Supreme Court in case reported as AIR 1995 SC 129. The aforementioned decision would not be attracted to the facts of this case. This State appeal is found to be without any merit and is dismissed. It is made clear that in case the appellantState had proceeded to hold an enquiry with regard to fraudulent nature of appointments visavis Sanjay Kumar and Chaman Lal, then they can resort to same procedure visavis respondentwrit petitioner also.

13. Otherwise, there is no merit in this appeal, which is dismissed.