Sr. No. 18

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

LPA No. 153/2026

Pronounced on : 28.10.2026
Uploaded on : 30.10.2026

UT of J & K & Ors. .....Applicant(s)

Through :- Mr. Suneel Malhotra, GA

v/s

Gopal Krishan .....Respondent(s)

Through :- Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate

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

ORDER (ORAL)

1. Impugned in this *intra-court* appeal, filed by the UT of J & K and its functionaries, under Clause 12 of the Letters Patent, is an order and judgment dated 25.03.2026 passed by a learned Single Judge of this Court **["the Writ Court"]** in WP (C) No. 1776/2020 titled *"Gopal Krishan Vs. UT of J & K & Ors.",* whereby the Writ Court has allowed the petition filed by the respondent and has set aside the inquiry proceedings leading to the order dated 20.05.2020 issued by the Commissioner, Jammu Municipal Corporation, dismissing the respondent from service. There is a further direction to the appellants to process the case of the respondent for grant of pension and consequential benefits.

2. Briefly stated, the facts leading to the filing of this appeal are that the respondent was appointed as Sanitary Inspector in Jammu

Municipal Corporation (JMC). He came to be promoted as Enforcement Inspector in the year 2016 and was posted, as such, for Ward Nos. 51, 52, 53 and 54 of Jammu from 07.02.2019 to 31.07.2019. On 18.06.2019, the appellants received a complaint from one Smt. Jyoti Devi, Corporator Ward No. 53, Trikuta Nagar, Jammu making serious allegations against the respondent with regard to his connivance in the unauthorized constructions going on in Ward No. 53. On the basis of aforesaid complaint, a preliminary inquiry was conducted by the Assistant Commissioner (Revenue), JMC, who submitted his report on 27.07.2019 to the Commissioner, JMC. On the basis of the fact finding report submitted by the Assistant Commissioner (Revenue), JMC, the respondent was placed under suspension vide order dated 31.07.2019 issued by Commissioner, JMC. The Secretary, JMC was appointed as the Inquiry Officer to look into the allegations against the respondent. Accordingly, a fresh preliminary inquiry was conducted by the Secretary, JMC, who, after a detailed inquiry, submitted his report and recommendations vide communication dated 12.12.2019.

3. There was another complaint received by the Commissioner, JMC against the respondent which made the Commissioner, JMC, who was also the disciplinary authority, qua the respondent, to initiate formal departmental proceedings against the respondent in terms of Rule 33 of the Civil Services (Classification, Control & Appeal) Rules, 1956 **["the Rules of 1956"]**.

4. The article of charges and statement of imputations were served upon the respondent, who was asked to file his written statement within a period of 07 days. The respondent submitted his written statement on 22.02.2020 denying all the charges and imputations. The Commissioner, JMC decided to hold the inquiry herself and thus, acted as Inquiry Officer in the matter.

5. Admittedly, out of 11 witnesses cited with article of charges/imputation, not even a single witness was examined, rather the matter was taken up by the disciplinary authority/Inquiry Officer with the Joint Commissioner (A), JMC to verify the veracity of statement of defence submitted by the respondent, particularly in relation to the constructions raised between February, 2019 to July, 2019 in the Wards under supervision of the respondent. It seems that the Joint Commissioner (A), JMC submitted a report in this regard to the Inquiry Officer on 20.04.2020. The Inquiry Officer neither shared this report of Joint Commissioner (A), JMC with the respondent nor any opportunity was granted to the respondent to dispute the same.

HIGH COURT JAMMU & KASHMIR

6. Be that as it may, the Commissioner, JMC, relying upon the report of the Joint Commissioner (A), JMC, admittedly prepared at the back of the respondent, straightaway issued notice of proposed penalty to the respondent, in terms of Section 30 of the Rules of 1956. The notice of proposed penalty was replied by the respondent, who in his reply raised the grievance that the inquiry

was ex-parte without giving him adequate opportunity to defend. Upon consideration of the reply submitted by the respondent to the proposed penalty, the Commissioner, JMC vide order bearing No. JMC/PS/COM/279 dated 20.05.2020 dismissed the respondent from service.

7. The impugned inquiry proceedings including the order of dismissal dated 20.05.2020 were assailed by the respondent before the Writ Court in WP (C) No. 1776/2020. The Writ Court, after having considered the rival contentions and perused the inquiry report, came to the conclusion that the Inquiry Officer had not adhered to the principles of natural justice. In the inquiry, an adequate opportunity to defend was never provided to the respondent. The Writ Court was of the opinion that the report prepared by the Joint Commissioner (A), JMC, on the directions of the Inquiry Officer, could not have been relied upon unless the same was put to the delinquent i.e. the respondent herein and such delinquent given a fair opportunity to rebut. The Writ Court has also gone into certain other aspects of the matter in view of the arguments raised by the learned senior counsel appearing for the respondent.

HIGH COURT JAMMU & KASHMIR

8. The appellants are aggrieved of and have challenged the judgment of the Writ Court, primarily, on the ground that the Writ Court has failed to appreciate that the respondent was given adequate opportunity at all stages of inquiry. Learned counsel for the appellants has submitted that the respondent was associated with

the preliminary inquiry conducted into the matter by the Assistant Commissioner (Revenue), JMC. Copy of the charge-sheet was also served upon the respondent to which he submitted his detailed reply.

9. It is further submitted that the order of dismissal was issued only after putting the respondent to show cause notice of proposed penalty. In support of his submissions, he has also produced the original inquiry record.

10. **Having heard learned counsel for the parties and perused the material on record,** we are in complete agreement with the findings of fact recorded by the Writ Court that the inquiry proceedings in the instant case are vitiated for non-compliance with the principles of natural justice. We have carefully gone through the original record produced before us and we find that no inquiry, worth the name, was conducted after the reply to the charge-sheet was submitted by the respondent. None of the witnesses, cited in the article of charge and statement of imputations in support thereof, were examined nor was there any occasion for the respondent to cross-examine such witnesses. The entire inquiry proceedings have been concluded on the basis of the fact finding report submitted by the Joint Commissioner (A), JMC, who was tasked by the Inquiry Officer to verify the assertions made by the respondent in his defence in the reply submitted to the charge-sheet.

HIGH COURT JAMMU & KASHMIR

11. Interestingly, the report of the Joint Commissioner (A), JMC was not shared with the respondent nor was he given any opportunity to dispute the same by producing contrary evidence. Even the statement of the respondent has not been recorded during the course of inquiry. Subsequent notice of the proposed penalty on the basis of such inquiry would not cure the defect in the inquiry, which is vitiated for non-compliance with the principles of natural justice.

12. The respondent has been admittedly prejudiced by not providing him the copy of the report submitted by the Joint Commissioner (A), JMC which ultimately formed basis of conclusion of inquiry against the respondent and imposing upon him the major penalty of dismissal from service.

HIGH COURT JAMMU & KASHMIR

13. We, however, do not find any substance in the argument raised by Mr. Abhinav Sharma, learned senior counsel, representing the respondent that the Commissioner, JMC being the disciplinary authority and having served a charge-sheet upon the respondent was not competent to act as an Inquiry Officer. Sub-rule 4 of Rule 33 of the Rules of 1956 clearly provides that 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. The competent authority envisaged under Rule 33 is a disciplinary authority who is also competent to serve upon the delinquent member of service the charges and statement of imputation in support thereof.

14. After arguing for a while, Mr. Sharma was fair enough to concede to this position but would submit that when the Inquiry Officer and disciplinary authority is one, there is every likelihood of such authority proceedings with a predetermined mind to punish the delinquent.

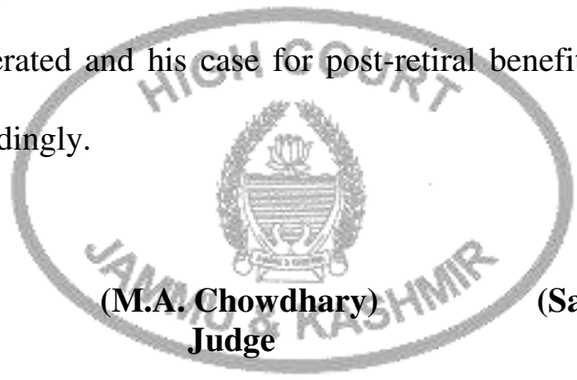
15. Be that as it may, since the legal position in this regard is not contestable and, therefore, no detailed discussion on the issue is required. Suffice it to say that in terms of Rule 33 of the Rules of 1956, the disciplinary authority may either itself inquire into the allegations against the delinquent or appoint some other officer as an Inquiry Officer. Simply because the disciplinary authority has also acted as an Inquiry Officer does not *ipso facto* vitiate the disciplinary proceedings unless the specific prejudice is pleaded, demonstrated and proved.

HIGH COURT JAMMU & KASHMIR

16. **For the foregoing reasons**, **we concur with the view taken by the Writ Court** that the enquiry proceedings conducted in this case after receiving a reply to the charge-sheet are completely vitiated having been conducted in sheer violation of the principles of natural justice. **While upholding the judgment of the Writ Court** on this aspect, **we dispose of this appeal by providing that** the appellants may, if they so choose, can proceed to conduct the disciplinary proceedings, afresh, from the stage the reply to the charge-sheet was submitted by the respondent, by strictly complying with the principles of natural justice and the provisions of Rule 33 of the

Rules of 1956 read with Article 311 of the Constitution of India. The inquiry may be conducted in the manner aforesaid against the respondent, notwithstanding the fact that the respondent has superannuated from service. The respondent shall be deemed to be in service for the purposes of conducting the inquiry afresh.

17. Having regard to the fact that the allegations against the respondent pertain to the year 2019, it would be in the fitness of things to direct the appellants to conclude the inquiry, if continued in terms of the directions issued above, within a period of six months from today, failing which, the respondent shall be deemed to have been exonerated and his case for post-retiral benefit shall be processed accordingly.



(M.A. Chowdhary)
Judge

(Sanjeev Kumar)
Judge

JAMMU
28.10.2026
Manan

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