
(1999) 08 J&K CK 0030
In the Jammu And Kashmir High Court
Case No : LPANo 164 Of 1998

Mohd.Aslam Laigaroo

APPELLANT

Vs

State of J&K and another

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 31

Citation : (2000) 1 SCT 626 : (1999) 2 SriLJ 429

Hon'ble Judges : Bashir-Ud-Din, J and G.D.Sharma, J

Bench : Division Bench

Advocate : M.H.Beg, H.I.Hussain , G.A.Lone, Advocates appearing for the Parties

Judgement

Sharma, J.—This appeal has been filed under section 12 of the Jammu and Kashmir Letters Patent against the order of the learned Single

Judge dated: 8.7.1998 passed in SWP No. 1068 of 1998. The learned Single Judge dismissed the application of the appellant wherein he had

prayed for staying the order whereby he had been suspended from holding the charge of Director, Estates, Srinagar. The appellant contends that

the rejection of the application amounts to the refusal of some of the reliefs which had been prayed for in the main writ petition.

2. The factual matrix of the case is that vide Govt. order No. 705GAD of 1997 dated: 30.5.1997, the appellant herein alongwith other nine

officials of different departments were suspended pending investigation by the Vigilance Organisation with the allegations of disproportionate assets

accumulated by them. The order is reproduced hereunder:

Government of Jammu and Kashmir General Administration Department.

Subject: Suspension of Officers.

Government order No. 705GAD of 1997

Dated . 30.5.1997.

Pending investigation by the Vigilance Organisation into the allegations of disproportionate assets accumulated by the officers indicated below, the following officers are hereby placed under suspension with immediate effect:

1. M.A.Hajam, KAS, Custodian General, J and K
2. M.A.Laigaroo, KAS, Director Estates.
3. M.L.Bhardwaj, FA/COA, J and K Mineral Ltd.
4. G.H.Rather Superintending Engineer, Electrical Purchases Circle IId Srinagar.
5. Abdul Majid Khan, Executive Engineer, Irrigation and Flood Control, Kupwara.
6. Vijay Gupta (Assistant Conservator of Forest)
Project Officer Basantar Project West.
7. J.K.Misri, Dy. Superintendent of Police.
8. Raghubir Singh, Deputy Superintendent of Police.
9. G.N.Wani, EDO Banihal.
10. Hem Raj, Section Officer in the office of Dy.Commr Kathua.

During the period of suspension, the officers indicated at serial Nos. 1,2,4 and 5 shall remain attached with Divisional Commissioner, Kashmir and

those at serial numbers 3,6,7,8,9 and 10 shall remain attached with the Divisional Commissioner, Jammu.

By the order of the Government of Jammu and Kashmir . sd/

Commr/Secretary to Govt. General Administration Department.

One of the officials namely Hem Raj Gupta, S.O in the Revenue department challenged the said order by filing writ petition which was dismissed.

LPA (SWP) NO.04/98 was preferred on 6.4.98 against the said judgment/order and the appellate court stayed the operation of the judgment of

the learned Single Judge. The suspension of the appellant therein was also stayed. The appellants herein asserts that in the month of

September,1995, he received a communication from Additional Secretary to Govt. Home Deptt. (Vigilance) bearing No. Home (Vig) M32/KAS

dated: 1.9.1995 whereby he was informed that he had not filed the property statement returns from 1986 and that the returns which he had filed

showed extensive immovable properties received by way of inheritance. This was a selfcontradictory communication. On the one hand, it showed that property statement returns were not filed from 1986 while on the other hand, it contained that large properties were possessed on the basis of inheritance. The appellant had given a reply to the said communication and was labouring under the belief that the objection raised therein stood dropped. It was a bolt from the blue for him when all of a sudden he came to know that a case under FIR NO. 28 of 1995 Police Station VOK for the commission of offences falling under section 5(2) of the J and K Prevention of Corruption Act, 2006(hereinafter to be referred to as the Act) and under section 12 and 14 of Policemen and Public Servants Declaration of Assets Act, 1983 was registered. During the registration of the above said case, he was promoted to the senior K.A.S. scale in the year 1996. In the month of May, 1997 the house of the appellant was searched but no incriminating evidence was found. This search was blown out of proportions by respondent No. 3 in order to prejudice the higher authorities with the result that on 30.5.1997 the appellant was placed under suspension.

3. The appellant has challenged the order of suspension by filing writ petition (SWP No. 1068/98) wherein relief in the nature of writ of certiorari was prayed for quashing the impugned order. Further, relief of writ of mandamus was prayed commanding the respondents to post the petitioner at an appropriate place which should be commensurate with his status. In the writ petition, the order was challenged on the grounds that it was passed in contravention of rule 31 of the Classification, Control, and Appeal Rules, 1956 (hereinafter to be referred to as CCA Rules). The instructions appended to the rule are supplementary in nature and character and they have statutory force but they were not followed. It was also pleaded that the police officers who conducted the investigation including the house search were not competent to do so. The case of the petitioner was not reviewed by respondents or any competent authority and thus there was a violation of the mandates of rule 31 of the CCA Rules. The order of suspension was passed without application of mind and on extraneous considerations. When the investigation against the appellant was being conducted, the passing of the impugned order in the midstream was without jurisdiction. The impugned order was not passed in the public

interest. The continuation in service of the appellant was neither prejudicial to the investigation of the case nor it would have caused a drain on the public exchequer.

4. In the impugned order, the learned Single judge has held that the appellant herein was placed under suspension by a competent authority and the

instructions issued under rule 31 of CCA Rules are only guidelines and in case they are not adhered meticulously, the order of suspension ""m could

not be nullified. It was also held that a periodical review of the suspension order was done and the subsistence allowance after suspension is being

given to the appellant according to the rules. Sanction of prosecution of the appellant was accorded by the Government vide Government Order

NO.27GAD (Vig) of 1998 dated: 5.5.1998 and after the completion of the investigation, Challan has been produced before the Special Judge

(Anticorruption). After passing the impugned order on the lines stated above, the learned. Single judge posted the above said writ petition (No.

1068/98) for further consideration.

5. The appellant has felt aggrieved and through the medium of this appeal the order has been challenged on the following grounds:

1. The learned Single Judge wrongly placed reliance on the entrires of documents which were recovered from the house of Mohammad Anwar

Mir, Div. Manager SICOP while conducting the search in carrying the investigation of FIR No. 19/1997 Police Station, Vigilance Organisation

Kashmir. These entries recited that the appellant owns two residential flats (No: 7136 and 7258) in Basant Bihar New Delhi. This attribution made

to the appellant is totally wrong.

2. Discriminatory treatment has been meted out to the appellant when the learned Single Judge has stayed the suspension of Abdul Qayoom, who

is an IPS Officer on the grounds of noncompliance of prescribed procedure but on the same basis suspension of the appellant was not stayed. The

learned Single Judge took no notice of the order passed in LPA No. 04/1998 by the Division Bench (Jammu Wing) when the suspension of the

appellant Hem Raj Gupta, S.O. of D.C. Officer Kathua was stayed. While ordering the suspension in question, the procedure to be followed as

laid down in the case reported in AIR 1979 SC 1628 was not followed.

3. The learned Single Judge wrongly had held that the instructions appended to

Rule 31 of the CCA Rules are only guidelines and their noncompliance will not nullify the Suspension order.

4. The learned Single Judge had failed to consider the implication of the procedure order issued by the Governor in exercise of his constitutional power which prescribes that the suspension can be ordered on the basis of an investigation lawfully conducted only after sanction for prosecution is

granted by the Government against the government servant. This instruction was issued after the High Court had held in Ghulam Mohammad

Hurra's case (decided by the Division Bench in 1989 SLJ 536) that para 3(c) in the instructions issued in pursuance of rule 54 of the J and K

Business Rules on 1.9, 1988 was contrary to the provisions of rule 31 of the CCA, Rules. In view of the latter instructions, the grant of sanction for

prosecution in respect of the cases registered under the Act would not amount to automatic suspension of the employee but in each case the

appointing authority has to consider the question of placing an employee under suspension in the light of the material collected during the

investigation of the case and other relevant factors including the likelihood of official hindering the investigation. Since this procedure has not

been followed in the instant case so the suspension is bad in the eye of law.

5. The learned Single Judge had not appreciated the allegations that the search of his house was conducted by incompetent police officials.

6. Particulars of some cases have been given in the memo of appeal showing that in those cases the allegations were of more serious nature but the

suspension orders were not issued. By issuing the suspension order in question, petitioner stands discriminated

6. Heard the arguments.

7. The learned counsel appearing for the appellant have contended that after the decision of the High Court given in the case of G.M. Hurra Vs.

State of J and K and Others reported in 1989 October. Part S.L.J. (J and K) page 536 para (c) of circular (No. GAD(Adm) 19478iv dated

1.9.1988) was held as invalid on the ground that it was contrary to the provisions of Rule 31 of CCA Rules and the President/Governor in the year

1990 while exercising the executive and constitutional powers issued instructions in pursuance of Rule 54 of the J and K Business Rules, which are

to the following effect:

a) All cases relating to allegation of corruption against government servants falling under the J and K Prevention of Corruption Act, Samvat, 2006

or any other law for the time being in force, on the subject, shall be examined and processed by the Home Department, after they are received by

it from the Vigilance Commissioner or any other authority authorised by the Government in this behalf.

b) All cases which under law require previous sanction for prosecution of a public servant shall be submitted to the Chief Minister by the Home

Department alongwith the views containing the full facts of the case and after the orders of the Chief Minister are obtained sanction for prosecution

will be issued by the Home Department.

c) Where sanction for prosecution of a public servant has been granted, the Home Department shall endotherse a copy of the sanction to the

Administrative Department/appointing authority for consideration of the matter in terms of the provisions of rule 31 of the J and K Civil Services

(Classification, Control and Appeal) Rules, 1956 and the instructions issued thereunder:

Circular No. GAD(Adm)18478ii/ dated : 1.9.1988 (stated above was rescinded. Continuing their arguments it is submitted that the above stated

guidelines prescribe that suspension of a public servant against whom there are allegations of corruption under the Act, can only be considered

under rule 31 of CCA Rules by the Administrative Department/Appointing authority after copy of the sanction order for prosecution is received

from the Home Department. In the instant case, the appellant was suspended on 30.5.1997 (Vide Govt. order No. 705GAD of 1997 alongwith

other nine officers) but the Government accorded sanction for his prosecution after a gap of more than eleven months (vide Government order No.

27GAD(Vig) of 1998 dated; 5.5.1998). The instructions issued by the Governor as a guidelines (stated above) were of statutory nature issued

under section 43 of the Constitution of J and K and their nonobservance renders the suspension as invalid. In otherwords, rule 31 of CCA Rules

could only be invoked after the passing of the Government order No. 27GAD of 1998 dated: 05051998. The order of suspension required not to

be passed as an administrative routine or automatic order but gravity of misconduct ought to have been investigated/inquired and nature of

evidence placed before appointing authority and it should have been considered. Suspension is not a punishment but is only one way of forbidding

or disabling an employee to discharge the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to

perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the

offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle

the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the

investigation or enquiry etc. Each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible

impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation.

The suspension should have been a step in aid of the ultimate result of the investigation or enquiry but the authority who has suspended the

appellant did not apply its mind because even the guidelines (stated above) were not followed and this shows that there was no consideration on the

nature of evidence, the gravity of the offence and the other relevant factors stated above. This automatic order passed in routine is bad in the

eye of law laid down by the apex court in the case of *State of Orissa Vs. Rimal Kumar Mohanty* (AIR 1994 SC 2296).

8. In rebuttal, it has been contended by the counsel of the respondents that the instructions in question issued in pursuance of rule 54 of J and K

Business Rules cannot be equated with a rule itself framed under section 43 of the Constitution of J and K because that section deals with a rule

making power of the Governor for the more convenient transaction of the business of the State and for the allocation amongst Ministers of the said

business. This instruction cannot be equated with any Rule framed under section 124 of the Constitution of J and K having statutory status as it is

only a guideline issued under rule 54 which was framed under section 43 of the Constitution.

9. We have given our thoughtful consideration to the respective contentions of the counsel for the parties and in order to resolve the controversy

rule 31 of the CCA Rules shorn of its unessentials is reproduced as under:

31(1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf,

may place a Government servant under suspension where:

a. an inquiry into his conduct is contemplated or is pending, or

b. a complaint against him of any criminal offence is under investigation or trial".

From the plain reading of the above stated rule it is obvious that the competent authority has been given the powers to place the government

servant under suspension inter alia if any complaint of the alleged commission of criminal offence is under investigation or trial. The Government has

issued instructions for the guidance of competent authorities while exercising the powers given by the above said rule. The class of cases where

charge of misconduct for possessing assets disproportionate to known sources of income falling under section 5(2) of the Act is under

investigation, the Government had initially issued circular No. GAD(Adm) 18487iv contained in clause (c) which was struck down by this court as

ultra vires to rule 31 of CCA Rules. Thereafter, fresh instructions were issued in the year 1990 under President/Governor's Rule as reproduced

hereinabove and by no stretch of reasoning it can be said that those instructions were Rules made under section 124 of the Constitution of Jammu

and Kashmir regulating the recruitment and conditions of service but those are purely the procedural instructions dealing with according of sanction

for prosecution of a public servant in corruption cases, and did not deal with the powers enshrined in rule 31 CCA Rules while ordering

suspensions. These instructions cannot be equated with any statutory status as they are only guidelines purely executive in nature. They can only

supplement rule 31 CCA Rules but cannot supplant it. In case the argument as advanced on behalf of the appellant is accepted, then the public

servants accused of contravening the provisions of the Act will form a privileged class as none of them can be suspended till order for sanctioning

the prosecution is issued by the Government. Indirectly it will amount encouragement for indulging in corruption which is against public policy and

contrary to the aims and objects of administering criminal justice. The public policy demands eradication of corruption in every sphere of life as it is

eating the vitals of the society.

10. With regard to the argument advanced by the counsel appearing for the

appellant that his case was not reviewed by the competent authority

for suspension, it is stated that under subrule (3) of rule 31 of the CCA Rules, the authority making the suspension order has the discretion to

revoke it at any time and in this behalf the Government has issued the instructions to the competent authority. In government instructions No. (2) at

page 444 (Service Law in J and K) this instruction is reproduced as under:

Government Instructions (2): Competent authority should endeavor to have chargesheet filed in court, in case of prosecution, or served on the

Government servant, in case of departmental proceedings within three months from the date of suspension. Cases in which this is not possible such

authorities will report to the next higher authority, explaining the reason for delay.

The cases of Government servants under suspension should be reviewed by the competent authority periodically to see that steps be taken to

expedite the progress of the court trial/ departmental proceedings, so as to reduce the periods of suspension to barest minimum".

In the case of A.P. Vs. Sivaraman (AIR 1990SC 1157) while interpreting A.P. CCA Rules, the apex court observed as under:

..... the order of suspension after a period of six months would not become nonest giving an automatic right to reinstatement in service. Our

attention has not been invited to any provisions of law conferring such right on a Government servant who has been placed under suspension

pending enquiry of a case against him. Where the rules provide for suspending a civil servant and enquire thereof to report the matter to the

Government giving out reasons for not completing the investigation or enquiry within six months, it would be for the Government to review the case

but it does not mean that the suspending beyond six month become automatically invalid or nonest. The only duty enjoined by such a rule is that the

officer who made the order of suspension must make a report to the government and it would be for the government to review the facts and

circumstances of the case to make a proper order. It is open to the government to make an order revoking the order of suspension or further

continuing the suspension. The order of suspension however, continues until it is revoked in accordance with the law".

Same principal has been laid in the case of ""Director General of Police, Andra

Pradesh, Hyderabad and Others Vs. K.Rathnagiri (AIR 1990 SC 1423).

11. This apart, from record it is seen that in the instant case, review was initiated on 2.3.1998. Report was called from investigating agency on

18.3.1998. Vigilance Organisation submitted final report to Government Administrative Department with request for grant of sanction for

prosecution. The matter was considered. Sanction was granted. Again the progress of the case was sent for and the report of the Vigilance

Organisation examined. Challan was filed against the accused on 23.6.1998 in the court of Special Judge (Anticorruption), Srinagar. The

petitionerappellant filed a writ petition only thereafter notwithstanding mention is not made of all this in the writ petition. The fact remains that the

case has been subject of review of the competent authority periodically and substantially in accordance with the government instructions on the

subject.

With regard to the third submission made by the counsel for the appellant that he is being discriminated qua Hem Raj Gupta, SO, Deputy

Commissioners office, Kathua who too was placed under suspension vide Government order No. 70GAD of 1997 dated: 30.05.1997, it is stated

that his suspension has been stayed under an interlocutory order passed by the court in LPA NO. 04/1998 (Jammu wing) while the said LPA is

still pending disposal, considering that the matter has not been finally adjudicated by the concerned bench. It is inappropriate for this bench to

speak on the merits of the said stay order. The existence of that order on the record of that case cannot be a ground available to the appellant

herein for staying his suspension. However, in order to keep the scales of justice even it becomes imperative that LPA NO. 04/1998 (of Jammu

wing) is also finally decided by the competent Bench. The registry is directed to get that case listed with utmost despatch before the appropriate

Bench for final adjudication.

In the result, there is no force in this appeal which is dismissed. Writ petition No. 1068/1998 be now listed before the concerned Single Bench at

an early date.