

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

**WP(C) No. 63/2020  
CM No. 103/2020**

**Reserved on:- 03.02.2025  
Pronounced on: 21.02.2025**

**Kunj Lal, Age 55 years,  
S/o Pecha Thakur, R/o Village Chill  
Shamti, Tehsil Assar, District Doda.**

.... Petitioner(s)

Through :- Mr. Rameshwar Singh Jamwal, Advocate with  
Mr. Adeep Bandral, Advocate.

V/s

- 1. UT of Jammu and Kashmir  
Th. its Commissioner/ Secretary,  
Food Civil Supplies and Consumer Affairs  
Department, Civil Secretariat, Jammu.**
- 2. Director, Food Civil Supplies and Consumer  
Affairs Department , Govt. of J&K , Jammu.**
- 3. Assistant Director, Food Civil Supplies and  
Consumer Affairs Department , Doda.**
- 4. Tehsil Supply Officer, Food Civil Supplies and  
Consumer Affairs Department Assar, Doda.**
- 5. Deputy Commissioner, Doda.**
- 6. Deputy Commissioner, Ramban.**
- 7. Assistant Director, Food Civil Supplies and  
Consumer Affairs Department, Ramban.**

....Respondent(s)

**Respondents.**

**Proforma Respondents.**

Through :- Mr. Sumeet Bhatia, GA.

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**JUDGMENT**

1. The petitioner through the medium of instant petition has challenged order No. TSO/ FCS&CA/A/20/1491-92 dated 03.01.2020 issued by respondent no. 4 and

report No. 662-69/FCS&CA/D/2018-19 dated 24.01.2019 issued by respondent No. 3 and has also prayed for the release of carriage (loading/unloading) charges due in favour of the petitioner since August, 2018.

**FACTUAL MATRIX OF THE CASE**

2. The specific case of the petitioner is that he is a ration dealer having his Fair Price Shop at Village Shamti-A, Tehsil Assar, District Doda and is running the said shop under license No. 633-37/FSD/98 dated 09.07.1198.

3. The further case of the petitioner is that on 04.01.2020, he came to know that an enquiry was initiated against him and a report bearing No. 662-69/FCS&CA/D/2018-19 dated 24.01.2019 was issued by respondent No.3, without informing and associating the petitioner to the said enquiry. The petitioner was also made aware that an order bearing No. TSO/ FCS&CA/A/20/1491-92 dated 03.01.2020 has been issued by respondent no. 4, whereby he was directed to remit the recovery of excess carriage of food grains amounting to the tune of Rs 4,38,305/- into the Govt. Treasury, Doda under Major Head 4408- misc within 7 days.

4. The report dated 24.01.2019 indicates that the complainant Sh. Jagdish Raj Rana S/O Shiv Ram Rana R/O Chill Tehsil Assar District Doda, has filed some complaint regarding the excess carriage charges drawn by the petitioner. However, the respondent No.3 failed to examine the complainant, and he did not examine any other witnesses on behalf of the complainant.

5. It is the further case of the petitioner that he has been distributing the ration at multiple locations of Shamti-A area and the ration holders are getting their due shares properly and in the aforesaid report, it has been stated that the maximum rationees belong to the Schedule Tribe category and the petitioner is providing the due share to all the rationees properly.

6. Furthermore, in the enquiry report, it has been stated that respondent No. 3 has examined Sh. Panchi Ram S/o Mohan Lal R/o Bashal. It is, however, contended by learned counsel for the petitioner that the said Panchi Ram is not the resident of Bashal and he is also not the rationee/ ticket holder of the Fair Price Shop at Shamti-A, which belongs to the petitioner.

7. The further case of the petitioner is that the respondent No.4 has wrongly mentioned in the enquiry report dated 24.01.2019 that the petitioner is transporting the ration for his Fair Price Shop at Shamti-A from Tehsil Office, Assar via crane, however, it is stated that the crane at village Trungal, Tehsil Assar is not working since long. The petitioner submits that since 2016 he is carrying all the ration from Tehsil to his Fair Price Shop at Shamti-A by Road as per the distance certificate issued by the PWD Department Batote and the Block Development Officer, Assar.

8. The petitioner further submits that he along with other villagers have approached respondent Nos. 3 and 4 for making their statement and for submitting their resolution in favour of the petitioner. However, respondent Nos. 3 and 4 have refused to accept the same.

#### **ARGUMENTS ON BEHALF OF THE PETITIONER**

9. Mr. R.S. Jamwal, learned counsel for the petitioner has argued that the respondents have conducted the enquiry at the back of the petitioner, who could not make himself present before the authorities during the enquiry. Also, order dated 03.01.2020 passed by respondent No.4 and report dated 24.01.2019 issued by respondent No.3 are illegal and unjustifiable, as the same are passed without intimating and associating the petitioner to the enquiry proceedings and on the basis of the said enquiry, the petitioner is held accountable and a penalty has been imposed to the tune of Rs. 4,38,305/- which is untenable in the eyes of law and against the principle of natural justice.

10. The learned counsel for the petitioner further submits that report dated 24.01.2019 reveals that the said Sh. Jagdish Raj Rana has filed the complaint against the petitioner, however, learned counsel for the petitioner asserts that respondent No.3 before whom the said complaint was filed, has failed to examine the complainant himself and any other witness on behalf of the complainant and hence states that the said report is illegal and inconsistent with the principles of natural justice.

11. It has also been argued by the learned counsel for the petitioner that the enquiry report reveals Sh. Panchi Ram, who has been examined by the respondent No.3, is not a resident of Bashal and is neither a rationee/ticket holder of Fair Price Shop at Shamti-A which belongs to the petitioner and this fact is evident through the certificate issued by the Office of the Sarpanch Panchayat Halqa Shamti which is placed on record as Annexure IV. In the aforesaid backdrop, the petitioner clarifies that the enquiry report is false and frivolous and has been deliberately prepared against him.

12. The learned counsel for the petitioner has denied the allegation that the petitioner is transporting ration for his Fair Price Shop at Shamti-A from the Tehsil Office at Assar via crane. This denial is supported by a certificate issued by the Block Development Officer, Assar, which specifically addresses Block Assar and provides details regarding the distance traveled by a pony from the Food Store at Assar to various stations. Furthermore, the counsel has argued that the Enquiry Officer failed to recognize that the crane is not an authorized means of transporting ration from the Tehsil Office at Assar to the Fair Price Shop at Shamti-A. The counsel further contends that the Enquiry Officer incorrectly computed the carriage charges for the crane transport from Trungal to Chill, as such transportation has not been sanctioned by the department.

13. Lastly it has been contended by the learned counsel for the petitioner that the petitioner has been responsibly distributing ration to all the rationees in the Shamti-A area since 1998, with no complaints against him till date. The counsel submits that the order impugned, issued by respondent no. 4, and the report issued by respondent no. 3 are both vague and false and, thus, prays the same be quashed.

#### **ARGUMENTS ON BEHALF OF THE RESPONDENTS**

14. *Per contra*, learned counsel appearing on behalf of the respondents submits that none of the petitioners' legal, constitutional, or statutory rights have been infringed upon by the respondents.

15. The learned counsel for the respondents further submits that vide communication no. DCD/PA- Genl-112/2018/2165 dated 10-12-2018 issued by the office of Dy. Commissioner/ District Development Commissioner, Doda, the then Assistant Director, Food Civil Supplies & Consumer Affairs, Doda directed the enquiry to be initiated into the complaint filed by Sh. Jagdish Raj Rana regarding the carriage charges drawn by the petitioner.

16. Further it is submitted that the enquiry report was submitted on 29.07.2019 by respondent no.3. The findings of the said enquiry report revealed that the carriage charges incurred by the dealer from the Food Store Assar to Chill near crane site, including the charges, amounted to Rs. 134/- per Qtl. However according to the certificate issued by the executing agencies, the distance from the Food Store to the FPS centre was 2km, with an additional 20 km covered by the ponies and submits that petitioner has been receiving Rs. 364 per Qtl from 2016-2017 and Rs. 531/- per Qtl from 2017 onwards for transporting food grains from the food store, Assar to the sanctioned FPS at Shamti-A. Thus it has been urged

that a total of Rs. 6,61,053/- has been drawn by the petitioner whereas the actual cost incurred was Rs. 2,22,748 upto Chill as the petitioner used to distribute the ration at Chill. Therefore according to the respondents difference of Rs. 4,38,305/- has been calculated which needs to be recovered from the petitioner.

17. It is also the case of the respondents that the actual distribution of the ration has been made by the petitioner against the rules and norms governing the field, thus a penalty to the tune of Rs. 4,38,305/- has been imposed on the petitioner for the recovery of excess charges, as the ration was directed to be distributed at Shamti-A instead of Chill.

### **LEGAL ANALYSIS**

18. Heard learned counsel for the parties and perused the record.

19. In view of the above and after considering the arguments put forth by the learned counsel for both the parties, the instant petition is taken up for final disposal at this stage and this Court is of the view that the outcome of the instant petition rests on the determination of the following issues:-

Issue no.1 – **Does the failure to associate an employee in the enquiry process, where the outcome of such enquiry has the potential to affect their livelihood, violate the principles of natural justice more particularly their right of fair hearing?**

Issue no.2- **Whether enquiry proceedings can be conducted without issuing a notice to the person against whom the enquiry has been initiated, thereby violating the principles of natural justice, and the right to be heard, under the applicable legal framework, and relevant procedural safeguards?**

20. As far as issue no.1 is concerned the principles of natural justice are founded on two core elements: *audi alteram partem* (the right to be heard) and *nemo iudex in causa sua* (the rule against bias). When an enquiry is conducted without

involving the employee, especially in situations where the result could lead to the termination or other severe consequences, it breaches the *audi alteram partem* principle. This principle mandates that an individual must be given a reasonable opportunity to present their case, answer the charges against them, and defend themselves before any adverse action.

21. Additionally, the failure to involve the employee in the enquiry process could lead to an arbitrary decision, thus infringing upon their right to a fair hearing. It is well-established in jurisprudence that any action affecting an employee's livelihood must be preceded by a fair, transparent and unbiased process, where the person is not only notified against the allegations leveled against him but is also afforded an opportunity to participate in their defense. If an employee is denied a fair opportunity to participate in the enquiry, the potential for unjust outcomes increases, which could irreparably harm their future prospects, thus the failure to associate an employee in the enquiry process underscores the centrality of natural justice, since the right to a fair hearing is not just a procedural formality but a fundamental safeguard against arbitrary and unjust actions.

22. In the present case the record in terms of order dated 03.01.2019 and 24.01.2019 has been produced before this Court and perusal of the same reveals that one sided enquiry has been conducted against the petitioner who was not at all associated with the enquiry process and on the contrary the decision has been made whereby a penalty to the tune of Rs 4,38,305/- has been imposed on the petitioner, despite the lack of his participation in the enquiry. The respondents could not justify the order impugned and it is the specific case of the petitioner that he has not been heard before imposition of the final penalty. The order which has been produced before this Court has been examined, figuring the stand that the petitioner has not been heard whereas on the other hand one sided enquiry has been

conducted where the statement of public at large has been taken which is impugned in the present petition.

23. Therefore, the allegation of the petitioner that he was not associated with the enquiry is factually correct, which has been initiated at the back of the petitioner, what to talk of associating the petitioner in the said enquiry, even no show cause notice was issued to the petitioner while imposing the penalty. Thus the order impugned, is violative of principle of natural justice and the imposition of penalty without affording an opportunity of being heard to the petitioner, is violative of right to livelihood.

24. The Hon'ble Apex Court in catena of judgments has consistently upheld the principles of natural justice in matters of an employees' discipline, particularly when an enquiry may lead to adverse consequences. The legal doctrine of natural justice insures that no person should be condemned unheard, particularly when such actions impact their livelihood and career.

25. In "**A.K. Kraipak and Others v. Union of India and Others**" (1969) 2 SCC 262 quoting with approval the judgment **In re: H.K. (All Infant)**, this Court held that :

***"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or***

*unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative inquiry may have more far reaching effect than a decision in a quasi-judicial inquiry.....”*

26. In “*Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others*”(1991) Supp(1) SCC 600, a five-Judge Bench of this Court highlighted how essential it is to afford a reasonable opportunity to an employee to put forth his case in a domestic inquiry and the requirement of an employer to comply with the principles of natural justice and fair play, in the following words:

*“202. ....It is now well settled that the ‘audi alteram partem’ rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally..Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.....”*

27. Thus in light of what has been discussed herein above coupled with the settled legal position, the issue no. 1 is decided in favour of the petitioner and against the respondents.

28. With regard to issue no. 2 whether enquiry proceedings can be conducted without issuing a notice to the person against whom the same has been initiated, the principles of natural justice are fundamental to ensure fairness in administrative and quasi- judicial proceedings. The rule of *audi alteram partem* is one of the cornerstones of this principle, thus the person involved in the enquiry proceedings, must be given a proper notice of the proceedings, detailing the nature of the action or decision, as well as the allegations or evidence that will be considered. This gives them an opportunity to prepare a defense. Thus failure to follow these principles, particularly the failure to issue proper notice or providing an opportunity to be heard, can result in the decision being deemed procedurally flawed or unjust, which would likely render the proceedings invalid, as it undermines the fairness of the process and violates the right to a fair hearing.

29. The record produced before the Court reveals that no notice has been issued to the petitioner before initiating the said enquiry proceedings, the respondents have also failed to explain what prevented them from issuing a notice to the petitioner before initiating the enquiry, and even the final penalty has also been imposed upon the petitioner. Thus it can be inferred from the respondent's action that the failure to issue notice was an attempt to prevent the petitioner from having an opportunity to present his case, as a result, the respondents' action clearly violate the principle of natural justice with an ulterior and biased motive behind their conduct.

30. The Apex Court has consistently emphasized that any order issued without providing sufficient notice and an opportunity to the affected party to be heard is

fundamentally defective. This reinforces the necessity of adhering to due process, as the failure to issue notice or allow a fair hearing violates the principles of natural justice, making the decision legally invalid. The Hon'ble Apex Court in case titled ***D.K Yadav v. J.M.A Industries Ltd. (1993) 3 SCC 259***, has held as under:-

*“The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.*

*Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.”*

31. Thus In light of the discussion made herein above coupled with the judgment passed by the Apex Court referred above, the issue no.2 is also decided in favour of the petitioner and against the respondents. The respondents were under legal obligation qua the petitioner to have issued a notice to the petitioner before initiation of the inquiry proceedings as the petitioner has the right to be heard which has not happened in the instant case.

### **CONCLUSION**

32. In light of the discussions made hereinabove, coupled with the settled legal position, **the instant petition is allowed and the impugned order No. TSO/FCS&CA/A/20/1491-92 dated 03.01.2020 issued by respondent no. 4 along with report No. 662-69/FCS&CA/D/2018-19 dated 24.01.2019 issued by respondent No. 3 are hereby quashed.** However, it is made clear that this will not come in the way of the respondents to initiate fresh enquiry, strictly in consonance with law, if the respondents so desire, after associating the petitioner in said enquiry. Any decision which is likely to be taken on the basis of said enquiry shall be taken after issuing show cause notice to the petitioner. In case, decision on the basis of said inquiry goes against the petitioner so taken, he will be at liberty to avail appropriate remedy available to him under rules.

33. Further, the amount which has been deposited by the petitioner in pursuance to the interim order dated 08.01.2020, to the tune of Rs. 4,38,305/-, shall be released in favour of the petitioner along with the interest accrued thereupon.

34. Accordingly, the petition is ***disposed of*** along with connected application(s), if any, in the manner indicated hereinabove.

**(Wasim Sadiq Nargal)**  
**Judge**

Jammu:  
21.02.2025  
Neha-1

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|-----------------------------------------------|----------|----------------------|
| <b><i>Whether the order is speaking</i></b>   | <b>:</b> | <b><i>Yes/No</i></b> |
| <b><i>Whether the order is reportable</i></b> | <b>:</b> | <b><i>Yes/No</i></b> |