



**Government of Jammu & Kashmir
Public Works (R&B) Department
Civil Secretariat, J&K**

Subject: T.A. No. 2428/2020 in WP(C) No. 2402/2019 titled Syed Shabir Hussain V/s UT of J&K & Others-**Consideration thereof.**

**Government Order No: 363-PW(R&B) of 2024
Dated: 27-12-2024**

WHEREAS, Mr. Syed Shabir Hussain had filed a case through T.A No. 2428/2020 in WP(C) 2402/2019 titled Syed Shabir Hussain v/s UT of J& K & others, claiming for release of all the service benefits i.e., salary, increments, gratuity, GP Fund etc;

AND WHEREAS, Mr. Syed Shabir Hussain, as per the service record, was appointed as Roller Stocker w.e.f 11.11.1961 on work charge establishment and was later promoted as Roller Operator vide Superintending Engineering, Mechanical Circle, MED Kashmir Order No. 33 of 1981 dated 24.09.1981;

AND WHEREAS, the official applied and proceeded on two months Earned Leave w.e.f 01.06.1992, which was sanctioned on 01.07.1992 by the Executive Engineer, Mechanical Division Anantnag. The official later applied for an extension of leave for a further two months, which was not sanctioned;

AND WHEREAS, the official after availing two months earned leave, did not resume his duties for a long time. Consequently, the Executive Engineer Mechanical Division, Anantnag, where the official was last posted, referred the matter of unauthorized absence of Mr. Syed Shabir Hussain, Roller operator to the higher authorities;

AND WHEREAS, the Superintending Engineer, Mechanical Circle MED Kashmir directed the Executive Engineer, Mechanical Division, Anantnag to proceed against the said official under the rules and as such, the Charge Sheet under No. MDA/Estt/2019-2020 dated 07.05.1997, was served upon the delinquent official and was posted to his home/ residential address through registered post No. RC701 dated 08.05.1997. However, the same was returned back on the ground that the official was not available at his home;

AND WHEREAS, a show cause notice was issued against the delinquent official via., newspaper publication through the Director, Information Department, Srinagar vide No. MDA/517-19 dated 16.07.1997, for publication of the same in one of the leading local dailies. However, the official neither resumed his duties w.e.f. 01.08.1992 till the date of his actual date of superannuation from Government Service i.e, 30.09.2001, nor replied to any communication;

AND WHEREAS, the delinquent has remained un-authorizedly absent from duties since 01.08.1992 for a period of 9 years 1 month 29 days;

AND WHEREAS, as sequel of the claim put forth by the petitioner in T.A No. 2428/2020 in WP(C) 2402/2019, the matter was examined in the department and it was viewed that the petitioner has not come clean on the reasons of such a long unauthorized absence from official duties, which tantamounts to gross misconduct on his part;

AND WHEREAS, in terms of the Jammu and Kashmir Civil Service (Verification of Character and Antecedents) Instructions, 1997, as amended from time to time, the matter was taken up with CID, J&K for re-verification of Character and Antecedents of the petitioner. The Director General of Police, CID, J&K, reported that the petitioner had crossed LOC/left to POK, in the year 1992, to obtain illegal arms/ ammunition training and in the year 2004 he returned back to the valley via Chotali, Boniyar. On 02.11.2004, the petitioner was arrested by the Police and an FIR No. 68/2004 u/s 2/3 Egress and Internal Movement (Control), Act and 121 RPC was registered against him in Police Station, Boniyar, Baramulla. During the course of the investigation, the accused was taken into custody and after the investigation was completed, a charge sheet was produced before the Trial Court on 03.12.2004. The accused was acquitted by the Trial Court of all the charges on 23.06.2005;

AND WHEREAS, the petitioner filed a civil suit for release of all service benefits, however, on 24.04.2012, the suit was dismissed. The petitioner filed an Appeal before the Principal District Judge, Budgam, which was dismissed by the Hon'ble Court vide Its Order dated 22.02.2014. The petitioner filed 2nd Appeal which was withdrawn by him by virtue of order dated 27.05.2019, wherein it was ordered that the petitioner shall be at liberty to exhaust the remedy for seeking of pensionary benefits, if any, which have accrued to him for rendering 26 years of service with the Department;

AND WHEREAS, the petitioner then filed WP(C) No.2402/2019 which was transferred to the Hon'ble Central Administrative Tribunal bearing T.A. No. 2428/2020, which has been disposed of vide Order dated 20.05.2022, with the direction that the respondents/ competent authority to consider the averments made in the present O.A. as a representation;

AND WHEREAS, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs and vide U.O. LAW-Ser2/9/2023-10 dated 24.05.2023, opined as under:

"Dismissal from service is a major penalty under the J&K Classification Control (Appeal) Rules 1956 which can be inflicted only after a full dressed disciplinary action under extant rules. The Departmental notings are suggestive of the fact that no disciplinary action had been initiated for unauthorised absence of the retiree. Department may therefore, examine this aspect qua the proposal to dismiss the incumbent at this stage."

AND WHEREAS, the case was further examined and Finance Department was also consulted and latter who vide U.O. No. FD-Code/257/2021-03-Part(1)-874 dated 09.08.2023, has advised as under:

1. The ex-official proceeded on 2 months leave and did not report back to his duties.
2. As per Article 128 of Civil Service Regulations Vol-I, absence without leave or after end of leave involves loss of appointment.
3. The official was to retire from service on 18/09/2001, as such the Department needs to ascertain from the Law Department whether the action under Article 128 can be initiated at this time.
4. The Hon'ble High Court has in its judgement dated 30.05.2019, held that the petitioner will be at liberty to exhaust the remedy for seeking release of pensionary benefits which have accrued to him for rendering 26 years of service with the Department.



5. In terms of Article 168 of Civil Service Regulations Vol-I, good conduct is implied condition for every grant of pension. The Government reserves to itself the right of withholding or withdrawing the pension if the pensioner is guilty of grave misconduct.
6. Director General of Police, CID J&K Srinagar has vide its communication dated 29.11.2022 reported that the petitioner, in the year 1992, had crossed LOC/left to POK for obtaining illegal arms/ammunition training and in the year 2004 he returned back to valley via Chotali, Boniyar.
7. The Department may proceed accordingly in the matter."

AND WHEREAS, the matter was again taken up with the Law Department, which vide U.O. No. LAW-Ser2/9/2023-10 dated 14.09.2023 advised as under:

"In terms of article 128 of the Jammu and Kashmir Civil Services Regulations, absence without leave or after end of leave involves loss of appointment. Whether unauthorized absence of an employee beyond the period of five years results in automatic cessation of employment came before the division bench of Hon'ble High Court of Jammu and Kashmir and Ladakh in LPA No. 265/2019 titled Mohd Razaq Vs State of J&K and Ors. The Hon'ble High Court dismissed the LPA vide judgment dated 17.03.2022 and held in Para 15 asunder:

15. The law on abandonment of service appears to be quite clear and it is settled that absence from duty in the beginning may be a misconduct but once absence continues for a long period, it may amount to voluntary abandonment of services and in such an eventuality the bonds of service come to an automatic end without requiring any order to be passed by the employer.

In view of aforesaid position of law held by division bench of Hon'ble High Court, the unauthorized absence of applicant for more than 8 years amounts to voluntary abandonment of services and in such an eventuality the bonds of service come to an automatic end without requiring any order to be passed by the employer."

AND WHEREAS, having regard to advice of Department of Law, Justice and Parliamentary Affairs and Finance Department, the matter has been examined in the Department with following conclusion

- I. Mr. Syed Shabir Hussain, the then Roller Operator, has absconded from the service w.e.f 01.08.1992 and never resumed his duties till his actual date of superannuation i.e. 30.09.2001.
- II. Proper procedure has been followed and adequate opportunity has been given to the petitioner to resume his duties after expiry of sanctioned leave [Expiry: 31.07.1992] and has un-authorizedly remained absent from duties, which qualifies for loss of appointment in terms of Article 128 of Civil Service Regulations Vol-I.
- III. The CID, J&K has established that he has crossed LOC/left to POK to obtain illegal arms/ammunition training in the year 1992 and in the year 2004 he returned back to the valley via Chotali, Boniyar. On 02.11.2004 the petitioner was arrested by the Police and an FIR No. 68/2004 u/s 2/3 EIMCO Act and 121RPC was registered against him in Police Station, Boniyar, Baramulla. This very action of the petitioner of indulging into anti-

national activities and making himself part of enemy action is a grave misconduct under the J&K Government Employees Conduct Rules, 1971.

- IV. In terms of Article 168 of the Jammu and Kashmir Civil Service Regulations, 1956, good conduct is an implied condition for grant of a pension and the Government reserves right to withhold or withdraw a pension, if a pensioner is guilty of grave misconduct.
- V. Having being involved in anti-national activities, the pension shall not be granted to him in terms of the Article 168 of the Jammu and Kashmir Civil Service Regulations, 1956;

AND WHEREAS, the Hon'ble Supreme Court in case of "Ex-Armymen's Protection Services Private Limited vs. Union of India and Others 2014 (5) SCC 409" has observed as under:

"What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive. To quote Lord Hoffman in Secretary of State for the Home Department v. Rehman [5]:

"... in the matter of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive."

Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.

AND WHEREAS, in M. Narasimhachar v. The State of Mysore:

(1960)ILLJ798SC, and State of Uttar Pradesh v. Brahm Datt Sharma and Anr.: [1987] 2SCR444, similar Rules authorizing the Government to withhold or reduce the pension granted to the Government servant were interpreted and the Hon'ble Court has held that merely because a Government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the Government was entitled to withhold or reduce the pension granted to a Government servant;

AND WHEREAS, it has been established beyond doubt that in terms of Article 128 of the Jammu and Kashmir Civil Service Regulations, 1956, the petitioner has lost his appointment and in terms Article 168 of the Jammu and Kashmir Civil Service Regulations, 1956, he has lost the entitlement for any pensioner benefits, having been involved in grave misconduct of anti-national activities;

NOW THEREFORE, in light of the directions passed by the Hon'ble Central Administrative Tribunal in T.A. No. 2428/2020 in WP(C) 2402/2019 titled Syed Shabir Hussain V/S UT of J&K and others and in light of the opinion rendered by the Department of Law, Justice & Parliamentary Affairs and Finance Department, the claim of the petitioner has been considered and found devoid of any merit, hence rejected having regard to the gross misconduct and indulging into anti-national activities in terms of Article 128 and 168 of J&K CSRs Vol-I.

By Order of the Government of Jammu & Kashmir.

Sd/-

(Bhupinder Kumar) IAS
Secretary to the Government
Dated: 27-12-2024

No: PWD-LIT/327/2022-05 [220286]

Copy to the:

1. Ld. Advocate General, J&K.
2. Additional Chief Secretary to the Hon'ble Chief Minister, J&K
3. Principal Secretary to the Hon'ble Lieutenant Governor, J&K.
4. Joint Secretary (JKL), Ministry of Home Affairs, Government of India.
5. Director Archives, Archaeology and Museums, J&K.
6. Special Secretary to the Hon'ble Deputy Chief Minister, J&K.
7. Chief Engineer, PW(R&B) Department, Mechanical & Hospital Engineering Department, Kashmir.
8. SLO/ PLO, Public Works (R&B) Department.
9. Private Secretary to the Secretary to the Government, Public Works (R&B) Department.
10. Concerned.
11. In-charge Website, Public Works (R&B) Department.
12. Government Order file (w.3.s.c.s)/Monday Return

(Hamid Hameed)

Under Secretary to the Government