

**(1999) 07 J&K CK 0004**  
**In the Jammu And Kashmir High Court**  
**Case No : LPANo. 77 Of 1999**

Fayaz Ahmad Khuroo

APPELLANT

Vs

State of J & K

RESPONDENT

**Date of Decision :** 05-07-1999

**Acts Referred:**

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31  
Constitution of India, 1950 — Article 14

**Citation :** (2000) 1 SCT 454 : (2000) 1 SriLJ 40 : (2000) SriLJ 40

**Hon'ble Judges :** Bhawani Singh, C.J and Syed Bashir-Ud-Din, J

**Bench :** Division Bench

## Judgement

Bhawani Singh, Chief Justice.

1. Admit. Notice accepted by Shri M.H Attar. Additional Advocate General. Heard finally.

2. This Appeal is directed against the judgment of Single Judge dated 19041999

3. Shortly narrated the facts are that. petitioner is a draftsman in R&B Department. BY Government order No. 54 (Vig) of 1998. dated

27071998. sanction for his prosecution for offence under section 5(2) of prevention of Corruption Act, 2006. 167A. 201 RFC read with section

120B RFC has been accorded in case FIR No. 1/97, police station, vigilance organization, Kashmir. This order has been issued by General

Administration Department on 27071998. Endorsement to some authorities also records that matter be considered in terms of Rule 31. Jammu

and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 and instructions issued thereunder. Following this order. Government

Order No: 02PW of 1999 dated 04011999 has been passed, whereby petitioner has been placed under suspension with immediate effect and

attached with the Chief Engineer (R&B) Department, Kashmir. Petitioner raised number of question assailing this order passed by the respondent.

It is submitted that sanction has not been granted by Competent Authority and that suspension is malafide and against instructions issued under

Section 31 of Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956.

4. Single Judge considered the matter, but dismissed the same by the impugned judgment. On the question of sanction. Single Judge observed that

the same can be raised before the Special Judge, AntiCorruption, where the case is pending for trial. With respect to plea against suspension.

Single Judge has observed that petitioner is involved in a public scandal alongwith 50 people and the case is pending trial, apart form holding that

the competent authority has acted under Clause (b) of Rule 31 (1). Jainniu and Kashmir Civil Services (Classification. Control and Appeal) Rules.

1956, which Government instructions cannot override.

5. We heard Learned Counsel for the parties. So far as the question of sanction is concerned, we confirm the order of Single Judge that this plea

can be raised before the Trial Court at appropriate stage, where the matter is pending. But with respect to suspension based on malafides and

unreasonableness, the contention can be considered by this Court. Shri Qayoom contented that Government Order dated 27071998 has been

passed with respect to as many as 54 persons. But Government Order dated 04011999 has been passed only against the petitioner. This is

absolutely unreasonable and in violation of Articles 14 and 16 of the Constitution of India. It is also pointed out that while passing the order of

suspension. Government instructions have to be seen and had they been kept in mind, the competent authority would not have passed the Order

only against the petitioner, particularly when the petitioner was working in Office other than the one to which the offence pertains. Shri Attar,

learned additional advocate General, submits that authority must have found the case of petitioner singular, therefore, the Order has been confined

to him. We are not satisfied with the contention so raised. It is patently clear from Government Order dated 7.7071998 that sanction has been

given against 54 persons. Out of them, three are uraiiMneu, to which category the petitioner belongs. But the order of suspension has been passed

against the petitioner alone. What circumstances prevailed with the authority to do so cannot be spelled out from the impugned order dated 04011999.

6. True it may be that Order refers to Rule 31 of Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules. 1956 and instructions issued thereunder, but it is not understandable which particular instruction prompted the authority to pass this Order against the petitioner in public interest and not against others. It is, therefore, clear that the petitioner alone has been picked up for this kind of treatment leaving others similarly placed persons out without assigning any reason. Therefore, the Order cannot be allowed to sustain against the petitioner and is, therefore, set aside. We leave it open to the competent authority to examine the matter afresh and pass appropriate Order, if necessary in public interest, afresh taking into consideration Rules and instructions on the subject and the observations made above. Appeal is disposed of in terms aforesaid.