

**GOVERNMENT OF JAMMU AND KASHMIR,
FINANCE DEPARTMENT,**

(www.jkdat.nic.in)

**Subject: - CPSW No.554 in SWP No.442/2006 titled Kuldeep Singh Jamwal V/s
State and Another.**

Government Order No: 249 -F of 2023

Dated : 23 .12.2023

Whereas, Sh. Kuldeep Singh Jamwal, the then Accounts Officer while working as Treasury officer, Mendhar was transferred and posted as Accounts Officer, District Fund Office Leh vide G.O. No. 128-GR/F of 1990 dated 07.06.1990;

Whereas, the officer neither reported in District Fund Office Leh nor applied for any kind of leave and remained absent from duty in disregard to the Service Conduct Rules and the Government Orders;

Whereas, the officer during his posting as Treasury officer Mendhar absented from duties un-authorizedly w.e.f 03.03.1990 to 01.04.1990 and 11.06.1990 to 27.07.1990. The officer also drew his salary for the above mentioned period of un-authorized absence. Besides, the officer by misusing his official position signed the records post-facto even for the days he was on leave;

Whereas, the officer did not report to his new place of posting, instead remained absent un-authorizedly w.e.f from July 28, 1990 to April 27, 1993 and thereafter, the officer applied for leave on medical grounds, and resumed his duties only after cancellation of his posting to Ladakh vide G.O No. 73-F of 1993 dated 26.04.1993;

Whereas, the department while taking serious note of misconduct and indiscipline exhibited by the officer served a Charge-Sheet upon him to explain his position. The reply tendered by the officer was not-convincing, thereby the same was not accepted by the Government;

Whereas, the Government vide Order No. 77-F of 1993 dated 29.04.1993, appointed Commissioner of Inquiries as Inquiry Officer to conduct the enquiry about the un-authorized absence of Shri Kuldeep Singh Jamwal (Ex-Treasury officer Mendhar) from his duties from time to time and also to inquire into other allegations against the officer concerned;

Whereas, the Commissioner of Enquiries vide No. COI/38/93-FD dated 21.11.1994, submitted the report wherein he had established the acts of omissions and

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commissions on the part of the officer and proposed that the Finance Department may proceed against the officer in-terms of Rule 30 of J&K Civil Services (CC&A) Rules, 1956 in the following manner:-

Consider for sanction the entire period of his absence including ~~the~~ period from July 28, 1990 to April 27, 1993 as on leave whatever kind due to him. The department may refer to the Government Order No. 2206-GD of 1984 dated 10.12.1984 in the matter of his leave applied for at the time of his transfer to Leh. In case leave as due to him under rules doesn't cover the entire period of his absence the charged officer may face interruption in service adversely effecting his seniority inter-se and increments. It is however, proposed that in view of his being at the threshold of his service carrier he should not suffer discharge from service Mr K.S. Jamwal be censured for indiscipline he has committed.

Whereas, keeping in view the findings made by the Inquiry Officer and the recommendations made thereof, the department issued a Show Cause Notice bearing No. CAE/292-799 dated 07.02.1996 to the officer asking him to explain why he should not be dismissed from the Government service for his acts of omissions & commissions;

Whereas, notwithstanding the above, the department later took a lenient view in the matter and vide G.O. No. 41-F of 1998 dated 15.01.1998 it was decided that :-

- a. *"The period of absence from 03.03.1990 to 01.04.1990 and 11.06.1990 to 27.04.1993, shall be treated as leave whatever kind due to the officer. Rest of the period in excess of leave will be treated as "DIES NON" not constituting break in service.*
- b. *Forfeiture of three periodical increments for the above period with the effect of postponing future increments in favour of Shri Jamwal."*

Whereas, the Officer approached the Hon'ble High court through the medium of writ petition SWP No. 394/1996 titled, Kuldeep Singh Jamwal Vs State and others, wherein he challenged the charge-sheet, the inquiry conducted upon such charge sheet, besides the show cause notice issued against him and the Government Order No. 41-F of 1998 dated 15.01.1998. The Hon'ble High Court vide order dated 07.10.1999 inter-alia directed as under:-

"That being so, I find that the proceedings and the order impugned dated 15.01.1998 are vitiated because of non-compliance of Rule 35 of the Rules in so far as an adequate opportunity of being heard was not given to the petitioner before passing that order. On this ground alone the order impugned and the proceedings taken there before must go. The third ground as such needs not to be referred to. I accordingly allow this

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23/12/23

petition and quash the order impugned as also the proceedings therefore. However, the competent authority if it so chooses, may hold a fresh inquiry with respect to the allegations but no punishment should be awarded unless adequate opportunity of being heard as required in terms of rule 35 (supra) is provided and the writ petitioner's defence is taken into account."

Whereas, the Government preferred an appeal against the aforementioned order through LPA No. 273/2000, titled State of J&K and others V/s Kuldeep Singh Jamwal, before the Hon'ble Division Bench. The Hon'ble Division Bench vide judgment dated 11.07.2000, dismissed the above said appeal. The operative part of judgment dated 11.07.2000 is reproduced as under:-

"On the interpretation of Rule-35 of the Classification Control and Appeal Rules, a learned single Judge of this court has observed that the term adequate opportunity of making any representation would include not only showing cause, but also an opportunity of being heard. Taking this view of the matter, the learned Single judge has directed the appellant-State to afford opportunity of hearing, we are of the opinion that the order passed by the learned Single Judge calls for no interference. This direction is in consonance with the law laid down by the Supreme Court of India in case reported as Ram Chander V/s Union of India AIR 1986 SC 1173.

In view of the above the learned Single judge rightly directed the State to give opportunity of hearing to the respondent –writ petitioner and re-decide the matter. The appeal is as such found to be without merit and is dismissed."

Whereas, Sh. Kuldeep Singh Jamwal, again approached the Hon'ble High Court and filed SWP No. 442/2006 in the Hon'ble High Court at Jammu for release of salary and other consequential benefits for the period w.e.f. 31.07.1990 to 27.04.1993 and the Hon'ble High Court in terms of order dated 18.11.2013 disposed of the writ petition. The operative part of order reads as under:-

"To complete the disciplinary proceedings as allowed by this court vide judgment in SWP No.394/1996 (supra) within a period of 60 days. In case proceedings are not completed as above the charge sheet (supra) served upon the petitioner shall stand quashed and petitioners shall be treated as if there were no charges against him, period of his absence shall be treated as on duty and he shall be paid arrears of his salary and other consequential benefits."

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23/12/23

Whereas, in compliance to the above referred judgment, Inquiry officer was appointed vide G.O.No.192-F of 2014 dated 07.08.2014, for conducting the enquiry into the matter. However, the Inquiry officer could not complete the enquiry due to submerging of the office of the Director General Funds Organization at Srinagar in the floods of 2014 in the Kashmir Valley.

Whereas, the petitioner filed contempt petition bearing CPSW No. 554/2014 for alleged non-compliance of judgment dated 18.11.2013, passed by the Hon'ble Court in SWP No. 442/2006 and stayed the orders of the Hon'ble Court dated 18.11.2013 in contempt petition vide order dated 29.11.2014, operative part of which is reproduced as under:-

"Meanwhile, disciplinary proceedings initiated against the petitioner vide Government Order no. 192-f of 2014 dated 07.08.2014 shall remain stayed."

Whereas, an Application bearing MCC No. 2016/2019 was filed by the Finance Department for extension of time to conclude the enquiry in pursuance to the orders of the Hon'ble High Court and the same was dismissed by the Hon'ble court on 29.11.2021 in the following manner:-

*"By way of this application, the applicant respondent No. 2 has sought extension of time to implement the order whereby the respondents were directed to complete the disciplinary proceedings initiated pursuant to the orders of this Court.
This application was filed on 25.04.2019 and is listed today therefore, by the efflux of time, this application has been rendered infructuous.
This application is dismissed, as such."*

Whereas, the Finance Department filed a Review Petition in the Hon'ble Court against the order dated 29.11.2021 for the dismissal of the Application MCC No. 216/2019, submitted for exemption from personal appearance of respondent no. 1 and for extension of time to file compliance report in pursuance of the order dated 07.03.2022 passed by the Hon'ble Court in contempt petition;

Whereas, aggrieved by the orders dated 9-5-2022 and 5-7-2022 wherein the Hon'ble court had directed personal appearance of the respondent No.1, an Appeal LPA No. 126/2022 was filed before this Hon'ble Court, to set aside the order dated 09.05.2022 and 05.07.2022;

Whereas, meanwhile, Review petition No. 70/2022 was listed before the Hon'ble High Court on 16.02.2023 and the Hon'ble High Court dismissed the Review Petition with observations as under:-

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“The applicant having failed to conclude the enquiry proceedings within 60 days from the date of passing of judgment dated 18.11.2013, the petitioner was entitled to all consequential benefit. This application for review is afterthought and has become infructuous in view of the fact that the disciplinary proceedings were to be concluded within 60 days from the date of the judgment. Having failed to do so have lost their validity. This application is without any merit as envisaged under Order-47 Rule-1, the review of the judgment is satisfied in the petition.

“Having regard to the aforesaid facts and circumstances of the case this application for review is not maintainable and is accordingly dismissed.”

Whereas, the LPA No 126/2022 also came up for hearing on 14.07.2023 and the same was dismissed by the Hon’ble Division Bench. The operative part of which is reproduced as under;

“Learned Counsel for the parties, jointly submit that this appeal has become infructuous as the Learned Single Judge has heard the petition and reserved the same for the orders. Their statement is taken on record. Accordingly, this appeal is dismissed as having rendered infructuous. However, the parties are at liberty to agitate the order passed by the learned Single Judge.”

Whereas, the matter was taken up with the Department of Law, Justice and Parliamentary Affairs for opinion, who returned the file vide UO No.LAW-LIT/1017/2023-10 dated 3.11.2023, with the following advice:-

“Department is advised to take steps for implementation of the judgment/order dated 18.11.2013 as there is no scope for agitating the judgment of the year 2013 and in the meantime in order to avoid the adverse orders of the Court in contempt petition, an application for extension of time for implementation of order and also seek exemption of the Director General Accounts & Treasuries, from personal appearance.”

Whereas, the Contempt petition No. 554/2014 was lastly listed on 01.12.2023 and the Hon’ble Court was pleased to pass an order, the operative part of which is reproduced as under:-

“In view of the above, three week’s time is granted to the respondents to comply with judgment of this Court in letter and spirit, failing which, Director General Accounts and Treasuries, Finance Department, Civil Secretariat, Union Territory of J&K, present incumbent shall remain present in person before this Court on next date of hearing.”

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AND whereas, pursuant to the observation of the Hon'ble Court in the contempt petition CPSW No. 554/2014 and as advised by the Department of Law Justice and Parliamentary Affairs, the matter has been considered and it has been decided to implement the Judgment dated 18.11.2013 passed in SWP No. 442/2006;

Now, therefore, in compliance to the judgment dated 18.11.2013 passed by the Hon'ble Court in SWP no. 442/2006 read with orders passed in contempt petition CPSW No. 554/2014, sanction is hereby accorded to treat the period of un-authorized absence w.e.f 31.07.1990 to 27.04.1993, as on duty alongwith release of arrears on account of salary for the aforementioned period and other consequential benefits in favour of Shri. Kuldeep Singh Jamwal, the then Accounts officer.

By Order of the Government of Jammu and Kashmir.


Sd/-
(Santosh D Vaidya), IAS,
Principal Secretary to Government,
Finance department.

No. DGAT/Legal/CC-61201/414

Dated: 23 .12.2023

Copy for information to the:

1. Principal Accountant General, J&K Srinagar/Jammu.
2. Principal Secretary to Hon'ble Lieutenant Governor.
3. Joint Secretary (J&K) Ministry of Home Affairs, Govt, New Delhi.
4. Secretary to Government Information Technology Department.
5. Secretary to Government, Department of Law, Justice & Parliamentary Affairs.
6. Director Archives, Archaeology and Museum, J&K.
7. Director Information Department.
8. Director Accounts and Treasuries, Jammu.
9. Sh. KDS Kotwal Deputy Advocate General J&K High Court Jammu.
10. Private Secretary to Learned Advocate General, J&K, High Court.
11. Private Secretary to Chief Secretary J&K.
12. Private Secretary to Principal Secretary to Govt. Finance Department.
13. Kuldeep Singh Jamwal S/o Sh. Govind Singh R/o village Raipur Tehsil and district Jammu.
14. Government Order File.
15. Relevant File.


(Mahesh Dass), 23/12/23
Director General,
Accounts & Treasuries,
Finance Department.