

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 02.07.2024

Pronounced on: 12.07.2024

SWP No.1210/2016

MOHAMMAD AMIN MIR

...PETITIONER(S)

*Through: - Mr. Altaf Haqani, Sr. Advocate, with
M/S: Shakir Haqani & Asif Wani, Advocates.*

Vs.

UNIVERSITY OF KASHMIR & ORS.

...RESPONDENT(S)

*Through: - Mr. Syed Faisal Qadiri, Sr. Advocate, with
Mr. Asif Maqbool, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order dated 31.05.2016, whereby respondent/University has imposed the penalty of forfeiture of five annual increments of the petitioner and besides this, his prospective promotion has been deferred by five years from the date he becomes eligible for promotion. The petitioner has also been recommended to be transferred to any Satellite/offsite campus of the respondent University. A further direction has been sought by the petitioner commanding the respondents to treat his period of suspension as on duty and to consider him for further promotions.

2) As per case of the petitioner, he was holding the post of Senior Assistant in the University of Kashmir and vide order bearing endorsement No.F(Suspension-Exam)GA/KU/12 dated 11.10.2012, he

was placed under suspension pending completion of enquiry. Vide the aforesaid order, two more officers, namely, Shri Ghulam Mohammad (Assistant Controller) and Abdul Hamid (Section Officer), were also attached to the office of Registrar of respondent University. It has been submitted that the respondent University constituted a Committee of Officers to look into the matter regarding attempt of withdrawal of fraudulent cheque from J&K Bank.

3) According to the petitioner, no chargesheet was served upon him nor was he informed about the nature of allegations levelled against him for which he was placed under suspension and he was not asked by the respondents to explain his conduct. However, he was asked by the Committee to present himself before the Enquiry Committee on 24.12.2012. It is being claimed by the petitioner that on the said date he was not informed about the nature of allegations levelled against him and, in fact, no proceedings were held by the Enquiry Committee in his presence.

4) It has also been submitted by the petitioner that a show cause notice bearing No.F(Show cause-Sr. Asstt-Gen-Admin)KU/14/1653 dated 19.06.2014 came to be issued by the respondents to the petitioner whereby he was informed that on 10.01.2013, Deputy Registrar Accounts had intimated that a cheque bearing No.1228341 dated 22.08.2012 for an amount of Rs.11,158/ had been fraudulently prepared without any supporting voucher and that the said cheque had been

allegedly presented by the petitioner for encashment before the J&K Bank, Nandpora Hazratbal. It was alleged in the said notice that the petitioner had presented the said cheque for encashment before the bank but when he was asked to show his identity card, he fled away from the spot. On the basis of this, it was recommended by the Enquiry Committee that penalty of forfeiture of three annual increments of the petitioner and deferring of his prospective promotion by two years from the date of his eligibility along with his transfer to any Satellite/offsite campus of the University be imposed upon the petitioner.

5) It seems that the petitioner filed his reply to the aforesaid show cause notice in which he denied the allegations and challenged the legality and validity of the show cause notice as also the conclusions drawn by the Enquiry Committee. It was contended by the petitioner in his reply to the show cause notice that the cheque in question had been signed by the competent authorities but no action was taken against them. It was further contended by the petitioner in his reply to the show cause notice that the procedure for holding an enquiry has not been followed by the Enquiry Committee.

6) It is being contended by the petitioner that the respondents without taking note of the contentions raised by him in his reply to the show cause notice did not take any further action in the matter which compelled him to file a writ petition bearing SWP No.335/2015 challenging his order of suspension dated 11.10.2012 as also the show cause notice dated

19.06.2014. The said writ petition was disposed of by this Court in terms of order dated 25.08.2015 and the respondents were directed to consider favourably petitioner's case for his reinstatement and to take a final decision vis-à-vis the final punishment after considering the reply of the petitioner.

7) After passing of order dated 25.08.2015 (supra) by this Court, impugned order dated 31.05.2016 came to be issued by the respondents whereby, though the petitioner has been reinstated in service yet penalty of forfeiture of five annual increments of the petitioner from the date of his suspension and deferment of his prospective promotion by five years from the date of acquisition of eligibility along with transfer to any Satellite/offsite campus of the University has been imposed upon him which is under challenge in the present writ petition.

8) The petitioner has challenged the impugned order on the grounds that the same is in violation of the mandate contained in the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. It has been contended that no chargesheet has been issued to the petitioner nor he has been asked to respond to specific allegations. It has been averred that the petitioner has not been allowed to participate in the enquiry proceedings or to defend himself. It has been further contended that while passing the impugned order of penalty, the respondents have not taken into consideration the pleas raised by the petitioner in his reply to the previous show cause notice dated 19.06.2014. It has also been

contended that the respondent University has imposed the enhanced punishment upon the petitioner without giving him any opportunity to show cause against the proposed enhanced punishment. It has been contended that the respondents had no authority to impose enhanced punishment after having issued a show cause notice in respect of a lesser punishment.

9) The respondent University has contested the writ petition by filing its reply, wherein it has been submitted that the petitioner had prepared a fraudulent cheque bearing No.1228341 dated 22.08.2012 for an amount of Rs.11,158/ and got it signed by his superiors in absence of proper bills and vouchers. It has been alleged that the petitioner personally went to J&K Bank Branch Office Nandpora Hazratbal for encashment of the said cheque. The bank officials asked the petitioner about his identity but he left the bank premises. According to the respondents, the Bank Manager informed Deputy Registrar Accounts about the incident and from the CCTV footage involvement of the petitioner in the case was established. Accordingly, vide order dated 11.10.2012, the petitioner was placed under suspension and two more officers, namely, Ghulam Mohammad Bhat, Assistant Controller, and Abdul Hamid, Section Officer, were also attached.

10) The respondents have claimed that the petitioner has appeared before the Committee constituted for conducting enquiry into the matter and he confessed his guilt in writing by making an application dated

03.11.2012. In his communication the petitioner had clarified that he was fully aware of the facts and that there was lapse on his part. According to the respondents, the Enquiry Committee, after investigating the matter and in view of the admission made by the petitioner, submitted a report to the competent authority. The recommendations of the Enquiry Committee were approved, whereafter a show cause notice for imposing penalty upon the petitioner was issued on 19.06.2014 which was challenge by the petitioner by way of a writ petition before this Court. It has been submitted that in compliance to the judgment passed by this Court, a fresh Committee was constituted to review the case of the petitioner and the said Committee recommended reinstatement of the petitioner subject to imposition of penalty of forfeiture of five annual increments and deferment of his prospective promotion by five years with his transfer to any Satellite/offsite campus of the respondent University. It has been submitted that the recommendations of the Enquiry Committee have been approved by the competent authority and, accordingly, the impugned order has been issued.

11) I have heard learned counsel for the parties, perused the pleadings of the parties, record of the case and the record of enquiry.

12) The main thrust of argument of learned Senior Counsel appearing for the petitioner was upon the contention that the penalty has been imposed upon the petitioner without initiation of regular enquiry against him in terms of Rule 33 of the Jammu and Kashmir Civil Services

(Classification, Control and Appeal) Rules, 1956 (hereinafter referred to as “the CCA Rules”), which provides for service of articles of charge together with statement of allegations on which each charge is based, upon the delinquent official and in case these charges are denied, the subsequent enquiry in the shape of providing an opportunity to the delinquent official to cross-examine the witnesses and to produce his own evidence. The learned Senior Counsel has submitted that a departmental proceeding can be said to have been initiated only when a chargesheet is issued and in the instant case, admittedly, no chargesheet has been issued to the petitioner, therefore, the impugned order imposing penalties upon the petitioner cannot be sustained in law. To support his contention, the learned Senior Counsel has relied upon the judgment of the Supreme Court in the case of **Union of India vs. Anil Kumar Sarkar**, (2013) 4 SCC 161.

13) A perusal of the impugned order reveals that the petitioner has been imposed the penalty of forfeiture of five annual increments and deferment of his prospective promotion by five years. His transfer to Satellite/offsite campus cannot be termed as penalty. As per Rule 33 of the CCA Rules, which are, admittedly, applicable to the employees of the respondent University, the procedure prescribed therein is applicable to the cases involving imposition of penalty of dismissal, removal from service and reduction in rank. It does not apply to the cases involving imposition of penalty other than the aforesaid penalties. In respect of cases involving imposition of penalties specified in clauses (i), (ii), (iii)

and (v) of Rule 30, the procedure prescribed in Rule 35 of the CCA Rules is applicable. As per this Rule, while imposing the penalties other than the penalties relating to removal/dismissal or reduction in rank including reduction to a lower post and/or a lower time scale and/or to a lower stage of time scale, it is obligatory on the part of the competent authority to give an adequate opportunity of making a representation to the delinquent official before passing the order of penalty. Of course, before asking the delinquent official to make a representation against the proposed order of penalty, there has to be an enquiry, though such enquiry need not to be as comprehensive as under Rule 33 of the CCA Rules.

14) In the instant case, the petitioner has been inflicted the penalty of forfeiture of five increments and deferment of his promotion by five years. The question that arises for determination is as to whether, in the instant case, the procedure for enquiry would be governed by Rule 33 or the same would be governed by Rule 35 of the CCA Rules. To find an answer to this question, we need to understand the effect of the penalty of forfeiture of increments upon the service career of the petitioner. The penalty of forfeiture of increments results in permanent loss in the increments and it does not amount to simple withholding of increments without cumulative effect.

15) In the above context, I am supported by the judgment of Punjab and Haryana High Court in the case of **Punjab State and others vs.**

Ram Lubhaya, 1982 (2) All India Services Law Journal 62. In the said
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case Punjab & Haryana High Court, while discussing the question whether withholding of increments with cumulative effect would come under the category of minor penalty or in the category of major penalty, observed as under:

“4. While according to the State, the penalty of withholding of increments with cumulative effect is a minor penalty covered by sub-rule (iv), according to the counsel for the employee, it falls in, major penalties covered by sub rule (v). Sub-rule (iv) provides for imposition of penalty of withholding of increments and it does not say in terms with or without cumulative effect. It is again not disputed by the counsel for the State that if the penalty of withholding of increments is imposed, it means with a non-cumulative effect.

5. Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simpliciter, i.e. without cumulative effect, and with cumulative effect. For example, if an employee is getting Rs.100/- at the time of imposition of penalty of withholding of increments and the penalty is without cumulative effect for a period of two years and the annual increments were to be of Rs.5/-, then in that case for two years, he will continue to get Rs.100/- per month but after the expiry of two years, he will get at the time of next increment, Rs.115/- including the increments for the past two years during which period they remained withheld. In case of withholding of increments for two years with cumulative effect, the employee will get Rs.100/- for two years and at the third increment, he would get Rs.105/- and not Rs.115/. While in the first case there will be a loss of increments for two years only and no further loss thereafter till retirement, but in the second eventuality due to loss of two increments, there will be loss of pay for whole of the remaining tenure of the employee which will affect his pension on his retirement. Therefore, two penalties would be clearly distinct having different consequences.

6. The next question would be whether both the penalties would be minor penalties and come within the purview of sub-rule (iv) or only the first one would come within sub-rule (iv). A comparative reading of sub-rules (iv) and (v)

shows that while in sub-rule (iv) only withholding of increments of pay is permissible under sub-rule (v), which is a major penalty, there is reduction to a lower stage in the time-scale of pay for a specified period and it is to be specified in the order whether the employee will be earning increments during the period of reduction and whether the reduction will or will not have the effect of postponing the future increments of his pay. As provisions have been made in sub-rule (v), similar provisions could have been made in sub-rule (iv) also, if different eventualities were considered to flow by passing different kinds of orders and in that case the rule framers would have specifically provided so. On a literal reading of sub-rule (iv) as also the practical application of the same, so far it is not disputed on behalf of the State that if simple order of withholding of increments of pay is passed then such an order does not amount of withholding of increments with cumulative effect. It appears that the rule framers only wanted to provide imposition of minor penalties under sub-rule (iv) of withholding of increments without cumulative effect so that there is a temporary loss to the employee not having a permanent effect on his increments; whereas sub-rule (v) provides for making a permanent loss in the increments and that is why it was included in the category of "major penalties". Similar point arose before a Division Bench of the Mysore High Court and a Single Bench of the Calcutta High Court and they also came to the conclusion that imposition of penalty of withholding of increments with cumulative effect is different from the penalty of withholding of increments from non-cumulative effect and has far reaching consequences. Reference in this connection may be made to (1) C. Verra Chowdaiah C . State of Mysore and another and (2) Alakendu Sarkar v. State of West Bengal and others. I am in agreement with the aforesaid two decisions and conclude that withholding of increments with cumulative effect would not be covered by sub-rule (iv) and may fall under sub-rule (v) and, therefore, would not be a minor penalty."

16) In view of what has been discussed above, it is manifestly clear that forfeiture of increments is a major penalty and it would not fall under the type of penalty as set out in clause (iii) of Rule 30 of the CCA Rules.

Forfeiture of the increments has the effect of reducing an employee to a lower stage in time scale and, as such, it falls in the category of penalty set out in clause (iv) of Rule 30 of the CCA Rules. Thus, the procedure for enquiry in the instant case is to be governed by the provisions contained in Rule 33 of the CCA Rules.

17) The question that falls for determination is as to whether in the instant case any enquiry at all has been conducted by the respondents before issuing the impugned order whereby penalty has been imposed upon the petitioner. As already stated, the procedure prescribed under Rule 33 of the CCA Rules is applicable to the present case. Therefore, in the instant case, it was incumbent upon the respondents to frame a proper articles of charge and serve a copy thereof along with statement of imputations upon the petitioner. Thereafter a departmental enquiry by following the mandate of Rule 33 of the CCA Rules was required to be followed by the respondents before coming to a conclusion as to whether or not the allegations against the petitioner were established.

18) The record produced by the respondent University reveals that a Committee of Officers was constituted for the purpose of conducting the enquiry. The record also reveals that the said Committee summoned the petitioner and he was heard by the Committee in its meeting held on 05.11.2012, on which date the petitioner submitted his written statement, wherein he admitted that he had prepared a cheque for an amount of Rs.11,158/ and got it signed by Mr. Ghulam Mohammad Bhat (Assistant

Controller), and Mr. Muzaffar Ahmad (Deputy Registrar Accounts). It was further recorded in his application dated 03.11.2012 that while writing the cheques, he had forgot to mark cheque number on one of the vouchers amounting to Rs.11,158/, which led to writing of another cheque. The petitioner in his application accepted his lapse. On the basis of the recommendations of the Enquiry Committee, show cause notice dated 19.06.2014 was issued to the petitioner proposing the punishment of forfeiture of three annual increments and deferment of his promotion by two years. To this show cause notice, the petitioner has, admittedly, filed his reply.

19) This Court vide order dated 25.08.2015, in an earlier round of litigation between the parties, directed the respondents to take a final decision on the basis of the aforesaid show cause notice but the respondents, instead of taking any decision on the said show cause notice in the light of the reply filed thereto by the petitioner, proceeded to issue the impugned order whereby they have imposed the enhanced penalty of forfeiture of five annual increments and deferment of promotion of petitioner by five years.

20) As already stated, in terms of Rule 33 of the CCA Rules, which is applicable to the present case, no order imposing the penalty can be passed against a delinquent official without holding an enquiry against him in the manner prescribed under the said Rule. Even if it is assumed that the petitioner had admitted his lapse in preparing the cheque dated

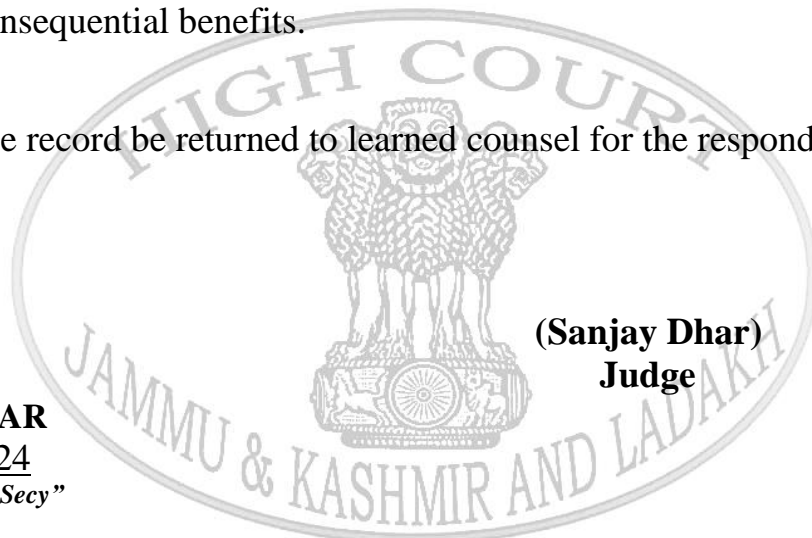
22.08.2012, still then because in the impugned order it has been noted that in addition to the cheque dated 22.08.2012 for an amount of Rs.11,158/, the petitioner had prepared as many as 25 similar cheques without requisite vouchers, which were recovered from his possession and signatures therein were found tampered, a chargesheet was required to be framed against the petitioner setting out these imputations against him, whereafter his reply was required to be considered for deciding the future course of action in accordance with the mandate of Rule 33 of the CCA Rules. These fresh allegations were never put to the petitioner during the enquiry proceedings, as is discernible from the record of the enquiry.

21) Without seeking any explanation from the petitioner and without holding enquiry in respect of fresh imputations against him, the respondents could not have relied upon the said unsubstantiated allegations for the purpose of enhancing penalty upon the petitioner. The enhanced punishment could not have been imposed upon the petitioner without holding an enquiry in a fair and transparent manner in accordance with Rule 33. The respondents have not held any enquiry at all with regard to additional allegations levelled against the petitioner regarding preparation of 25 cheques, therefore, it was not open to them to make it a basis for enhancing the penalty against the petitioner. There has been clear breach of the mandatory procedure on the part of the respondents in the present case and, as such, the impugned order is not sustainable in law.

22) For the foregoing reasons, the writ petition is allowed and the impugned order dated 31.05.2016 is quashed to the extent of imposition of penalty of forfeiture of five annual increments and deferment of promotion of the petitioner for five years, leaving it open to the respondents to proceed afresh against the petitioner strictly in accordance with the procedure prescribed under Rule 33 of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. In case the respondents do not choose to proceed afresh against the petitioner within a period of three months from the date of this judgment or in the event of his exoneration in the enquiry, the petitioner shall be entitled to all the consequential benefits.

23) The record be returned to learned counsel for the respondents.

SRINAGAR
12.07.2024
"Bhat Altaf-Secy"



(Sanjay Dhar)
Judge

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No