

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.1616/2010

Date of Order:24.09.2015

Abdul Hamid Mir

Vs.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing Counsel:

For the petitioner(s)/Appellant(s): Mr. Hilal Akbar Lone.

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

- 1) Vide order No.3138/2009 dated 07.12.2009 impugned, respondent No.3, in exercise of powers conferred under Rule 335 of the Police Rules, has removed the petitioner (Constable) from service. The period of suspension w.e.f. 19.07.2009 to 08.08.2009 has been treated as on earned leave and the period w.e.f. 09.08.2009 till date of order i.e. 07.12.2009 has been treated as on duty having remained present during this period.
- 2) Petitioner, admittedly, was appointed as Constable in the year 1999 allotted No.814/IRP 5th Bn. He had remained unauthorizedly absent w.e.f.19.07.2009. An information was received by Special Police Component to the effect that he had developed connections with militant outfit LeT(Lashkar-e-Toiba) and clandestinely had conspired to carry out activities prejudicial to the security of the State. He was possessing illegal arms, based on which

case has been registered as FIR No.77/2009 P/S Sheergari for commission of offences punishable under Section 7/25 Arms Act, 121-A, 120-B RPC read with 30 Police Act. Allegedly during investigation of the said case, two Chinese made hand grenades were recovered from his possession. He had been placed under suspension and the departmental enquiry was ordered to be conducted by Deputy Superintendent of Police of Special Police Component, Srinagar.

- 3) The said enquiry officer had submitted the report recommending petitioner to be discharged from service. The disciplinary authority (respondent No.3) before taking a final decision issued show cause notice in terms of Rule 359(II)(2) of the Police Rules calling upon the petitioner to show cause as to why he should not be discharged from service. The said show cause notice has been responded to by the petitioner which on consideration was found unsatisfactory. Finally, he has been removed from service.
- 4) The first contention as raised is that the petitioner was not associated with the enquiry proceedings by the enquiry officer so has been condemned

unheard. 2nd, Further, the disciplinary authority while issuing show cause notice regarding proposed punishment had not sent copy of the enquiry report or the material forming base of the enquiry report to the petitioner disabling him from making an effective representation as against the proposed punishment.

- 5) According to learned AAG, the petitioner was associated with the enquiry proceedings. During the course of enquiry, summary of allegations has been served upon him, he has admitted the guilt and it is in view of his clear admission the enquiry officer had formulated the report and submitted the same to the disciplinary authority, therefore, there was no requirement of sending him copy of the enquiry report as well as the material forming base of the said enquiry report along with show cause notice proposing punishment.
- 6) When learned counsel for the petitioner and the petitioner were confronted with the summary of allegations as available on the records produced by learned AAG, showing the petitioner to have admitted the guilt and signed the same, petitioner in the open Court stated that he was never called

nor associated with the enquiry proceedings and the signature on the summary of allegations as recorded does not belong to him as it has been manipulated. It is neither in his writing nor he has signed the same which would mean that the signature has been concocted.

- 7) What would emerge from the perusal of enquiry proceedings is that the petitioner appear not to have been put on notice by the enquiry officer. Now the question is as to whether petitioner had signed the summary of allegations as were served upon him and as to whether signature and admission of guilt as recorded, is in his hand writing or not.
- 8) When show cause notice proposing punishment has been served upon the petitioner, the report of the enquiry officer including the summary of allegations and then the admission of guilt as recorded on the leave containing summary of allegations had not been sent to the petitioner and in case same would have been sent to him, he would have clearly answered it by denying or accepting the same.

- 9) In the reply to the show cause notice proposing punishment, petitioner had made it clear that on the date of recovery of arms, he, in fact, was on duty and an official is a witness to the same. He will not disclose name of the said official till fair enquiry is not conducted into the alleged misconduct. In the reply he has further stated as under:

“I have not been given chance to controvert the allegations made during the process of the inquiry to which I have never been associated with.”

He has further made it clear that his involvement is venomous as he has been involved in a frivolous and concocted case. The enquiry officer has not followed the procedure.

- 10) Contention of the learned AAG that non-sending of copy of the report/recommendation of the enquiry officer and the material forming base of the same has not caused any prejudice to the petitioner as he has voluntarily accepted the summary of allegations and to the acceptance he is a signatory. Same position is not denied. This contention of learned AAG loses significance in

view of the fact that the petitioner has denied to have signed any summary of allegations. In case recommendations/ report of the enquiry officer along with relevant material including summary of allegations, which according to learned AAG bears signature of the petitioner, would have been send to the petitioner, he would have been in a position to deny or accept the same. When same has not been sent to him nor he knew about the same, how could he be expected to have denied or accepted the same.

- 11) The object of holding enquiry is to provide appropriate opportunity to the delinquent to make his position clear which he may or may not avail is a different issue or even after availing the same he may not be in a position to come out of the allegations, that too is a separate issue but the requirement of law to associate the petitioner with the enquiry was imperative except for the default of the petitioner. The petitioner has been deprived of defending himself. Lapse of the disciplinary authority in not sending copy of the report/ recommendation of the enquiry officer along with material forming base for the same or at least

copy of summary of allegations to which petitioner is alleged to be a signatory having allegedly admitted the guilt, gives rise to a serious prejudice offending principle of providing of opportunity of being heard.

- 12) It is clear that the show cause notice proposing punishment having been send without copy of report/recommendation of the enquiry officer and the material, more particular summary of allegations shown to have been accepted and signed by the petitioner, does not serve the object i.e. the petitioner has been deprived of projecting his case. In case recommendation of the enquiry officer as well as summary of allegations would have been served upon the petitioner, he may have made his position about his non-association by the enquiry officer clear which may have persuaded the disciplinary authority to ask the enquiry officer to clarify the position and the order of discharge could not have been passed before clarifying the position by the enquiry officer or by holding such other proceedings so as to ascertain as to whether petitioner had appeared before the enquiry officer during the enquiry proceedings and

as to whether he had admitted the guilt and thereafter had signed the summary of allegations served upon him.

- 13) For the stated reason, petition is allowed. Order impugned bearing No.3138/2009 dated 07.12.2009 is set aside. The disciplinary authority (respondent No.3) shall afresh issue show cause notice proposing punishment. Same shall be accompanied by copy of summary of allegations on which petitioner is shown to have signed so as to enable the petitioner to project before the disciplinary authority that further enquiry is required. Depending upon cogent cause as shall be projected, the disciplinary authority shall proceed in the matter on proper satisfaction either way i.e. either to award punishment or to ask for further enquiry and thereafter to pass appropriate orders as shall be warranted. Meanwhile, petitioner be taken back into service
- 14) Writ petition, accordingly, succeeds, as such shall stand disposed of.
- 15) The record as produced by learned AAG be returned to him.

(Mohammad Yaqoob Mir)
Judge

Srinagar
24.09.2015
“Mohammad Altaf”