



GOVERNMENT OF JAMMU & KASHMIR
SCHOOL EDUCATION DEPARTMENT
CIVIL SECRETARIAT, J&K.

Subject: Case FIR No. 77/1997, P/S VOK (now ACB) against Late Wali Mohammad Sherwani, the then I/c Principal DIET Sopore, Baramulla - Closure thereof.

**Government Order No. 465 - JK (Edu) of 2024.
D a t e d: 05 - 11 - 2024.**

Whereas, in the meeting of the Departmental Promotion Committee (DPC) held on 08.07.2003, Mr. Wali Mohammad Sherwani, along with others, was considered for promotion to the position of Chief Education Officer. His services rendered in an officiating capacity at this level, were regularized with effect from 01.05.1999 to 31.08.2002, which is the date of his retirement; and

Whereas, the aforementioned officer is listed at Sr. No. 4 in the communication No. PSC/DPC/Edu/7/97 dated 08.08.2003 from the Public Service Commission, which conveys the approval of the DPC/PSC for the clearance of Joint Directors and equivalent positions, as well as Chief Education Officers and equivalent positions; and

Whereas, Anti-Corruption Bureau, J&K, Jammu vide letter No.ACB-FIR-77/1997-K-4729 dated 24.04.2024 has conveyed that the investigation of the case has been concluded as proved against six accused public servants and two beneficiaries namely **1) Wali Mohammad Sherwani, S/o. Gh. Mohi-ud-din R/o. Sedique Colony Sopore, the then Chief Education Officer Kupwara (retired/expired), 2) Ab. Hamid Sheikh, S/o. Gh. Ahmad Sheikh R/o. Nowgam Shangus, the then Sr. Assistant CEO Office Kupwara, 3) Abdul Gani Tantrey, S/o. Habibullah R/o. Bahipora Kupwara, the then Jr. Assistant CEO Office Kupwara, 4) Gh. Mohammad Dar, S/o. Ab. Aziz Dar R/o. Magam, Head Assistant CEO Office Kupwara, 5) Mohammad Abdullah Dar, S/o. Ab. Gaffar R/o. Regipora Kupwara, the then Head Assistant CEO office Kupwara, 6) Gh. Nabi Shah, the then Sr. Assistant CEO Office Kupwara, 7) Naseer Ahmad Malik, S/o. Mohammad Abdullah Malik R/o. Yaroo Handwara (beneficiary) and 8) Mushtaq Ahmad Bhat, S/o. Abdul Gani Bhat R/o. Bahadupora Handawara (beneficiary).** The chargesheet was, accordingly, produced which is pending adjudication before the Hon'ble Court of Addl. Special Judge, Anti-Corruption, Baramulla and is at prosecution evidence stage. **One of the accused public servants, namely Wali Mohammad Sherwani, the then Chief Education Officer, Kupwara, has passed away, and the Trial Court has abated proceedings against him."**; and

[Handwritten signatures and initials in blue ink]

Whereas, on examination of the matter in consultation with advice of Legal Section of the Department, the following opinion has been tendered in the matter:-

".....it is the settled law of land that the death of an employee exonerates him from all the charges and also no penalty can be imposed upon an incumbent after his death. In the instant case, the regularization of promotion has already been cleared by the DPC, however the same was purportedly been kept under sealed cover, pending conclusion of Departmental Proceedings and Criminal Proceedings. As stipulated in the preceding note paras, none of the proceedings has been concluded during the life of the delinquent and same were open on the date of death of delinquent. As such his death would exonerate him not only from the Criminal Liability but will also exonerate him from Departmental Penalties as no penalty, be it civil or criminal, can be imposed upon a deceased person. It is for these reasons, withholding of confirmation of promotion would in a way result in imposition of penalty upon the deceased and the same is barred under law. Though the same could have been done during the life of the deceased without prejudice to the pendency of the criminal proceedings against the delinquent employee...

....By the perusal of records, this fact is undisputed that departmental proceeding was initiated after the death of the husband of the petitioner. It appears that only after order of this Court dated 22.02.2013, respondents have initiated the departmental proceeding ignoring this fact that husband of the petitioner died much earlier. It is also very ridiculous that Inquiry Officer has issued notice to petitioner to submit the reply for an allegation against her late husband. In fact this act of Inquiry Officer absolutely suffers from non-application of mind and also ignores settled law of departmental proceeding. How it is possible for the petitioner to submit reply with regard to the alleged allegation of embezzlement by her late husband. Whatever letters are referred in the counter affidavit, either filed by respondent No.4 or by the State-respondents with regard to the departmental proceeding are undisputed after the death of the husband of the petitioner. Therefore, in such facts, the complete departmental proceeding is ex-facie bad as in any case, no inquiry can be initiated against a dead person. Respondents may have initiate the inquiry proceeding during the service period of the husband of the petitioner or at least before his death, but after death, complete inquiry proceeding as well as impugned order dated 10.06.2013 is bad in law and not sustainable."

Handwritten initials: HS

Whereas, under the provisions of Article 168-A of the Jammu and Kashmir Civil Service Regulations, any proceedings initiated by a government department must commence before the employee's retirement or within one year from the date they were last on duty, whichever occurs first; and

Handwritten initials: SS, HS, and a signature

Whereas, the Hon'ble Court of the 1st Additional Sessions Judge (Anti-Corruption), Baramulla, by order dated 01.02.2019, has held that the proceedings against the accused, Wali Mohammad Sherwani, stand abated in light of his death certificate; and

Whereas, the criminal liability has ceased due to the abatement of proceedings upon the death of Sh. Wali Mohammad Sherwani, and the civil liability has also ceased, as the employer-employee relationship no longer exists; and

Whereas, the case has been further examined in light of the existing provisions governing the post-retirement benefits of an employee who has retired. Accordingly, it has been submitted to the competent authority, and it has been decided to close the case of the deceased employee.

Now, therefore, in light of the above circumstances and the abatement of proceedings against the accused public servant, namely Late Wali Mohammad Sherwani, by the Hon'ble Court of the 1st Additional Sessions Judge (Anti-Corruption), Baramulla, the departmental proceedings against the deceased employee are hereby closed in accordance with Rule-108 of the Jammu and Kashmir Civil Service Regulations, Volume-I

By order of the Government of Jammu and Kashmir.

Sd/-

(Suresh Kumar Gupta) IFS,
Principal Secretary to the Government,
School Education Department.

No: Edu/HRM/243/2021-01 (80895)

Dated: 05.11.2024.

Copy to the:

1. Principal Accountant General, J&K Srinagar.
2. Joint Secretary (J K & L), Ministry of Home Affairs, Government of India.
3. Commissioner/Secretary to the Government, General Administration Department for information.
4. Secretary, Public Service Commission, J&K Srinagar for information.
5. Director, School Education Kashmir.
6. OSD to Hon'ble Minister for information.
7. Pvt. Secretary to the Principal Secretary, School Education Department.
8. Concerned.
9. I/c Website.
10. Government Order file w.3.s.c


(Masood Ahmad Wani)

Deputy Secretary to the Government.

 