

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

**WP (C) No. 186/2024
CM No. 341/2024**

Reserved On: 3rd of September, 2026.
Pronounced On: 22nd of September, 2026.
Uploaded On: 22nd of September, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Mohammad Amin Rather, (50 Years)
S/O Ghulam Hassan Rather
R/O Bonigam, District Kulgam,
Kashmir.

... Petitioner(s)

Through: -
Mr Shuja-ul-Haq Tantray, Advocate.

V/S

1. **Union Territory of Jammu & Kashmir**,
Through Financial Commissioner,
(Additional Chief Secretary),
Home Department, J&K,
Civil Secretariat, Srinagar/ Jammu.
2. Director General of Police,
Srinagar, Kashmir.
3. Additional Director General of Police,
(Security), Srinagar, Kashmir.
4. Sr. Superintendent of Police,
(Security), Srinagar, Kashmir.

... Respondents

Through: -
Ms Maha Majeed, Assisting Counsel vice
Mr Mohsin-ul-Showkat Qadri, Sr. AAG.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioner, through the medium of the instant Writ Petition filed under Article 226 of the Constitution of India, is aggrieved of and has challenged Order No. 312 of 2023 dated 21st of December, 2023 issued by

the Senior Superintendent of Police (Security), Kashmir/ Respondent No.4 herein, whereby Petitioner's services as SPO were disengaged from the rolls of the Security Kashmir with immediate effect and he was further directed to deposit all Government articles issued to him, from time to time, in the Stores of Security Kashmir.

02. The Petitioner claims to have been engaged as SPO in the Respondent-Department in the year 2004; that, thereafter, a process was initiated by the Respondents in the year 2007 for conversion of SPOs as Constables on compassionate grounds, wherein the Petitioner along with other five SPOs was not considered for their conversion as Constables despite recommendations having been made by the competent authority, constraining the Petitioner along with aforesaid five SPOs to file SWP No. 1218/2011 before this Court; that the said SWP No. 1218/2011, vide Judgment dated 23rd of February, 2012, came to be disposed of by this Court on the analogy of SWP No. 1563/2009 by directing the Respondents to treat the Petitioners at par with the private Respondents therein and consider their case for appointment and absorption in the Police Organization as Constable Drivers, with all consequential benefits, including seniority within a period of three months from the date private Respondents were appointed.

03. Aggrieved of the Judgment dated 23rd of February, 2012, the Respondents assailed the same by way of LPA No. 190/2012 which, however, came to be dismissed by the Division Bench on 19th of September, 2013; that, thereafter, while facing Contempt proceedings having been initiated by the Petitioner along with other SPOs, the Respondents issued Government Order No. 155-Home of 2022 dated 24th of May, 2022, whereby ten (10) SPOs, including the Petitioner herein, came to be absorbed/ appointed as Constables with effect from the dates shown against the names of each of them.

04. The Petitioner further proceeds to state in his Petition that, on perusal of Government Order dated 24th of May, 2022, the Petitioner claims to have come across the fact that his date of birth has been wrongly reflected as 4th of March, 1981 instead of 1st of January, 1973, as such, he approached the Respondents and sought correction of his date of birth, whereafter, various *inter se* communications were issued by the Respondents on the subject; that, in terms of communication dated 26th of December, 2022, the AIG of Police (Personnel) in the office of Director General of Police, J&K, while enclosing a copy of communication dated 12th of December, 2022 of ZPHQ, Kashmir Zone, along with its enclosures, including copy of DOB certificate and genuineness report of DOB received from JK BOSE, requested the Respondent No.1 herein that necessary rectification in DOB of the Applicant/ Petitioner herein as 1st of January, 1973 instead of 4th of March, 1981 in the above Government Order dated 24th of May, 2022 may kindly be made, so that formal appointment order of the subject could be got issued by the concerned quarters.

05. It is further pleaded by the Petitioner that, when despite the aforesaid *inter se* communication(s), the date of birth of the Petitioner was not rectified and formal appointment order was not issued in his favour, the Petitioner moved a representation before the Respondents for rectifying the error with regard to the date of birth of the Petitioner in Government Order dated 24th of May, 2022, vide which the Petitioner, along with other similarly situated SPOs were appointed/ absorbed as Constables in the Respondent-Department; and that, instead of considering the representation of the Petitioner with reference to recording his date of birth in the Government Order dated 24th of May, 2022, the Respondents, in terms of the impugned Order, disengaged the services of the Petitioner from the rolls of the Security Kashmir, with immediate effect.

06. Upon notice having been issued, the Respondents have filed their Reply/ Objections, *inter alia*, stating therein that the Petitioner has

willfully produced fake and fabricated documents to suppress his actual age with an ill-design to manage his engagement as SPO in the Security Kashmir, deceitfully, on the basis of fabricated documents; that, on the basis of authenticated records, the actual date of birth of the Petitioner was found as 1st of January, 1973 instead of 4th of March, 1981, thereby substantiating the fact that his age was 32 years, 10 months and 02 days at the time of his engagement as SPO and, therefore, was not meeting the eligibility criteria of age laid down by PHQ/ Security Headquarters for engagement of SPO; that, having regard to this factum of deceitfully fabricating his age, the Petitioner was later disengaged by the SSP Security Kashmir vide Order dated 21st of December, 2023.

07. Heard and considered.

08. Admittedly, the Petitioner was engaged as SPO in Respondent-Department in the year 2004, whereafter, he came to be absorbed/appointed as Constable in the year 2022. Subsequently, the Respondents, vide the impugned Order, disengaged the services of the Petitioner from the rolls of Security Kashmir with immediate effect, on the ground that that he has willfully produced a fake and fabricated document to suppress his actual age with an ill-design to manage engagement as SPO Driver in Security Kashmir, deceitfully, on the basis of a fabricated document.

09. From a plain reading of the Order impugned, it is clearly discernible that the Respondents, while disengaging the services of the Petitioner, have not referred to any notice having been issued to the Petitioner or any inquiry having been conducted by them on the subject before proceeding to inflict the heavy punishment of dismissal from service upon the Petitioner. Even, from the perusal of the relevant record made available before this Court by the Respondents, there is nothing forthcoming as to fact that the Respondents have issued any prior notice to the Petitioner or conducted any enquiry before disengaging the services of the Petitioner.

10. Given the above factual position, let us now appreciate the law on the subject.

11. It has been consistently held by the constitutional Courts that if an employee is sought to be disengaged on whatever ground(s), he is at least entitled to a show cause notice, if not to be subjected to an enquiry under the Rules governing the subject. The issuance of a show cause notice, before issuing an order which is prejudicial to the rights and interests of an employee, is based upon the sound legal doctrine of '*Audi Alteram Partem*', which doctrine, *inter-alia*, provides that no person should be condemned unheard, in that, the right to hear would mean that party must know the cause he or she has to meet and must have a reasonable opportunity to present his or her case and the said requirement of issuance of show cause notice as also affording an opportunity of hearing has been held to be flowing directly from the said doctrine of '*Audi Alteram Partem*'.

12. In this regard, a reference can be made to the Judgment passed by the Hon'ble Supreme Court in a case titled "**Canara Bank & Ors. V. Debasis Das & Ors., (2003) 4 SCC 557**". Paragraphs No. 13 and 15, being relevant, are extracted as under:

"13. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and

such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “*Magna Carta*”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”.

13. In **“Dharampal Satampal Limited V. Deputy Commissioner of Central Excise & Ors., 2015 (8) SCC 519”**, the Hon’ble Apex Court, at Paragraph Nos. 21, 24, and 28, has held as under:

“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.”

14. Again, the Apex Court, in **“Pawan Kumar V. Union of India, (2023) 12 SCC 317”**, while relying upon its earlier Judgment passed in **“Avtar Singh V. Union of India, (2016) 8 SCC 471”**, has held that mere suppression of material information or furnishing of false information in a given case does not mean that the employer can arbitrarily discharge/terminate an employee.

15. Similar views were taken by three different Division Benches of this Court in: (i) Letters Patent Appeal (LPA) titled **“Sharaz Hussain Shah V. State of J&K and Ors., 2024 (2) JKJ 38 [HC]”**; (ii) WP (C) No. 289/2025 titled **“Union Territory of J&K and Ors. V. Arsam Imtiyaz Malik”** in its Judgment dated 17th of February, 2025 (authored by me); and (iii) LPA No. 152/2025 titled **“UT of J&K and Ors. v. Shaheen Shah”** vide Judgment dated 6th of August, 2025.

16. Recently, a Division Bench of this Court headed by the Lord Chief Justice, in **“LPA No. 90/2026 titled Union Territory of J&K and Ors. v. Mushtaq Ahmad Shah”**, reported as **2026:JKLHC-SGR:320-DB**, in identical facts, as are in the present case, while concurring with the Judgments passed by this Court in **“State of J&K and Ors. V. Mohammad Iqbal Mallah, 2014 SCC OnLine J&K 58”**; and **“UT of J&K and Ors. v. Shahan Shah (LPA No. 152/2025 decided on 6th of August, 2025)”**, held that in these cases Sections 18 and 19 of the Police Act, 1983 and Article 311 of the Constitution of India will not operate and that only the immediate safeguard of a notice and a reply to the satisfaction of the Respondent therein shall operate. It has been further held that it shall

be the requirement that wherever a stigma or allegation has resulted into such disengagement of the SPOs, they shall be entitled to a notice prior to the disengagement and after such notice is given and reasonable opportunity for filing reply or hearing is given, the authority shall be free to pass appropriate orders. It has been further laid down that where the services of an SPO are terminated or disengaged on account of any misconduct, then the opportunity of hearing shall be a minimum requirement and doctrine of *audi alteram partem* has to be followed.

17. Applying the aforesaid exposition of law to the facts of the case on hand, admittedly, no show cause notice (SCN) or enquiry was held in the case of the Petitioner, before passing the impugned Order to remove him from the rolls of SPOs of Security Kashmir, for furnishing alleged fake documents of his DOB. The Respondents have, thus, proceeded against the Petitioner raising stigmatic accusation, for which he was required to be heard in his defence. Therefore, the irrefutable conclusion that could be drawn is that the Respondents indeed have violated the basic fundamental principle of natural justice, while ordering disengagement of the services of the Petitioner as SPO, thereby condemning him unheard. The Petitioner was entitled to be afforded an opportunity of hearing before inflicting the major punishment of disengagement of service from the Respondent-Department. Therefore, the Order impugned having been passed in direct conflict with the rules of natural justice, if allowed to stand, would compound gross injustice against the Petitioner.

18. Viewed thus, the instant Petition is **allowed** and, as a corollary thereto, by issuance of a '*Writ of Certiorari*', the impugned Order No. 312 of 2023 dated 21st of December, 2023 issued by the Respondent No.4 is hereby quashed. The Respondents, by a '*Writ of Mandamus*', are directed to reinstate the Petitioner back into service with all consequential benefits, excluding the payment of emoluments for the period with effect from the date of his disengagement till the date of restoration of his services.

However, the Respondents shall be at liberty to revisit and re-consider the case of the Petitioner with reference to the alleged production of fake DoB certificate, after following due process of law and providing him adequate opportunity of hearing as per Rules.

19. Record, as produced, be returned to the Respondents through their Counsel, against proper receipt.

20. Writ Petition is, thus, **disposed** of as allowed on the above terms, along with the connected CM.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

September 22nd, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.

