

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Pronounced on 03.09.2026
Uploaded on 08.09.2026

WP(C) No. 2472/2023

Kamni Kesar, Age 62 years.
S/o Late Sh. Raghunath
Sharma
R/o H. No. 224, Lane No. 3
Hazuri-Bagh, Raod, Bhor,
Talab Tillor, Jammu.

.... Petitioner(s)

Through:- Mr. Sachin Gupta, Advocate.

V/s

1. Union Territory of Jammu
and Kashmir through
Commissioner Secretary
Housing and Urban
Development Department Civil
Secretariat Jammu.
2. Commissioner, Jammu
Municipal Corporation,
Townhall, Jammu.
3. Joint Commissioner (Adm),
Jammu Municipal Corporation.
4. Joint Commissioner (R&E)
Jammu Municipal corporation.
5. Chief Accounts Officer,
Municipal Corporation Jammu.

.....Respondent(s)

Through:- Mr. Suneel Malhotra, GA
Mr. Mayank Gupta, Advocate.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT (ORAL)
03.09.2026

1. Learned counsel for the petitioner submits that the only grievance which has been raised by the petitioner in the instant petition is that respondent No. 1 before imposing the penalty by way of a fine equivalent to one month salary in terms of Jammu and Kashmir Civil Service (Classification, Control, and Appeal) Rules, 1956, has

not issued show-cause notice to the petitioner, which according to learned counsel was mandatory in terms of Rule 35 of Jammu and Kashmir Civil Service (Classification, Control, and Appeal) Rules, 1956 for facility of reference, the same is reproduced as under:-

Adequate opportunity of making any representation be given to the officer concerned before issuing order imposing penalty.

Without prejudice to the provisions of rule 33, no order imposing the penalty {specified in clause (i), (ii), (iii), ad (v) of rule 30 (other than an order based on facts which have led to his convictions in a criminal court or by a court-martial, or an order superseding him for promotion to a higher post on the ground of his unfitness for that post} on any government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make any such representation, if any, has been taken into consideration before the order is passed.

Provided that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

2. With a view to appreciate the aforesaid statutory provision it would also be apt to refer to Rule 33 of CCA Rules as well. The same is reproduce under:-

33. Issue of an order of dismissal, removal or reduction in rank

33 (1) *Without- prejudice to provisions of the Public Servants Inquiries Act, 1977, no order (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) of dismissal, removal, or reduction in rank 1 [which includes reduction to a lower post and/or lower timescale - and/or to a lower stage in time-scale] but excludes the reversion to a lower post of a person who is holding a higher post temporarily shall be passed on a person who is a member of a Civil service, or holds a Civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded and adequate opportunity of defending himself. The ground s on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of tile allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he*

desires to be heard in person. If he so desires, or if the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard, as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the officer conducting the inquiry may for sufficient reason to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

- (2) The rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him, or where in the interest of the security of the State, it is considered not expedient to give to that person an opportunity of showing cause against the action proposed to be taken against him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged.*
- (3) this shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, or to dismiss, remove or reduce in rank a temporary government servant, for any specific fault or on account of his unsuitability for the service.*
- (4) the competent authority may inquire into the charges itself or if it considers it necessary so to do, it may appoint an inquiry officer for the purpose.*

3. From a conjoint reading of Rule 33 read with Rule 35, it is apparently clear that, without prejudice to the provisions of Rule 33, no order imposing the penalty in Clauses (i), (ii), (iii), and (v) of Rule 30 (other than this) on any Government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make before the order is passed.
4. It is specific case of the petitioner that no adequate opportunity was provided in terms of Rules 35 of Jammu and Kashmir Civil Services Rule, (Control Classification and Appeal) Rules, 1956, and before imposing the punishment which is subject matter of the instant petition.
5. The learned counsel, with a view to fortify his claim, has placed reliance upon the judgment passed by this Court in case titled as N.

C Prabhakar V/S State of J&K and Ors. being SWP No. 293/2001 C/w connected matter decided on 06.02.2009 & LPASW No. 138 of 2009; decided on 19.04.2010, wherein, in the aforesaid judgment, the Hon'ble Division Bench has already affirmed the order of the learned Single Judge, whereby the Division Bench concurred with the view that no adequate opportunity of hearing was provided before imposing the punishment in consonance with the provisions of the Rule 35 of Jammu and Kashmir Civil Services Rule, (Control, Classification and Appeal) Rules, 1956. For non-compliance of the same, the order/judgment was passed by the learned Writ Court, which order was affirmed by the learned Division Bench **in case titled State of J&K V/s N. C Prabhakar decided on 19.04.2010 being LPASW No. 138/2009**.

6. Another judgment which has been relied upon by the learned counsel for the petitioner in which it has been held that competent authority was not empowered to inflict any other penalties envisaged under Rule 30 of the Rules of 1956 upon a person who has ceased to be a member of service. In **WP(C) No. 2027/2024 decided on 11.09.2025 in case titled Sudershan Mehta V/s UT of J&K**, it is held that the petitioner cannot be subjected to the Departmental proceedings for the misconduct committed during the period he was in service as the rule do not envisage the conduct of disciplinarily enquiry into the misconduct of delinquent employee after his superannuation and relaying upon aforesaid principle, the impugned judgment before the Hon'ble Division Bench, to the extent it upheld the action of respondents for recovery of remuneration received by the petitioner from JKCA from his pension, was quashed and set-aside.
7. Relying upon aforesaid judgment passed by the Hon'ble Division Bench in the similar facts and circumstance of the case, the learned counsel for the petitioner submits that admittedly, in the instant matter, no opportunity of being heard has been provided to the petitioner in terms of the aforesaid Rules and therefore, the order

which is impugned in the instant petition is vitiated and cannot sustain in the eyes of law and is liable to be set aside.

8. Learned counsel for the petitioner has confined his argument only to the aforesaid legal issue.
9. Mr. Mayank Gupta learned appearing counsel for the respondent Nos. 2 to 5, on the other hand, submits that the instant writ petition is not maintainable and is liable to be dismissed for the reasons that the petitioner has alternate remedy of filing an appeal against the impugned order before the competent authority in terms of Rules 36 of Jammu and Kashmir Civil Service (Classification, Control, and Appeal) Rules, 1956 for facility of reference, the same is reproduced as under :-

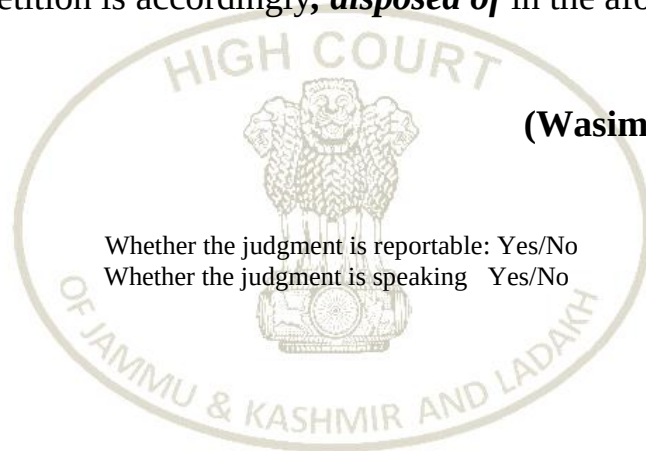
“Appeals every member of a service shall be entitled to appeal, as hereinafter provided, from an order passed by any authority imposing upon him any of the penalties specified in rule 30; provided that no appeal shall lie against the order made by the Government.”

10. Admittedly, according to the learned counsel for the respondents, the petitioner has not availed the said efficacious and alternate remedy by way of an appeal before the competent authority and has bypassed the statute by filing the instant writ, petition, which, according to the learned counsel for the respondents, is not maintainable. In addition, it has also been submitted that the petitioner has also a remedy of filing a review in terms of Rules 55 of the aforesaid Rules and, therefore, bypassing the aforesaid provision, the petitioner has straightaway filed the instant petition, which is not maintainable.
11. Mr. Mayank Gupta, Advocate, further clarifies that the petitioner is not aggrieved of the enquiry being conducted against the petitioner; rather, the grievance which has been projected by the petitioner in the instant petition is that, before imposing the punishment, the show-cause notice has not been issued. Therefore, the relief of the petitioner must confine to the issuance of the show-cause notice, which according to the learned counsel for the respondents has not been issued.

12. Mr. Suneel Malhotra, learned GA appearing counsel on behalf of the respondent No.1 also adopts the reply already filed by the respondent Nos. 2 to 5 and well as the arguments advanced by the learned counsel appearing on behalf of Nos. 2 to 5.
13. Heard learned counsel for the petitioner and also learned counsel for appearing for the respondents at length and perused the record.
14. Since the only grievance which has been projected in the instant writ petition by the learned counsel for the petitioner is that no show-cause notice has been issued to the petitioner in terms of the Rules 35 of CCA Rules before imposing the punishment, thus, this Court, without venturing into the maintainability of the instant petition, deems it proper to dispose of the instant writ petition at this stage with the consent of the learned counsel for the respondents, as the relief which has been projected in the instant writ petition is restricted only to the extent of non-issuance of the show-cause notice in terms of the aforesaid rules
15. The respondents have also admitted the non-compliance of the aforesaid statutory provision, which led to the passing of the order impugned. Therefore, this Court without wasting the time in the instant matter or venturing in to maintainability of the instant petition, deems it appropriate to dispose of the instant writ petition at this stage by directing the respondent Nos. 2 to 5 to proceed strictly in consonance with the Rules 35 of Jammu and Kashmir Civil Service (Classification, Control, and Appeal) Rules, 1956, by providing an adequate opportunity to the petitioner to make a representation before imposing the penalty if permissible under Rules and the respondents deems it appropriate to impose the same as the petitioner is not aggrieved of the conduct of the enquiry proceedings but the only grievance raised in the instant petition is that adequate opportunity in terms of the aforesaid Rules has not been provide to the petitioner.
16. The only limited question which has been raised by the petitioner in the instant petition being the aforesaid issue, the instant petition is **allowed**, and respondents are directed to provided an adequate

opportunity to the petitioner by making effective representation before imposing the penalty which if be done will be in conformity with Rules 35 Jammu and Kashmir Civil Service (Classification, Control, and Appeal) Rules, 1956.

17. Let the entire exercise shall be done by the respondents within a period of four weeks from the date opportunity is given by the respondents to the petitioner to make a effective representation in tune with the aforesaid Rule 35 Jammu and Kashmir Civil Service (Classification, Control, and Appeal) Rules, 1956. Subject to providing an opportunity to petitioner to make an effective representation, to the respondents, the respondents shall pass the final order in consonance with the Rules. As a necessary corollary, the impugned order dated **08.09.2023** is hereby set-aside/quashed.
18. The writ petition is accordingly, ***disposed of*** in the aforesaid manner.



(Wasim Sadiq Nargal)
Judge

Jammu:
03.09.2026.
Javid Iqbal