

Jammu & Kashmir High Court

Tej Krishan Bhat vs Union Territory Of J&K And Another on 28 December, 2022

HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Reserved on : 09.12.2022

Pronounced on: 28.12.2022

WP(C) No. 2669/2021 (O&M)
c/w

WP(C) No. 2662/2021 (O&M)

WP(C) No. 2663/2021 (O&M)

WP(C) No. 2664/2021(O&M)

WP(C) No. 2665/2021(O&M)

WP(C) No. 2667/2021(O&M)

WP(C) No. 2668/2021(O&M)

WP(C) No. 2670/2021 (O&M)

WP(C) No. 2671/2021(O&M)

WP(C) No. 2672/2021(O&M)

Tej Krishan Bhat
Daljeet Singh
Mohd Sadiq
Sukhdev Singh
Amar Singh
Arjun Singh
Jasbir Singh
Mohd Sharief Wani
Jagtar Singh
Nanak Chand

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

Through: Mr. M. K. Bhardwaj, Sr. Advocate with
Mr. Gagan Kohli, Advocate

Vs

Union Territory of J&K and another
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..... Respondent(s)

Through: Mr. Dewakar Sharma, Dy.AG for No. 1
Mr. R. Koul, Advocate for J&KSRTC

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

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WP(C) Nos. 2669/2021,
a/w connected matters

JUDGEMENT

1. In all these writ petitions identical issues are involved, so these petitions were considered together, admitted, heard with the consent of learned counsel for the parties and as such, are being disposed of by this common judgment. However, the facts peculiar to each writ petition, have been taken note of separately.

2. In WP(C) No. 2669/2021, the petitioner was appointed as Conductor in the year 1981. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 003-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 17 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 13.08.1981 till 30.10.2019.

3. In WP(C) No. 2662/2021, the petitioner was appointed as Conductor in the year 1985. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 007-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 14 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 08.02.1986 till 02.11.2015.

4. In WP(C) No. 2663/2021, the petitioner was appointed as Conductor in the year 1986. He was issued show cause notice dated 10.09.2021, by virtue of a/w connected matters which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 014-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 22 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 04.09.1987 till 18.09.2016.

5. In WP(C) No. 2664/2021, the petitioner was appointed as Conductor in the year 1985. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 010-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 18 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 24.07.1985 till 05.06.2015.

6. In WP(C) No. 2665/2021, the petitioner was appointed as Conductor in the year 1985. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 011-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 15 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 03.09.1986 till 18.03.2015.

7. In WP(C) No. 2667/2021, the petitioner was appointed as Conductor in the year 2002. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not a/w connected matters taken against him including termination from service and thereafter, vide order No. 013-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 15 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 28.04.2004 till 08.04.2017.

8. In WP(C) No. 2668/2021, the petitioner was appointed as Conductor in the year 1986. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 003-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 16 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 02.08.1986 till 05.09.2017.

9. In WP(C) No. 2670/2021, the petitioner was appointed as Conductor in the year 1981. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 015-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 14 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 12.11.1983 till 11.09.2012.

10. In WP(C) No. 2671/2021, the petitioner was appointed as Conductor in the year 1985 (wrongly mentioned in the writ petition as 2004). He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including a/w connected matters termination from service and thereafter, vide order No. 005-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 11 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 29.08.1989 till 18.11.2019.

11. In WP(C) No. 2672/2021, the petitioner was appointed as Conductor in the year 1985. He was issued show cause notice dated 10.09.2021, by virtue of which, he was directed to show cause as to why action under law be not taken against him including termination from service and thereafter, vide order No. 012-JKRTC/GMA of 2021 dated 29.10.2021, his services were terminated by the respondents on account of 14 offences of misappropriation of Corporation revenue and allied offences allegedly committed by the petitioner w.e.f. 04.12.1985 till 21.01.2019.

12. In all these petitions, respondent No. 2 has filed the objections, in which it is the common stand of the respondents that the petitioners were found indulging in misappropriation of Corporation money right from the day of appointment and despite warnings, the petitioners failed to mend their ways and following the principle of natural justice, each of the petitioners was issued show cause notice dated 10.09.2021 to provide him a chance to explain their conduct and thereafter, their services were terminated by virtue of orders dated 29.10.2021.

13. Mr. M. K. Bhardwaj, learned senior counsel appearing for the petitioners vehemently argued that no proper enquiry has been held by the respondents before terminating the services of the petitioners thereby imposing the major penalty upon the petitioners and simply serving a show cause notice does not a/w connected matters satisfy the requirement of law, as such, the impugned orders are required to be quashed, being illegal. Mr. Bhardwaj has placed reliance upon the judgment of the Co-ordinate Bench of this Court in WP(C) No. 2501/2021, titled, Bhagwan Dass vs Union Territory of J&K and others decided on 07.09.2022.

14. On the contrary, Mr. R. Koul, learned counsel representing the J&K State Road Transport Corporation, respondent No. 2 herein vehemently argued that proper show cause notices were served upon the petitioners and it was sufficient compliance of procedure for imposing major penalties upon the petitioners. It has also been stated that as the facts have been admitted and never questioned before any forum, the issue of holding of any enquiry does not arise at all. It is further stated that the petitioners had committed series of offences and in order to stream line the functioning of the Corporation and in order to weed out undesirable employees, the services of the petitioners were terminated.

15. Heard and perused the record.

16. The main contention of the petitioners is that they have been condemned unheard and their services could have been terminated only by holding an enquiry as contemplated under Rules.

17. The respondents have placed reliance upon the Regulation 17 of the Jammu and Kashmir Road Transport Corporation (Discipline and Conduct) Regulations 2012 while terminating the services of the petitioners. Annexure-II and Annexure-III to "The Jammu and Kashmir Road Transport Corporation (Discipline and Conduct) Regulations 2012" provides the description of minor and major offences. Regulation 17 of the Jammu and a/w connected matters Kashmir Road Transport Corporation(Discipline and Conduct) Regulations 2012 provides as under:

"For matters not specifically provided in these Regulations, the J&K Government Employees (Conduct) Rules, 1971, the J&K Employees (Classification, Control and Appeal) Rules, 1956 shall, mutatis mutandis, apply to the employees of the J&K State Road Transport Corporation and without prejudice to these Regulations punishment shall be awarded for minor and major act of misbehaviour, misconduct, indiscipline as shows in Annexure-II and III to these Regulations. The action of misbehaviour, misconduct, indiscipline listed in these Annexures are only illustrative and not exhaustive."

18. The relevant offence and punishment provided under the Regulations is reproduced as under:

S. No.	Offence	Quantum of punishment
3	Theft, dishonesty, fraud, forgery,	Stoppage of increment with

misappropriation including cheating effect of ? postponing, and non-issue of tickets after reducing to a lower post or collecting fare for an amount stage in the time scale, exceeding Rs. 500 removal or dismissal.

19. A perusal of the Annexure No. III to Jammu and Kashmir Road Transport Corporation (Discipline and Conduct) Regulations 2012 reveals that for the commission of theft, dishonesty, fraud, forgery, misappropriation including cheating and non-issue of tickets after collecting fare for an amount exceeding Rs. 500, the delinquent can be punished with stoppage of increment, reducing to a lower post or stage in the time scale, removal or dismissal. As per Regulation No.17, Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 applies mutatis mutandis to the employees of the Corporation. Further Regulation No. 18 provides that "The J&K SRTC Service Condition Rules and Regulations, 1979" shall continue to apply so far as they are not inconsistent with these Regulations.

a/w connected matters Regulation No. 148 of Regulations of 1979 contemplates an enquiry before imposing major penalties and even the procedure has also been provided in the said Regulation.

20. Even Rules 33 and 34 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 also provide a procedure for holding enquiry before imposition of major penalty.

21. This is admitted case of the respondents that no enquiry was conducted and rather they have gone a step ahead by stating that it was not required at all as the facts were admitted by the petitioners. This court is of the considered view that once the regulations provide for holding an enquiry before imposing major penalty, then simple service of show cause notice before imposing major penalty would not satisfy the requirement of Rules, more particularly when the regulations do not provide for dispensing with the enquiry under such circumstances. The action of the respondents in terminating the services of the petitioners is arbitrary, mechanical and in violation of Article 14 of the Constitution of India.

22. Thus, this Court has no hesitation to hold that the respondents have violated the principle of natural justice that no one should be condemned unheard. No doubt notices were issued to the petitioners but hearing in the case of the petitioners would mean holding of a regular enquiry for the purpose of imposing any major penalty upon the petitioners in accordance with rules and regulations. In Deputy General Manager (appellate authority) and ors. v. Ajai Kumar Srivastava¹, Apex Court has held as under:

"24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process (2021) 2 SCC 612 a/w connected matters and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached

or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact."

(Emphasis supplied)

23. Viewed thus, the present petitions are allowed and the orders impugned passed by the respondents terminating the services of the petitioners are quashed. The petitioners are reinstated with all the consequential benefits from the date of termination of their services. However, the respondents shall be free to proceed afresh against the petitioners in accordance with the law, if they intend to do so.

24. Disposed of.

CM No. 7121/2021 in WP(C) No. 2663/2021 The instant application is allowed and the name of the petitioner shall be read as Mohd. Saliq. Application is disposed of.

(RAJNESH OSWAL) JUDGE Jammu 28.12.2022 Rakesh Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No