

Reserved on 21.05.2025

Central Administrative Tribunal
Jammu Bench, Jammu

Hearing through video conferencing

T.A. No. 61/5590/2021



Pronounced on :- This the 06th day of June 2025

Hon'ble Mr. Sanjeev Gupta, Judicial Member
Hon'ble Ms. Pragya Sahay Saksena, Administrative Member

1. Jahangir Khan, Age 52 years, S/o Sh. Makhan, R/o Village Chann Grahan, Tehsil and District Kathua, J&K.
...Applicant

(Through Advocate: Mr. Aseem Sawhney)

Versus

1. State through Commissioner/Secretary to Government, Home Department, Civil Secretariat, Srinagar.
2. DGP Prisons, J&K, Srinagar
...Respondents

(Through Advocate: Mr. Hunar Gupta, D.A.G.)

ORDER**Per:- Sanjeev Gupta, Judicial Member**

The present Transferred Application (in short T.A.) was originally filed as SWP No. 1759/2013 by the applicant before the Hon'ble High Court of Jammu & Kashmir. The same was transferred to this Tribunal pursuant to the Hon'ble High Court's order dated 15.03.2021.

2. Briefly, the facts noted in the T.A. are that the applicant was appointed as Warden in the Prisons Department on 28.08.1980 and in the year 1994, he was promoted as Selection Grade. It is averred that a false and frivolous complaint was filed by Maqsood Begum, wife of applicant, when he was posted in the Prisons Department as Warden in District Jail, Kathua in the year 1999, alleging therein that applicant had contracted three marriages, however, without any enquiry or an opportunity of being heard, the applicant was discharged from service within a span of 13 days after filing of the complaint, in complete violation of the procedure under the J&K Civil Services (Classification, Control and Appeal) Rules, and Civil Service Conduct Rules.

3. The applicant in this T.A. is mainly aggrieved by his discharge from Government service by the Additional Director General Prisons Fire Services, J&K vide order No. 104 of 2000 dated 16.02.2000 (hereinafter called impugned order). It is submitted that against the impugned order, the applicant had filed Writ Petition bearing SWP No.



210 of 2000, which was dismissed as withdrawn by the Hon'ble High Court on 25.02.2000, with a liberty to the applicant to approach the Appellate Authority, in accordance with law to question the legality, validity or otherwise of impugned order. It was directed by the Hon'ble High Court that as and when appeal is filed by the applicant, the Appellate Authority under rules will take all steps to ensure that it is disposed of at the earliest and in no case, later than 30.06.2000. That the applicant filed an Appeal but could not pursue the same, as he was facing several litigations filed by his wife and even had to face civil prison. The applicant, thereafter, had filed number of applications/representations seeking review of the discharge order, but the respondents kept the matter pending for several years, in violation of direction of Hon'ble High Court, to decide the matter within a time frame.

4. It is further averred that in pursuance to communication dated 30.09.2009 of Respondent No. 2, applicant filed a detail reply on 30.12.2009 to the notice dated 01.03.2004 annexed with the aforesaid communication, besides, applicant along with his wife, as per communication No. Esst/689/9958 dated 25.02.2010 also appeared before Respondent No. 2, and wife of the applicant filed an affidavit denying any knowledge about the applicant's three marriages. The applicant on 20.02.2010 has received a communication from the Office of Respondent No. 2 that matter is under consideration and as and when decision will be taken, the applicant would be informed.



5. Aggrieved by the inaction on the part of the respondents for delay in disposal of his appeal, applicant filed SWP No. 2350 of 2011 in the Hon'ble High Court of Jammu & Kashmir, which was disposed on 26.12.2011 with a direction to Respondent No. 2 to dispose of the appeal of applicant within four weeks from the date of receipt of copy of the order, however, despite serving the copy of the order of the Hon'ble High Court, the respondents did not decide the appeal within stipulated period due to which petitioner was constrained to file Contempt Petition which was also disposed of by Hon'ble High Court on 10.04.2012, directing the respondents to comply with the order dated 26.12.2011 passed in SWP No. 2350 of 2011.

6. It is further case of the applicant that in response to RTI applications and in first appeal under RTI Act, the record of the respondents pertaining to the case of applicant was obtained and it was found that respondents after obtaining opinion of the Law Department, appointed Shri Dinesh Sharma as the new Inquiry Officer, however, instead of taking any decision, the Respondent No. 2 has turned a volte face by taking refuge to an order dated 28.02.2000, whereby the appeal of the applicant is stated to had already been disposed, though as per office notes No. 63, 64, 65, 75, 88, 89 received through RTI applications, the appeal of the applicant was pending before the respondents. The communication No. Esstt/689/9489-90 dated 21.02.2012 addressed by Respondent No. 2 to the Additional Advocate General, Jammu shows that no further

appeal can be entertained, being time barred as the Review Petition of the applicant had been already disposed of on 28.02.2000 by the Respondent No. 2.



7. On the basis of aforesaid pleadings, the applicant has challenged impugned discharge order. A challenge has also been thrown to the impugned communications No. Esst/689/9489-90 dated 21.02.2012, Estt/3247 dated 22.05.2013, whereby the impugned order dated 28.02.2000 passed by Respondent No. 2 was conveyed to the counsel for the applicant, on the grounds that the impugned communications are illegal and arbitrary, with a direction to the respondents to reinstate the applicant with all consequential benefits.

8. The stand taken by the respondents in their objections is that after a preliminary inquiry conducted by Superintendent, District Jail, Kathua against the applicant on a complaint filed by his first wife, the charge sheet was furnished to the applicant on 03.02.2000, however, applicant during the inquiry pleaded guilty and admitted that he had consummated three marriages, without seeking requisite approval from the competent authority, as envisaged under the Jammu and Kashmir Employees (Conduct) Rules, 1971, due to which the applicant was discharged from Government Service. That the Review Petition filed by the applicant did not raise any new ground, which was rejected and the present T.A. suffers from delay and laches, as

the same has been filed after a long delay after the dismissal of the Review Petition, and as such, same be dismissed.



9. The applicant has filed rejoinder reiterating almost the same grounds as projected in the T.A. It is, however, submitted that the impugned order dated 16.02.2000 has been passed without holding any formal inquiry, which is in violation of principles of natural justice, in as much as, the applicant was holding a regular civil post with the respondents' department. It is also submitted that the applicant was unfairly treated as appeal filed by him against the impugned discharge order was not decided by the Respondent No. 2, despite direction of Hon'ble High Court of Jammu & Kashmir dated 26.12.2011.

10. Mr. Aseem Sawhney, learned counsel submits that the applicant was substantively appointed to the post of Warden in the Prisons Department after having successfully completed the recruitment process and was promoted as Selection Grade in the year 1994. He further submits that the applicant was discharging his duties diligently and to the utmost satisfaction of the respondents' authorities, however, the respondents have discharged the applicant from service by passing the impugned order in an arbitrary manner, which is bad in the eyes of law.

11. Learned counsel for the applicant further urged that the procedure established for taking the appropriate action against the applicant has not been taken as per constitutional provisions



contained in Article 311 of Constitution of India read with Article 126 of Constitution of erstwhile State of Jammu & Kashmir, besides the applicant was also entitled to statutory protections in terms of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 (in short Rules of 1956) and merely on the basis of a preliminary inquiry without conducting regular inquiry as per law, the applicant has been discharged from service by adopting procedure, totally unknown to the service jurisprudence for contracting three marriages, in violation of J&K Employees Conduct Rules, 1971, which is factually incorrect. He further submits that applicant was never associated with the inquiry and provided an opportunity to cross examine the witnesses or to lead evidence in his defence and except serving of charge sheet, he was not heard at all in violation of principles of natural justice. It is further contended by the learned counsel that the impugned discharge order on its plain reading reflects the hasty decision of Respondent No. 2 having been taken without application of mind and in derogation of constitutional and legal provisions by adopting a shortcut method, which is also evident from the material on record in the shape of information under Right to Information Act provided to the applicant. It is also submitted that the applicant filed an appeal/representation before the Appellate Authority on 28.03.2000, for his reinstatement in service, as per direction given by the Hon'ble High Court in SWP No. 210 of 2000, but, despite filing of reply on 30.12.2009 to the communication dated 30.09.2009 of Respondent No. 2, in which show cause notice, stated to be served earlier to the

applicant on 01.03.2004 is also mentioned, no decision was taken by the respondents.



12. It is further urged by the learned counsel that in pursuance of direction given by Hon'ble High Court in SWP No. 2350 of 2011 on 26.11.2011 for disposal of the appeal filed by the applicant, the impugned communications dated 21.02.2012 and 22.05.2013 were issued by the respondents stating therein that appeal of applicant stands disposed of by the respondents as in the Review Petition earlier filed by the applicant on 28.02.2000, the Respondent No. 2 has recorded his view that there is no reason to modify earlier order. He, therefore, prays that T.A. may be allowed and the impugned discharge order as well as impugned communications may be quashed and set aside.

13. Mr. Hunar Gupta, learned D.A.G. appearing for the respondents has stated that order of discharge is legal and valid as applicant had contracted three marriages against J&K Employees Conduct Rules, 1971.

14. We have considered the submissions made at the Bar and have gone through the relevant records of the case.

15. The undisputed facts in the present case are that a preliminary inquiry was conducted by the Superintendent Jail, Kathua on 07.12.1999, against the applicant, on the direction of Respondent No. 2, while he was serving as Selection Grade Warden in the District Jail



Kathua, on the complaint filed by his wife Maqsood Bibi for contracting second and third marriage without proper permission. Thereafter, Superintendent District Jail, Kathua initiated a formal inquiry on the further direction of Respondent No. 2 on 31.01.2000 and on the failure of the applicant to file reply to the explanation dated 03.02.2000, the Superintendent District Jail, Kathua without serving article of charges and memorandum to the applicant as contemplated under Article 311 of Constitution of India read with Section 126 of the erstwhile Constitution of State of J&K and Rule 33 of the Rules of 1956, forwarded a communication dated 15.02.2000 to the Respondent No. 2, who on the basis of said communication passed the impugned order and discharged the applicant from Government service. From a careful perusal of impugned discharge order, it transpires that respondent No. 2, without application of mind has arrived at a conclusion that applicant has contracted three marriages, without obtaining Government sanction in violation of Employees Conduct Rules, oblivious to the fact that in her written complaint, Maqsood Bibi has levelled allegations against the applicant for contracting 2nd and 3rd marriage without proper permission.

16. Be that it may be, except for photocopies of some communications, the reference whereof has been made in the preceding paras, the original record of the departmental proceedings has not been produced before the Tribunal on the ground that the

same has been submerged in the flood during the year 2014 in Kashmir.



17. Admittedly, applicant is a member of Jammu & Kashmir Jails Subordinate Service and governed by Jammu & Kashmir Jails (Subordinate) Service Recruitment Rules, 1985 and also J&K Employees Conduct Rules, 1971. Rule-10 of the aforesaid Recruitment Rules specifically provides:-

“10. In regard to matters not specifically covered by these rules the member of the service shall be governed by the rules, regulations and orders applicable to the State Civil Service in general.”

18. There is no provision in the aforesaid recruitment rules of 1985 dealing with the disciplinary action to be taken against the member of a service, meaning thereby, that as far as the disciplinary action is concerned, it is governed by Rules of 1956.

19. Sub rule 1 of Rule 22 of the Jammu & Kashmir Employees Conduct Rules, 1971 deals with bigamous marriages which reads as under:-

“22. Bigamous marriages – (1) No Government employee who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.”

20. Rule 3 of the Jammu & Kashmir Employees Conduct Rules, 1971 provides that a Government Servant is expected to maintain a

reasonable and decent standard of conduct in his private life and not bring discredit to his service by his misdemeanor like neglect of his wife and family. Departmental action can be taken against such an employee in terms of Rules of 1956.



21. A conjoint reading of Rule 10 of the Recruitment Rules of 1985 and Rule 3 of the J&K Employees conduct rules, 1971, it becomes clear that respondents were under an obligation to proceed against the applicant as per Rule 33 of the Rules of 1956 and Section 126 of the Constitution of erstwhile State of Jammu & Kashmir, which is in tune with Article 311 of Constitution of India providing constitutional protection to a Government servant against his dismissal, or removal from service or reduction in rank. The procedure adopted by the respondents as is evident from the record, is not correct and totally illegal. Sub-section (1) of Section 126 of the erstwhile State Constitution provides that no person who is a member of the civil services of the State or holds a civil post under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Sub-section (2) of Section 126 provides that no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Not only that, where it is proposed after such inquiry to impose on him any such penalty, he shall be given a reasonable opportunity of making representation on the penalty



proposed. Similarly Rule 33 of Rules of 1956 protects a permanent employee from any punitive or arbitrary action which could be initiated against such an employee, who can be dismissed, removed or terminated from services only after following the procedures prescribed in the aforesaid rule. Section 126 and Rule 33, thus, reflects and mandates observations of the principle of audi alteram partem which is one of the important principles of Natural justice.

22. In the case of **Parveeza Akhter Vs. State and others JKJ 303**, the Hon'ble High Court of Jammu & Kashmir has set aside the termination order of the petitioner therein, on the ground that procedure in terms of Article 311 and Rule 33 of Rules of 1956 were not followed by the competent authority.

23. In the present case, the Respondent No. 2 without holding any proper inquiry has reached to the conclusion that the applicant has committed misconduct. The Respondent No. 2 was under a statutory obligation to apply the provisions of Section 126 and Rule 33 before any disciplinary action is taken against the applicant, that too, whereby the action contemplated is a major penalty. It is, therefore, clear that respondent No. 2 has acted in contravention of the law. The entire action against applicant including impugned order stands vitiated on account of the non-observance of the mandatory rules and the principles of audi alteram partem.

24. Coming to the manner in which appeal/representation of the applicant has been dealt with by the respondent No. 2, it is manifest



from the copies of RTI record placed on the file by the applicant, that Respondent No. 2 has acted in a slip shod manner. Notings in the RTI record shows that a Review Petition of the applicant was received in the office on 28.02.2000 which was dismissed by the Respondent No. 2 on 23.04.2000 stating that there is no reason to modify earlier order. The record further shows that on 28.03.2000, applicant filed a representation before the respondents against his discharge order, requesting for his reinstatement and on 29.03.2000, Respondent No. 2 recorded a note that all three wives of applicant to appear in the office for personal hearing, but that did not happen. On 10.02.2004, Respondent No. 2 decided to hold inquiry into the representation made by the applicant by appointing Dinesh Sharma (Staff Officer) as enquiry officer with the direction to furnish report at the earliest. Thereafter, charge sheet dated 01.03.2004 was served to the applicant by the enquiry officer on 22.09.2009 to which reply was filed by the applicant on 07.12.2009 along with documentary material, mentioning therein that he had divorced his first wife on 25.02.1997 and second wife on 30.11.1999 and contracted Nikah with third wife on 10.02.2001, but was discharged on 16.02.2000, when he had no wife. The record further shows that Respondent No. 2 on a note submitted by the office for continuation of enquiry against the applicant, opined on 15.12.2009 that case of the applicant shall not be opened after a gap of nine years, however, on 18.01.2010, the applicant was conveyed that matter is under consideration and as soon as a decision is taken, he will be informed. The inquiry remained



pending without its finalization and in pursuance of a direction given by the Hon'ble High Court in SWP No. 2350 of 2011 on 26.11.2011, for disposal of the appeal filed by the applicant, the impugned communications dated 21.02.2012 and 22.05.2013, were issued by the respondents to the effect that Review Petition earlier filed by the applicant was already dismissed by Respondent No. 2, therefore, there is no question of entertaining the appeal filed by the applicant which has become time barred.

25. Thus, from the aforesaid material on record, it is apparent that respondents after entertaining the representation/appeal filed by the applicant on 28.03.2000, appointed Inquiry Officer on 10.02.2004, but again without following the due procedure under law in the enquiry, the impugned communications were issued after a lapse of more than eight years. The act of Respondent No. 2 shows that in an arbitrary manner, in violation of directions given by the Hon'ble High Court in **SWP No. 210 of 2000**, the appeal filed by the applicant was not disposed in a time bound manner and the matter dragged for years together, even after appointing, a new inquiry officer in the year 2004. The Hon'ble High Court vide order dated 26.12.2011 in the second round of litigation in SWP No. 2350 of 2011 filed by the applicant directed the respondents to dispose of the appeal filed by the applicant within four weeks, the non compliance, led the applicant to file a Contempt Petition No. 84 of 2012 in which Hon'ble High Court on 10.04.2012 directed the respondent to file the compliance report



and, thereafter, in an about turn, after a deep slumber, the respondents without application of mind issued the impugned communications. To our mind, greater sympathy and compassion should have been shown in considering the disposal of representation/appeal filed by the applicant, in the inquiry, but the matter was dealt by the respondents with a lackadaisical approach, which has caused a serious prejudice to the applicant, forcing him to approach the Hon'ble High Court by filing SWP No. 1759 of 2013 in a third round of litigation, which is renumbered as T.A. No. 5590 of 2021 after its transfer to this Tribunal.

26. To say precisely and sum up, from a bare reading of the impugned discharge order dated 16.02.2000, one does not think twice before coming to the conclusion that the same has been passed without conducting the departmental proceedings (inquiry) as required under Article 311 of the Constitution read with Section 126 of the State Constitution and Rule 30 read with Rule 33 of J&K Civil Services (Classification, Control and Appeal) Rules, 1956 and therefore, unjustified and illegal. The order violates the principles of natural justice. The applicant has been deprived of his Constitutional right of hearing before discharging him from service. The impugned order, therefore, cannot sustain, consequently, the impugned communications dated 21.02.2012 and 22.05.2013 are also unsustainable under law



27. The matter has been pending adjudication for the last more than 25 years and in all fairness, learned counsel for the applicant submitted that during the pendency of SWPs'/this T.A., the applicant remained unemployed, who has attained the age of superannuation from the active Government service, as such, on account of unlawful discharge of the applicant, he is entitled for full back wages besides all retiral pensionary benefits.

28. The question which falls for consideration is as to whether the applicant would be entitled for back wages for the period, he has remained out of service. The applicant has not placed on record any material that he was not gainfully employed or was employed on lesser wages after his discharge from services. The Hon'ble High Court of Jammu & Kashmir and Ladakh in the case of **Prem Pal Singh Vs. UOI and others 2024 (2) JKLLJ 422**, while dealing with the case of a CRPF personnel whose termination order was set aside has held that if an employee has succeeded in establishing that his dismissal from service is illegal, he may be entitled to reinstatement but it is not necessary that he should be given full back wages. For entitling such an employee to full back wages, he has to show that he was not gainfully employed after termination of his services.

29. The applicant has already attained the age of superannuation during the pendency of this petition, as such, he cannot be reinstated. The applicant has not pleaded in the T.A. or placed any material on record to show that he was not gainfully employed after discharge



from his service. The respondents have also not stated anything in this regard, in their reply. The action against applicant, as per impugned discharge order, was taken by the respondents for misconduct on account of contracting three marriages without permission of the Government. Therefore, in these circumstances, the applicant is not entitled to full back wages, but, the relief of back wages in favour of the applicant can be restricted to 50%.

30. Viewed thus, we allow the T.A. filed by the applicant by quashing the impugned discharge order dated 16.02.2000 passed by Respondent No. 2, whereby the applicant has been discharged from service. Consequently, the impugned communications dated 21.02.2012 and 22.05.2013 are also quashed. The applicant shall be entitled to only 50% of the back wages besides, he is also entitled for pension and other benefits in accordance with rules.

31. Let this exercise be completed within a period of two months from the date of receipt of a certified copy of this order. In case, the benefits are not released in favour of the applicant within the stipulated period, the applicant would be entitled to interest @ 6% p.a.

32. The T.A. is accordingly disposed of in aforesaid terms.

33. No order as to costs.

(Pragya Sahay Saksena)
Administrative Member

(Sanjeev Gupta)
Judicial Member

Arun...