

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

**LPA No. 197/2023  
CM No. 5989/2023**

Reserved On: 7<sup>th</sup> of August, 2025  
Pronounced On: 20<sup>th</sup> of August, 2025

1. **Union Territory of J&K,**  
Through Commissioner/ Secretary to Government,  
Power Development Department,  
Civil Secretariat, Srinagar/ Jammu.
2. Managing Director,  
J&K State Power Development Corporation (SPDC), Srinagar.
3. Chief Engineer,  
EM & RE Wing, Kashmir, Srinagar.
4. Chief Engineer,  
Generation Wing, Power Development Corporation (JKPDC),  
Kashmir, Srinagar.
5. Executive Engineer,  
General Division, Lower Jehlum Hydel Project (LJHP),  
Gantamulla, Baramulla.

**... Appellant(s)**

**Through: -**

Mr Ilyas Nazir Laway, Government Advocate.

**V/s**

**Aftab Ahmad Malik, Age: 60 Years**

S/O Abdul Qayoom Malik

R/O Mohra, Uri, District Baramulla.

**... Respondent(s)**

**Through: -**

Mr N. H. Shah, Senior Advocate with  
Ms Saima Ghulam, Advocate.

**CORAM:**

**Hon'ble Ms Justice Sindhu Sharma, Judge**

**Hon'ble Mr Justice Shahzad Azeem, Judge**

**(JUDGMENT)**

**Shahzad Azeem-J:**

**I. SUBJECT MATTER OF CHALLENGE:**

01. This *intra* Court appeal is directed against the Order and Judgment dated 16<sup>th</sup> of June, 2023 passed by the learned Single Judge of this Court [“the Writ Court”] in SWP No. 1954/ 2017 titled ‘**Aftab Ahmad Malik v. State of J&K and Ors, (PDD)**’, whereby the Writ Court has allowed the Writ Petition filed by the Respondent herein and quashed the impugned Order No. JKSPDC/86 of 2017 dated 22<sup>nd</sup> of February, 2017 *qua* the Respondent and further the Appellants-Writ Respondents were directed to release the retiral, along with all consequential, benefits in favour of the Respondent-Writ Petitioner to which he is entitled to.

**II. FACTS:**

02. For better understanding of the controversy on hand, we deem it expedient to take note of the relevant facts in brief:

03. At the relevant point of time, Respondent was entrusted with the duty of Incharge Stores Officer, Lower Jehlum Hydel Project (LJHP), along with two other employees of the Power Development Corporation. In the Stores, under the charge of Respondent, theft of old copper bars alleged to have taken place which were lying in the shed adjacent to the Power House Building. Thereupon, the incidence was reported to the police of Police Station, Boniyar. The concerned Police Station registered FIR No. 80/2012 on 3<sup>rd</sup> of November, 2012. The FIR was initially registered for the commission of an offence punishable under Section 380 of the Ranbir Penal Code (RPC), which was, however, later on altered to Section 409 of the Ranbir Penal Code (RPC). Simultaneously, the Chief Engineer, Generation Wing, JKPDC, vide office Order No. CEG/PDC/ADM/71 of 2012 dated 2<sup>nd</sup> of November, 2012, constituted a departmental Inquiry Committee to

conduct inquiry in respect of theft of old copper bars said to have taken place from the Store, near Power House. The Respondent, who was incharge of the Stores, along with Mr Qazi Qamer-ud-Din (Technician-III) and Mr Mohammad Akbar Dar (TPLA), were immediately placed under suspension vide Order No. GD/LJHP/37 of 2012 dated 15<sup>th</sup> of November, 2012 read with Order No. GD/LPJH/33 of 2012 dated 3<sup>rd</sup> of November, 2012 respectively. It is also relevant to mention at this stage that the Respondent, who was incharge of Stores, along with Mohammad Maqbool Dar (Chowkidar), Nazir Ahmad Dar (Helper), Mashkoor Hussain Shah and Gh. Mohammad Sheikh, both Station Attendants, were later placed under suspension on 15<sup>th</sup> of November, 2012.

04. Insofar as the investigation into the matter was concerned, the Station House Officer (SHO), Police Station, Boniyar summoned the record of the case for examination, which was furnished by the Appellants. The police authorities concerned, after initial investigation, informed the Appellants, vide letter dated 19<sup>th</sup> of March, 2013, that the Helpers, namely, Mohammad Maqbool Dar, Nazir Ahmad Dar, Mashkoor Ahmed Shah and Station Attendant-Gh. Mohammad Sheikh were not involved in the theft case. The matter was considered in the Review Committee and it was unanimously decided that pending final outcome of the departmental inquiry, the Watch and Ward officials shall be re-instated vide Order dated 11<sup>th</sup> of July, 2014.

05. The Inquiry Committee constituted by the Chief Engineer to look into the matter submitted its report to the Chief Engineer, Generation Wing, Kashmir indicating therein that it was not a case of theft, but a case of embezzlement of Government property by the officials, who were responsible to protect it.

06. The Police of Police Station, Boniyar presented a final report in the case before the Court of learned Judicial Magistrate, 1<sup>st</sup> Class,

Boniyar. The learned Judicial Magistrate, 1<sup>st</sup> Class, Boniyar, however, discharged the Respondent along with other two co-accused in case FIR No. 80/2012 under Section 409 of the Ranbir Penal Code (RPC) vide its Judgment dated 4<sup>th</sup> of June, 2016 by holding that the material collected by the Investigating Agency is not sufficient to connect the accused with the commission of offence under Section 409 of RPC and, thus, the accused were discharged.

07. The Managing Director, JKSPDC constituted time to time inquiry committees and in this regard, last Committee came to be constituted vide Order No. JKSPDC/69 dated 19<sup>th</sup> of February, 2017. Subject to outcome of inquiry, the Respondent, along with Qazi Qamer-ud-Din (Technician-III) and Mohammad Akbar Dar (Helper), were re-instated vide Order No. PDC/86 dated 22<sup>nd</sup> of February, 2017. Meanwhile, the Respondent stood retired from service on reaching the age of superannuation w.e.f. 31<sup>st</sup> of July, 2017.

### **III. PROCEEDINGS BEFORE THE WRIT COURT:**

08. Feeling aggrieved by Order No. JKSPDC/86 of 2017 dated 22<sup>nd</sup> of February, 2017, whereby the Respondent, along with other two officials, were -reinstated, subject to outcome of inquiry to be conducted by the Committee constituted vide Order dated 17<sup>th</sup> of February, 2017, the Respondent filed the Writ Petition, being SWP No. 1954/2017. The impugned Order dated 22<sup>nd</sup> of February, 2017 was called in question by the Respondent, primarily, on the ground that since he has retired from service on reaching the age of superannuation on 31<sup>st</sup> of July, 2017, as such, he ceases to be the employee of the Department and no inquiry has been conducted till date, therefore, after his retirement, he cannot be subjected to any disciplinary proceedings.

09. Further ground urged by the Respondent in the Writ Petition was that since he stood discharged by the competent Court of law,

therefore, the departmental inquiry is not permissible and, thus, he is entitled to all the service benefits which have been withheld by the Department.

10. The Writ Petition was contested by the Appellants-Writ Respondents on the ground that since embezzlement/ mis-appropriation of huge amount involving the Respondent-Writ Petitioner and few others had taken place, as such, the competent authority was well within its power to hold an inquiry which, in fact, was going on from day-to-day basis. In response to the contention of the Respondent-Writ Petitioner in the Writ Petition that it was not permissible to subject him to any departmental inquiry after his retirement from service on reaching the age of superannuation, it was submitted by the Appellants-Writ Respondents in their reply that simply because an employee had retired on superannuation does not mean that he can go scot-free from facing the inquiry for alleged misconduct.

11. The Writ Court, having considered the rival stand of the parties and the material on record, came to the conclusion that in terms of Article 168-A read with Article 168-D of the J&K Civil Service Regulations, 1956 ( for short “the Regulations of 1956”), it is not permissible to hold departmental inquiry against the Respondent after he stood retired from service on reaching the age of superannuation on 31<sup>st</sup> of July, 2017. The Writ Court also took note of the fact that the Respondent had faced the criminal proceedings and also stood discharged by the Court of learned Judicial Magistrate, 1<sup>st</sup> Class, Boniyar vide Judgment dated 4<sup>th</sup> of June, 2016. It was, thus, concluded by the Writ Court that on the date of superannuation, neither any judicial nor departmental proceedings were pending against the Respondent.

12. On the basis of the aforesaid conclusion drawn, the Writ Court allowed the Petition of the Respondent and quashed the Order impugned

before it with a direction to the Appellants to release all the post-retiral benefits in favour of the Respondent.

#### **IV. THE CHALLENGE:**

13. The Appellants have questioned the legal pregnability of the impugned Judgment of the Writ Court, mainly, on the ground that when the Respondent was in active service and was posted as Storekeeper, he, along with other employees of the Department, were served with a charge sheet dated 4<sup>th</sup> of March, 2013, however, in the meanwhile, during the currency of inquiry, the Respondent retired from service on reaching the age of superannuation, therefore, the provisional pension was sanctioned in his favour as permissible under Article 168-D (1) of the Regulations of 1956.

14. The Appellants further contended that in terms of Article 168-A of the Regulations of 1956, a disciplinary inquiry initiated while the employee was in service, can be continued even after the retirement of the said employee, as such, a retired employee is deemed to be in service and on conclusion of the inquiry, penalty by way of recovery can be made from the pension of the employee.

15. According to the Appellants, the disciplinary proceedings were initiated against the Respondent for very serious allegations of misconduct allegedly for causing substantial loss of more than Rs. 57.72 lacs in the Stores due to his negligence and misconduct, therefore, if such a charge is proved, the provisions of sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 would be attracted and it would be within the discretion of the Appellants to withhold the payment of gratuity due to the Respondent during the pendency of the disciplinary proceedings, which is in consonance with Article 168-D.

16. It is also contended that the Writ Court, vide Order dated 27<sup>th</sup> of September, 2017, has stayed the inquiry/ disciplinary proceedings in

spite of the fact that charge sheet was served upon the Respondent and the operation of the same continued till the passing of the Judgment by the Writ Court, therefore, inquiry could not be taken to its logical end.

17. According to the Appellants, the Writ Court did not take into consideration all the aforesaid facts and the rules governing the subject, while passing the impugned Judgment, therefore, prayed for setting aside of the impugned Judgment, in the interests of justice.

18. *Per contra*, Mr N. H. Shah, the learned Senior Counsel appearing on behalf of the Respondent, vehemently argued that the Appellants have constituted three committees to hold fact finding inquiry and, in the meanwhile, the Respondent has retired from service on reaching the age of superannuation, therefore, the Appellants, in law, cannot initiate disciplinary proceedings after retirement of the Respondent.

19. It has also been canvassed at Bar by the learned Senior Counsel that since at the time of the retirement of the Respondent, neither judicial nor departmental proceedings were pending against him, inasmuch as the Respondent was discharged in judicial proceedings, therefore, the Writ Court, on sound legal principles, has shown indulgence by quashing the impugned Order before the Writ Petition dated 22<sup>nd</sup> of February, 2017, as such, no fault can be found with the Judgment under challenge. The learned Senior Counsel, accordingly, prayed for dismissal of the appeal.

#### **V. THE ISSUES:**

20. After going through the impugned Judgment under challenge and rival submissions made by the parties, the following issues crop up for consideration:

- i. Whether disciplinary inquiry with respect to an employee, due to whose act(s) of omission and commission while in active service losses were caused

to the Government, can be initiated/ continued after his retirement from service upon reaching the age on superannuation; and

- ii. Whether on acquittal/ discharge of an employee in the criminal case, a departmental proceeding on the same charges can be initiated.

## **VI. ANALYSIS:**

21. To begin with, it is important to notice in brief the relevant Rules and Regulations providing for a procedural framework for initiating, conducting and concluding disciplinary proceedings against an employee for misconduct, inefficiency or violation of conduct rules and, on proved misconduct, infliction of minor or major penalties. In this regard, at first instance, we deem it important to take note of the Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 [hereinafter referred to as “the Rules of 1956”], which are the cornerstone of service jurisprudence governing the conduct, discipline and administrative control of Government employees.

22. Rule 30 of the Rules of 1956 enumerates penalties that may, for good and sufficient reasons, be imposed upon a member of service. The penalties, *inter alia*, include dismissal from service, removal from service and reduction to a lower post, etc.

23. For the purposes of present discussion, we are concerned with the words used in Rule 30 of the Rules of 1956 viz. “**member of a service**”. Therefore, as many as eight penalties which can be imposed for good and sufficient reason can only be imposed upon a member of a service and Rule 2 (e) of the Rules of 1956 defines a member of service to mean a person holding or appointed to a whole-time pensionable post.

24. There is no manner of doubt that with the retirement of an employee from service, the relationship of employee and employer gets severed and, thus, no departmental proceedings for imposing any penalty for any misconduct can be instituted against such employee after his superannuation. It is, thus, conspicuous that in terms of Rule 30 of the Rules of 1956, it is not permissible to hold disciplinary proceedings against the delinquent employee after he has retired from service on reaching the age of superannuation.

25. However, there is no complete immunity to the delinquent employee for alleged misconduct which, on being found in judicial or departmental proceedings, has led to losses to the Government by negligence or fraud of such delinquent employee during his service. Thus, this is an exception to the general principle of service jurisprudence, as discussed hereinbefore, which is contained in Article 168-A of the Regulations of 1956 and same reads, thus:

“168-A: The Government reserves to itself the right to order the recovery from the pension of an officer of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service provided that:

- (a) Such departmental proceedings if not instituted while the officer was on duty:
  - i. Shall not be instituted save with the sanction of Government;
  - ii. Shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later;
  - iii. Shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and
  - iv. Shall be concluded by such authority and in such places as the Government may direct;
- (b) All such departmental proceedings shall be conducted if the officer concerned so requests in accordance with the procedure

applicable to departmental proceedings on which an order of dismissal from service may be made; and

- (c) Such judicial proceedings if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (a) above.”

26. A plain reading of Article 168-A of the Regulations of 1956 clearly suggests that the Government is empowered to order the recovery from the pension of a delinquent employee of any amount which represents the losses caused to Government by negligence or fraudulent act of such delinquent employee during his service. However, these proceedings would be limited only to determine the amount to be recovered from the pension of the Government employee on account of losses found to have been caused to the Government by the negligent and fraudulent act of the delinquent employee. There is, however, a rider to the exercise of this power by the Government and the proviso is that where such departmental proceedings are not initiated, while the employee was on duty, these proceedings shall not be instituted, save with the sanction of the Government. These proceedings shall be instituted before the retirement of the delinquent employee from service or within a year from the date on which he was last on duty or in respect of an event which has taken place not more than one year before the date on which the delinquent employee was last on duty, whichever is later.

27. It is, thus, evident that if the Government fails to institute departmental proceedings for recovery of the amount on account of losses found to have been caused to the Government by negligence and fraud of the delinquent employee or not instituted while the employee was in service shall not be instituted, unless the conditions laid down in the proviso to Article 168-A of the Regulations of 1956 are fulfilled.

28. Here, we take a pause for a moment and when have a flashback of the findings recorded in the impugned Judgment of the Writ

Court, in this regard, we find that the impugned Judgment of the Writ Court proceeds, mainly, on the premise that the Respondent retired from service on reaching the age of superannuation on 31<sup>st</sup> of July, 2017 and stood discharged of the criminal charges vide Judgment dated 4<sup>th</sup> of June, 2016, as such, as a matter of fact, on the date of his superannuation, no judicial or departmental proceedings were pending against the Respondent. The Writ Court further proceeded on the premise that under Article 168-A, the departmental proceedings had to be instituted with the sanction of the Government and before the employee's retirement from service or within a year from the date on which he was last on duty, whichever is later, and it has to be in respect of an event which took place not more than one year before the date on which the officer was last on duty. The Writ Court also went onto hold that the departmental inquiry in the case was ordered vide impugned Order dated 22<sup>nd</sup> of February, 2017 by a Committee to be constituted in terms of Order dated 17<sup>th</sup> of February, 2017, as such, indisputably, such an inquiry was not a departmental inquiry as envisaged under the Regulations of 1956, but, instead, is an inquiry regarding alleged theft/ embezzlement, more so, in respect of an event which had taken place in the year 2012, which *per se* is not in tune with the mandate of clause (iii) of Article 168-A. The Writ Court also held that such an inquiry in terms of impugned Order by the Appellants herein (Respondents before the Writ Court) can also be said to be insignificant and inconsequential against the Respondent herein (Petitioner before the Writ Court) in view of the fact that the Respondent stands discharged/ acquitted of the criminal charge by the competent Court in respect of allegations forming basis for holding of such inquiry. For all these reasons, the Writ Court went onto quash the impugned Order dated 22<sup>nd</sup> of February, 2017, by virtue of the impugned Judgment under challenge before us.

29. It seems that the reasoning which weighed with the Writ Court while reaching to the conclusion as arrived at in the impugned Judgment

was that there was no disciplinary proceedings, as envisaged under Article 168-A of the Regulations of 1956, was pending against the Respondent, while he retired from service on reaching the age of superannuation, and further that, at the relevant point of time, no judicial proceedings were pending against him since he stood discharged much before the attaining the age of superannuation. Therefore, in law, the Respondent cannot be subjected to any disciplinary proceedings nor such proceedings can be continued against him.

30. To the contrary, the bone of contention of the Appellants is that for the alleged losses caused to the Government by the negligent and fraudulent act(s) of the Respondent during his service, the Respondent, along with other delinquent employees, were served with a charge sheet on 4<sup>th</sup> of March, 2013, on the serious allegations of misconduct by dishonestly causing shortage of stores by way of embezzlement in league and conspiracy with other delinquent employees, thereby causing substantial losses to the Government for more than Rs. 57.72 lacs.

31. However, it is important to note that no such finding, as contended by the Appellants, regarding serving of charge sheet dated 4<sup>th</sup> of March, 2013 in the wake of initiation of regular inquiry came to be mentioned in the impugned Judgment of the Writ Court. Therefore, it had become imperative to ascertain as to whether the plea raised by the Appellants is an after-thought which has been taken for the first time in the instant Letters Patent Appeal (LPA) or factual foundation thereof was also laid before the Writ Court, but, for some reason, the Writ Court could not take note of such vital fact in coming to a different conclusion, which otherwise, in law, could not have been arrived.

32. Confronted with the above position, we have marshalled the Writ Court record and on a meticulous perusal thereof, it is found that the Appellants herein (Respondents before the Writ Court), in their Counter

Affidavit which came to be filed in compliance to Order dated 9<sup>th</sup> of September, 2022 passed by the Writ Court, very categorically and specifically mentioned in paragraph Nos. 4 to 6 as follows:

“4. After receiving the enquiry report, the Articles of charges against Sh. After Ahmad Malik, the then In-charge stores/store office of Lower Jehlum Hydel Electric Project, Baramulla were served upon the petitioner and other two official, copy enclosed as Annex (R-I). The replies to the charge sheet were received by the Chief Engineer and same have been send to the Corporate office alongwith various other documents.

5. On examination of such replies and documents, the competent authority considered that involved employees are jointly concerned in the disciplinary case and inquiry officer should be appointed to hold common proceedings against these erring officials. Sh. Ajaz Ahmad Sahaf Chief Engineer CI&D, who was appointed as Inquiry Officer to inquire into the charges framed against the said employees, but he could not conclude the enquiry due to superannuation subsequently, Chief Geologist was appointed as Enquiry Officer but he too could not proceed further due to some personal reasons.

6. The petitioner and two other officials were charge sheeted during service tenure and prior to their retirement. The petitioner and other two officials were reinstated vide order No. JKSPDC/86 of 2017 dated 22.02.2017 subject to outcome of the enquiry constituted vide office order No. DC/69 of 2017 dated 17.02.2017. However, the Enquiry office could not have scrutinized and examined the replies furnished by the erring officials including the petitioner, for the reasons, the Hon'ble High Court vide its order dated 19.07.2017 in SWP No. 1351/2017 had stayed for conducting if Enquiry by the committee constituted vide order dated 22.02.2017, therefore, the Enquiry remained inconclusive due to stay imposed by the Hon'ble High Court in the above writ petition. Further, suspension period was to be determined in terms of findings of the Enquiry Committee, which could not be done by the answering respondents due to stay imposed.”

33. At this stage, little correction of facts is required with regard to the number and date of the Writ Petition as mentioned in paragraph No.6 of the Counter Affidavit that the High Court vide its Order dated 19<sup>th</sup> of July, 2017 in SWP No. 1351/2017 had stayed the conducting of inquiry.

However, to the contrary, perusal of Writ Court record shows that the operation of the impugned Order before the Writ Court dated 22<sup>nd</sup> of February, 2017 came to be stayed in the Writ Petition filed by the Respondent bearing SWP No. 1954/2017 titled '**Aftab Ahmad Malik v. State of J&K and Ors.**' vide Order dated 27<sup>th</sup> of September, 2017, therefore, same appears to be a typographical mistake as the interim Order passed by the Writ Court on 27<sup>th</sup> of September, 2017 is itself part of the Writ Court record.

34. It is equally important to place on record that the Respondent herein (Petitioner before the Writ Court) has also filed his Rejoinder Affidavit in response to the Counter Affidavit filed by the Appellants, but he nowhere denied that the Respondent, along with other two delinquent officials, have not been served with charge sheet while in active service, precisely on 4<sup>th</sup> of March, 2013, as submitted by the Appellants in the memo of appeal at paragraph No.7 (a). The Appellants have also placed on record the 'Articles of Charges' and 'Statement of Imputation' in support of each charge which stood served upon the Respondent vide memorandum dated 4<sup>th</sup> of March, 2013, requiring the Respondent and other two delinquent employees to submit their written defence within 21 days from the date of issuance of the said memorandum.

35. Therefore, from the above discussion, it is deducible that much before the retirement of the Respondent on reaching the age of superannuation, i.e., on 4<sup>th</sup> of March, 2013, the Appellants have issued the memorandum containing the 'Articles of Charges' and 'Statement of Imputation' in support of each charge. Inquiry Officers were also appointed, but meanwhile, the Respondent-Writ Petitioner got stay order, as noted hereinbefore, therefore, the inquiry could not be concluded, as such, the Respondent cannot be allowed to blow hot and cold in the same breath.

36. In the context of Article 168-A of the Regulations of 1956, the word “**instituted**” refers to the formal initiation or commencement of judicial or departmental proceedings against a Government servant. Specifically, it denotes the official act of starting an inquiry or legal process to investigate alleged misconduct, negligence or fraud by an officer during his service, which may lead to recovery of losses from his pension. The term “**instituted**” in this context implies the formal commencement of the disciplinary proceedings, which in the given facts and circumstances are deemed to have “**instituted**” when a Statement of Charges is formally served upon the Government servant (Respondent herein).

37. Therefore, to say that till the time the Respondent retired from service on reaching the age of superannuation no inquiry was pending or only fact finding inquiry was pending is factually incorrect and, thus, confronted with this factual narration, it is established that the memorandum containing the ‘Articles of Charges’ and ‘Statement of Imputation’ dated March 04, 2013 was issued by the disciplinary authority while the Respondent was on active duty and, therefore, the proviso to Article 168-A of the Regulations of 1956 is not attracted.

38. Having said so, we are of the firm opinion that the Appellants are well within their right to proceed with the departmental inquiry against the Respondent, but this inquiry would only be limited to find out and determine the amount of losses, if any, found to have been caused to the Government by the negligent and fraudulent act(s) of the Respondent. The departmental proceedings in question would not lead to any of the penalties enumerated in Rule 30 of the Rules of 1956, as we have discussed hereinbefore at length. This is the clear position emerging from careful reading of the relevant provisions of the Regulations of 1956 as well as the Rules of 1956, respectively.

39. Once factual foundation has sufficiently been laid by the Appellants regarding initiation of disciplinary proceedings by serving the memorandum containing 'Articles of Charges' and 'Statement of Imputation' upon the Respondent much before the attaining the age of superannuation, in that event, to say that no judicial or departmental proceedings were pending at the time of his retirement is not legally and factually tenable, as has been held by the Writ Court vide the impugned Judgment under scrutiny.

40. While testing the case on hand on the anvil of legal and factual expositions as discussed hereinbefore, there left no scope for doubting the clear legal position emerging from the Regulations of 1956 and the Rules of 1956 that, while the Rules of 1956, in particular Rule 30, clearly envisage disciplinary proceedings for inflicting the enumerated minor and major penalties upon 'a member of service', which expression, as held hereinabove, would not include a retired employee of the Government, however, at the same time, Article 168-A of the Regulations of 1956 does permit the Government to conduct departmental proceedings to find out and determine the amount of losses, if any, caused by a delinquent employee, whether serving or retired, due to his acts of negligence or fraud, of course, with few restrictions, as discussed hereinbefore.

41. We, however, reiterate that if such departmental proceedings are continued against a retired Government employee, same shall be only to find out and determine the amount on account of losses caused to the Government by said employee due to his negligence or fraud and would not, in any manner, be applied for imposing any of the punishments enumerated in Rule 30 of the Rules of 1956.

42. Accordingly, issue No.(i) is answered in the above terms.

43. This now takes us to the issue No. (ii) that once the Respondent stood acquitted/ discharged in judicial proceedings, whether, thereafter, he can be subjected to departmental proceedings.

44. In this regard, suffice it to say that there is nothing in the Rules or the general law which would support this contention that once the delinquent employee is acquitted or discharged in judicial proceedings, then no departmental proceedings can be initiated against him. It is for the Government to decide what action can be taken against the Government servant for certain misconduct. Such a discretion in the Government does not mean that the provision for the departmental inquiry on such charges of misconduct is in violation of the provisions of Article 14.

45. The Government has the discretion in every case considering the nature of the alleged misconduct and other circumstances whether a criminal prosecution should be launched or not. The Government is free to take departmental proceedings against the close of the criminal proceedings, if instituted. Therefore, there is nothing illegal in the Government instituting the departmental proceedings against the delinquent official/ officer after the closure of criminal/ judicial proceedings. We are fortified in our view by the law laid down by Hon'ble Supreme Court in cases titled '**S. Pratap Singh v. The State of Punjab**', reported as '**1964 AIR 72**' and '**Airports Authority of India v. Pradip Kumar Banerjee**' passed in Civil Appeal No(s). 8414 of 2017 dated February 4<sup>th</sup>, 2025.

46. Notwithstanding the above noted legal position, even otherwise, the learned Magistrate, Boniyar, while passing the order of discharge, specifically mentioned that on presentation of challan on 26<sup>th</sup> of April, 2013, on noticing defective investigation, order for further investigation under Section 173 (8) of Cr. P. C. was passed. However, despite lapse of sufficient time, further investigation was not carried out, therefore, the matter was taken up by the Magistrate without ensuring

compliance of order of further investigation and, as a necessary corollary, the accused was discharged. Therefore, the discharge of the Respondent-accused was just on account of failure of the investigating officer to carry out further investigation.

### **VII. RELIEF:**

47. For the foregoing reasons, we are of the considered opinion that the impugned Judgment passed by the Writ Court is unsustainable in the eyes of law. Accordingly, the appeal is **allowed** and the impugned Judgment dated 16<sup>th</sup> of June, 2023 passed by the Writ Court is set aside. Consequently, the Writ Petition filed by the Respondent-Writ Petitioner is dismissed. We, however, make it clear that the Appellants may proceed against the Respondent for the purposes of determining the amount on account of losses, if any, caused to the Government by any negligent or fraudulent acts of the Respondent, but would not proceed for the purposes of imposing any of the penalties prescribed in the Rules of 1956. We also make it clear that till the culmination of the said proceedings, the Respondent shall be entitled to pensionary benefits as envisaged under Article 168-D of the Regulations of 1956.

48. Let Writ Record be dispatched with due diligence.

49. Letters Patent Appeal is, accordingly, **disposed** of on the above terms, along with the connected CM(s).

**(Shahzad Azeem)**  
**Judge**

**(Sindhu Sharma)**  
**Judge**

**SRINAGAR**

August 20<sup>th</sup>, 2025

*"TAHIR"*

i. Whether the Judgment is approved for reporting?

**Yes.**