

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SWP No. 2445/2018

Date of pronouncement:- 08.11.2025

Date of uploading:- 13.11.2025

Asif Iqbal Malik, Age 29 years
S/o Mohammad Iqbal Malik,
R/o Village Bhatali, Tehsil
Thannamandi, District Rajouri.

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

Through: Mr. Syed Nadeem Hamdani, Advocate

vs

1. **State of J&K** th. Commissioner/Secy.
Home Department, Civil Secretariat,
Srinagar/Jammu.
2. Director General Police Jammu/Srinagar.
3. Dy. Inspector General of Police, Rajouri-
Poonch Range, Rajouri.
4. Senior Superintendent of Police, Rajouri.

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE
JUDGMENT (ORAL)

1. The petitioner, in the instant petition filed under Article 226 of the Constitution of India , has challenged order No. 924 of 2018 dated 27.08.2018 [for short “**the impugned order**”], passed by Senior Superintendent of Police, Rajouri-respondent No. 4 herein, in terms whereof, the service of the petitioner as Special Police Officer (SPO) have been terminated and a prayer has been made for reinstatement of the petitioner from the date he has been disengaged, on the premise that the petitioner herein came to be engaged as SPO by Inspector General of Police (IGP), Jammu Zone, Jammu in the year 2013 and came to be allotted Belt No. 1155/SPO-R, whereafter the petitioner successfully completed his three months training and consequently, came to be deployed at Police Station Thanamandi, wherefrom after

serving for almost three years, he came to be transferred to District Police Line, Rajouri and thereafter came to be disengaged as SPO despite the fact that the he have had performed his duties with full dedication and discipline.

2. The petitioner has challenged the impugned order on the multiple grounds, including that the same has been issued in gross violation of principle of natural justice, inasmuch as the rules and norms regulating the terms and conditions of his service as SPO.
3. Reply to the instant petition has been filed by the respondents, wherein it is being stated that during the course of screening of SPOs' of District Rajouri, a verification of Character Antecedents thereof was conducted through DySP CID, SB Rajouri, who, vide his letter No. CID/SBR/2018/3269 dated 27.08.2018, reported that there is nothing adverse against all the SPOs' working in District Rajouri except the petitioner-SPO Asif Iqbal Malik, who reportedly has been found indulged in bovine smuggling, whereafter, respondent No. 3-Dy. Inspector General of Police, Rajouri-Poonch Range, vide communication dated 14.08.2018, directed the Senior Superintendent of Police, Rajouri to disengage the petitioner from his services, as a consequence whereof, in terms of the impugned order, the petitioner came to be disengaged.

Heard learned counsel for the parties and perused material available on record, as well as that produced by the counsel for the respondents in compliance with the order passed by this Court on the previous date of hearing.

4. Before advertizing to the respective submissions of the appearing counsel for the parties, it would be significant to mention here that the engagement of the SPOs', inasmuch as, their powers, privileges, protection and duties are provided under and in terms of the provisions of Sections 18 and 19 of the Police Act Samvat., 1983 (1927 A.D.), which, for the sake of convenience, are extracted and reproduced hereunder:-

“.....18. Special Police officers.-

When it shall appear that nay unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as Special Police officers for such time and within such limits as he shall deem necessary ; andthe Magistrate to whom such application is made shall unless he see cause to the contrary comply with the application.

19. Powers of Special Police Officers.—

Every special Police Officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of Police.....”

5. Keeping in mind the aforesaid provisions of the Police Act of 1983 and reverting back to the case in hand, it is not in dispute that the petitioner came to be engaged by the respondents as SPO in the year 2013. It is also an admitted fact that the petitioner continued to work as SPO with the respondents up till the issuance of the impugned disengagement order manifestly suggesting that the petitioner has worked with the respondents for a considerable period of more than five years.

6. It is significant to mention here that the doctrine of *Audi Alteram Partem* and its application to judicial/quasi judicial and administrative institutions is not new and that though the principles of *Audi Alteram Partem* have been held to be a procedural requirement, yet it has been consistent view of the Courts that the same ensures strong safeguard against any judicial or administrative order or action adversely affecting the substantive rights of an individual.

It is also pertinent to note here that the first principle of *Audi Alteram Partem* is that there should be no bias and the rule against the bias is expressed in the maxim that "**no one must be judge in his own cause**", whereas the second broad principle of *Audi Alteram Partem* is that "**no person should be condemned unheard**", in that, the right to be heard would mean that a person must know the case he or she has to meet and must have reasonable opportunity to present his or her case, and the requirement of issuance of a show cause notice as also an opportunity of hearing has been held to be flowing directly from the said second principle of doctrine of *Audi Alteram Partem*.

Here a reference to the judgment of the Apex Court passed in case titled as "*Dharampal Satyampal Limited vs. Deputy Commissioner of Central*" reported in 2015 (8) SCC 519 would be appropriate wherein at Paras 21, 24 and 28, following has been held:-

".....21. In common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision- making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind

only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo debet esse judex in propria sua causa; and (ii) opportunity of being heard to the party concerned i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order".

"24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanizing factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong."

"28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not."

7. Since the fundamental plea urged by the petitioner in the instant petition against the impugned order is that the same has been issued without following principles of natural justice, which plea of the petitioner has not been specifically denied or controverted by the respondents in the reply filed to the instant petition. Having regard to

the aforesaid position of law laid down by the Hon'ble Apex Court *qua* the doctrine of *Audi Alteram Partem*, as also the record available on the file and the one produced by the counsel for the respondents, it cannot be said that the respondents have observed the said principles of *Audi Alteram Partem*, in breach, having failed to either issue a show-cause notice to the petitioner or else providing him an opportunity of hearing before issuing of the impugned order.

8. Thus in view of the aforesaid position obtaining in the matter, the impugned order, therefore, is not legally sustainable.
9. For what has been observed, considered and analzed hereinabove, the instant petition succeeds, as a consequence whereof, instant petition is **allowed** and impugned order No. 924 of 2018 dated 27.08.2018 is quashed and the respondents consequently are directed to re-instate the petitioner back in service without back wages.
10. **Disposed of.**

(Javed Iqbal Wani)
Judge

Jammu
08.11.2025
Vishal Sharma

<i>Whether the order is reportable:</i>	<i>Yes</i>
<i>Whether the order is speaking:</i>	<i>Yes</i>