



**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH  
AT JAMMU**

**WP(C ) No. 1776/2020**

Reserved on: 12.03.2026

Pronounced on: 25.03.2026

Uploaded on: 25.03.2026

Whether the operative part or full  
judgment is pronounced: Full

Gopal Krishan

..... Petitioner (s)

Through :- Mr. Abhinav Sharma Sr. Advocate  
with Mr. Abhirash Sharma Adv.

V/s

UT of J&K and others

.....Respondent(s)

Through :- Mr Mayank Gupta Advocate.

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1 The petitioner, through the medium of present petition, has challenged order No.JMC/PS/COM/279 dated 20.05.2020 passed by respondent No. 2, whereby he has been dismissed from service. Challenge has also been thrown to the Departmental Enquiry proceedings that have been conducted by respondent No. 2 holding him guilty of the charge of misconduct.

2. As per case of the petitioner, he was appointed as Sanitary Inspector in Jammu Municipal Corporation (JMC) in the year 1991 and was promoted as Enforcement Inspector in the year 2016. According to the petitioner, he was posted as Enforcement Inspector for Ward Nos. 51, 52, 53 & 54 of Jammu from 07.02.2019 to 31.07.2019.

3 A complaint dated 18.06.2019 came to be filed against the petitioner by one Smt. Jyoti Devi, Corporator Ward No. 53, Trikuta Nagar,



Jammu, alleging that unauthorised construction is going on in Ward No. 53 and no action is being taken by the petitioner. On the basis of the aforesaid complaint, an enquiry came to be initiated against the petitioner and he was directed to explain his position. The petitioner is stated to have submitted his reply on 15.07.2019. A preliminary inquiry was conducted by the Assistant Commissioner (Revenue), JMC who submitted his report dated 27.07.2019. On the basis of the fact-finding report submitted by Assistant Commissioner (Revenue), JMC, the petitioner was placed under suspension by virtue of order dated 31.07.2019 issued by respondent No. 2, and the Secretary, JMC was appointed as the Enquiry Officer to look into the allegations against the petitioner. Accordingly, a fresh preliminary enquiry was conducted into the allegations against the petitioner. The Secretary, JMC Jammu, after a detailed enquiry, submitted his report and recommendations vide his communication dated 12.12.2019.

4. Thereafter, respondent No. 2, by virtue of memorandum dated 17.02.2020, initiated departmental proceedings against the petitioner in terms of Rule 33 of the Civil Services (Classification, Control and Appeal) Rules, 1956 (hereinafter referred to as the Rules of 1956). The article of charges and the statement of imputations were served upon the petitioner, who was asked to file his written statement of defence within 07 days. The petitioner is stated to have submitted his written statement of defence on 22.02.2020 denying the charges. Thereafter, respondent No. 2 appointed herself as the Enquiry Officer and proceeded to hold the enquiry into the charges levelled against the petitioner.



5 By virtue of notice dated 20.03.2020, the petitioner was directed to appear before respondent No. 2 for recording his statement of defence. During the course of enquiry, respondent No. 2 directed the Joint Commissioner Administration, JMC (respondent No.4 herien), to submit a factual report relating to the constructions raised between February 2019 to July 2019. Accordingly, a report dated 20.04.2020 was submitted by respondent No. 4. Respondent No.2, the Enquiry Officer rendered her report dated 23.04.2020 holding the petitioner guilty of the charges.

6 Thereafter, respondent No. 2, vide notice dated 23.04.2020, asked the petitioner to show cause as to why the proposed penalty of dismissal from service in terms of Rule 30 of the Rules of 1956 be not imposed upon him. The petitioner submitted his reply to the notice vide his communication dated 29.04.2020, pleading that the enquiry had not been conducted in accordance with the Rules and that he had not been permitted to cross-examine the witnesses. Another notice dated 05.05.2020 was issued by respondent No. 2 to the petitioner asking him to appear before her on 08.05.2020. The petitioner is stated to have filed a written reply to the notice dated 05.05.2020. Thereafter, respondent No. 2 proceeded to issue the impugned order dated 20.05.2020 whereby the petitioner has been dismissed from service.

7. The petitioner has challenged the impugned order on the ground that the same suffers from malice and personal bias. It has been contended that respondent No. 2 has not appreciated the reply filed by the petitioner and has proceeded to record findings without any substantial evidence. It has been further contended that respondent No. 2 has not complied with the principles of natural justice, as the petitioner was never allowed to cross-examine the



witnesses on the basis of whose statements respondent No. 2 had come to the conclusion that the petitioner is guilty of dereliction of duty. It has been contended that respondent No. 2 has not furnished copy of the record on the basis of which findings have been recorded by the said respondent. It has also been contended that the punishment imposed upon the petitioner is disproportionate to the charges levelled against him. It has been contended that no formal order for appointment of Enquiry Officer has been made and even the Presenting Officer has not been appointed. It has been contended that the reports relied upon by the Enquiry Officer are not substantiated by oral statements of any witness. It has been contended that respondent No. 2, by acting as the Disciplinary Authority as well as the Enquiry Officer, and by taking active part in recording the statements of the departmental witnesses and putting leading questions to them, had become an adjudicator as well as the prosecutor while rendering the inquiry report and finally passing the order of punishment against the petitioner. This, according to the petitioner, violates the principles of natural justice.

8. The respondents have contested the writ petition by filing their reply. In the reply, it has been submitted that a preliminary enquiry was initiated against the petitioner on the basis of a complaint dated 18.06.2019 received from the Councillor of Ward No. 53. It was alleged in the complaint that the petitioner, who was posted as an Enforcement Inspector, was not performing his duties properly and unauthorised construction work was going on in the said ward. While the preliminary enquiry was being conducted into the said complaint, another complaint was received against the petitioner from one Sh. Surinder Singh leveling similar allegations.



9 It has been submitted that, as per the report of preliminary enquiry dated 27.07.2019, various constructions had come up in Ward Nos. 53 and 17 without any building permission. On the basis of these findings, a fresh enquiry was ordered and the Secretary, JMC was appointed as the Enquiry Officer. The said Enquiry Officer submitted his report dated 12.12.2019 and, as per the said report, the petitioner did not inform his superior officers for timely legal action against illegal constructions that were coming up in the area of his jurisdiction. It was reported that the petitioner had shown laxity and dereliction in performing his duties.

10 Based on the findings of the enquiry Officer, a charge sheet was issued to the petitioner vide memorandum dated 17.06.2020 along with the article of charges and statement of imputations. It has been submitted that the petitioner filed his written statement of defence on 21.02.2020 in response to the charge sheet. The reply of the petitioner was not found satisfactory by the competent authority, as such, a detailed enquiry was initiated against the petitioner by the Disciplinary Authority, who designated itself as the Enquiry Officer. It has been submitted that during the enquiry proceedings, the petitioner was given adequate opportunity of hearing, and he filed a comprehensive reply to the charges. It has been submitted that statements of as many as eleven witnesses were recorded by the Enquiry Officer. The particulars of these witnesses find mention in the reply. According to the respondents, the Enquiry Officer has not relied upon the statements of these witnesses but has only relied upon the official record and the reports, while arriving at the findings.



11 It has been further submitted that, during the disciplinary proceedings, reports were sought from the Senior Town Planner and the Joint Commissioner (A) to verify the claims made by the petitioner in his reply. These reports were received on 20.04.2020. The entire available material, including relevant records of the Enforcement Section, Building Section, and Works Section, were scrutinised by the Enquiry Officer, and a threadbare examination of the records was undertaken to arrive at a conclusion in respect of the allegations relating to violations in raising constructions. The details thereof have been given in the reply filed by the respondents. The Enquiry Officer is stated to have analysed and assessed the timing of raising of illegal constructions within the petitioner's area of operation for the period from 07.02.2019 to 31.07.2019, by examining the labour schedule and the corresponding pace of work. According to the respondents, these parameters clearly established that the illegal constructions had taken place during the tenure of the petitioner. It was found that illegal construction at as many as three sites had been carried out, either partially or fully, during the petitioner's tenure. It has been contended that the petitioner was obliged to report such violations promptly to enable timely action.

12 The Enquiry Officer concluded that the articles of charges framed against the petitioner stand proved. Accordingly, enquiry report dated 23.04.2020 came to be framed by respondent No.2. Pursuant to the aforesaid findings of the Enquiry Officer, notice in terms of Rule 34 of the Rules of 1956 was issued by respondent No.2 in the capacity of Disciplinary Authority to the petitioner asking him to show cause as to why the penalty of dismissal from service be not imposed upon him. Pursuant to the said notice, the petitioner is



stated to have appeared before the Disciplinary Authority on 18.05.2020. However, he could not produce any new documentary evidence in support of his claim. Accordingly, the impugned order dated 20.05.2020 imposing punishment of dismissal from service upon the petitioner came to be issued.

13. It has been contended that every opportunity was given to the petitioner to produce the documents and the Enquiry Officer has supplied all the documents to the petitioner. It has been contended that there has been no breach of any statutory Rule while conducting the enquiry against the petitioner. To lend support to their case, the respondents have also produced the record relating to the enquiry.

14. I have heard learned counsel for the parties and perused record of the case.

15. For assailing the impugned order imposing penalty of dismissal from service upon the petitioner and the impugned enquiry report, learned Senior Counsel appearing for the petitioner has raised a number of grounds. However, he has laid much emphasis on the ground that respondent No. 2 has acted as a prosecutor and an adjudicator in the present case and, as such, on this ground alone the impugned enquiry proceedings are liable to be quashed. It has also been contended that the petitioner has not been given the opportunity of cross-examining the witnesses whose statements were recorded during the course of the enquiry proceedings and that the entire material relied upon by the Enquiry Officer has not been furnished to the petitioner. Thus, according to the learned Senior Counsel, the impugned order imposing major punishment upon the petitioner cannot be sustained in law.



16. So far as the first ground projected by the petitioner is concerned, it appears that vide memorandum dated 17.02.2020, respondent No. 2 formulated the charges against the petitioner and the same were received by the petitioner on 17.02.2020. Vide his communication dated 21.02.2020, the petitioner submitted his written statement of defence to the articles of charges and statement of imputations. Thereafter, on 24.02.2020, respondent No. 2, who is also the Disciplinary Authority in respect of the petitioner, issued order dated 24.02.2020 appointing herself as the Enquiry Officer in order to conduct a detailed enquiry into the charges in terms of the Rules of 1956. The petitioner was further directed to submit his reply within a week's time. The record shows that respondent No. 2, who happens to be the Disciplinary Authority, after appointing herself as the Enquiry Officer, has not passed any order for appointment of a Presenting Officer.

17 The question that arises for determination is as to whether, in a case where the Disciplinary Authority acts as Enquiry Officer and does not appoint a Presenting Officer, the enquiry proceedings are vitiated. The said issue has been a subject matter of discussion and determination before the Supreme Court in a number of cases.

18 In **State of U.P. and others vs. Saroj Kumar Sinha, 2010 (2) SCC 772**, the Supreme Court has, while explaining the status of an Enquiry Officer, held that an Enquiry Officer is a quasi-judicial authority and he has to act as an independent adjudicator and that he is not a representative of the department. Paras (28), (30) & (31) of the said judgment are relevant to the context and the same are reproduced as under:



"28. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department disciplinary Authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In the case of *Shaughnessy v. United States*, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

19. Karnataka High Court in the case of **Bharath Electronics Ltd vs. K. Kasi**, 1986 SCC Online Karnataka 30, had an occasion to consider the issue as to whether non-appointment of a Presenting Officer would vitiate the enquiry proceedings. Paras (14) and ( 15) of the said judgment are relevant to the context and the same are reproduced as under:

"14. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry See : *Gopalakrishna Reddy v. State of Karnataka* (ILR (Karnataka) 1980(1) 575). It is true that in the absence of Presenting Officer if the Inquiring



Authority plays the role of the Presenting Officer, the inquiry would be invalid and this aspect arises out of the next point raised for the petitioner, which I shall consider immediately hereafter.

15. The third ground on which the Industrial Tribunal held that the domestic inquiry was invalid was that the Inquiry Officer had played the role of the Presenting Officer. The relevant part of the findings reads :

"The Learned Counsel for the workman further contended that the questions put by the Enquiry Officer to the Management's witnesses themselves suggest that he was biased and prejudiced against the workman. There has been no explanation as to why no Presenting Officer was appointed and as to why the Enquiry Officer took upon himself the burden of putting questions to the Management witnesses. The enquiry proceedings at Ext. A-6 disclose that after the cross-examination of the Management's witnesses by the defence, the Enquiry Officer has further put certain questions by way of explanation, but from their nature an inference arises that they are directed to fill in the lacuna. The Learned Counsel for the Management contended that the Enquiry Officer has followed the principles of natural justice and that the domestic enquiry is quite valid. I am of the view that the fact that the Enquiry Officer has himself taken up the role of the Presenting Officer for the management goes to the root of the matter and vitiates the enquiry,"

As far as position in law is concerned, it is common ground that if the Inquiring Authority plays the role of a Prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is : Whether the Inquiry Officer did so ? It is also settled law that an Inquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the Inquiring Authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair. See : Munchandani Electric and Radio Industries Ltd. v. Their Workman"

20. Again, the Supreme Court in the case of **Workmen, Lambababri Tea Estate vs. Management, 1965 SCC Online SC 5** considered the question whether, in a case where the Enquiry Officer becomes a prosecutor, the enquiry is vitiated. The Supreme Court observed thus:



"The inquiry which was held by the management on the first charge was presided over by the manager himself. It was conducted in the presence of the assistant manager and two others. The enquiry was not correct in its procedure. The manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and manager in turns. The record of the enquiry as a result is staccato and unsatisfactory."

21. A Division Bench of the Madhya Pradesh has, in the case of **Union of India and othres vs. Naseem Siddiqui, 2004 SCC Online MP 678** summarized the fundamental principles of natural justice in the following manner:

"(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.



Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may".

22. The aforesaid principles laid down by the Division Bench of Madhya Pradesh High Court have been endorsed by the Supreme Court in its judgment titled **Union of India vs. Ram Laxhan Sharma, (2018) 7 SCC 670**. In the said case, the Supreme Court held that when the statutory provisions do not require appointment of a Presenting Officer, the non-appointment of a Presenting Officer does not ipso facto vitiate the inquiry. It was further held that if the Inquiry Officer starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias would come into play. The Supreme Court went on to hold that there is no requirement of appointment of a Presenting Officer in each and every case and when the statutory rules are silent with regard to the applicability of any facet of principles of natural justice which are not specifically excluded in the statutory scheme, they are not prohibited. It has been further held that when there is no express exclusion of a particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. The Court went on to hold that the question as to whether an Inquiry Officer who is supposed to act independently in an inquiry has acted as a prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case.



23 In light of the aforesaid principles, let us now analyse the facts of the present case. As has already been stated, respondent No. 2 happens to be the Disciplinary Authority and she has also acted as an Inquiry Officer. There is no prohibition in Rule 34 of the Rules of 1956 for appointment of the Disciplinary Authority as the Inquiry Officer. Clause (4) of Rule 33 of the Rules of 1956 vests power with the Competent Authority to inquire into the charges itself or to appoint an Inquiry Officer for the purpose. Therefore, *per se* there is nothing wrong in the action of respondent No. 2 in appointing herself as the Enquiry Officer. The Rules of 1956 also do not provide for appointment of a Presenting Officer, but there is no prohibition contained in the said Rules regarding appointment of a Presenting Officer. Therefore, the issue as to whether, by acting as a Disciplinary Authority, the Inquiry Officer and the Presenting Officer, the inquiry proceedings in the present case would get vitiated becomes a question of fact which has to be decided having regard to the manner in which the inquiry proceedings have been conducted in the present case.

24 In the above context, if we have a look at the record of the inquiry, it appears that during the pendency of the inquiry proceedings, respondent No. 2 has sought reports from the Senior Town Planner and Joint Commissioner (A). It has been done to collect evidence against the petitioner. Similarly, respondent No. 2, while conducting the inquiry, has recorded the statements of as many as eleven witnesses, out of whom at least two have deposed against the petitioner. These witnesses have also produced photographs and documents to substantiate their statements. The statements of these witnesses have been relied upon by the Inquiry Officer while recording



the findings against the petitioner. The record further shows that the statements of these witnesses were recorded behind the back of the petitioner and he was not even afforded an opportunity to cross-examine the witnesses. It also appears that the copies of the reports obtained by the Inquiry Officer from the Senior Town Planner and the Joint Commissioner were not furnished to the petitioner.

25 The aforesaid circumstances clearly go on to show that respondent No. 2, while acting as the Disciplinary Authority, Inquiry Officer and the prosecutor rolled into one, has approached the whole issue with a premeditated mind to somehow implicate the petitioner. The manner in which the proceedings have been conducted by respondent No. 2 clearly reflects a reasonable apprehension of bias against the petitioner.

26 It has to be kept in mind that while holding disciplinary proceedings against an employee and imposing punishment upon him after finding him guilty of misconduct, though technical rules of the Code of Civil Procedure and the Evidence Act do not apply, yet the principles of natural justice are required to be observed strictly. Therefore, the inquiry is required to be conducted fairly and reasonably. It is a cardinal principle of natural justice that no man shall be a judge in his own cause. The Supreme Court has, in the case of **Ashok Kumar Yadav and others v. State of Haryana and others (1985) 4 SCC 417**, held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, the law requires that a person should not decide a case in which he is interested. The question is not whether the person is actually biased, but whether the



circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.

27 In the present case, as already stated, the circumstances clearly go on to show that there is a reasonable apprehension that the manner in which respondent No. 2 has acted in the present case by donning three hats, viz., the Disciplinary Authority, the Enquiry Officer and the Presenting Officer, the decks were heavily loaded against the petitioner even before imposing punishment upon him. The enquiry proceedings and the impugned report of enquiry rendered by respondent No.2, as such, get vitiated.

28 The second ground urged by learned Senior Counsel for the petitioner also appears to be well founded. The petitioner was subjected to a regular departmental inquiry and, therefore, Rule 33 of the Rules of 1956 was required to be followed. The said Rule clearly stipulates that the person charged is entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish. In the present case, the Inquiry Officer has recorded the statements of as many as eleven witnesses, out of whom two have deposed against the petitioner and their statements have been relied upon by the Inquiry Officer. These witnesses have also placed on record of the enquiry the photographs and documents. The record shows that the petitioner has not been given an opportunity to cross-examine the witnesses and the photographs/documents produced by these witnesses have not been furnished to him. The record also bears testimony to the fact that the petitioner has not been furnished copies of the reports of the various officers that were obtained by the Inquiry Officer during the course of the inquiry, nor has the petitioner been given an opportunity of producing his witnesses after the



closure of departmental evidence. In fact, the record of the enquiry produced before the Court shows that the Enquiry Officer has not even recorded the minutes of the enquiry proceedings from which one could gather as to in what manner the proceedings have been conducted. The mandate of Rule 33 of the Rules of 1956 has been completely violated by the Inquiry Officer while conducting the inquiry. On this ground also, the inquiry proceedings are vitiated.

29 Once the impugned inquiry proceedings against the petitioner stand vitiated for the reasons stated hereinbefore, the impugned order imposing penalty of dismissal from service upon the petitioner cannot sustain. The same, therefore, deserves to be quashed.

30 Ordinarily, the respondents ought to have been granted an opportunity of removing the defects in the conduct of departmental proceedings by allowing them to hold a fresh enquiry against the petitioner, but during the pendency of the present petition, a significant development has taken place, which is that the petitioner has superannuated from service in the month of October 2024. Once the relationship of an employee and employer between the petitioner and the respondent-Corporation has ceased to exist, the inquiry proceedings cannot be initiated/continued afresh against him. It is pertinent to mention here that the applicable rules do not permit initiation or continuation of enquiry proceedings against the petitioner upon his superannuation from service. The charges that have been levelled against the petitioner, relate to dereliction in duty in reporting illegal constructions raised in his area of posting. Thus, even Article 168-A CSR is not attracted to the present case because it is not the case of the respondents that the action of the



petitioner has resulted in any financial loss to the respondent-Corporation. Thus, at this stage, a fresh inquiry cannot be initiated or continued against the petitioner in any circumstances whatsoever.

31 In view of what has been discussed hereinbefore, the impugned inquiry proceedings and the impugned order dated 20.05.2020 issued by respondent No. 2, whereby the petitioner has been dismissed from service, are set aside. The respondents are directed to process the case of the petitioner for grant of pension and consequential benefits as per rules by treating him in service up to the date of his superannuation.

(SANJAY DHAR)  
JUDGE

Jammu  
25.03.2026  
Naresh Secy

Whether the order is reportable: **Yes**

Whether the order is speaking: **Yes**