
(2018) 02 J&K CK 0048
In the Jammu And Kashmir High Court
Case No : 137 of 2011?MP No 146 of 2011

Wali Mohd Ganai

APPELLANT

Vs

State of Jammu and Kashmir and others

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

[Ranbir Penal Code, 1860](#), Section 471, Section 467 -
Jammu and Kashmir Police Rules, 1960, — Rule 338(2), Rule 138(2)

Citation : (2018) 02 J&K CK 0048

Hon'ble Judges : Alok Aradhe

Bench : Single Bench

Advocate : Rahil Raja, Sanchit Verma, W. S. Narga

Final Decision : Disposed Off

Judgement

1. In this writ petition, the petitioner inter alia seeks quashment of inquiry report dated 19.08.2010 submitted by respondent No. 4 as well as writ

of certiorari for quashment of order dated 15.01.2011 passed by respondent No.

4. The petitioner also seeks writ of mandamus commanding the

respondents to allow the petitioner to continue as Selection Grade Constable in the J&K Armed Police in terms of order 11.06.1992 along with all

consequential benefits. In order to appreciate the petitioner's grievances few facts need mention, which are stated infra.

2. The petitioner was appointed as a Constable in J&K Armed Police on 29.03.1983. The petitioner thereafter was promoted as Selection Grade

Constable vide order dated 11.06.1992. The name of the petitioner was mentioned at Sr. No. 904 in tentative seniority list of the Constables

issued on 5th of February 1991. The services of the petitioner as Selection Grade Constable were terminated on 20th March, 1993 on account of

his unauthorized absence from duty. The aforesaid order was subject matter of challenge in SWP No. 1616/1999. In the aforesaid writ petition,

the respondents did not dispute the status of the petitioner as Selection Grade Constable. The writ petition was disposed of by a Bench of this

Court with a liberty to the respondents to pass fresh order after affording an opportunity of hearing to the petitioner.

3. In compliance of the aforesaid order passed by a Bench of this Court, the Company Commander, D.Coy JKAP, 9th Battalion conducted an

inquiry and submitted inquiry report. The aforesaid report was accepted by the competent authority i.e. Commander, JKAP 9th Battalion and an

order was passed on 27.04.2001 treating the period of absence of the petitioner from 01.12.1992 to 20.03.1993 as earned leave and period from

21.03.1993 to 31.05.2000 as on duty. The competent authority vide order dated 30th April, 2001 fixed the salary of the petitioner as Selection

Grade Constable in the revised pay scale and released consequential benefits. However, the petitioner was again placed under suspension on

27.09.2002. The competent authority ordered an inquiry into the promotion of the petitioner as Selection Grade Constable with effect from

01.06.1992 and appointed Deputy Superintendent of Police Adjutant to hold an inquiry and submit report within 10 days. However, no action in

the matter was taken. Thereupon, the petitioner again visited this Court by filing SWP No. 2773/2002 which was disposed of by a Bench of this

Court vide order dated 14.11.2008 directing the respondents to pay subsistence allowance to the petitioner of the post of Selection Grade

Constable, with a further direction to the respondents to conclude the inquiry within a period of three months from the date of receipt of copy of

the order.

4. It is pertinent to mention here that during the pendency of the writ petition department inquiry was concluded by the Inquiry Officer who, in view

of the nature of the allegations leveled against the petitioner, recommended the investigation of the matter through Crime Branch of Jammu and

Kashmir. The recommendation of the Inquiry Officer was accepted and the matter was referred to the Crime Branch, which registered First

Information Report, namely, FIR No. 42/2003 against the petitioner, Shri G. Q. Matoo, Senior Superintendent of Police, Mohd Nazir, Inspector,

Nazir Ahmad and Mushtaq Ahmad, Head Constables and Sharif-ud-Din Selection Grade Constable. The Crime Branch after concluding the

investigation filed the charge sheet before the Special Judge, Anticorruption, Jammu. The respondents on disposal of SWP No. 2773/2002,

initiated denovo inquiry and appointed the Deputy Inspector of Police, JKAP Armed Range Kashmir to hold an inquiry. The Inquiry Officer after

recording solitary statement of a witness behind the back of the petitioner, served a detailed charge sheet on the petitioner.

5. The petitioner duly replied to the charge sheet and made a request for supply of documents to enable him to file further reply to the charge sheet.

No further proceeding in the departmental inquiry was conducted and neither any witness was examined nor any documentary evidence was

collected and the inquiry was concluded. In the inquiry report dated 19.08.2010, it was inter alia held that the petitioner has absented himself un-

authorizedly from duty from 03.09.1990 to 07.02.1992, and since no inquiry has been held in this regard, an inquiry is required to be held to

decide the unauthorized absence of the petitioner in accordance with law. It was further held that period of absence from 01.12.1992 to

01.06.2000 is required to be decided by holding a denovo inquiry as the earlier inquiry report did not come up to the standards of impartiality,

objectivity and fair play. It was further held that the petitioner continues to hold the post of Constable and not Selection Grade Constable. It was

further held that fixation of pay of the petitioner as Selection Grade Constable is illegal and any monetary benefit given to the petitioner is required

to be recovered from his salary. In the aforesaid factual background, the petitioner has approached this Court seeking the reliefs as stated supra.

6. Learned counsel for the petitioner at the outset, while inviting attention of this Court to the Rule 338 (2) of the Jammu and Kashmir Police Rules,

1960, submitted that since the Inquiry Officer himself had stated in the inquiry report that prima facie commission of cognizable offence is made

out, therefore, the authority inquiring into the case is required to stay his hands and refer the matter to the Inspector General of Police to be dealt

with in accordance with law. However, in flagrant violation of the aforesaid statutory requirement, the inquiry was concluded and inquiry report

was submitted. It is further submitted that the inquiry officer himself accepted the Inquiry Report and acted as a disciplinary authority and no

opportunity of hearing was afforded to the petitioner with regard to the proposed punishment. It is further submitted that departmental inquiry

conducted by the Inquiry officer is vitiated and suffers from procedural infirmity in as much as no document was supplied to the petitioner,

therefore, the inquiry report is required to be quashed.

7. On the other hand, Mr. Sanchit Verma, Advocate appearing vice Mr. W. S. Nargal, Senior Additional Advocate General, submitted that the

petitioner has prepared a false and fabricated order of promotion by inserting his name at serial No. 349 in connivance with the officials of the

department. It is further submitted that the inquiry has been held as per the Rules and the subject matter of present enquiry is not a subject matter

of any earlier departmental enquiry against the petitioner.

8. I have considered the submissions made by the learned counsel for the parties and have perused the record. It is well settled in law that

simultaneous continuance of departmental inquiry and criminal proceedings on the same set of charges is not permissible in law. In this regard

reference is made to the decision of the Supreme Court in the case of Capt. M. Paulanthony vs. Bharat Gold Mines Ltd. and another, (1999) 3

SCC 679. The Supreme Court once again examined the aforesaid legal position in the case of Divisional Controller, Karnataka State Road

Transport Corporation vs. M. G. Vittal Rao (2012) 1 SCC 442 and laid down the principles that are applicable in such situation, which read as

under:

i) There is no legal bar for both proceedings to go on simultaneously.

ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the

criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the

employer clearly lies in a prompt conclusion of the disciplinary proceedings.

iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts

and the evidence in both the proceedings is common.

In the aforesaid decision, the Supreme Court also took note of the reference made in the case of Capt. M. Paul Anthony (*supra*). The aforesaid

decision is referred to by the Supreme Court in the case of *M/s Stanzen Toyotetsu India P. Ltd. vs. Girish V and others*. AIR 2014 989.

9. In the instant case, the service conditions of the petitioner are governed by the J&K Police Rules, 1960. Rule 338(2) of the aforesaid Rules is reproduced below for facility of reference:

The procedure prescribed for the trial of summons cases shall apply *mutatis mutandis* to the departmental enquiries, provided that when the

evidence against an officer discloses, *prima facie*, the commission of a cognizable offence by him, the authority inquiring into the case shall stay his

hands and refer the matter to the Inspector General of Police to be dealt with in accordance with law.

10. Thus, from the perusal of the aforesaid provision, it is evident that in case from the evidence adduced against an official, it comes up that he has

committed the cognizable offence, the authority inquiring into the case shall stay his hands and refer the matter to the Inspector General of Police to

be dealt with in accordance with law. In the instant case, the Inquiry officer has held that from the evidence adduced against the petitioner,

cognizable offence is made out against him, therefore, the same is required to be examined by the appellate authority. Thereafter, First Information

Report, namely, FIR No. 43/2003 was lodged against the petitioner for commission of offences under sections 467 and 471 RPC with regard to

preparing of a false and fabricated order of promotion in his favour. The departmental inquiry has also initiated on the same set of charges,

therefore, in view of statutory mandate provided under Rule 338(2) of the J&K Police Rules, 1960, the same is not permissible. While conducting

the departmental inquiry, neither any witness was examined nor any documentary evidence was collected and the inquiry was concluded. It is

evident that the inquiry has been conducted in flagrant violation of the statutory mandate provided under Rule 338(2) of the 1960 Rules. Therefore,

the same cannot be sustained in the eye of law.

11. In the preceding analysis, impugned inquiry report dated 19.08.2010 as well as order dated 15.01.2011 passed by respondent No. 4, by

which inquiry report was accepted by the disciplinary authority, are hereby

quashed. In view of the fact that the petitioner has been re-instated on the post of Selection Grade Constable, needless to say that he is entitled to salary for the post of Selection Grade Constable. It is made clear that payment of salary to the petitioner on the post of Selection Grade Constable shall be subject to the result of criminal case, which is pending against him as well as Departmental inquiry which may be initiated against the petitioner after conclusion of the criminal case, in accordance with Rule 138(2) of the J&K Police Rules, 1960.

12. Accordingly, the writ petition is disposed of along with connected MP.