

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 27.03.2023.

Pronounced on : 11.07.2023.

WP(C) No. 2711/2021

CM No. 9219/2021

Sanjay Sharma

..... Petitioner(s)

Through: Mr. Sheikh Najeeb, Advocate

Vs

UT of J&K and others

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

Heard learned counsel for the petitioner.

01. When it comes to a matter of an administrative action taking or decision making in discharging/dismissing a person from position of public employment, be that from a permanent, temporary or contractual status, to be based upon an adverse judgement drawn by the public authority as an employer against a given employee for any delinquency on his part, then most elementary procedural safeguard which an employer has to keep in guiding service attending his action/decision is the observance of the rules of natural justice so that a well meaning

action/decision to be taken maintains and retains its foothold in the event of being posed with a legal challenge at the instance of an aggrieved employee.

02. The present case is the grievance of a person who while serving as Special Police Officer ("**SPO**" in short) came to be discharged from his engagement without affording him any right of hearing against his dismissal that too which proceeded on stigmatic judgement and order of the Sr. Superintendent of Police (SSP), Jammu.

03. The petitioner came to be engaged as SPO, under the Jammu & Kashmir Police Act, Svt., 1983, in the J&K Police vide an order no. 333 of 2014 dated 22.02.2014 passed by the Sr. Superintendent of Police (SSP), Jammu. The engagement of the petitioner as SPO was made on the basis of the approval granted by the Deputy Inspector General of Police, J-K-S Range.

04. From the date of his engagement as SPO till the date of his unceremonious discharge by virtue of the impugned order passed in July, 2019 the petitioner's working in service was blameless if not creditworthy. The petitioner, as SPO, was detailed with the District Police Line ("**DPL**" in short) from where he used to be assigned to different duties in connection with the police duty/work. An FIR no. 0132 dated 07.07.2019 came to be registered by the Police Station Satwari on a complaint of Sr.

Superintendent of Police (SSP) Traffic City, Jammu wherein one Sgct. Chatter Singh and the petitioner herein came to be named as accused persons for alleged act of omission and commission amounting to an offence under section 4 of the Jammu & Kashmir Prevention of Corruption Act, Svt.2006.

05. The lodging of FIR by the Sr. Superintendent of Police (SSP) Traffic City, Jammu was purportedly precipitated by a viral video of 05.07.2019 on social media, said to be of an incident which took place at Fourth Tawi Bridge, Jammu when a vehicle was stopped by Sgct. Chatter Singh, no. 58/JT, EXJ-006622 along with the petitioner being SPO while deployed for traffic regulation duties at the said bridge. As per the alleged video footage the vehicle stopped for checking was allegedly boarded by the petitioner to speak to the driver of the said vehicle for allegedly demanding/accepting bribe and allowing the vehicle to resume its movement after a while thereby casting an impression that by accepting the bribe the two police persons i.e. Sgct. Chatter Singh and the petitioner had let the vehicle off which footage allegedly brought the reputation of the traffic police in disrepute, besides constituting an alleged act of corruption on the part of the two policemen under the provisions of the Jammu & Kashmir Prevention of Corruption Act, Svt. 2006.

06. This FIR later on resulted in presentation of a final police report no. 12/2021 dated 15.06.2021 under section 173 of the Jammu & Kashmir Criminal Procedure Code, Svt. 1989 in terms whereof the case came to be closed as 'not proved' against the said two accused persons.

07. However, with the same purported event, the petitioner came to be disengaged vide an order no. 790 of 2019 dated 06.07.2019 of the Sr. Superintendent of Police (SSP), Jammu, where as Sgct. Chatter Singh seemed to have suffered no such disengagement from his service. It is pertinent to mention here that upon registration of FIR, the petitioner as well as Sgct. Chatter Singh had come to be placed under suspension by the Sr. Superintendent of Police (SSP) Traffic City, Jammu vide an order no. 175 of 2019 dated 05.07.2019 and order no. 175 of 2019 dated 07.07.2019, only to be reinstated in terms of an order no. TPOJ/Estt/Re-Inst/2019/14817-21 dated 05.10.2019.

08. Thus, while from the criminal culpability relatable to alleged video footage incident the petitioner along with other co-accused Sgct. Chatter Singh came to be exonerated and even reinstated from suspension but it is only the petitioner who came to suffer the hit of dismissal by virtue of an order no. 790 of 2019 dated 06.07.2019 for the alleged delinquency.

09. It is this order of his disengagement being read by the petitioner as being punitive in intent and effect which is under challenge in this writ petition filed under article 226 of the Constitution of India before this Court.

10. In the writ petition, the petitioner has put a challenge to the impugned order on the ground that the same is in contravention of the rules of natural justice having been issued without any show-cause notice to the petitioner to defend his position and vindicate his honour and that the order visiting the petitioner with civil consequences was supposed to be passed after a regular enquiry but it was not so conducted thereby dispensing with by a stroke of pen five years of unblemished service of the petitioner as SPO to a waste bearing a long life stigma.

11. The respondents in their reply have pleaded that the petitioner was not deserving of any service of rules of natural justice given the incident in which the video footage came to catch the petitioner and Sgct. Chatter Singh thereby bringing the name of the Police to a disrepute.

12. Heard the submissions from both sides.

13. The sole basis upon which the passing of the impugned order no. 790 of 2019 dated 06.07.2019 came to take place

against the petitioner by the Sr. Superintendent of Police (SSP), Jammu is the alleged video footage. It is this footage which led Sr. Superintendent of Police (SSP) Traffic City, Jammu to register the aforementioned FIR against the petitioner and Sgct. Chatter Singh to a charge of an act of corruption under the provisions of Prevention of Corruption Act, Svt. 2006 which upon investigation was found not proved by the Investigating Officer and as such the very reading of the video footage became a matter of an individual and personal judgement.

14. Insofar as, judgment making from video footage is concerned that can be left to personal reading and discernment of any individual observer of the said video footage but when it comes to the matter of making a decision/judgement having legal consequences against the persons allegedly seen in conducting themselves in an alleged misconduct then it cannot be a matter of seeing and believing as it is as that can be very misleading as what actually happened in the case. If the footage would have been the truth bearing in the manner and intent as suggesting, then the closure of the FIR no. 0132 dated 07.07.2019 against Sgct. Chatter Singh and the petitioner named as accused in the said case would not have taken place when the charge of alleged corruption against them out of the

same very incident failed to hold ground after a police investigation.

15. In view of this, situation was not an enabling one for the Sr. Superintendent of Police (SSP), Jammu to ponder upon disengaging the petitioner as SPO from the J&K Police particularly when similarly placed other person i.e. Sgct. Chatter Singh was excluded from suffering the outcome of the expulsion from the service.

16. Thus, the act/decision on the part of the Sr. Superintendent of Police (SSP), Jammu in conceiving and deciding to disengage the petitioner for the very same video footage incident was misconceived at the first instance. Even if the Sr. Superintendent of Police (SSP), Jammu was inclined to relieve the petitioner from the service of Jammu & Kashmir Police for the purported stake of salvaging the public reputation of the Police from suffering a bad impression held out by the said video footage involving the petitioner and Sgct. Chatter Singh, then the Sr. Superintendent of Police (SSP), Jammu ought to have afforded the petitioner an opportunity of hearing so as to defend his position and honour against the purported basis upon which the Sr. Superintendent of Police (SSP), Jammu was contemplating to disengage the petitioner from the service. That having not been done by the Sr. Superintendent of Police (SSP),

Jammu, the very impugned order no. 790 of 2019 dated 06.07.2019 so passed by him in disengaging the petitioner by branding him as a villain out of the said video footage in reference is beyond any doubt against the elementary principal of natural justice that you cannot condemn a person to suffer an adverse consequence in the context of his public position/employment without affording him/her an opportunity of knowing the basis upon which a purported adverse action is aimed to be taken against him/her thereby serve him/her with an opportunity to explain his/her position vis-à-vis the adverse civil consequence conceived to emerge.

17. The Hon'ble Supreme Court of India has facilitated for the convenience of understanding the essence of rules of natural justice by saying that it is nothing but common sense justice. In the case of "Canara Bank and other Vs. Debasis Das and others", (2003)4 SCC 557 in para13 & 15, the Hon'ble Supreme Court of India has worded its wisdom as under:-

"13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works [1863(143) ER 414], the principle was thus stated:

"[E]ven God himself did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam' (says God), "where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."

18. Thus, the impugned order no. 790 of 2019 dated 06.07.2019 passed by the Sr. Superintendent of Police (SSP), Jammu is in direct conflict with the Rules of Natural Justice and if allowed to stand would compound the injustice against the petitioner. As such, this order deserves to be set aside.

19. Therefore, this writ petition is **allowed**. Order no. 790 of 2019 dated 06.07.2019 passed by the Sr. Superintendent of Police (SSP), Jammu thereby disengaging the petitioner as SPO is set aside. The petitioner is restored as SPO in Jammu & Kashmir Police with all consequential benefits excluding the payment of emoluments for the period with effect from the date of his disengagement till the date of restoration of his service as Special Police Officer (SPO). Compliance to be carried out within a period of three months by the Sr. Superintendent of Police (SSP), Jammu from the date a certified copy of this order is made available to him.

20. **Disposed of** accordingly.



सत्यमेव जयते

(Rahul Bharti)

Judge

Jammu

11.07.2023

Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable: **Yes**