



POLICE HEADQUARTERS J&K JAMMU / SRINAGAR

Phone/FaxNo: 0194-2443026 (Sgr) Establishment Website: www.jkpolice.gov.in
0191-2433936 (Jmu) Email: phqjk@jkpolice.gov.in

Subject: - Appeal against ZPHQ Jammu order No. 470 of 2017 dated 16.11.2017.

- Refn'ce:-**
- i) FIR No.146 of 2017 US 307, 452,323,34 RPC of P/S Samba.
 - ii) ZPHQ Jammu order No.287 of 2017 dated 05.08.2017.
 - iii) Court order dated 15.11.2017 passed by Hon'ble High Court J&K in SWP No.2703/2017, MP No. 01/2017 titled Neeraj Ramotra Vs State and Others.
 - iv) ZPHQ Jammu order No. 470 of 2017 dated 16.11.2017

ORDER NO: 2862 OF 2018
DATED: 11-07-2018

This order disposes off representations separately submitted by Ex-SI Neeraj Ramotra EXJ109570 and Ex-SGCT Kulbir Singh No.EXJ985865 (here-in-after to be referred as representees) requesting therein for revocation of their dismissal ordered by Zonal Police Head Quarters Jammu (ZPHQJ) vide order No. 470 of 2017 dated 16.11.2017 vis-à-vis re-instatement into services. Brief facts of the case as has been conveyed by ZPHQ Jammu /revealed in the dismissal order are given here under;

Whereas, on 16.07.2017, one Rashpal S/O Inderjeet R/O Supwal (here-in-after to be referred as complainant), lodged a written report at Police Post Supwal where Ex. Sub Inspector (representee) was posted, as I/C Police Post, to the effect that the father of the applicant namely Inderjeet (who owns a shop in Village Supwal adjoining NHW) as usual opened his shop at about 0430 hours on 16.07.2017 and in the meanwhile some unknown persons assaulted him. One of the assailants was equipped with sharp edged weapon who inflicted grievous injuries on his father's head, neck and chest with the intention to kill him. His father was shifted to Hospital for treatment. Applicant further mentioned in his application that it might be the conspiracy of one Dalip Kumar S/O Mohinder Lal case Jatt R/O Supwal, as on 15.07.2017 he threatened his father of dire consequences. It was further mentioned in the application that there was old rivalry between the families.

Whereas, while taking cognizance of the accusations, a report vide daily dairy report No.03 dated 16.07.2017 was entered at Police

Post Supwal and extract of the same was submitted to P/S Samba where a formal case FIR No.146/2017 U/S 307, 452, 323, 34 RPC was registered and investigation of the case was entrusted to the representee. During course of investigation, the representee visited the spot prepared the site plan, recorded the statement of witnesses namely Sikander Lal S/O Ramji Dass R/o Supwal and other two (relatives of victim) U/S 161 Cr.PC. Thereafter he also recorded the statements of two witnesses namely Birbal S/O Prem Cand R/O Mansighpora-Kallian Pathankot, Surinder Kumar S/O Kanthu Ram who were also in the lock-up of Police Post Supwal during the intervening night of 15/16 July 2017 in a separate case registered vide FIR No.145/2017 U/S 407, 409 RPC 3/7 EC Act, and FIR No.144/2017 U/S 48(f) Excise Act.

Whereas, during the course of investigation carried out by the representee, accused Dalip Kumar @ Deepu had revealed that he managed attack on the victim through one person namely Shammy R/O Katra Auto driver by profession against a monetary consideration of Rs.50000/-. In the consequence of the stated disclosure, the representee as IO, made his departure towards Katra along with accused Dalip Kumar @ Deepu to identify and locate the nominated Shammy. Later on, another team headed by ASI Mohan Lal of P/S Samba proceeded to Katra to trace the said Shammy. The team arrested accused Shammy (Romesh Kumar @ Shammy) and Farooq Ahmad @ Rongi both auto drivers and on questioning, it was revealed that the said Shammy was not in any way associated with accused Dalip Kumar and Farooq Ahmad @ Rongi was also found not involved in the crime as such both of them were accordingly let off.

Whereas, subsequently complainant lodged another complainant before IGP, Jammu wherein inter-alia, he categorically stated, that it was Ex. SI Neeraj Ramotra I/C Police Post Supwal (representee herein) who in connivance with other officials of Police Post had let off the accused Dalip Kumar in the intervening night of 15/16-07-2017 from the Lock-up of his Police Post and accused Dalip with his accomplices attacked his father and injured him seriously.

Whereas, a Special Investigation Team (SIT) was constituted to probe into the allegations leveled against the Ex. Incharge of Police Post Supwal (representee herein). During the course of investigation, the accusations were found based on facts as such a prima facie case was made out against the Incharge Police Post.

Whereas, as for the prima facie case, the accusations leveled against the representee being highly objectionable, unwarranted on the part of a responsible police officer amounts to criminal conspiracy as such, the representee (Ex. SI Neeraj Ramotra EXJ109570 then I/C PP Supwal) and following two lower rung officials (co accused) were placed under suspension:-

- 1) SGCT Kulbir Singh No.EXJ985865 (then Moharrar Ct./Station clerk at PP Supwal)
- 2) SGCT Mohammad Hanief EXJ976962(then Incharge Lock-up, concerned)

Whereas, disciplinary proceedings were initiated vide ZPHQ Jammu order No.287 of 2017 dated 05.08.2017 and the enquiry was entrusted to Addl. SP Samba, who after completion of the enquiry had submitted his findings to ZPHQ Jammu with the recommendations that Ex. SI Neeraj Ramotra EXJ109570 (representee) the then Incharge Police Post Supwal and SGCT Kulbir Singh No.EXJ985865 (then moharrar Ct./Station clerk at PP Supwal may be dismissed from services and SGCT Mohammad Hanief EXJ976962 be awarded with forfeiture of increment for two years.

Whereas, IGP Jammu while agreeing with the recommendations of the enquiry officer dismissed Ex. **SI Neeraj Ramotra EXJ109570** and Ex. **SGCT Kulbir Singh No.EXJ985865** from services with vide ZPHQ order No. 470 of 2017 dated 16.11.2017 and ordered forfeiture of two annual increments in respect of SGCT Mohammad Hanief EXJ976962 w.e.f the date next fall's due to him.

Whereas, aggrieved of their dismissal the representees, Ex. **SI Neeraj Ramotra EXJ109570** and Ex. **SGCT Kulbir Singh No.EXJ985865** preferred appeal at Police Headquarters and prayed for revocation of their dismissal on the following counts:-

1. The order impugned dated 16-11-2017 is illegal and has been passed in violation of Section 126 of the State Constitution read with Article 311 of the Constitution of India.
2. That the applicant had informed the E.O. that he had filed an application before IGP Jammu alleging therein that the E.O. is biased against him, as such he should be changed. But despite that the E.O. submitted his findings and recommended for his dismissal. Similarly the disciplinary Authority without disposing of the application and despite stay granted by the Court passed the order of dismissal on the same day which clearly shows that both the E.O. as well as the Disciplinary Authority were bent upon to inflict the major punishment on the representee.
3. That it is well established law as laid down by the Apex Court that whenever a delinquent is subjected to Criminal Prosecution, no departmental action can be simultaneously taken against him, if so initiated has to be stayed till the finalization of the criminal case. Even otherwise there is statutory bar in terms of Rule 338 of the Police Manual to hold DE under such circumstances.
4. The enquiry has been conducted against the Police Rule 359(5) and 349.

5. That since ASP (E.O.) had conducted preliminary inquiry in the matter and it is on his report that IGP Jammu ordered for initiation of regular enquiry. Therefore, ASP should not have been entrusted with the regular enquiry. Anyhow, when the applicant had already moved a transfer application before the worthy IGP Jammu for entrusting the enquiry to some other independent officer, he should not have given the findings till the application is disposed off. On this count also the enquiry held is improper and conducted by unauthorized person being personally interested in the case.
6. Till date the applicant has not been served with the order of dismissal, the photo copy of the order impugned dated 16-11-2017 obtained unofficially is annexed herewith for kind perusal and ready reference.
7. In the backdrop of what has been stated here-in-above, and taking the facts and circumstances of the case into consideration, it is respectfully the order impugned may kindly be reviewed in terms of Rule 363 read with 374 of Police Manual. Since the order impugned suffers from various irregularities and illegalities as pointed out above in the grounds, he requested that the order of Dismissal issued vide No.470 of 2017 dated 16-11-2017 may kindly be set-aside in the interest of justice and fair play.

Whereas, the appeal preferred by duo at PHQ was examined in light of accusation leveled against them in the complaint and the procedure adhered to during the disciplinary proceedings and observed as under:-

- 1) No show cause notice has been issued by the disciplinary authority before imposing the major punishment of dismissal;
- 2) Findings have been submitted on 14.11.2017 and the dismissal order issued on 16.11.2017 which speaks of hurriedness which is not appreciable under constitutional guarantee in a case where major punishment is intended to be awarded;
- 3) Exercise of powers by vested in disciplinary authority competent to award major punishment are to be exercised in proportion to the culpability involved e.g. in case of security of State the promptness in award of such punishment has to stand for but where entering false report in the DD like allegations are concerned, it warrants to prove the allegations beyond any shadow of doubt before reaching any conclusion, the disciplinary authority has to act patiently and to ensure that no injustice is done with the official facing the DE.
- 4) It is well established principal of law that 100 culprits may go scot free but an innocent should not get punished so while awarding punishment all the pros and cons are to be taken into account but disciplinary authority seems to have acted hurriedly in the case in hand;

- 5) The EO (i.e ASP) has also been Enquiry Officer in fact finding/preliminary enquiry so to appoint the same person as Enquiry Officer to conduct regular Departmental Enquiry is not appreciable under law more-so when it was prayed by the officials that the EO may be changed.
- 6) That Rule 349 of Police Manual has not been followed in the case of representees.

In view of the observations enumerated above and to ensure that no ambiguity with regard to the fairness is attributed with the departmental action, it is hereby ordered as under:-

- i) Order No.470 of 2017 dated 16.11.2017 issued by IGP Jammu Zone is set aside and the representees (1) **Ex-SI Neeraj Ramotra EXK109570** and (2) **Ex. SGCT Kulbir Singh No.EXJ985865** are re-instated into services with immediate effect.
- ii) A denovo enquiry is ordered into the matter on the aforesaid grounds which shall be conducted by Shri Danish Raina-IPS (IGP Armed Jammu). The enquiry officer shall conduct the Departmental Enquiry, re-examine the issue from all its dimensions, elaborate the quantum of culpability in respect of the each of the accused officials while taking into consideration circumstances of the case and shall forward findings with specific recommendations to PHQ within a period of one month.
- iii) Till the finalization of the denovo enquiry, the SI **SI Neeraj Ramotra EXJ109570** and **SGCT Kulbir Singh No.EXJ985865** shall remain attached with ZAPHQ Jammu.

Sd/

(S. P. Vaid) IPS

Director General of Police

J&K Srinagar

Dated: 11 -07-2018

No: Estt/APL-36/2017/40730-40

Copy to:-

6. IGP Jammu Zone for information and n/action.
7. IGP Armed Jammu Zone for information and n/action.
8. SO IT/Estt. PHQ.
9. OB/Master file for records.

for Director General of Police

J&K Srinagar