

Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 747/2021
(S.W.P. No.233/2008)

Thursday, this the 29th day of April, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Head Constable Nirmal Singh No. 11/WJ
S/o. Late Sh. Isher Singh, Age 48 years,
R/o. Sher-e-Kashmir Police Academy,
Udhampur.

..Applicant

(Mr. K S Johal, Senior Advocate)

VERSUS

1. State of J&K through its,
Chief Secretary, Civil Secretariat,
Jammu.
2. Commissioner-cum-Secretary,
Home Department, Civil Secretariat,
Jammu.
3. Director General of Police,
J&K State, Jammu.
4. Inspector General of Police
(Mod) PHQ J&K, Jammu
5. Assistant Director (Trgs)
S. K. Police Academy,
Udhampur,
6. Head Constable MohdShafi No.: 20WJ,
PTWS Jammu.
7. Head Constable MohdRamzan
Police Transport Workshop,
Srinagar.

..Respondents

(Mr. Sudesh Magotra, Advocate)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:



The applicant was working as Head Constable in the Jammu & Kashmir Police. He became due for transfer somewhere in the year 2006 when he was working at Jammu. It is stated that he approached the Director General of Police with a representation that there is another Head Constable by name Mohd. Shafi (respondent No.6), who is prepared to be posted at Udhampur and he may be spared from transfer. Acceding to his request, the administration did not transfer him. At a later stage, disciplinary proceedings were initiated against him, alleging that he forged the letter of other Head Constable by name Mohd. Shafi. The applicant denied the allegation. An inquiry was conducted and the applicant states that several steps were taken without notice to him. Ultimately, the Disciplinary Authority (DA) passed an order dated 10.08.2007, imposing the penalty of forfeiture of annual increments for a period of five years till the next increment became due. The applicant filed SWP No.233/2008 before the Hon'ble High Court of Jammu & Kashmir, challenging the order of punishment.

2. The applicant contends that the very charge leveled against him is without any basis; and that the so-called departmental inquiry was conducted in utter breach of the

prescribed procedure. He contends that on the conclusion of the inquiry, the report thereof was not furnished to him and the punishment was imposed upon him straightway, despite a specific objection being raised by the applicant in his reply to show cause notice. Various other contentions were also urged.



3. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the charge against the applicant is serious in nature and was held proved by referring to the Forensic Science Laboratory (FSL).

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.747/2021.

5. Today, we heard Mr. K S Johal, senior counsel for applicant and Mr. Sudesh Magotra, learned Deputy Advocate General.

6. The applicant was imposed the punishment of forfeiture of annual increments for a period of five years, till the next increment became due. It was on the allegation that he forged a letter, said to have been submitted by one Head Constable by name Mohd. Shafi (respondent No.6). It has already been mentioned that the whole episode was referable to the proposed transfer of the applicant from Jammu to Udhampur. The plea of



the applicant was that when he approached the Director General of Police with a request to retain him at Jammu, it was indicated that if another Head Constable is willing to join Udhampur, he may be spared. The applicant is said to have requested Mohd. Shafi and he agreed with the proposal. Necessary steps in this behalf were taken. At a later stage, it was alleged that Mohd. Shafi did not sign the letter at all.

7. In matters of this nature, the elements of criminal offence and misconduct under the Conduct Rules come into play. A mechanism is devised by the Police by incorporating Rule 349 (1) of Jammu & Kashmir Police Manual, which reads:

“349 CRIMINAL OFFENCES BY POLICE OFFICERS AND STRICTURES BY COURT, (1) Whenever a Superintendent of Police received a complaint against a police officer that under colour of his duties he has committed an offence, as defined in the Ranbir Penal Code, the substance of the complaint shall be reported immediately to the District Magistrate who will decide whether the investigation of the complaint shall be conducted by a police officer or by a Magistrate. If he decides that the investigation or a trial or an inquiry under the Criminal Procedure Code should be held by a Magistrate, he shall proceed according to the instruction laid down in the Rules and Orders (Criminal) for, the guidance of Courts Subordinate to the High Court.”

8. For one reason or the other, no action was taken against the applicant under this provision and straightway, the disciplinary proceedings were initiated against him. A report, said to have been obtained from the FSL, was not furnished to the

applicant. A finding is said to have been recorded by the Inquiry Officer holding the charge as proved.



9. It is fundamental that whenever a finding is recorded to the effect that the charge is proved, the report of the Inquiry Officer must be made available to the delinquent employee, so that he can submit his explanation/remarks. In the instant case, the applicant was issued a show cause notice proposing the punishment. He submitted a detailed reply stating that the report of the Inquiry Officer, various documents relied upon in the inquiry, were not made available to him. Without making any mention of that, the impugned order was passed on 10.08.2007 imposing the punishment. Relevant paragraph of the order reads:-

“Whereas, the findings of the E.O. were examined at PHQ and in view of the gravity of the misconduct; it was proposed to inflict punishment of “reduction in rank” to HC Nirmal Singh for which he was served a Show Cause Notice by PHQ vide endstt. No. Estt/MT-02/2006-47561 dated 15.11.2006, to which he submitted the reply on 30.11.2006. In his reply, the HC has tried to prove his innocence besides, pleading that his domestic circumstances were not favourable. The delinquent HC was also heard in person but for the lapse he has done, he had nothing to adduce.

Whereas, on perusal of the enquiry papers and other records on file, it is undoubtedly clear that the HC has exhibited grave misconduct by way of filing wrong application with forged signatures, for which he deserves to be punished. The act on the part of delinquent HC clearly borders on criminal misconduct, for which a stringent action is warranted against him and, therefore, having regard to the charges made out by the Enquiry officers

against the delinquent HC Nirmal Singh No.11/WJ, presently working in SKPA Udhampur, are forfeited for a period of five years from the date, the next increment falls due to him, to serve as a deterrent to him in future.”



10. It is fundamental that any employee against whom disciplinary proceedings are initiated is furnished with a copy of report of Inquiry Officer. That is the protection given to him under law. He shall be entitled to point out the defects or deficiencies, if any, in the report. If it is not furnished, the order of punishment becomes vitiated.

11. We are aware of the judgment of Hon'ble Supreme Court in **Managing Director, ECIL v. B. Karunakar & others**, 1993 SCC (L&S) 1184, becomes relevant here. It has been held that if any defect is found, it is not necessary that the entire disciplinary proceedings must be set aside and steps can be resumed from the stage, the defect was noticed. However, in the instant case, the inquiry is referable to the year 2006. The Writ Petition was pending before the Hon'ble High Court for the past one and half decades. No useful purpose would be served at this stage, if the matter is remanded back to the authorities for fresh consideration.

12. We are of the view that the balancing act can be chosen by setting aside the impugned order on the one hand and denying

the applicant the arrears on the other. Learned senior counsel for applicant did not raise any objection to this course of action.

13. We, therefore, allow the T.A. and set aside the impugned order dated 10.08.2007. The applicant shall be entitled to the restoration of his pay scale and the promotions, if any, denied on account of the impugned order. However, he shall not be entitled to be paid any arrears. The pay and other benefits shall be restored to him within two months from the date of receipt of a copy of this order.



There shall be no order as to costs.

(AradhanaJohri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 29, 2021
/sunil/mbt/sd/