

Serial No. 131
Supplementary List-1

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Pronounced on : 02.04.2026
Uploaded on : 04.04.2026**

WP(C) No. 2790/2023

Rattan Lal Ticku

.....Petitioner

Through: Mr. Rahul Sharma, Advocate and
Ms. Rupali Sharma, Advocate

Vs

UT of J&K & Ors.

.....Respondents

Through: Mr. Dewakar Sharma, Dy. AG

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
ORDER
(02.04.2026)**

- 01.** The petitioner, through the medium of the present petition, has challenged order No. 177-JK(IND) of 2023 dated 21.09.2023 whereby the Secretary to the Government, Industries and Commerce Department, J&K, has appointed Sh. Inderjeet, JKAS, Managing Director, J&K SICOP/SIDCO as the Enquiry Officer to enquire into the charges framed against the petitioner in terms of Sub-rule (4) of Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules,

1956(hereinafter referred to as, 'Rules of 1956'). Challenge has also been thrown by the petitioner to the enquiry proceedings emanating from the aforesaid impugned order.

02. As per case of the petitioner, he was appointed as Store Officer in the year 1982 in Jammu and Kashmir Small Scale Industries Development Corporation Ltd. (hereinafter referred to as, 'SICOP'). He served as Managing Director of SICOP from the year 2012 to January 2019, whereafter he retired on superannuation on 31.03.2019.

03. It has been submitted that after retirement of the petitioner, the impugned order came to be issued by respondent No. 1 whereby an Enquiry Officer has been appointed to enquire into the charges framed against the petitioner by the Vigilance Organization, Jammu as no criminal offence was made out against the petitioner during the preliminary verification conducted by the Vigilance Organization.

04. The petitioner has challenged the impugned order and the proposed enquiry proceedings on the ground that after his superannuation, in the absence of any

rule providing for initiation/continuation of enquiry proceedings against a delinquent employee, the impugned order could not have been issued. It has been contended that Rule 33 of Rules of 1956 does not apply to a person who has ceased to be a member of civil service. It has also been contended that the punishment contemplated under Rule 30 of Rules of 1956 cannot be imposed upon the petitioner because he is no more in service.

- 05.** The respondents have contested the writ petition by filing their reply to the same. While narrating the background facts, it has been submitted by the respondents in their reply that the Director Vigilance, J&K, Srinagar vide his communication dated 19.07.2017, intimated the General Administration Department (GAD) that a Joint Surprise Check (JSC) was initiated based on a source report alleging that SICOP has become a major conduit for corruption by the officials of various departments under the guise of a government run organization. It was informed that upon Joint Surprise Check, it was found that numerous fresh appointments were made without the requisite administrative approval and some engineers and technical staff were engaged for 89 days without any advertisement, suggesting a pick-and-choose approach

favouring certain individuals. The Vigilance Organization further informed that SICOP lacked a proper system for selecting suppliers or contractors and such selections were made without tenders. Thus, as per the report of the Vigilance Organization, it was established that various illegal appointments were made by or with the approval of the then Managing Director-the petitioner herein, in gross violation of established rules and procedures. A request was made by the Vigilance Organization vide its communication supra that Regular Departmental Action be initiated against the petitioner.

- 06.** It has been further submitted that the GAD vide its O.M. dated 04.10.2017 forwarded a copy of communication dated 19.07.2017 of Vigilance Organization along with connected documents to the Industries and Commerce Department for consideration of the recommendation of the Vigilance Organization. The Industries and Commerce Department vide its communication dated 04.10.2017 forwarded all the material to Managing Director, J&K SICOP and requested him to furnish further details in the matter. In response to the same, the Managing Director, SICOP vide his communication dated 12.03.2018 furnished a report to the Industries and Commerce Department with the request to close the matter as 'not

substantiated'. The said report was forwarded to the General Administration Department vide communication dated 29.05.2018.

07. The GAD vide its communication dated 02.08.2018 advised the Industries and Commerce Department to re-examine the matter in its entirety and get the facts re-verified. Pursuant to the said advice, the Industries and Commerce Department vide Memorandum dated 23.10.2018 served the Article of charges along with statement of imputations to the petitioner and informed that the Government proposes to hold an inquiry against him under the J&K CSRs, 1956 with a direction to submit a written statement in his defence within fifteen (15) days. However, no response was received from the petitioner even after affording him sufficient time.

08. Thereafter, the Industries and Commerce Department vide Government Order No. 153-IND of 2019 dated 22.07.2019 appointed Mr. Rajesh Chander Kotwal, the then Director Finance, Industries and Commerce Department, as Enquiry Officer with a request to complete the enquiry within 21 days and submit the findings/report. The enquiry officer informed that because the petitioner had retired from service upon

attaining the age of superannuation on 31.03.2019, as such, the disciplinary proceedings against the petitioner cannot proceed further.

09. The respondents have further submitted that after examining the matter, the same was referred to GAD for further advice. Vide memorandum dated 28.02.2020, the GAD advised that the Regular Departmental Enquiry initiated against the petitioner can still be pursued further in terms of the provisions of Article 168-A of the J&K CSR, 1956.

10. The respondents have gone on to state that Sh. Suresh Koul was appointed as the Enquiry Officer vide Government Order dated 25.01.2023 and Mr. Rakesh Singh Bhau, was appointed as the Presenting Officer. Sh. Suresh Koul, is stated to have retired from service on 31.07.2023 without completing the enquiry and subsequently, impugned order dated 21.07.2024 came to be issued by the Government appointing Sh. Inderjeet, JKAS, as the Enquiry Officer.

11. After furnishing the detailed background of the facts and circumstances of the case, the respondents have, in their reply, sought to justify continuance of the enquiry

against the petitioner even after his retirement from service by placing reliance upon Article 168-A of the J&K Civil Services Regulations, 1956.

12. I have heard learned counsel for the parties and perused record of the case.

13. From a bare perusal of the stand taken by the respondents in their reply, it can safely be inferred that respondents do not dispute the legal position that once a person has retired from service, no departmental enquiry can be initiated/continued against such person in terms of Rule 33 of the Rules of 1956. Thus, there is no dispute to the legal position that in the instant case the petitioner after having superannuated from service on 31.03.2019 cannot be proceeded against by holding the departmental enquiry against him in terms of Rule 33 of the Rules of 1956. The only issue that is required to be determined is as to whether the respondents can take aid of Article 168-A of J&K CSRs, 1956 to continue the proposed enquiry against the petitioner.

14. In the above context provisions of Article 168-A of J&K CSR, 1956 are required to be noticed. It reads as under :-

“168-A. The Government reserves to itself the right to order the recovery from the pension of an officer of any amount on account of losses found in Judicial or Departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service provided that-

(a) Such departmental proceedings if not instituted while the officer was on duty:-

(i) Shall not be instituted save with the sanction of Government;

(ii) Shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is latter;

(iii) Shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and

(iv) Shall be conducted by such authority and in such places as the Government may direct;

(b) all such departmental proceedings shall be conducted if the officer concerned so requests in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and

(c) such judicial proceedings if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (a) above.”

15. From a perusal of the aforesaid provisions, it is clear that the Government is vested with right to order recovery from the pension of an officer of any amount on account of losses found in Judicial or Departmental proceedings which may have been caused to the Government by the negligence or fraud of a delinquent employee during his service subject to the conditions stipulated in the said provision.
16. The aforesaid provision has fallen for consideration before the Division Bench of this Court in the case of **UT of J&K & Ors. Vs. Qazi Qamer U Din, LPA No. 38/2023, decided on 19.05.2025.** The Division Bench after noticing the provisions contained in Article 168-A of J&K CSR, 1956 has interpreted the same in the following manner :-

“09.The plain reading of Regulation 168-A, clearly suggests that the Government is empowered to order the recovery from pension of an officer of any amount, which represents the losses caused to Government by the negligence or fraudulent act of such officer during his service. This loss caused to the Government on account of negligence or fraud is required to be established either in judicial or departmental proceedings, such recovery is, however, subject to the following conditions (i) such departmental proceedings, if not instituted while the officer was on duty, shall not be instituted save with the sanction of the

Government; (ii) shall be instituted before the retirement of such officer from service or within a year from the date on which he was last on duty, whichever is later; (iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and (iv) shall be conducted by such authority and in such places as the Government may direct. Article 168-A further provides that all such departmental proceedings leading to recovery from pension shall be conducted, if the officer concerned so requests, in accordance with the procedure applicable to the departmental proceedings on which an order of dismissal from service may be made.

10. It is, thus, abundantly clear that in terms of Rule 30 of J&K Civil Services (Classification, Control and Appeal) Rules, 1956, it is not permissible to hold disciplinary proceedings against the delinquent employee after he has retired on superannuation and this would be the position even if the disciplinary proceedings are initiated while such delinquent employee is in service. However, as provided in Article 168-A, nothing prevents the Government to hold departmental proceedings into the conduct of the officer/official, which has resulted into a financial loss to the Government. These proceedings, however, would be limited only to determination of negligence and fraud of the delinquent employee and the amount to be recovered from the pension of such employee on account of losses found to have been caused to the Government by the negligence or fraudulent act of the delinquent officer. There is, of course, a caveat to the exercise of this power by the Government and the caveat is that if the departmental proceedings are not initiated against the officer while he was on duty, these proceedings shall not be instituted after his retirement

without sanction of the Government. These proceedings could be instituted before the officer's retirement from service or within a year from the date on which he was last on duty whichever is later or in respect of an event which has taken place not more than one year before the date on which the officer was last on duty. It is, thus, axiomatic that if the Government fails to institute departmental proceedings for recovery of the amount on account of losses found to have been caused to the Government by negligence or fraud of delinquent officer/official while he was in service, such proceedings shall not be instituted unless the conditions laid down in the proviso to Regulation 168-A are fulfilled."

- 17.** From the foregoing position of law, as analyzed by the Division Bench, it is clear that while the Government reserves the right to hold departmental proceedings into the conduct of a delinquent official which has resulted in financial losses, the exercise of such power is subject to the conditions stipulated in clauses (a) to (c) of Article 168-A of the J&K CSR.
- 18.** Turning to the facts of the present case, as per the Article of charges served upon the petitioner in respect of which the enquiry is proposed to be held against him, the petitioner is alleged to have failed to adhere to the rules and regulations for making the appointments in SICOP; he is alleged to have appointed ad-hoc JEs and other

technical staff randomly by adopting pick-and-choose method without resorting to advertisement; he is alleged to have failed to supervise the system of choosing a supplier or a contractor for a particular financial year; he is alleged to have maintained silence thereby paving way for illegal appointments and method of choosing the suppliers/contractors in SICOP; he is alleged to have failed to maintain absolute integrity and sincerity in the discharge of his official duties and he is alleged to have brought discredit to service by his misdemeanor and misuse of his official position.

- 19.** A bare look at the allegations leveled against the petitioner in the Article of Charges would reveal that there is no allegation with regard to any financial losses having been caused to the Government by the alleged conduct of the petitioner. The only allegation against the petitioner is that he has not adhered to the rules and procedures while appointing staff in SICOP or while selecting the suppliers. There is no allegation that the petitioner has either misappropriated any amount or due to his action any financial loss has been caused to the SICOP. Besides this, no judicial or disciplinary enquiry has been conducted to determine the losses caused to the Government/SICOP by any act of negligence or

misconduct committed by the petitioner. In these circumstances, the conditions laid down in Article 168-A of the J&K CSRs, 1956, are not satisfied in the present case. The respondents therefore, cannot fall back on Article 168-A of J&K CSRs, 1956, to either initiate or continue the departmental proceedings against the petitioner.

20. For what has been discussed hereinbefore, the writ petition is allowed and the impugned order No. 177-JK(IND) of 2023 dated 21.09.2023 and the disciplinary proceedings initiated pursuant thereto, as against the petitioner are quashed.

21. The writ petition is accordingly, ***disposed of.***

(SANJAY DHAR)
JUDGE

JAMMU
02.04.2026
SUNIL

Whether the order is speaking ?	:	Yes/No
Whether the order is reportable ?	:	Yes/No