
(2004) 09 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1740 of 2000

Zahoor Ahmed Shah

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Constitution of India, 1950 — Article 311
Police Rules — Rule 187

Citation : (2005) 2 JKJ 121

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : M.R. Qureshi, for the Appellant; B.S. Slathia, AAG, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner who was a recruit trainee constable, has been discharged during the training by the Principal, STC Talwara,

Reasi (Udhampur) vide Order No. STC-7359-GS dated 31.5.2000, which is the subject matter of challenge in the present petition. The grounds

on which the petitioner has been discharged from service, have been specified in the impugned order 31.5.2000 itself. The same is reproduced as

under:

REVERSION ORDER

As verified from the Attendance Register Mess Cutting Register, the following recruit constables have not attended the mess during the month of

February- March to May 2000 without any permission or justification.

This is grave misconduct an act of indiscipline on behalf of these Recruit Constables and this set a wrong example for other Recruit Constables.

Moreover, they have not attended the out door/indoor classes regularly which has again an act of indiscipline and deserves strict action.

Keeping in view these facts, below mentioned recruit constables are struck n off from the roll of the training centre and hereby reverted back to

their concerned units with immediate effect. The Commandants concerned are requested to take appropriate action against these R/constables:

1. R/Constable Zahoor Ahmed No. 665/JKAP 5th Bn.

2. R/Constable Prince Kallin No. 617/JKAP 5th Bn.

3. R/Constable Showkat Ahmed No. 372/IR 5th Bn.

Sd/-

(Principal)

STC Talwara (Reasi)

2. Petitioner in the present petition has denied the allegations contained in the impugned order. It is stated that on being selected by the Police

Recruitment Board on 28.5.1999, he was appointed as constable and joined his duties on 20.10.1999. He was deputed for training on

23.10.1999, where he continued till the passing of the impugned order. The allegations contained in the impugned order have been vehemently

denied. It is stated that he attended the classes and parades regularly. The detail of the attendance is given in para- 6 of the writ petition, even

showing the number of days he attended training during the months he was under training. In respect to other allegations that petitioner did not take

his food from the mess from March, 2000 to May, 2000 without permission. It has been stated that in the month of January, 2000, petitioner

proceeded on leave on the eve of Id Festival and developed hepatitis. He was advised by Doctor not to take meals from the mess. He sought

permission from responent-4 for preparation of his own meals and accordingly he prepared his own meals on account of his ailment. He has

placed on record certificate dated 12.1.2002 from Block Medical Officer, Magam, Kashmir wherein it is stated that petitioner is suffering from

Hepatitis . He was advised rest from 12th January, 2002 to 31st January, 2002 and he should take advised food. Petitioner has further stated that

during the course of training, he has been awarded commendation certificate as also the cash award. He has also made certain allegations against

respondents 3 and 4.

3. In the objections filed to the writ petition by respondent-4, it is stated that petitioner was on probation and he was required to under-go the

training and on failure to pass the training course, he is liable for discharge from service and for all disciplinary matters which are governed by the

J&K Police Manual Since the petitioner did not take meal in the mess, he is guilty of grave misconduct, as this act of indiscipline on his part has set

a wrong example for other recruit constables. It is relevant to notice that in the reply, nothing has been said about non attendance of the training as

is the case made out in the impugned discharge order.

4. Admittedly, petitioner is a recruit trainee and is on probation. In so far his attendance during training is concerned, it is mentioned in the

impugned order that he failed to attend training course viz outdoor/indoor classes regularly. However, there is no detail nor this stand is reiterated

in the reply. Conversely, petitioner in para-6 has given details of his attendance, which fact has not been specifically denied or disputed in the reply

filed by the respondents. Regarding non-joining of mess during the months of February and March, petitioner has placed on record a certificate

from the Government Doctor regarding his ailment and medical advice of restricted food habits, though in the reply respondents have stated that

this fact was not brought to their notice and preparation of the meals during training is impermissible. It is further stated that petitioner should have

taken advice from the Police Doctor and sought permission for preparation of meals, if so advised by the doctor.

5. It is evident from the impugned discharge order that petitioner has been discharged on account of alleged misconduct. Admittedly, no

explanation was sought from him nor any show cause notice issued providing him an opportunity to explain the circumstances and allegations

against him. Once the authorities were of the opinion that petitioner has mis-conducted in any manner, it was obligatory to have conduct an

enquiry. Nothing has been done. Petitioner has been condemned unheard. Though the petitioner was on probation, but his discharge on account of

mis- conduct is a stigma and thus, violative of Section 126 of the Constitution of India read with Article 311 of the Constitution. Even Police Rule

i.e. Rule -- 187 is applicable for discharge of petitioner from service only if the

appointing authority is satisfied that he is unlikely to prove an efficient police official. No such satisfaction has been recorded. The discharge of petitioner cannot be said to be in accordance with the Police Rules or permissible under law. The discharge of petitioner is accordingly illegal and violative of principles of natural justice.

6. I am fortified with the decision of this Court in case State of Jammu & Kashmir and Others Vs. Firdous Ahmad Sheikh and Others, , wherein the Hon'ble Court observed as under:

Moreover, as observed earlier in this judgment, under Rule 187 of the Police Manual a constable can be discharged from service if the appointing authority is satisfied that he is unlikely to prove an efficient police officer, but in this case no such satisfaction has been recorded. The order of discharged of the plaintiff- respondents from service are, therefore, violative of Rule 187 of the Police Rules and on this score too the orders cannot be sustained.

7. In the above case, the discharge of constable in violation of Rule 187 and principles of natural justice, is held to be bad in law.

8. This petition is accordingly allowed. The impugned discharge order is quashed. Respondents are directed to take back the petitioner in service,,.

Allow him to complete the training and grant him all consequential benefits including seniority as per the merit at the time of recruitment.