

Falail Singh Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Sep-30-2004

Reported in : 2005(1)JKJ364

Judge : S.K. Gupta, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226; ;Constitution of Jammu and Kashmir - Section 103; ;Police Rules; ;Police Act

Appeal No. : SWP No. 1265/1999

Appellant : Falail Singh

Respondent : State and ors.

Advocate for Def. : K.S. Johal, A.A.G.

Advocate for Pet/Ap. : Surinder Kour, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. Petitioner was enrolled as Constable in J&K; Police Department and allotted No. 156/PTC. Subsequently, he was promoted as Selection Grade Constable on 14.5.1986 and thereafter as Head Constable in June 1997. In the year 1989 the

petitioner was posted and attached with Sher-I-Kashmir Police Training College, Udhampur (PTC Udhampur for short). According to the petitioner, a case was registered against him by Vigilance Organisation under FIR No. 67 of 1984 on a complaint lodged by one Ghulam Qadir Sofi. The petitioner had to attend the court of Anti-Corruption at Srinagar every month when the date was fixed and on account of this he could not attend the duties. Order No. 352 of 1989 dated 12.6.1989 came to be issued by which increment for three months of the petitioner came to be stopped. Thereafter Order No. 606 of 1989 dated 16.9.1989 came to be issued by the respondents, whereby, increment of the petitioner was stopped for a period of one year. Further, order No. 158 AP (O) dated 18.12.1989 came to be issued by the respondents whereby proceedings were ordered to be initiated against the petitioner. The increment of the petitioner for further two years was forfeited vide Order No. 117 of 1990 dated 20.2.1990. Again order No. 144 of 1990 dated 8.3.1990 was passed by the respondents by virtue of which Censure was awarded to the petitioner and the period of overstay of 9 days was treated as dies-non. Further plea of the petitioner is that every time when he had to go on leave to attend the court at Srinagar, his leave application was not considered by the respondents. The representations of the petitioner, narrating the facts in detail, including one that his son remained sick and being only male member in the family, he had to look after the child also, a reason for his overstay, did not merit acceptance. His further submission is that, punishments awarded are likely to affect his future and, as such, he has approached this Court for quashment of aforesaid orders, by invoking jurisdiction of this Court under Article 226 of the [Constitution of India](#) read with Section 103 of the Constitution of J&K; State, for issuance of appropriate writ or direction in this behalf.

2. Challenge to the impugned orders has been made by the petitioner on the grounds that respondents have stopped the increments of the petitioner without conducting any enquiry. No opportunity of hearing has been afforded to the petitioner before passing the impugned orders, which shows malafide intention of the respondents. The representations, filed by the petitioner, giving cogent reasons for his overstay, have not been considered. The petitioner has further pleaded violation of principles of natural justice in awarding the punishments, without proper enquiry and giving him opportunity to cross examine the witnesses.

3. On the other hand, respondents in their detailed reply submitted that the petitioner, having not exhausted the statutory remedy, provided under the Police Rules, renders the writ petition not maintainable under law. The petitioner has approached the Court after nine years and the writ petition is hopelessly barred by delay and laches and on this account alone it deserves to be dismissed. On facts, the respondents submitted that, ever since his enrolment in the Police Department, the conduct of the petitioner remained under clout because of his being a habitual absentee. It is after due enquiry and affording him opportunity of being heard that disciplinary action was taken against the petitioner, which never came to be challenged by availing statutory remedy available under Police Act and Rules framed thereunder. The respondents further stated to have conducted proper enquiry under rules and petitioner also had participated in such enquiry. After affording the petitioner full opportunity of being heard the orders with regard to stoppage of increments, for different periods, were passed. The representations, stated to have been made by the petitioner against the orders impugned, were filed after a lapse of 7/8 years of the passing of the orders and that too without any justifiable grounds to modify the orders. The conduct of the petitioner had compelled the respondents to take such disciplinary action, in order to maintain discipline in the department. The procedure laid down in Rule 359 of Police Manual was strictly followed while conducting disciplinary enquiry against the petitioner and the action taken was based on such enquiry.

4. I have heard the learned counsel for the parties and also perused the record, produced by the respondents, meticulously.

5. Learned counsel appearing for the petitioner vehemently argued that the increments of the petitioner were stopped for various periods by different orders, without conducting any department enquiry into the alleged misconduct in accordance with the procedure laid down in Rule 359 of Police Manual. Neither the petitioner was given opportunity to cross examine the witnesses nor of being heard before issuance of impugned orders, which has occasioned serious prejudice to him.

6. On going through the record, produced by the learned counsel for the respondents, it is clearly found that the petitioner absented himself, unauthorized, from duty on 1.6.1988, He was marked absent vide DD report No. 8 dated 2.6.1988. The petitioner resumed duty on 11.7.1988, after 40 days absence. Detailed enquiry was conducted in to his grave mis-conduct/indiscipline by Mr. J.L. Sharma, Dy. S.P. The enquiry officer served the petitioner with summary of allegations. The enquiry officer recorded the statements of witnesses in corroboration of the allegations made against the petitioner. Ample opportunity was given to the petitioner to cross examine the witnesses. In reply to the charge sheet, the petitioner did not furnish sufficient and satisfactory explanation and the enquiry officer did not find any justification to regularize the absence of the petitioner. After observing the codal formalities, required under the Police Manual, the enquiry officer recommended stopping of annual increment for one year. The Vice Principal of PTC Udhampur, vide order No. 352 of 1989 dated 12.6.1989, agreed with the recommendations of the enquiry officer and stopped the increment of the petitioner for three months and the period of absence was treated on commuted leave on full pay. Against this order, representation was made by the petitioner to the Director-Principal, PTC Udhampur. The Director-Principal, after having examined the record of the case of the petitioner, found that the petitioner is a habitual absentee and on that account, he had been served with a show cause notice, in reply to which the petitioner explained that leave applied was not sanctioned. The Director-Principal found the explanation to be not plausible for having remained absent. He also found the petitioner having not improved his conduct in the matter of performance of his duties and, as such, order No. 352 of 1989 dated 12.6.1989 was quashed and period of absence was regularized as dies-non and increment of the petitioner was stopped for one year, with an opportunity to the petitioner to file the appeal against the order, if he so desired, within the statutory period.

7. Record further disclosed that the petitioner again remained absent from duty for a period of nine days with effect from 13.8.1989 to 22.8.1989. The absent was marked vide DD report No. 29. He resumed duty on 22.8.1989 vide DD report No. 33. Consequently, detailed enquiry was conducted by Shri Parminder Singh, APO. The enquiry officer, after following the procedure laid down in the Police Manual,

recommended annual increment to be forfeited for a period of two years and period of leave to be treated as on leave. The Director-Principal, however, agreed with the recommendations of the enquiry officer and ordered forfeiture of increment of the petitioner for a period of two years and ordered that nine days absence be treated as earned leave, vide his order No. 117 of 1990 dated 20.2.1990.

8. Again on 27.10.1989, the petitioner proceeded on two days casual leave and was due to resume his duty on 1.11.1989. The petitioner overstayed and finally reported back on duty vide DD report No. 5 dated 9.11.1989. Detailed enquiry was conducted by Shri G.L. Kaul, CPO AP(I). Summary of allegations was served to the petitioner, as is found from the record, to which he pleaded not guilty. Evidence was recorded by the enquiry officer and petitioner was chargesheeted. Reply was also filed by the petitioner, which was found not convincing and plausible by the enquiry officer and Censure was recommended to be awarded and period of absence was to be treated on leave due to him. The Director-Principal, however, while agreeing with the enquiry officer awarded censure to the petitioner and ordered that overstay period be treated as Dies-non.

9. Record manifestly shows that department enquiry was conducted in accordance with procedure laid down in Rule 359 of the Police Manual, in all the cases of unauthorized absence of the petitioner. The petitioner participated in the enquiry proceedings and cross examined the witnesses. Show cause notices were also issued to the petitioner before recommendations of the enquiry officers were accepted. Reply was also dealt with and considered before passing the impugned orders. I do not find from the record any non-observance of the rules, pertaining to the disciplinary enquiry under the Police Manual. The petitioner was given full opportunity to cross examine the witnesses and of being heard by the enquiry officers every time. Besides, show cause notices were also served by the Disciplinary Authority/Competent Authority, to whom the punishments were recommended by the enquiry officers, before their acceptance and passing of impugned orders. All the codal formalities have been observed minutely.

10. It is not the case of the petitioner that the reports of the enquiry officers, along with the material on which they were based, have not been provided to him, which amounts to depriving him of representing his case to the Disciplinary Authority. In fact, the petitioner has made representations to the Disciplinary Authority. In fact, the petitioner has made representations to the Disciplinary Authority against the recommendations of the enquiry officers, at every stage, which were disposed of after giving show cause notices to the petitioner, receiving his replies and considering them by passing the impugned orders. The Disciplinary Authority has arrived at its own conclusion, on the basis of evidence recorded in the enquiry proceedings and reply to the show cause notices given by the petitioner. Thus, the orders impugned have been passed by the Disciplinary Authority, after considering the evidence, reports of the enquiry officers and the representations of the petitioner against the recommendations. As such, the contention raised by Mrs. Surinder Kour, learned counsel for the petitioner, about violation of principles of natural justice is devoid of any legal force and cannot be accepted nor can there be said to be breach of Articles 14 and 16 of the Constitution.

11. Both the dictates of reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it, as has been handed down by the Apex Court in *Managing Director ECIL v. B. Karunakar*, 1993 (4) SCC, 730.

12. In the instant case, the disciplinary authority, after considering all these aspects of the matter and giving requisite notices to the petitioner, to file reply to the enquiry officer's report, considered the reply and passed the orders impugned.

13. Mr. K.S. Johal, learned AAG, however, submitted that since the remedy, by way of recourse to appeal, was available to the petitioner and the same having not been availed, the writ petition was liable to be dismissed.

14. Suffice it to observe that rule of exclusion of writ jurisdiction, way of alternate remedy, is a rule of discretion and not one of compulsion. In an appropriate case, inspite of availability of alternate remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies, namely, where the writ petition has been filed for enforcement of any of the fundamental rights; where there is violation of principles of natural justice and where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged, as handed down by Apex Court in *Whirlpool Corporation v. Registrar or Trade Marks*, 1998 (8) SCC 1. The present case attracts none of the above contingencies.

15. Again in *T.K. Rangarajan v. Government of Tamil Nadu and Ors.*, 2003 (5) Supreme, 256, the Apex Court, held as under: --

'It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extra-ordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.'

16. In the present case, Jammu and Kashmir Police Manual provides a right of appeal to every police officer under Rule 364, from an order by any authority, imposing upon him any of the penalties specified in Rule 334 of the Manual. This is a statutory remedy provided in the Police Manual, both effective and efficacious under law. The petitioner, having not availed this remedy, readily available to him under law, would not be entitled to invoke the extra ordinary writ jurisdiction of this court under Article 226 of the Constitution.

17. Mrs. Surinder Kour, learned counsel for the petitioner, however, while controverting the submissions of the respondents, submitted that various representations were filed by the petitioner against the impugned orders. In this context, it is apt to point out that representation is not a substitute for appeal.

18. It was further contended by Mr. K.S. Johal, learned AAG, that the writ petition is liable to be dismissed on the ground of delay and laches, having been filed after nine years of the passing of the impugned orders. He has submitted that petition is highly belated, as repeated representations would not extend the cause of action. The orders impugned have been passed in the year 1989/1990, by virtue of which increments of the petitioner have been stopped for different periods. The representations came to be filed in the year 1997-98 and that too after a period of seven years. To entertain and allow a writ petition, after a gross delay of nine years, would amount to putting a premium on dilatory tactics. In such circumstances, delay and laches defeats remedy. In view of the settled principles relating to interference in service matters of this kind, the petition, filed after a period of nine years, seeking exercise of judicial review, deserves to be rejected on the ground of laches alone, as is handed down by the Apex Court in *Union of India v. S.S. Kothiyal and Ors.*, 1998 (8) SCC, 682.

19. What is indisputably gatherable from the facts and circumstances of the case is that, laches on the part of the petitioner, without sufficient cause for inordinate delay in filing the writ petition, disentitles him to relief claimed by him. On this count also, the writ petition deserves to be dismissed.

20. The conclusion reached from the aforesaid discussion is that, there is no merit in the writ petition and same is, accordingly, dismissed. No order as to costs.