



Government of Jammu and Kashmir,
Housing & Urban Development Department,
 Civil Secretariat, Srinagar/ Jammu.

-:o:-

Subject:- RDA against Smt. Farzana Ara Naqashbandi, the then Sr. Town Planner, Sh. Kamni Kumar, the then Assistant Enforcement Officer and Sh. Naresh Kumar the then Khilafwarzi Inspector, JMC Jammu (FIR No. 38/2015 P/S VOJ (now ACB).

Government Order No. *117* -JK(HUD) of 2024

Dated: *15* -05-2024

Whereas, the General Administration Department vide O.M. No. GAD(Vig)76-RDA/2017 Dated 11.08.2017 forwarded a report of Anti Corruption Bureau, J&K vide No. VO/FIR/38/2015/J-9416 dated 31.05.2017 for initiation of Regular Departmental Action against Smt. Farzana Ara Naqashbandi, the then Senior Town Planner, Jammu Municipal Corporation and others, in terms of J&K Civil Services (Classification, Control & Appeal) Rules, 1956; and,

Whereas, vide Government Order No. 113-HUD of 2019 dated 16.04.2019, Mr. Vikas Sharma, the then Vice Chairman, Jammu Development Authority was appointed as Inquiry Officer to enquire into the charges levelled against the officers/officials of Jammu Municipal Corporation for issuing building permission for construction of a residential building at Plot No.5-A/C Green Belt Park, Gandhi Nagar Jammu in violation of the approval of BOCA, JMC as well as the Jammu Master Plan; and,

Whereas, the Inquiry Officer vide communication No. DHPM/101/Estts/2022/976 Dated 14.09.2022 submitted the inquiry report. The Inquiry officer interalia submitted the findings as under:-

A detailed investigation already stands concluded by the Vigilance Organization and case recommended for taking departmental action. Both Kamni Kumar, the then Assistant Enforcement Officer and Sh. Naresh Kumar, the Khilafwarzi Inspector have allowed construction in violation of norms. Smt. Farzana Ara Naqashbandi, the then Sr. Town Planner had issued Building Permission vide No. 4181B512013 dated 22-07-2013 in violation of the approval of BOCA, JMC, drawings authenticated by JK Housing Board as well as Master Plan. However, Smt. Farzana Ara Naqashbandi, the then Sr. Town Planner has already been pre-maturely retired by the government; and;

Whereas, the recommendations of Inquiry Officer were accepted by the Competent Authority and a copy whereof was forwarded to Commissioner, JMC

with the request to decide and consider the matter in accordance with the relevant provision of J&K (Classification, Control and Appeal) Rules, 1956 in respect of Mr. Kamni Kumar, the then Assistant Enforcement Officer and Mr. Naresh Kumar, the then Khilafwarzi Inspector for allowing the construction in violation of building permission norms; and,

Whereas, the Commissioner, JMC vide Office Order No. 42 of 2022 dated 30.11.2022 issued under endorsement No. JMC/Estt/S/828-32 dated 30.11.2022, imposed fine of one month salary upon Sh. Naresh Kumar, the then Khilafwarzi, Inspector in terms of Rule 30(II) of J&K CS (CC&A) Rules 1956; and,

Whereas, Smt. Farzana Ara Naqashbandi, the then Sr. Town Planner was pre-maturely retired from services under Article 226(2) of Jammu and Kashmir Civil Services Regulations, 1956, w.e.f. 01.04.2022 vide Government Order No. 363-JK(GAD) of 2022 Dated 31.03.2022; and,

Whereas, the department sought opinion of General Administration Department with regard to the conclusion of departmental proceeding case(s) of prematurely retired public servants and the General Administration Department vide U.O. No. GAD-VIGORDA/122/2022-02-GAD Dated 10.01.2023 opined as under:-

Returned. The matter has been examined in consultation with the Department of Law, Justice & Parliamentary Affairs, which opined as under:-

"In terms of Article 168-A of CSR, the Government can order for recovery of losses from the pension of an officer found guilty, beyond that no other penalty can be imposed. The said issue has also been deliberated upon by the Hon'ble High Court of J&K and Ladakh recently vide its judgement dated 22.08.2022 in WP(C) No. 1218/2021 titled Mukhtar Ahmad Bhat V/s UT of J&K & Ors, the operative part of which is excerpted herein under:-

"17. In view of the aforesaid analysis, this petition is disposed of by holding as under:

- i) That under Rule 30 and 33 to 35 of the Rules of 1956, the Government is empowered to institute and conduct disciplinary proceedings for imposition of penalties enumerated in Rule 30 only against a member of service and as held above, member of service would not include a retired government employee.*
- ii) That under Article 168-A of the Regulations of 1956, the Government is well within its right to conduct departmental proceedings against a Government Officer or government employee (serving or retired) to find out and determine the amount of loss caused to the Government by negligence or fraud of such employee and recover the same from his*

pension. Such departmental enquiry shall, however, be restricted only to the determination of financial loss caused to the Government by the delinquent government employee and would not be applied or made use of for the purposes of imposing the punishment(s) prescribed under Rule 30 of the Rules of 1956.

- iii) That the impugned order dated 28th May, 2021 issued in respect of the petitioner may be proceeded only for the purposes of determining the amount on account of loss, if any, caused by any negligent or fraudulent act of the petitioner. The petitioner, however, would not be proceeded in the departmental proceedings for the purposes of imposing any of the punishments prescribed in Rule 30 of the Rules of 1956.
- iv) The Government shall be entitled to recover such amount of loss, as is found established in the departmental enquiry, if any, conducted by the respondents in pursuance of the impugned notice dated 28th May, 2021. Till such enquiry is conducted and amount of loss, if any, is determined against the petitioner, he shall not be denied post retiral benefits. The respondents shall do well to process the case of the petitioner for post retiral benefits and release the same in his favour within a period of two months from the date a copy of this judgement is served upon them." The relationship of an employer and employee comes to end by retirement. In the instant case Ms. Farzana Naqashbandi, then STP has already been prematurely retired as such no further punishment can be imposed upon her only except the proceedings under Article 168-A of CSR, if there is any financial loss to the Government by negligence or fraud of such employee and that can be recovered the same from his/her pension. Department, as such, is advised to proceed accordingly in the matter."

The Housing and Urban Development Department is, accordingly, conveyed the above opinion of Law Department with the advise that no punishment can be imposed upon the retiree namely Ms. Farzana Naqashbandi and the department shall proceed under Article 168-A of J&K CSRs against the retired officer, if there is any financial loss to the Government by negligence or fraud of such officer and the same can be recovered from her pension and the case can be concluded accordingly.

Whereas, vide letter dated 29.12.2023, the Commissioner, JMC was requested to ascertain/assess the quantum of loss caused to state exchequer by an act of negligence or fraud of the delinquent public servant Smt. Farzana Ara Naqshbandi, the then Sr. Town Planner, so that the same could be recovered from the accused retiree in terms of Article 168-AA of J&K Civil Services Regulations, 1956; and,

Whereas, the Commissioner, JMC vide communication No. JMC/Estt/S/738 Dated 02.03.2024 has submitted that:-

As reported by Building Officer and Senior Town Planner, JMC that as per records, a building permission was issued vide No. 290/BS/2012 dated 14.06.2012 with built up areas of 3508 sft, 3328 sft & 3328 sft for G.F, FF and S.F respectively and fee amounting to Rs. 30136/- was charged vide G.R No. 14468 & 14469 which includes building fee, Mulba Security, Septic Tank and Sanitation Charges etc.

Further, a revised permission was issued vide No: 418/BS/2013 dated 23.07.2013 for built up areas as 4895 sft, 3338 sft & 3073 sft for G.F, F.F and S.F respectively and difference of fee amounting to Rs. 3771 was paid vide G.R No. 25165 and observed that no financial loss has occurred as for as building permission is concerned. However, though fees due as per area in Building Permission has been charged, intangible loss in term of higher density can't be calculated.

Whereas, the report received from the Commissioner, JMC, was placed before the Competent Authority who has agreed with the Observations/clarifications furnished by the Commissioner, JMC in the instant matter.

Now, therefore, in light of above, the departmental proceedings against Smt. Farzana Ara Naqshbandi, the then Sr. Town Planner (pre- maturely retired by Government vide Order No. 363-JK(GAD) of 2022 Dated 31.03.2022) in case FIR No. 38/2015 P/S VOJ(ACB) is hereby concluded in terms of Article 168-AA of J&K CSRs, subject to the outcome of criminal proceedings, if any, pending in any Competent Court of Law.

By Order of Government of Jammu & Kashmir.

Sd/-

(Mandeep Kaur) IAS

Commissioner/Secretary to the Government

No.: HUD-LSG0JMC/24/2021 (C.No. 9185)

Dated: 15.05.2024

Copy to the:-

1. Joint Secretary (JKL), Ministry of Home Affairs, Government of India.
2. Commissioner/Secretary to the Government, General Administration Department.
3. Commissioner, Municipal Corporation, Jammu/ Srinagar.
4. Director Archives, Archaeology & Museums, J&K.
5. Concerned.
6. Private Secretary to Commissioner/Secretary to Government, Housing & Urban Development Department.
7. I/C Website, Housing & Urban Development Department.
8. Government Order File (w.2.s.c)/Stock file.

(Kashif Altaf Bhat) JKAS

Under Secretary to the Government