

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP 331/2025

Date of pronouncement 12-02-2026

Uploaded on 23-02-2026

SGT BALKIRSHAN SONI (RETD)

...Petitioner/Appellant(s)

Through: Mr. Arvind Kumar, Advocate.

Vs.

UNION OF INDIA AND ORS.

...Respondent(s)

Through: Mr. T M Shamsi, DSGI with
Mr. Faizan, CGC.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

12.02.2026

1. The petitioner in the instant petition filed under Article 226 of the

Constitution has sought the following reliefs;

- i. Issue a writ in the nature of Habeas Corpus, direction or order whereby the official respondents may be directed to release the petitioner, produce the petitioner before the Hon'ble Court from the illegal custody and quash the impugned order bearing No. 1w/c141/248/pl dated 01-09-2025 and set the petitioner free forth with.
- ii. Issue a writ of Mandamus, direction or order in the nature of mandamus whereby the official respondents may be directed to pay all terminal benefits vis-à-vis pension, gratuity, leave encashment, AFGIS, Provident Fund etc, arising out of the retirement from the service.

2. Facts under the shade and cover to which the aforesaid reliefs have been

prayed and as are stated in the petition filed by the petitioner are that the

petitioner was enrolled in Indian Air Force (IAF) on 01-04-1997 as Catering Assistant and while working as such at unit 01 Wing Air Force (WAF), a Court of Inquiry (COI) was ordered by the Air Officer Commanding (AOC) 01 Wing to investigate financial irregularities related to sales of casual meals, supply of kerosene oil and fresh ration at Air Force Station, Srinagar. It is further stated that pursuant to the orders passed by the (AOC) 1 dated 01-09-2025, the COI was approved by the competent authority vide HQ WACPS 388 dated 28-08-2025 and vide signal dated 22-08-2025, the petitioner was asked to report to Srinagar Station where the petitioner was handed over a copy of order passed by AOC 01 No. 1W/C 141/248/PI dated 01-09-2025 issued under Section 122 of the Air Force Act 1950 invoked against him on the directions of ADC-N-C WAC LAF without assigning any reasons, whereupon the petitioner was kept under custody on 01-09-2025 in terms of the said order dated 01-09-2025 to holding proceedings against him.

3. The petitioner herein has challenged the order dated 01-09-2025, *inter alia*, on the premise that the provisions of Section 122 of the Act of 1950 is not applicable to the petitioner as the same are applicable to the subjects of the Act and that the petitioner had ceased to be subject to the Act upon having superannuated on 31-08-2025 and that though an application in this regard came to submitted by the petitioner on 02-09-2025 before the respondents also seeking copies of the Court of Inquiry proceedings followed by another applications dated 23-09-2025 and 25-09-2025, yet the respondents failed to advert to the said applications and that since the petitioner was discharged from service at 1400 hours on 31-08-2025 upon superannuation yet he was not physically released from the

service on account of the proceedings initiated against him under Section 122 of the Act of 1950 on 01-09-2025, and that the respondents not only detained the petitioner illegally for holding of said proceedings but also withheld his terminal benefits due to him upon his retirement and though an application for release of said benefits was submitted before the respondents on 21-11-2025, the same did not yield any results as the respondents implicated the petitioner maliciously in the case for ulterior motives and that non-release of terminal benefits in his favour violates his fundamental rights depriving him to engage a counsel for defending his case, more so when the petitioner has been subjected to disciplinary proceedings after having been detained after his retirement on 31-08-2025.

4. Two set of objections have been filed by the respondents to the petition, wherein the petition is being opposed while stating that the petitioner has suppressed material facts and that the petition has been filed as an attempt to delay lawful proceedings already initiated against the petitioner and that the petitioner has before maintaining the instant petition filed similar petition before the High Court of Delhi as well as the Armed Forces Tribunal, after having withdrawn the same though with liberty yet without any justified reason and that the Air Force Station, Srinagar on 30-01-2025 and on subsequent dates convened COI against the petitioner to inquire into financial irregularities relating to Mess Management, wherein the petitioner was found blameworthy and upon the conclusion of the said Court of Inquiry, appropriate proceedings were initiated against the petitioner pursuant to the invoking of Section 122 of the Act of 1950 and that the petitioner though superannuated on 31-08-

2025 (PM) and was struck off from the strength of the force on 01-09-2025 and a formal order in this regard came to be issued bearing No. 01W/C 141/248/PI dated 01-09-2025, whereafter the disciplinary proceedings commenced on 15-10-2025 and Summary of Evidence (SOE) was ordered on 22-10-2025 and same has since been completed and the General Court Martial (GCM) to try the petitioner assembled on 08-12-2025 at Air Force Station, Srinagar and that upon completion of Summary of Evidence, the petitioner was released from the close arrest and the petitioner presently is accommodated at SNCO's Mess Air Force Station, Srinagar, as the Court Martial Proceedings are yet to be completed.

Heard counsel for the parties and perused the record produced by the counsel for the respondents.

5. Learned counsel for the petitioner while making his submissions in tune with the case set up in the petition would insist that the respondents could not have invoked the provisions of Section 122 of the Act of 1950 on 01-09-2025, after superannuation of the petitioner on 31-08-2025, as the petitioner ceased to be subject to the provisions of the Act of 1950 and therefore not only the Court Martial Proceedings initiated against the petitioner by the respondents are legally unsustainable and without jurisdiction, but also the withholding of the terminal benefits of the petitioner on account thereof is violation of his fundamental rights.
6. In response to the aforesaid submissions of the counsel for the petitioner, the counsel for the respondents would contend that the plea of the counsel for the petitioner is factually incorrect, in that, the provisions of Section 122 of the Act came to be invoked prior to the superannuation of

the petitioner when a formal sanction for invoking the said provisions of Section 122 came to be ordered by Air Officer Commanding in Chief (AOC) (Western Air Command) on 28-08-2025 and a reference in this regard is made to a signal produced in the open Court and same is taken on record.

It is further contended by the counsel for the respondents that since the provisions of Section 122 came to be rightly invoked prior to the superannuation of the petitioner, when the petitioner was subject to provisions of Act of the 1950, the proceedings initiated against the petitioner and his detention in furtherance thereof is legally valid and under these circumstances, a writ of Habeas Corpus can be neither sought nor granted to the petitioner.

7. Before proceeding to advert to the aforesaid rival submissions of the appearing counsel for the parties, it is deemed appropriate to refer to the provisions of Section 122 of the Act of 1950 hereunder being relevant to the issues involved;

122. Liability of offender who ceases to be subject to Act.-(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in air force custody, and tried and punished for such offence as if he continued to be so subject.

(2) Except as provided by sub-sections (3) and (4), any such person shall not be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act.

(3) The provisions of sub-section (2) shall not apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in Section 37.

(4) Nothing contained in sub-section (2) shall affect the jurisdiction of a civil court to try any offence triable by such court as well as by a court-martial.

(5) When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the Air Force, or has otherwise ceased to be subject to this Act, and he may be

kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(6) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

8. Keeping in mind the aforesaid provisions of the Act, inasmuch as the respective pleadings of the parties including the aforesaid rival submissions of the appearing counsel for the parties, the moot question to be addressed in the instant petition would be as to whether a writ in the nature of Habeas Corpus as also the consequential writ of mandamus can be issued in favour of the petitioner.

9. It is significant to mention here that, in law, a writ of Habeas Corpus is in the nature of an order calling upon the person who has detained another to produce the later before the court in order to let the court know on what grounds he has been confined and set him free, if there is no legal jurisdiction for his detention and if the detention appears to the court to be in violation of the procedure established by law, the court has no option to allow him to be detained on the ground, such as, security of state or expediency.

The Apex Court in case titled as ***Union of India vs Chaya Ghoshal and Anr.***, reported in ***2005 (10) SCC 97*** as held that the writ of Habeas Corpus is a writ of right which is grantable *ex-debito-justitiae* and though a writ of right, it is not a writ of course making it incumbent upon the applicant to show a *prima facie* case of his unlawful detention. However, it is also settled position of law in regard to the writ of Habeas Corpus that if it appears on the face of the returns filed by a party opposing the issuance of writ of Habeas Corpus that a person is in detention in execution of the sentence or indictment on a criminal charge,

that would be a sufficient answer to an application for Habeas Corpus. This view has been expressed by the Apex Court in case titled as ***Janardan Reddy and Ors vs The State of Hyderabad*** reported in ***AIR 1951 SC 217***.

10. Having regard to the aforesaid position of law enunciated by the Apex Court and reverting back to the case in hand and it is not in dispute that the petitioner herein has superannuated on 31-08-2025 (PM) and action under the provisions of Section 122 of the Act against the petitioner was ordered on 28-08-2025 by the CNC stated to be the competent authority in the matter, manifestly suggesting that on the said date the petitioner was subject to the provisions of the Act of 1950.
11. Insofar as the plea of the counsel for the petitioner that the provisions of Section 122 have been invoked by the incompetent authority which has ordered holding of court martial in the aforesaid petition, said plea however, is not the subject matter of the instant petition and as such, this Court refrains from making any observations thereof or rendering any decision thereto.
12. Therefore, in view of above, it cannot by any stretch of imagination be said that the petitioner is detained illegally by the respondents' warranting issuance of writ of Habeas Corpus.
13. Insofar as the writ of Mandamus sought by the petitioner is concerned, the respondents are required to be called upon to consider the case of the petitioner in regard to the release of terminal benefits in accordance with law. Ordered accordingly.

14. Viewed thus, for what has been observed, considered and analyzed hereinabove, the petition shall be stand ***disposed of*** accordingly.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
12.02.2026
Sarvar

Whether the order is Speaking *Yes*

Whether the order is reportable *Yes/No*

