

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.504/2009
CMP No.835/2009

Date of Order:31.08.2015

Rafiq Ahmad Mir

Vs.

Union of India & ors.

Coram:

**Hon'ble Mr. Justice Mohammad Yaqoob Mir,
Judge**

Appearing Counsel:

For the petitioner(s)/Appellant(s): Mr. M. M. Khan.

For the respondent(s): Mr. S. N. Ratanpuri.

1. Petitioner seeks quashment of order No.9BN/B/DAR/153 / 3/2006-3368 dated 25th September, 2006 passed by respondent No.4, where-under petitioner has been removed from service.
2. Admittedly, petitioner has been appointed in the respondent department in the year 1993 and had risen to the rank of Head Constable. He had suffered shoulder injuries while on duty so was put on prolonged treatment. Finally, was compelled to apply for leave on medical grounds which had been sanctioned but his request for extension of leave had not been accepted, instead he was marked as absent, as a result whereof enquiry had been instituted against him in which proceedings he has not participated. Finally, punishment was imposed i.e. he was removed from service. He had preferred appeal before the appellate but without success. Then statutory revision was also filed but that too without success. Thereafter filed petition before Central Administrative

Tribunal which was returned for want of jurisdiction, hence the instant writ petition.

3. Learned counsel for the petitioner projected that the petitioner had not deliberately absented but, in fact, his health condition was such which forced him to avail leave and then to apply for extension of leave. The enquiry has been conducted in exparte and he has been condemned unheard. The enquiry and disciplinary proceedings have been concluded in haste and in violation of applicable rules.
4. Learned counsel for the respondents vehemently opposed the contention by stating that the petitioner with all calculations has chosen to remain absent. That apart, sufficient chances have been afforded to him which he did not chose to avail and opted not to participate in the enquiry proceedings as well as disciplinary proceedings. The conducted of the petitioner in not participating in the enquiry as well as disciplinary proceedings is clearly reflected in the order under challenge and same is duly supported by the records as he collected and produced for perusal of this Court.
5. Considered the rival submission.

6. Basically petitioner had applied for leave which was sanction for ten days, then has overstayed with effect from 01.10.2006, as a result whereof, charge sheet was issued under Rule 153 of "The Railway Protection Force Rules, 1987" (for short RPF Rules). Shri Matadeen Meena CC C-Coy 9 BN/RPSF was nominated as enquiry officer by the disciplinary authority. The enquiry has been conducted in accordance with RPF Rules. Petitioner has been served with charge memorandum through a special messenger HC Abdul Samad Mir B. Coy 9BN/RPSF in accordance with Rule 153(6) of RPF Rules. On the date of enquiry dated 19.06.2006, he did not turn up. He was again served a notice through special messenger HC M. A. Shah which he had acknowledged on 26.06.2006 but despite that he did not attend the enquiry proceedings nor has given any reason for the same. In the same background, the enquiry officer had proceeded in exparte and has recorded statements of witnesses and on examining the records pertaining to sanction of leave and his absence concluded that the delinquent is guilty of charge, as such, submitted his enquiry report to the disciplinary authority. The disciplinary authority in accordance with Rule 154.2 of RPF Rules, before imposing punishment, has sent a copy of enquiry report to

the petitioner by registered post so as to enable him to submit his representation which he failed. Then again copy of enquiry report has been sent to him through special messenger HC F. A. Tantray of A Coy 9BN/RPSF on 24.08.2006. The receipt of the enquiry report was acknowledged by the petitioner on 27.08.2006. Again he was given chance to submit his representation which he did not. Finally, competent authority has concluded that the proceedings against the petitioner were unbiased and impartial, principles of natural justice were strictly followed and then in view of powers vested has imposed punishment i.e. has removed petitioner from service.

7. The petitioner has not been able to show as to why he has not responded to the repeated reminders, how could he claim violation of principles of natural justice when he himself is a defaulter having not chosen to participate in the proceedings. It appears that the petitioner had taken everything for granted. When he has been afforded several opportunities, he has chosen not to avail the same, how can he now turn around to say that the rules and principles of natural justice have been violated. He himself, in effect, is a violator. There is neither any reason nor position of law which supports the case of the petitioner. The order of removal passed does not call for

any interference. Petition, as such, is held to be without merit, therefore, dismissed along with connected CMP.

8. Record as produced by learned counsel for respondents be returned back to him.

(Mohammad Yaqoob Mir)
Judge

Srinagar
31 .08.2015
“Mohammad Altaf”