

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.2027/2024

Reserved on: 03.09.2025
Pronounced on: 11.09.2025

Sudershan Mehta S/o Late Shri D.D.Mehta (Retd. Dy.S.P.)
R/o House No.2, Jamwal Colony, Trikuta Channi Link Road, Channi
Himmar, Jammu 180015, Age 63 years

...Petitioners(s)

Through:- Mr. Parveen Kapahi, Advocate

Versus

1. Union Territory of Jammu & Kashmir Government through
Chief Secretary, JK UT Civil Secretariat, Jammu/Srinagar.
2. Director General of Police, Police Headquarters, J&K
3. Principal Secretary to the Government, Home Department,
JK UT Civil Secretariat, Jammu/Srinagar-190009.

...Respondent(s)

Through:- Ms. Monika Kohli, Sr. AAG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Sanjeev Kumar J

1. The petitioner was appointed as Sub-Inspector in the Jammu & Kashmir Police on 11th November, 1990. He was promoted to the post of Inspector on 31st March, 2000. Vide Government Oder No.625 (P) of 2012 dated 20th July, 2012, the petitioner was placed as Incharge Deputy Superintendent of Police. In the year 2015, the police headquarters J&K received an information that the petitioner had been working as Joint Secretary in the Jammu & Kashmir Cricket Association (JKCA) simultaneously

while working in the police department, without obtaining prior permission of the Government as mandated under Rule 21(2) of the Jammu & Kashmir Government Employees (Conduct) Rules, 1971 [“the Conduct Rule”].

2. It also came to the notice of the police headquarters that the petitioner was receiving an amount of Rs.12,000/- per month as honorarium for performing his duties as Joint Secretary in JKCA. An explanation in this regard was sought by the police headquarters. There was also a specific complaint received against the petitioner from one Sh. Desh Rattan Dubey alleging that the petitioner, while working as AC HG, Samba, was not performing his official duties and was instead engaged in JKCA related activities. The Director General of Police, J&K Police [“DGP”] forwarded the complaint to the J&K State Vigilance Organization (now Anticorruption Bureau).
3. Meanwhile, the police headquarters also received information that apart from the petitioner, Sh. Benam Tosh, SP, Sharat Chander Singh, Inspector, Mr. Kuldeep Handoo, Inspector, Sajjad Hussain, Inspector and Rakesh Khajuria, Head Constable, were holding different positions in various state sports associations without seeking prior permission from the competent authority, as required in terms of Sub Rule (2) of Rule 21 of the Conduct Rules.

4. Faced with the aforesaid position and having received show cause notice from the police headquarters, the petitioner immediately made an application through proper channel on 24th February, 2016 to seek *post-facto* permission to hold the position of Joint Secretary in JKCA. However, no such permission was granted by the competent authority and instead the DGP vide communication dated 13th June, 2018 wrote to the Principal Secretary to the Government, Home Department to initiate departmental proceedings against the petitioner for misconduct. In the meanwhile, the State Vigilance Organization, too, had written back to the police headquarters to initiate departmental proceedings against the respondents.
5. Responding to the communication of the DGP dated 13th June, 2018 (supra) recommending departmental action against the petitioner, the administrative department of home vide Communication No.Home/Gaz/PB-1/61/2018 dated 14.11.2018, called upon the Director General of Police to furnish action taken report on the reply submitted by the petitioner in response to the explanation sought from him by the police headquarters vide letter dated 30th March, 2015. There is subsequent letter from the home department dated 29th June, 2021 on the same subject.
6. Responding to the communication of the home department in the matter of initiation of disciplinary proceedings recommended by

the police headquarters against the petitioner, the then Director General of Police, vide his communication dated 4th September, 2021, recommended to the home department to set aside its earlier recommendations in view of the petitioner having retired on attaining the age of superannuation on 31st May, 2021. Since the competent authority had issued fresh integrity certificate and vigilance clearance in favour of the petitioner, therefore, recommendation was made by the police headquarters for regularization of the promotion of the petitioner as Dy.S.P.

7. The home department, however, did not agree with the recommendations of the DGP and vide memorandum bearing No.HOME-PG/247/2021(56418) dated 12th May, 2022 proposed to hold an inquiry against the petitioner in terms of Rule 33 of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 [“the Rules of 1956”] and, accordingly, served upon the petitioner articles of charges and statement of imputations of misconduct. Accordingly, the administrative department of home in consultation with the General Administration Department after seeking reply to the charge-sheet from the petitioner, vide Government Order No.213-Home of 2022 dated 6th July, 2022 appointed an inquiry officer to conduct an in-depth inquiry into the charges framed against the petitioner.
8. The inquiry officer submitted his report on 14th September, 2022 holding that the petitioner, the then Incharge Dy.S.P. (now

retired) had accepted the assignment of Joint Secretary, JKCA without prior permission of the Government, as mandated by Sub-Rule (2) of Rule 21 of the Conduct Rules and had in that capacity also accepted remuneration from the JKCA while simultaneously drawing his salary from the Government exchequer as police officer. The report, thus, concluded that the petitioner was guilty of violating the provisions of the Conduct Rules.

9. On consideration of the report of the inquiry officer by the competent authority, it was decided that the amount of remuneration, which the petitioner had drawn from the JKCA while also drawing regular salary from the Government exchequer as a police officer should be recovered. Consequently, vide Government Order No.403-Home of 2022 dated 16.11.2022, the petitioner was held liable to pay back from his pension the amount which he had drawn as remuneration from the JKCA. The Financial Advisor/Chief Accounts Officer, PHQ, J&K was directed to take necessary steps to ensure deduction from the pension of the retired officer.
10. It seems that apprehending adverse order by the respondent and to assail the disciplinary proceedings initiated by the Government against him in terms of Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956, the

petitioner had approached the Tribunal by way of OA No.604 of 2022.

11. During pendency of that OA, the Government Order dated 16.11.2022 (supra) came to be passed against the petitioner which made him to file another OA No.1752/2022 before the Tribunal. Both these OAs have been disposed of by the Tribunal by a common order and judgment dated 28th June, 2024, whereby the Tribunal has upheld the action of the respondents recovering remuneration received by the petitioner from JKCA from his pension. However, the Tribunal has allowed the prayer of the petitioner for his regularization as Dy.S.P. and has issued necessary directions for considering his case for regularization with effect from the date he was entitled to be promoted as Dy.S.P. along with his other counterparts, including grant of selection grade of Dy.S.P. with all consequential benefits. The Government has not chosen to assail the directions, which are passed against it and, therefore, has accepted the impugned judgment passed by the Tribunal.

12. The petitioner is, however, aggrieved of the impugned judgment to the extent it has upheld the action of the respondents directing recovery of the amount which the petitioner had drawn as remuneration from the JKCA by taking resort to Article 168-A of the J&K Civil Service Regulations, 1956, [“the Regulations of 1956”], as ordered vide Government order No.403-Home of

2022 dated 16.11.2022. The petitioner assails the judgment impugned primarily on the ground that in the instant case the provisions of Article 168-A of Jammu and Kashmir Civil Service Regulations, 1956 [“JK CSR”] are not attracted as the loss to the public exchequer on account of the petitioner having accepted the assignment of Joint Secretary, JKCA has neither been established nor the petitioner has been given adequate opportunity to defend this charge.

13 Mr. Parveen Kapahi, learned counsel appearing for the petitioner, would submit that the petitioner having retired on 31st May, 2021 could not have been proceeded in departmental inquiry for misconduct, which is referable to the period when he was in active service.

14. *Per contra*, Ms. Monika Kohli, learned Sr. AAG, would argue that the judgment passed by the Tribunal, to the extent it is impugned by the petitioner, is perfectly in consonance with law. She would submit that though, it is true that disciplinary proceedings against an employee, for misconduct allegedly committed during service, cannot be initiated against a retired employee, yet in terms of the provisions of Article 168-A of the JKCSR, there is no prohibition to initiate disciplinary proceedings in respect of any loss caused to the Government either by negligence or by fraud of such an employee during his service. She would, therefore, urge this Court to uphold the

judgment of the Tribunal to the extent impugned in this petition and permit the respondents to recover the loss caused to the public exchequer by the petitioner by accepting the assignment of Joint Secretary in JKCA at the cost of his duties as a police officer in the Government.

15. Having heard learned counsel for the parties and perused the material on record, the controversy raised in this petition for determination falls in a narrow compass.
16. There is no dispute with regard to the fact that the petitioner while he was working as a police officer in the department of police, Government of J&K accepted the assignment of Joint Secretary in JKCA without seeking prior permission of the Government as required in Sub Rule (2) of Rule 21 of the Conduct Rule.
17. There can also be no dispute that the petitioner discharged his responsibilities as Joint Secretary in JKCA in different spells between 2003 to 2016 at the cost and to the detriment of his duties as a police officer. While he was drawing full remuneration from the government for performing his duties as a police officer, he was also receiving honorarium of Rs.12,000/- per month from JKCA.
18. We also cannot lose sight of the fact that in the then State of Jammu & Kashmir there were several government

officers/officials in the civil and police administration, who were holding such positions, on honorary basis, in different sports organizations. As per the list furnished by the Under-Secretary to the Government, Department of Technical Education and Youth Services and Sports vide office memo dated 01.02.2016, there are names of in as many as 51 government officials, who were holding different positions in the sports organizations/associations of the State. To name the few, the then CEO, SMVDSB, Ajit Sahu, IAS, the then IGP (Traffic Police), Sh. J.P.Singh, IPS, the then ADGP, Sh. Dilbagh Singh, IPS, the then Secretary Tourism, Sh. Farooq Ahmad Shah, IAS have functioned as President, Archery Association of J&K, President, J&K Squash Rocket Association, President, J&K Rifle Association and President Winter Games Association of J&K respectively.

19. Interestingly, as the list reveals, the then IGP Sh. H.K.Lohia, IPS, who was enquiry officer in respect of the petitioner, had himself held the position of President, Wushu Association of J&K. From the communication dated 01.02.2016 issued by the department of Youth Services and Sports, it is crystal clear that all these officers had accepted the assignments in different sports associations without prior permission from the competent authority. It also deserves to be taken note of that the administrative department of home vide its communication dated

20th February, 2016 had picked up five more officers in addition to the petitioner including the then Superintendent of Police, Benam Tosh for explaining their position. However, there was seemingly no action against any of them and the petitioner alone was chosen for the differential treatment.

20. We are not saying even for a minute that accepting such assignment in sports associations by government officials, whether in civil or police administration, without seeking prior permission of the Government is not misconduct under the Conduct Rules. Indisputably, no Government employee can accept assignment outside his office for remuneration or honorarium without prior permission of the Government and if any employee does so, he invites the wrath of Sub Rule (2) of Rule 21 of the Conduct Rule and can be validly proceeded against in departmental action.
21. Having said that we find that the Government being aware of the large scale violations by various senior officers of the civil and police administration, remained hesitant in initiating proper action against the petitioner and in the meanwhile, the petitioner attained superannuation on 31st May, 2021. This virtually closed the option, which was mulled by the respondents to initiate disciplinary proceedings against the petitioner for misconduct.
22. Notwithstanding that no disciplinary proceedings against the petitioner for misconduct committed by him, while he was in

service, could have been conducted after his retirement, the respondents vide office memo dated 12th May, 2022 (supra), served upon the petitioner the Articles of Charges and statement of imputations after his retirement. The charges, which were framed by the Financial Commissioner/Additional Chief Secretary (Home) read thus:-

Article-I

That Mr. Sudershan Kumar Mehta retired Dy.SP, while being in active Government service in Jammu and Kashmir Police Department was simultaneously functioning as Joint Secretary of Jammu and Kashmir Cricket Association, a sports association, for the periods 2003 to 2006, 2009 to 2011 and 2014 to 2016, without seeking previous permission of the Government and has thus violated sub-rule 2 of Rule 21 of J&K Government Employees (Conduct) Rules, 1971.

Article-II

That Mr. Sudershan Kumar Mehta retired Dy.SP, while being in active Government service in Jammu and Kashmir Police Department and drawing salary from the Government exchequer, has also accepted a monthly remuneration of Rs.12000 per month as Joint Secretary Jammu and Kashmir Cricket Association and has thus violated Rule 10(1) and 10(4) of the Jammu and Kashmir Government Employees (Conduct) Rules, 1971.

23. From a perusal of the two articles of charges framed against the petitioner, it is abundantly clear that the charge which the petitioner was asked to face in the departmental inquiry was a charge of 'misconduct' simpliciter and there was no charge with regard to the loss caused by the petitioner to public exchequer by accepting the assignment of Joint Secretary of JKCA.
24. The inquiry, thus, proceeded only on two charges and as is apparent from the Memorandum, this inquiry was initiated in terms of Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956. At this juncture, we would like to refer to Rules of 1956, which enumerate penalties that may, for good and sufficient reasons, be imposed upon a member of service. The penalties, *inter alia*, include major and minor penalties.
25. The eight penalties enumerated in Rule 30, as is clear from the plain language of the Rule, can be imposed upon a member of the service and the expression 'member of service' means a person holding or appointed to a whole time pensionable post and the definition of the expression 'member of service' given in Rule 2(e) of the Rules of 1956 makes it abundantly clear. Therefore, a person, who is retired from service, is obviously not a person holding or appointed to a whole time pensionable post. To be precise, a person not holding or appointed on a whole time

pensionable post under the Government, cannot be construed to be a 'member of service' for the purposes of Rule 30.

26. Viewed thus, retired person like the petitioner cannot be subjected to departmental proceedings for the misconduct which such employee has committed during the period he was in service. It is beyond pale of any discussion that Rules 30 and 33 to 35 of the Rules of 1956, which deal with disciplinary proceedings and the punishments that can be imposed on conclusion thereof, do not envisage the conduct of disciplinary inquiry into the misconduct of a delinquent employee after his superannuation. This is so because the competent authority is not empowered to inflict any of the penalties envisaged under Rule 30 of the Rules of 1956 upon a person, who has ceased to be a member of service.

27. Indisputably, to this general principle of service jurisprudence that a retire employee cannot be subjected to disciplinary proceedings for his acts and omissions committed by him during his service career, there is an exception embodied in Article 168-A of the Regulations of 1956. We need not to delve deep into the interpretation of Article 168-A of the Regulations of 1956, as the same has been thoroughly examined in LPA No.38/2023 titled *UT of J&K and others v. Qazi Qamer U Din* decided by this Court on 19th May, 2025. Para-9 of the judgment is relevant for our purposes and is, therefore, set out below:-

“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.”

28. While we are in complete agreement with the submission of Ms. Kohli, learned Sr. AG appearing for the respondents, that in view of the clear provisions of Article 168-A of the Regulations of 1956, nothing prevents the Government to order recovery, from the pension of an officer, an amount on account of loss found in judicial or departmental proceedings to have been caused to the Government by negligence or fraud of such officer during his service subject to certain conditions enumerated in Article 168-A, yet in the instant case, we find that there were no judicial or disciplinary proceedings conducted by the respondents to

determine the loss caused to the Government by an act of negligence or fraud by the petitioner.

29. We have, for a purpose, reproduced the Articles of Charges on which the disciplinary proceedings against the petitioner were conducted and we are at loss to find any charge with regard to the loss, if any, caused by the petitioner to the Government by his negligence or fraud.
30. In the absence of any such specific charge, the petitioner was definitely denied of an opportunity to render his explanation and defend the charge. As a matter of fact, the inquiry, which was initiated by the disciplinary authority was proposed to be initiated in terms of office memo dated 12.05.2022 on the twin charges, we have reproduced herein above, was an inquiry contemplated in terms of Rule 33 of the Rules of 1956 and not an inquiry in terms of Article 168-A of the Regulations of 1956.
31. We would have ignored the technical objection taken by the learned counsel for the petitioner and construed the inquiry conducted against the petitioner limited to finding out the loss caused by the petitioner to the Government by his negligence or fraud. However, having regard to the nature of charges framed against the petitioner, we are of the considered opinion that there was no inquiry with regard to the loss caused to the Government by the negligence or fraud of the petitioner, ever conducted by the respondents.

32. Government Order dated 16.11.2022 imposing recovery of the amount, which the petitioner had received from JKCA as remuneration/honorarium is clearly in violation of the principles of natural justice and, therefore, cannot sustain.
33. For the reasons we have given herein above, we find merit in this petition and the same is, accordingly, allowed. The impugned judgment to the extent it upholds the action of the respondents for recovery of remuneration received by the petitioner from JKCA from his pension vide Government Order No.403-Home of 2022 dated 16.11.2022 is quashed and set aside.

JAMMU
11.09.2025
Vinod, PS

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Whether the order is speaking : Yes
Whether the order is reportable: Yes