

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

SWP No. 783/2010

Date of decision: 28.05.2015

Mukhtar Ahmad Lone

Vs.

State of J&K & ors.

Coram:-

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:-

For the petitioner(s):- Mr. Hilal Ahmad Wani, Adv.

For the respondent(s):- Mr. B.A.Dar, AAG.

1. Petitioner was appointed as Constable in the year 1999, so was not a probationer; for terminating the services of such Constable, enquiry in terms of Rule 359 of the Police Rules was imperative.
2. Vide order No. 163 of 2009 dated 19.02.2009 he has been discharged from the services with effect from the date of his continuous absence i.e. 18.12.2008. Aggrieved thereof instant petition has been filed, which earlier was allowed vide judgment dated 27.07.2011, wherein it was observed that the petitioner was not on probation as he had completed 10 years of his service, therefore, for his discharge from the services full-fledged enquiry in terms of Rule 359 of Police Rules was required. Furthermore, he had been discharged without any opportunity of being heard. The order was set aside; period of absence was to be determined on the basis of the outcome of the enquiry. It was also observed that in case no enquiry shall be initiated then he shall not be entitled to the salary from the date of his absence till the date of the judgment.

Against the said judgement LPA No. 88/2012
was filed by the State, which has been allowed.
Judgment dated 27.07.2011 has been set aside.

The matter was remanded back to the writ court with the request to examine whether the enquiry on the fact of it appeared to have been conducted by the respondents, was held in accordance with Rule 359 J&K Police Rules and then to deal with the writ petition in accordance with law. This is how this petition has again come up for hearing before the Court.

3. The enquiry file has also been produced. Rule 359 of the Police Rules provide the procedure to be followed by the enquiry officer. He has to summon the delinquent officer and to read out to him a statement summarising the alleged misconduct. If a delinquent officer does not admit the allegations then the enquiry officer has to record evidence both oral as well as documentary; wherever possible witnesses shall be examined in the presence of the delinquent officer who shall be given opportunity to cross-examine them. Then the delinquent officer is also to be given opportunity to lead the evidence as against the charges framed against him. As per the Sub Rule 11, no officer can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity to show cause orally and also in writing against the action proposed to be taken against him.
4. In the aforesaid backdrop, now it is to be seen as to whether the enquiry record suggests that the enquiry is conducted in the manner as prescribed. Perusal of the record suggest that show cause notice has been issued on 07.02.2009. Charge sheet appears to have been framed and the delinquent officer has submitted his reply. The enquiry has been conducted by the Superintendent of Police, Anantnag as was entrusted to him by the Senior Superintendant of Police, Anantnag vide order dated 27.11.2008. The enquiry officer has recommended that

the delinquent officer shall be discharged from services and the period of absence shall be treated as dies non on the analogy of '*no work no pay*'.

5. The first important situation which has emerged is that no evidence has been recorded nor the reply as submitted by the delinquent officer has been properly considered. No-doubt enquiry has been conducted but not in consonance with the requirement of Rule 359 of Police Rules. In addition thereto after the recommendation was made by the enquiry officer, the disciplinary authority was required to serve notice upon the delinquent officer regarding the proposed punishment and the copy of the enquiry report was also to be furnished to him which has not been done.
6. When the enquiry has not been conducted in the manner as prescribed under Rule 359 of Police Rules then again before imposing penalty the petitioner has not been given chance to show cause as against the penalty proposed. When it is so the order of discharge passed by the disciplinary authority (SSP Anantnag) does not survive for the test of law, as such, is set aside, leaving it open to the respondent authority, if they so chose, to initiate enquiry afresh strictly in consonance with Rule 359 of Police Rules and to pass appropriate orders thereon as shall be warranted. Otherwise the period of absence of the petitioner till he is taken back into service no pay shall be payable to the petitioner, however, that period shall only be counted for pensionary benefits.
7. Disposed of as above along-with connected CMP.
8. Record, as produced, be returned to the learned counsel for the respondents.

(Mohammad Yaqoob Mir)

Judge

Srinagar
28.05.2015
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