

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

SWP No.721/2008

Date of Order: 29th July 2015

Bashir Ahmad Mir

Vs.

State of JK and Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

For the petitioner(s): Mr. Gul Ayaz, Adv

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

Impugned is the order No.822/2006 dated 25th March, 2006 issued by the Senior Superintendent of Police, Srinagar where under the respondent-SSP in exercise of the powers vested under Rule 359 (11) (2) (B) of J&K Police Manual read with Rule 128 J&K CSR and 208 (g) of J&K Police Manual, the petitioner has been removed from service with effect from 15th March, 2006 i.e. the date he has absented himself un-authorisedly.

According to the learned counsel for the petitioner, the order has been passed in a most casual fashion totally de hors the rules. In opposition, learned AAG submits that the petitioner belonged to a disciplined force, his conduct was such which never deserve him to be on the rolls of the disciplined force. The petitioner has earlier been imposed two major and one minor punishments. Four times he had been chosen for BRTC Training but such orders were not complied with. Therefore, the authority was persuaded to take harsh step for removing him from service.

It is quite clear that neither any enquiry has been conducted nor any enquiry officer has been appointed. The

disciplinary authority too without any enquiry has passed the order of removal. Such action of the respondent-SSP is not countenanced by the rules.

The respondent-SSP has referred to Rule 359 (11) (2) (B) of J&K Police Manual but has not followed the same. Rule 359 (11) (2) (B) of J&K Police Manual provides that no Police Officer shall be dismissed or removed or reduced in rank until he has been given reasonable opportunity of showing cause orally and also in writing against the action proposed to be taken. The said rule is controlled by the proviso i.e. without enquiry, a person can be dismissed or removed on the ground of conduct which led to his conviction on a criminal charge or where the authority is satisfied that for some reasons to be recorded in writing, it is not reasonably practicable to give to that person an opportunity of showing cause or where the Governor is satisfied that it shall be in the interest of the security of the State not to give any opportunity to the officer/official concerned.

In the impugned order, it is nowhere recorded that it was impracticable to serve the notice upon the petitioner nor any reason is recorded for the same. The normal course available as per the rules was that the disciplinary authority should have appointed an enquiry officer and then should have on the basis of the enquiry proceeded further. The petitioner had a right to participate in the enquiry proceedings or in the disciplinary proceedings. May be conduct of the petitioner may not be befitting to the disciplinary force but when an officer/official is to be

removed from service or otherwise dismissed, the rule position cannot be compromised, rules have to be strictly adhered to. The petitioner was required to be given reasonable opportunity of showing cause against the proposed or imposed penalty. In any case, the order impugned does not satisfy the requirement of the rules, as such, is unsustainable so is quashed, leaving it open to the respondent authorities if they so chose to initiate appropriate proceedings against the petitioner and conclude the same with promptitude preferably within a period of six months from the date copy of the order is served upon them.

Petition succeeds and accordingly is disposed of alongwith connected CMPs.

(Mohammad Yaqoob Mir)
Judge

Srinagar:
29.07.2015
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