

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on 22.08.2024

Pronounced on 10.09.2024

WP(C) No. 1509/2021

Shabir Ahmad Ahanger

...Petitioner(s)/Appellant(s)

Through: Mr. M. S. Reshi, Adv.

Vs.

Director General of Police & Ors.

...Respondent(s)

Through: Ms. Maha Majeed, AC vice Mr. Mohsin Qadiri, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

J U D G M E N T

Sanjeev J

1. The petitioner in this petition filed under Section 226 of the Constitution of India seeks to challenge the judgment dated 17th February 2021 passed by Central Administrative Tribunal, Jammu Bench, Jammu (the Tribunal) in TA No. 6317/2020 (SWP No. 1042/2005) titled Shabir Ahmad Ahanger vs. State of JK & Ors. whereby the Tribunal has dismissed the petition filed by the petitioner to throw challenge to order No. 631 of 2002 dated 18.10.2002 passed by Senior Superintendent of Police, District Pulwama. The impugned judgment is assailed on multiple grounds. However, before we advert to the grounds of challenge urged by learned counsel for the petitioner, we deem it appropriate to refer to the material facts which are germane to the disposal of this petition.
2. The petitioner came to be appointed as Constable in the J&K Police in the year 2000 and was put on probation. On 28th February 2002, the petitioner was deputed to undergo basic recruitment training course at Manigam. The petitioner absented from training w.e.f 4th March 2002 and was thus reverted to his parent district by PTS Manigam vide order issued under Endorsement No. 1222-24 dated 29th March 2002.

The petitioner reported to the District Superintendent of Police concerned on 21st July 2002 for duties and was permitted. However, on 18th August 2002, he again absented unauthorisedly and reported back on 22nd August 2002. Finally, on 25th August 2002, the petitioner again absented from duty unauthorisedly and did not report. The Dy. SP. (DAR) Pulwama conducted a departmental enquiry against the petitioner and recommended his discharge from service w.e.f. 25th August 2002. Taking note of frequent unauthorized absence of the petitioner during probation, the Senior Superintendent of Police, District Pulwama vide order No. 631 of 2002 dated 18th October 2002 discharged the petitioner from service w.e.f 25th August 2002 on the ground that the petitioner had failed to prove himself a good police official during his probation. It is this order of the Senior Superintendent of Police, District Pulwama which was called in question by the petitioner before the Tribunal. The Tribunal considered the rival contentions and the material on record and arrived at the conclusion that the discharge of the petitioner during probation which was not in any manner stigmatic in nature and, therefore, perfectly legal. The petitioner was, thus, dismissed vide order and judgment impugned passed by the Tribunal.

3. The impugned order and judgment of the Tribunal is challenged by the petitioner primarily on the ground that the respondents did not conduct any departmental enquiry nor was the petitioner provided any opportunity of being heard before passing the impugned order of discharge.
4. Mr. M. S. Reshi, learned counsel appearing for the petitioner would argue that the order of discharge referring to the petitioner as “*not a good police official*” has cast a stigma upon the petitioner which has the effect of debarring the petitioner from seeking employment elsewhere. He, therefore, submits that such order could not have been passed without complying with the minimum requirement of principles of natural justice.
5. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the order and judgment impugned passed by the Tribunal is perfectly legal and does

not call for any interference by this Court in the exercise of extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India.

6. From perusal of the impugned order of discharge, it clearly transpires that the petitioner who was appointed as Constable in the year 2002 was immediately deputed to undergo basic recruitment training course at Manigam. The petitioner absented unauthorisedly during the training. The respondents were compelled to revert him back to his parent department. This was done by the PTS Manigam vide its order dated 29th March 2002. The petitioner did not perform his duties diligently even in the Police Lines where he was posted after reversion from PTS Manigam. He remained unauthorisedly absent w.e.f 18th August 2002 to 22nd August 2002. After performing his duties for only 3 days, the petitioner again absented w.e.f. 25th August 2002 and did not return thereafter. Undoubtedly, the petitioner was a probationer and was required to maintain punctuality as well as dedication to his duty.
7. Having regard to the fact that the petitioner had shown no interest in the performance of his duties as Constable which was exhibited by him by remaining unauthorisedly absent on numerous occasions, the competent authority took note of all these aspects and came to the conclusion that the repeated unauthorized absence of the petitioner from training as well as from DPL, Pulwama was indicative of his disinterest in service and that the petitioner had failed to prove himself a good police official. Accordingly, the impugned order of discharge was passed. Learned counsel for the petitioner could not show any Police Rules or any other provisions of law which debars the employer from discharging the probation without notice. The only argument raised by Mr. Reshi, is that the impugned order of discharge is stigmatic in nature and, therefore, could not have been passed without first complying with the principles of natural justice.
8. We have given thoughtful consideration to the arguments raised by learned counsel. We are convinced that discharging a probationer on the ground that he had, during his probation shown disinterest in the job and has failed to prove himself a good police official is in no

manner stigmatic in nature. A person appointed to service is necessarily put on probation for a period of two years or more as may be provided under rules and his confirmation is subject to satisfactory performance by such official during said period of probation. A person who started remaining unauthorized absent from the very beginning cannot claim to have performed his duties to the satisfaction of his employer. Not only the petitioner failed to undergo the mandatory basic recruitment training course, but he failed to perform his duties in the Police Lines where he was posted after being withdrawn from the training. This clearly shows that the petitioner was not interested in the job from the day one and was taking his employer for granted. Yet the employer did not stigmatize the petitioner or held him guilty of any misconduct, but discharged him for having failed to perform his duties satisfactorily during the probation period. The impugned order of discharge is thus an order of discharge simplicitor and, as such, no departmental enquiry was called for. The petitioner was not holding any civil post under the State on substantive basis and, therefore, Article 311 of the Constitution of India or for that matter the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 were not attracted or applicable.

9. Viewed from any angle, we do not find any fault or legal infirmity with the order and judgment impugned passed by the Tribunal. This petition is, therefore, found to be without any merit, the same is accordingly dismissed.

(MOHAMMAD YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
10.09.2024
Altaf

Whether approved for reporting? Yes/No.