(2026) 08 J&K CK 0281

In the Jammu And Kashmir High Court

Case No : LPA No. 256/2022

UT Of Jammu And Kashmir And Others — APPELLANT

Vs

Abdul Rashid Durrani — RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Article 226, 14 and 16
Employees Service Rules of the Jammu and Kashmir Tourism Development Corporation Limited — Rule 145

Citation : (2026) 08 J&K CK 0281

Hon'ble Judges : Mohd. Yousuf Wani, J;Sanjeev Kumar, C.J

Bench : Division Bench

Advocate : Mr. Hakim Aman Ali Dy.AG., Mr. A. Haqani Sr. Advocate with Ms. Muneeba Advocate.

Final Decision : Allowed

Judgement

Chief Justice (A)1 This intra-Court appeal, filed by the Union Territory of Jammu and Kashmir, is directed against an order and judgment dated 11.10.2022 passed by the learned Single Judge of this Court (hereinafter referred to as the "writ Court") in SWP No. 190/2017 titled *Abdul Rashid Durrani vs. State of Jammu and Kashmir and others*, whereby the writ petition filed by the respondent under Article 226 of the Constitution of India came to be allowed and Government Order No. 152/ADM/JKTDC of 2012 dated 22.08.2012, terminating the services of the respondent, was quashed. 2 The impugned judgment is assailed by the appellants on multiple grounds. Before we advert to the grounds of challenge urged by the appellants, it would be appropriate to notice the facts which are necessary for the disposal of this appeal.

3 The respondent came to be appointed as a Waiter on ad hoc basis in the appellant-Corporation in the year 1983 and was regularized against the said post in the year 1985. He was subsequently promoted as Floor Supervisor in the year 2008. Thereafter, he was sent on deputation to the Tourism Department and

remained attached with the Personnel Section of the then Tourism Minister till September, 2008. Thereafter, he was posted at different establishments of the Corporation, including T.E. Gulmarg and Cheshmashahi Hutments. The respondent, however, remained absent w.e.f. 01.05.2010, though he claims that he remained attached with a Member of the Legislative Council w.e.f. 01.05.2010 till 31.10.2011. It is further claimed by the respondent that, despite the appellants being aware of his attachment with the MLC, they, without any reason or justification, withheld his salary with effect from 01.05.2010.And later vide Government Order No. 152/ADM/JKTDC of 2012 dated 22.08.2012, terminated his services retrospectively with effect from 31.05.2010 on the allegation of unauthorized absence from duty. The respondent claims to have submitted representations before the appellants seeking redressal of his grievance with regard to the impugned order of termination as well as for release of his withheld salary, but no action was taken thereon.

4 Aggrieved of his dismissal from service, the respondent invoked the writ jurisdiction of this Court by filing the writ petition, inter alia, contending that the impugned order of termination, passed retrospectively on the allegation of unauthorized absence from duty, was arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. It was pleaded that the impugned order had been passed without informing him of the allegations levelled against him and without affording him any reasonable opportunity of being heard. It was further contended that his attachment with the Personnel Section of the then Tourism Minister was under valid orders issued by the competent authority and, therefore, the said period could not have been treated as unauthorized absence from duty. It was also urged that before imposing the penalty of dismissal, the appellants were under a legal obligation to frame charges, communicate the same to the respondent, call for his explanation and, in the event the explanation was found unsatisfactory, hold a regular departmental enquiry in accordance with the applicable service rules and the principles of natural justice so as to enable the respondent to effectively defend himself. According to the respondent, no such procedure prescribed by law was followed by the appellants.

5 The writ petition was contested by the appellants by filing their reply. It was pleaded that an Inquiry Officer had conducted a preliminary enquiry and found that the respondent had remained unauthorizedly absent from his legitimate duties, thereby rendering himself liable to disciplinary action under the relevant rules. It was further pleaded that on the basis of the enquiry report, a detailed charge-sheet was framed and served upon the respondent, requiring him to explain the reasons for his unauthorized absence and directing him to resume duties within a period of fifteen days. However, according to the appellants, the respondent neither submitted any reply to the charge-sheet nor resumed his duties. It was further stated that a final show-cause notice dated 10.07.2012 was thereafter issued to the respondent calling upon him to show cause as to why his services be not terminated. As the respondent failed to respond even to the said notice, the appellants, after following the prescribed procedure, terminated his

services on the ground of unauthorized absence from duty.

6 The writ Court, after considering the rival submissions and examining the record, came to the conclusion that although an enquiry appeared to have been initiated into the alleged misconduct of the respondent, the mandatory procedure prescribed under Rule 145 of the Employees Service Rules of the Jammu and Kashmir Tourism Development Corporation Limited had not been complied with. The writ Court found that the record produced by the appellants did not disclose the manner in which the enquiry had been conducted. There was nothing on record to indicate that the statement containing the allegations of misconduct had been read over or explained to the respondent. Equally, there was no material to demonstrate that any evidence had been recorded during the enquiry. The writ Court, thus, held that the procedure prescribed under Rule 145 had not been followed at any stage of the disciplinary proceedings and, consequently, the order of dismissal was unconstitutional, illegal and unsustainable in law.

7 The judgment impugned is assailed by the appellants, inter alia, on the grounds that the respondent had been afforded adequate opportunity to defend himself and to submit his reply to the charge-sheet, thereby satisfying the requirements of the principles of natural justice. It is submitted that despite such opportunity having been afforded, the respondent failed to submit any reply to the charge-sheet or the final show-cause notice. It is further contended that the respondent had participated in the enquiry proceedings before the Inquiry Officer but thereafter deliberately chose not to respond to the disciplinary proceedings and, therefore, cannot be permitted to contend that the order of termination was passed in violation of the principles of natural justice. It is also urged that the appellants had complied with the mandate of Rule 145 of the Employees Service Rules by providing the respondent repeated opportunities of hearing and that the respondent, having consciously abstained from participating in the proceedings, is estopped from questioning the order of dismissal. According to the appellants, the record demonstrates that a full-fledged departmental enquiry had been conducted into the unauthorized absence of the respondent and, therefore, the writ Court erred in interfering with the order of dismissal. It is further submitted that the appellants had strictly adhered to the procedure prescribed under Rule 145 and, therefore, the impugned judgment deserves to be set aside. It is also argued that the respondent never reported back for duty after the order of suspension and, therefore, was not entitled to any service benefits as directed by the writ Court. Lastly, it is contended that since the respondent was an employee of the Corporation governed by its own Service Rules, the writ Court committed an error in extending him the benefit of judgments which, according to the appellants, were not applicable to the facts of the present case.

8 Before we proceed further, we deem it appropriate to reproduce Rule 145 of the Employees Service Rules of J&K Tourism Development Corporation Limited [‘Services Rules’], which reads as under:

"145. Procedure for imposing major penalties:

(i) When an employee is charged with misconduct which may lead to the imposition of a major penalty, the Disciplinary Authority shall frame definite charges on the basis of the allegations against him. The charges, together with a statement of allegations on which they are based, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), a written statement of his defence.

(ii) On receipt of the written statement of the employee or if no; such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or by an officer or committee appointed for the purpose (hereinafter called the Inquiring Authority) by the Disciplinary Authority.

(iii) At the enquiry a reasonable opportunity shall be afforded to the employee for explaining defending his case but he will not be allowed to engage a legal practitioner for this purpose.

(iv) At the conclusion of the enquiry, the Inquiring Authority shall prepare a report of the enquiry and record its findings on each of the charges, together with the reason therefor."

9 From a plain reading of Rule 145, it clearly transpires that Rule 145 is intended to provide an adequate opportunity of being heard to the delinquent employee before he is visited with one of the major penalties. The first requirement of the said Rule is to frame a definite charge/charges on the basis of allegations against a delinquent employee. These charges, together with the statement of allegations, are required to be communicated in writing to the delinquent employee with a view to enabling him to submit his reply/defence within such time as may be specified by the Disciplinary Authority, but such period should not exceed 15 days. It is only upon receipt of the written statement from the delinquent employee, the Disciplinary Authority shall proceed to hold the enquiry either itself or through an officer or committee appointed for the purpose. There is a further requirement that, at the enquiry, the delinquent employee shall be afforded a reasonable opportunity to explain and defend his case. The Enquiry Officer shall, upon following the aforesaid procedure, make his report and record his findings on each of the charges together with the reasons thereof.

10 From the above, it is vividly evident that the entire procedure prescribed under Rule 145 aims at providing a fair and adequate opportunity to the delinquent employee to defend himself against the charge/charges framed against him.

11 In the instant case, before framing the regular charges against the respondent, the appellants instituted a preliminary fact-finding enquiry. During the course of the preliminary enquiry, the respondent was given repeated opportunities to come forward and resume his duties and explain his

unauthorised absence. The first notice was issued on 29.03.2011, calling upon him to report for duty and explain his absence. He was also warned that in case he fails to join and explain his absence, disciplinary action would follow. The notice was duly dispatched to his residential address, which he himself had furnished and which was available in the official record. Having received no response to the notice dated 29.03.2011, the competent authority placed the respondent under suspension vide order dated 18.11.2011, pending regular enquiry into his unauthorised absence w.e.f. 01.06.2010.

12 From a reading of the preliminary enquiry report, it further emerges that the respondent did appear before the Enquiry Officer and was also heard. He sought to explain his absence by pleading that during the period of absence, he had been working in the office of the former Tourism Minister, who, at the relevant time, was a Member of the Legislative Council. The Enquiry Officer considered the explanation tendered by the respondent in the light of the documents available on the official record and came to the conclusion that the respondent was absent from duty unauthorisedly and that there was no order of any authority, much less the competent authority, placing his services at the disposal of the MLC, who happened to be a former Tourism Minister. It was found that the respondent was absconding from duty after 31.05.2010.

13 On the basis of the preliminary enquiry, formal charges were framed and communicated to the respondent, granting him 15 days’ time to submit his written defence. The charge-sheet was sent to his residential address and was also published in a local newspaper. Despite all these opportunities, the respondent neither submitted any written statement nor resumed his duties. Since the charges against the respondent were *prima facie* established during the fact-finding enquiry and the respondent had failed to avail the opportunity of defending himself in the regular enquiry by explaining his absence from duty, a formal show-cause notice dated 10.07.2012, proposing the penalty of dismissal, was issued. This notice too was sent to his residential address and was also published in the daily newspaper. The respondent failed to respond.

14 From the sequence of events, it is clearly demonstrated that the respondent was afforded adequate and reasonable opportunity, both at the preliminary enquiry stage as well as during the disciplinary proceedings. In these circumstances, it is very difficult for us to accept the contention of Mr. Haqani learned Senior Counsel that the order of dismissal passed against the respondent is in violation of the principles of natural justice. The principles of natural justice require that the delinquent employee is provided a reasonable and adequate opportunity to defend the charge. The Disciplinary Authority/Enquiry Officer is not under an obligation to postpone the proceedings indefinitely until the delinquent employee chooses to appear and participate. A person who, despite having an opportunity, abstains from the enquiry cannot subsequently complain of denial of a reasonable opportunity to defend himself.

15 It is true that even in a case where the delinquent employee chooses not to

appear in the domestic enquiry, the Enquiry Officer is under an obligation to establish the charge. In the case on hand, the charge stood firmly established. The initial onus of the employer stood discharged when, on the basis of the record, it was found that the respondent was unauthorisedly absent from duty and the respondent was called upon to explain his absence. It is also true that before the Enquiry Officer conducting the preliminary enquiry, the respondent took a plea that during the period of absence, he was working with the MLC, but could not disclose or produce any order or communication of any officer of the appellant Corporation, much less of the competent authority. He seems to have managed a certificate later from the MLC under whom he had served when he was the Minister for Tourism, so as to cover up his absence.

16 We are in agreement with the submission of Mr. Haqani, learned Senior Counsel, that a fact-finding enquiry/preliminary enquiry cannot be made the basis for terminating the services of a delinquent employee. However, the facts in the instant case are entirely different. The charges framed against the respondent were definite and pertained to unauthorised absence. It was never the case of the respondent that during the said period, he had attended any office of the Corporation at any place under the orders of the competent authority. As a matter of fact, in one of his representations, the respondent himself submitted that he could not attend his duties due to certain family circumstances.This is evident from the representation of the respondent dated 16.11.2016 addressed to the General Manager (Administration), JKTDC, Srinagar, requesting the latter to re-engage him in service. This communication is part of the writ petition filed by the respondent. Interestingly, in this representation, he does not refer to having performed his duties with the MLC, but has submitted that after his attachment with the then Tourism Minister, Mr. Ajatshatru Singh, was over, he was directed to attend his duties back in the Corporation. He would submit that he could not join his duties back in the Corporation due to some personal circumstances. In the said representation, he has only pleaded that the Corporation, in the case of many similarly situated employees, had taken a lenient view and later reinstated or re-engaged them. He also pleaded his family difficulties to the extent that he had three unmarried daughters, etc.

17 From the representation dated 16.11.2016, it is crystal clear that the certificate managed from the MLC was an additional ground carved out by the respondent to save himself from the charge. In view of the clear evidence available with the appellants, the initial burden of proving that the respondent had remained unauthorisedly absent was discharged, and it was now for the respondent to come forward with his written statement and explain his absence.

18 As noted above, the respondent miserably failed to do so. He denied having been served with any notice or any charge-sheet ever. As we have noticed above, and would like to reiterate here, the respondent was an employee who had remained absent from duty without leaving any whereabouts. In these

circumstances, the only address available with the appellants was his residential address available in the official record. Not only did the appellants serve the respondent with different communications, including the articles of charge, by posting them to his residential address, but they also published the information in the daily newspapers.

19 Viewed thus, the argument of Mr. Haqani learned Senior Counsel that Rule 145 of the Service Rules was breached with impunity is not acceptable. The findings recorded by the Enquiry Officer are based on the service record and the failure of the respondent to rebut such findings by submitting his written statement and leading evidence in support thereof. The learned Single Judge, in reassessing the adequacy of compliance with the principles of natural justice and the requirements of Rule 145, exceeded the permissible limits of judicial review under Article 226 of the Constitution.We are, therefore, satisfied that the order of dismissal does not suffer from any procedural illegality or violation of the principles of natural justice warranting interference. The impugned judgment of the learned Single Judge cannot be sustained and is, accordingly, liable to be set aside. Consequently, the present Letters Patent Appeal is allowed. The impugned judgment passed by the learned Single Judge is set aside, and the order of dismissal passed by the competent authority against the respondent is upheld. The writ petition filed by the respondent stands dismissed.