

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

WP(C) No. 440/2021
CM No. 2147/2021

Reserved on: 03.03.2026
Pronounced on : 12.03.2026
Uploaded on : 12.03.2026
Whether the operative part or full
judgment is pronounced: Full

Kirpal Singh

....Petitioners

Through:- Mr. Mazher Ali Khan, Advocate.

V/s

UT of J&K & ors

.....Respondents

Through:- Mrs. Monika Kohli, Sr. AAG with
Ms. Chetna Manhas, Advocate.

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

01. The petitioner, through the medium of the present petition, has challenged Order No. Estt/Appeal/2018/1923-25 dated 27.03.2018 passed by respondent No. 3 by virtue of which appeal of the petitioner against order of his disengagement has been dismissed. Challenge has also been thrown to order No. GB/VDC/Dis-Eng/15/20671-76 dated 23.06.2015 by virtue of which services of the petitioner as VDC SPO have been dispensed with. The petitioner has also

sought a direction upon the respondents to reinstate him as VDC SPO along with back wages.

02. As per case of the petitioner, he was engaged as VDC SPO in pursuance to scheme launched by the Government vide Order No. 293 of 1995 dated 30.09.1995. It has been submitted that under the coercion of the respondents, the petitioner was made to share the honorarium that he was receiving with other members of Village Defence Committee (VDC) but when he refused to do so, respondent No. 4, by virtue of impugned order dated 23.06.2015 (supra), disengaged him from the roll of VDC.

03. The petitioner is stated to have challenged the aforesaid order by virtue of writ petition bearing SWP No. 2060/2015. The said writ petition came to be disposed of by this Court in terms of order dated 27.11.2017 whereby the petitioner was given a liberty to prefer appeal/representation against the order of his disengagement before DIG, Doda-Bhaderwah or any other competent authority. Further a direction was issued to the said authority to dispose of the appeal/representation within four to six weeks. Accordingly, the petitioner filed the appeal/representation before respondent No. 3. However, the same was not decided by the said respondent within the stipulated time as a result whereof, the petitioner had to file a contempt petition before this Court. During pendency of the contempt petition, respondent No. 3

passed the impugned order dated 27.03.2018 (supra) whereby appeal of the petitioner has been rejected.

04. The petitioner has challenged the impugned orders on the grounds that he has not been given an opportunity of being heard before issuing the disengagement order or before rejecting his appeal against the said order. It has been further contended that punishment of disengagement imposed upon the petitioner is harsh in the given circumstances particularly when his role as VDC SPO has been appreciated by his superiors. It has been further contended that the respondents have not adhered to Rule 337 of the Police Rules while disengaging his services. It is being contended that no chargesheet has been served upon the petitioner and no regular enquiry into the charges has been held by the respondents before issuing the impugned order. It has also been contended that the petitioner was engaged as VDC SPO by the Government and, therefore, it was not open to respondent No. 4 to disengage his services.

05. The respondents have contested the writ petition by filing reply thereto. In their reply, it has been submitted that the petitioner was never harassed or pressurized to share his honorarium with his other VDC members. According to the respondents, the services of the petitioner were disengaged on the basis of written complaint of the public of his native village as he used to annoy his co-villagers and was threatening to kill them with his service weapon. It has been submitted that as

per the complaint lodged by the villagers, the petitioner used to remain in an intoxicated state and under the influence of liquor, he used to speak ill about others and would threaten to kill them. It has been submitted that the villagers got fed up with the misdeeds of the petitioner and sought his disengagement/disarmament.

06. According to the respondents, an enquiry was conducted by Additional SP, Baderwah regarding the allegations leveled against the petitioner by his co-villagers and it was established that the petitioner always remained in intoxicated state under the influence of alcohol and he was threatening general public with his service weapon. It has been submitted that the petitioner in pursuance to Government Order No. 293 of 1995 came to be appointed as VDC SPO to ensure the security and safety of his co-villagers but he started threatening the co-villagers with his service weapon. It has been submitted that in the previous past, VDC SPOs, out of their free will, used to share their honorarium with other members of the VDC. The respondents have, however, denied that there was any pressure exerted by them upon the petitioner to share the monthly honorarium amongst other VDC members. It has been emphatically stated by the respondents that the petitioner came to be disengaged on the basis of the complaint of local people and not for any other reason.

07. The respondents have submitted that despite disengagement of the petitioner, he refused to deposit the arms and ammunition issued to him as a result whereof FIR No. 109/2019 for offences under Section 7/25 Arms Act came to be registered against him with Police Station, Bhaderwah for possession of illegal arms/ammunition. The case was challaned before the competent court and it was only after hectic efforts of the police that the petitioner was disarmed and the arms and ammunition were deposited with Police Station, Bhaderwah in the year 2019.

08. I have heard learned counsel for the parties and perused record of the case including the relevant record produced by the respondents.

09. Vide Government Order No. Home-293 of 1995 dated 30.09.1995, sanction was accorded to creation of Village Defence Groups as per the Scheme called "Village Defence Group Scheme". This Scheme provided for setting up of a group of 10 to 15 armed civilians in each village comprising of certain categories of persons. The members of this group were to work on voluntary basis and each group was to be headed by a retired officer of the Army/CRPF/State Police, who was to be issued a higher category of weapon and was also to be appointed and given powers of Special Police Officer (SPO) with honorarium initially @ Rs. 1500 per month. The SPOs were to function under the overall supervision of respective Tehsildars and SHOs and instructions in this behalf were to be issued by

the respective District Magistrates and Superintendents of Police. As per the Scheme, the volunteers and the number of weapons to be allotted in a particular village had to be determined by the District Magistrate/Senior Superintendent of Police concerned.

10. It seems that the petitioner, pursuant to the aforesaid scheme, came to be appointed as VDC SPO. His services came to be disengaged in terms of impugned order dated 23.06.2015 issued by Sr. Superintendent of Police, Doda. The reasons for his disengagement, as are discernible from the said order, are that he has not shared honorarium with the other members of the VDC and that he remains in drunken condition day and night. Another reason for his disengagement as given in the order of disengagement is that the petitioner is threatening the members of VDC as well as panchayat members and he is not cooperating with the members of VDC.

11. Pursuant to the directions of this Court, the petitioner was given a liberty to file an appeal/representation against the aforesaid order and he filed an appeal/representation against the said order, which came to be rejected vide impugned order dated 27.03.2018. In the appeal, the petitioner raised the ground that he has not been given an opportunity of hearing before issuing the order of disengagement against him and that he could not have been

disengaged for not sharing honorarium with other members of the VDC.

12. The record, however, shows that SHO, Police Station, Bhaderwah has conducted a detailed enquiry into the allegations leveled against the petitioner. As per the record, the statements of VDC members of village Dhumunda as also the statements of Lamberdar and Sarpanch have been recorded. All of them have stated in one voice that the petitioner remains in drunken state, absent from duty and does not cooperate with the other members of the VDC. They have also stated that the petitioner has refused to share the honorarium to other members of VDC. They have further stated that the petitioner is threatening general public at large under the cover of his service weapon.

13. The petitioner, however, has not been afforded an opportunity of cross-examining these witnesses and no formal charges have been framed against him. The question that arises for determination is as to whether having regard to the nature of employment of the petitioner, he is entitled to be subjected to regular departmental enquiry before dispensing with his services.

14. The aforesaid issue has been conclusively determined by a Division Bench of this Court in the case of **“State of J&K and Ors Vs. Mohammad Iqbal Mallah [LPA No. 153 of 2012 decided on 05.06.2014.** Paras 4 and 5 of

the said judgment are relevant to the context and the same are reproduced as under:

“4. Having heard learned counsel for the parties we are of the considered view that once the petitioner- respondent was not holding any post regulated by any statutory rules, then it is not possible to hold that a departmental enquiry was required to be held although the SPOs might be discharging significant duties at their respective places. In somewhat similar circumstances the issue was raised before Honble the Supreme Court in the case of [State of Karnataka v. Ameerbi](#), (2007) 11 SCC 681. Considering the judgment rendered in the case of [State of Assam v. Kanak Chandra Dutta](#), AIR 1967 SC, 884, their Lordships of Hon’ble the Supreme Court held in para 29 as under:-

Appointments made under a scheme and recruitment process being carried out through a committee, in our opinion, would not render the incumbents thereof holders of civil post. Our attention has not been drawn to any rule or regulation governing the mode of their recruitment. Some statements in this behalf have been made by the interveners but for the reasons stated hereinbefore, we cannot enter thereinto. A distinction must be made about a post created by the Central Government or the State Governments in exercise of their power under [Articles 77](#) or [162](#) of the Constitution of India or under a statute vis-à-vis cases of this nature who are sui generis. Terms and conditions of services of an employee may be referable to acts of appropriate legislature. The matter may also come within the purview of [Article 309](#) of the Constitution of India as proviso appended thereto confers power upon the President or the Governor of a State or other authority, who may be delegated with such power, to make rules during the interregnum.

5. In the present case the petitioner- respondent was working as SPO at an honorarium of Rs. 3000/- per month. He decided to absent himself from duty and his services were disengaged vide order dated 01.07.2011 when he had rendered less than three years service. He has no right to any post. There was no requirement of law to hold an enquiry for complying with the rules of principles of natural justice as he was not a holder of a

post, much less a civil post. Therefore, the appeal deserves to be accepted and the judgment of the learned Single Judge is liable to be set aside.”

15. Relying upon the aforesaid judgment of the Division Bench, this Court in the case of “**Bilal Ahmed Sheikh Vs. State of J&K & ors [SWP No. 2548/2017 decided on 17.09.2021]** had an occasion to deal with a similar issue. This Court, after noticing the provisions contained in Section 18 of the Police Act, which deals with engagement of Special Police Officers and also Section 19 of the Act, which deals with special power of police officers, observed as under:

9) From a perusal of the provisions contained in Section 18 of the Police Act, it is revealed that SPOs are appointed by Police Officers above a particular rank for specific purposes when the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants. The provision makes it clear that residents of neighbourhood can be appointed as SPOs for dealing with specific contingencies. Thus, engagement of SPOs is not of a permanent nature but it is only to take care of a particular contingency. It is in this context that the provisions contained in Section 19 of the Act are required to be interpreted. By doing so, it becomes axiomatic that SPOs enjoy same powers, privileges and protections as do the ordinary officers in the matter of crowd control, prevention of unlawful assemblies or contingencies of like nature. The said provision cannot be interpreted in a manner so as to extend even the powers, privileges and protections relating to service conditions of an ordinary police officer to the SPOs, who, admittedly, do not hold any civil posts regulated by any Statutory rules. Therefore, they are not entitled to any protection as afforded to ordinary police officers under Police Rules or Civil Service Regulations. I am supported in my aforesaid view by the judgment of a Division Bench of this Court in State of J&K v.

Mohammad Iqal Mallah (LPA No.153 of 2012 decided on 05.06.2014).

16. From the foregoing analysis of the legal position, it is clear that a Special Police Officer engaged in terms of Section 18 of the Police Act or under the Scheme formulated in terms of Government Order No. 293 of 1995 dated 30.09.1995 cannot claim right to be subjected to regular departmental enquiry before disengagement of his services. At best, a Special Police Officer can claim a right of hearing before any adverse order is issued against him so as to comply with the principles of natural justice. A Special Police Officer does not hold a civil post so as to entitle him to the protection of Article 311 of the Constitution of India or the provisions contained in Police Rules, which is available to a regular member of police force holding a civil post.

17. Turning to the facts of the present case, the respondents have not disengaged the services of the petitioner without holding an enquiry. The record suggests that an enquiry with regard to the conduct of the petitioner has been held by the SHO under the directions of the concerned Superintendent of police. After recording the statements of witnesses during the preliminary enquiry, it has been found that the petitioner usually remained in drunken condition and threatened the people with his service weapon. It has also been found that the petitioner does not share honorarium with other members of VDC. The same may not form a valid ground

for his disengagement but because other allegations relating to his conduct vis-à-vis public at large, have also been found established against him during the preliminary enquiry, therefore, the respondents were justified in passing the impugned orders.

18. In view of the above circumstances, it can safely be stated that the requirement of giving an opportunity of hearing to the petitioner has been complied with by the respondents by holding a preliminary enquiry and by permitting him to file a representation against the order of disengagement wherein he has raised whatever pleas were available to him, whereafter the same have been dealt with by respondent No. 3 while issuing the impugned order dated 27.03.2018.

19. For what has been discussed hereinbefore, I do not find any merit in this petition. The same is, accordingly **dismissed.**

(SANJAY DHAR)
JUDGE

JAMMU
12.03.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**