

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

Case: SWP 519/1994 & CMP No. 968/1994

Date of decision: 12.2.2008

Abdul Majeed Vs. State of J&K and others.

Coram

Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge

Appearing Counsel:

For the petitioner(s) : Mr. M. A. Bhat, Advocate.

For the respondent(s): Mr. B. S. Salathia, Addl. Advocate General.

JUDGEMENT

This case has a chequered history. It seems that the petitioner is an unfortunate one. He came to be recruited as Constable in Jammu & Kashmir Armed Police in the year 1990, was posted at Narbal Bridge, Srinagar in the month of July, 1993 and in the intervening night 26th/ 27th July, 1993, militants are said to have stormed the said police post and took away/ snatched away the weapons of the writ petitioner and other police officials, who were manning the post. It appears that the petitioner came to be dismissed from service vide order dated 04.02.1994, impugned in this petition.

The petitioner has challenged the impugned order on various grounds taken in the memo of writ petition.

Respondents have resisted the petition on the grounds taken in the reply/ counter. The petition came to be allowed vide

judgment and order dated 17.08.1999. Feeling aggrieved, the respondents- State filed an appeal (LPASW No.147/2000) and questioned the said judgment. The Letters Patent Appeal Bench set aside the impugned judgment vide its judgment and order dated 16.11.2005 and remanded the case back with a command that writ petition shall survive and be restored to its original number with liberty to the parties to file their pleadings in this petition.

Additional pleadings came to be filed on behalf of the writ petitioner by medium of additional affidavit on 06.03.2006. Respondents filed objections in response to the additional affidavit.

Heard. Perused. Considered.

Respondents have produced record. It is admitted case of the parties that the petitioner was a Constable and came to be dismissed vide impugned order. The crux of matter is whether the respondents have conducted proper regular inquiry in terms of Rule 359 of the Jammu and Kashmir Police Manual.

I have gone through the record. It appears that a charge-sheet came to be framed on 11.08.1993 and petitioner submitted reply to the said charge-sheet (Pages 75-76 of the record). Thereafter, again a show-cause notice came to be issued to the petitioner on 01.01.1994 asking the petitioner to show cause why he should not be removed from service, and thereafter impugned order came to be passed. There is nothing on record suggesting the

fact that who conducted the regular inquiry, who were the witnesses examined during inquiry and on which date the witnesses were examined. Neither there is final inquiry report nor record of that inquiry. It is also worthwhile to mention here that after scanning the entire record, which consists of 214 pages (two hundred fourteen) there is nothing on record suggesting the fact that regular inquiry was conducted and witnesses were examined. Had inquiry officer examined the witnesses, then their statements would have been on record.

The petitioner has taken a specific plea in para 10 of the writ petition that respondents have not conducted any inquiry worth the name. It is profitable to reproduce para 10 of the writ petition herein:-

‘10. That vide his No.CS/Eng/35/13 dated 1-1-94, the Commandant 13th Bn. JKAP Srinagar issued a Show-Cause notice reiterating the context of the Charge-sheet with out holding any enquiry worth the name at all.....’

The respondents have not denied the contents contained in para 10 of the writ petition and have also not said that a full-fledged inquiry came to be conducted. Virtually, they have admitted the contentions raised by the petitioner. It is profitable to reproduce para 10 of the reply herein:-

‘10. Para 10 of the petition narrates the show cause notice issued to him dated 1.1.94 which is matter of record. The said show cause notice is very clear on material particulars that due to the negligence of the petitioner, the police force suffered badly in losing the men and material from the said Police Post guarding the said bridge in question, thus, the petitioner failed to perform his legitimate duty to alert other security guards to retaliate the militant attack on the said date on the said bridge.’

It is beaten law of the land that the services of Government employee cannot be terminated without any regular inquiry. Rule 359 of the J&K Police Manual mandates how to conduct a regular inquiry and how to dismiss a police official from the service.

In the given circumstances of the case, the impugned order merits to be quashed. It is, accordingly, quashed with a liberty to the respondents to conduct fresh inquiry. The service benefits from the date of termination order till today are subject to the result of inquiry, if conducted. If inquiry is not conducted, then the petitioner is not entitled to any monetary benefits right from dismissal order till today. However, it will not be termed as a break in his service and is to be computed for other service benefits including pension.

Writ petition stands disposed of in the terms stated above
alongwith connected CMP.