Government of Jammu and Kashmir
Consumer Affairs and Public Distribution Department,
Civil Secretariat, Jammu.
*****

Subject:- Re-instatement of Mr. Mudasir Rashid Dar, Assistant Controller, Legal Metrology Department.

GOVERENMENT ORDER NO:- 76 -CAPD OF 2016
D A T E D:- 25 - 04 - 2016

Whereas, vide Government Order No. 43-CAPD of 2015 dated 21.05.2015 Shri Mudasir Rashid Dar, Assistant Controller, Legal Metrology District Bandipora was placed under suspension in terms of Rule 31(2) of Jammu and Kashmir Services (Classification, Control and Appeal) Rule, 1956 on the basis of detention under custody beyond (48) hours.

Whereas, consequent upon the above, the enquiry committee was constituted vide Government Order No. 61-CAPD of 2015 dated 18.06.2015 to investigate the case of FIR No. 75/2015 U/S 5(2) DPC Act of Police Station Bandipora and the Committee was requested to conduct the enquiry and shall submit a detailed report with their specific comments/recommendations in the matter within a period of ten days;

Whereas In the meanwhile, the above said committee was superseded vide Government Order No. 75-CAPD of 2015 dated 27.07.3015and Shri A.R.War, Director, CA&PD, Kashmir was nominated as an enquiry officer for conducting an enquiry in the investigating case of FIR No. 75/2015 U/S 5(2) read with 5(1) DPC Act, of Police Station Bandipora and he shall enquire the facts and submit his report with specific comments/recommendations in the matter within a period of ten days;

Whereas, the enquiry against Shri Mudasir Rashid Dar, Assistant Controller, Legal Metrology District Bandipora has been conduct by Shri A.R.War, Director CA&PD, Kashmir submitted its report and the recommended the Department of legal Metrology is a law enforcing agency and it is the legitimate duty of Assistant Controller Legal Metrology to compound the challaned cases under J&K Standards of Weights and Measures (Enforcement) Act, 1997 registered by an Inspector of Legal Metrology against the erring traders within his territorial jurisdiction;

Whereas, the action of the accused compounding officer is fully protected under Section 8 of the J & K Standards of weights and measures (Enforcement) Act, 1997 i.e. Protection of action taken in good faith which reads as under:-

> "No suit, prosecution or other legal proceedings shall lie against the Controller, any Additional Controller, Inspector or any other person authorized by or under this Act to exercise any power or to perform any duty in respect of anything which is in good faith done or intended to be done under this Act or the Central Act or any rule or order made under either of the Acts aforesaid."

Whereas, there has been minor procedural lapse from the compounding officer (the accused officer) i.e. not counting the compounded money after its receipt from the trader and before putting the same in the drawer of his office table, not getting the composition application signed by the trader and not handing over the composition receipt to the trader well in time. However, it is observed that the procedural incompletion that has occurred on part of the accused seems to have taken place primarily due to more than normal deficiency of staff on the incident day and due to the fact that the trap team interrupted a legal compounding process midway which meant that certain steps left to be taken to complete the compounding process could not be taken;

Whereas, the Supreme Court in the Sirajuddin vs State of Madras, 1970 case has held that a suitable preliminary enquiry must be conducted by a responsible officer before laying down a trap against a public servant. The secret verification report in this regard is to be submitted to the Superintendent of Police concerned for seeking permission to lay down the trap. Moreover, a trap cannot be laid down against a public servant in order to settle personal scores or to take revenge. Neither can the money used for the trap be provided to the complainant by the investigating agency (Annexure I enclosed). In the case in hand, the preliminary enquiry has not been conducted before laying down the trap. Besides, the money used for the trap has been provided by the PA to the Deputy Commissioner, Bandipora as is evident from the FIR itself Besides, the complainant seems to have a valid reason, though illegal, for taking revenge from the accused as the complainant was booked by the accused officer on April 03, 2015 vide Seizure Memo No: 8518 for violation of Legal Metrology (Packaged commodity) Rules, 2011 and was legally entitled to deposit a composition sum of Rs. 10000/= with the office of the accused for getting the case compounded at the Department level. Further, the Supreme Court in the Darshan Lal vs Delhi Administration, 1973 case disbelieving the complainant and the trap witnesses has insisted on an

independent and trustworthy corroboration of evidences apart from the complainant and the witnesses;

Whereas, the Enquiry officer that the accused officer i.e. Shri Mudasir Rashid Dar, Assistant Controller Legal Metrology Bandipora be reinstated as proven having no guilt and allowed to continue his duties;

Now, therefore, in light of the above recommendations and as per Rule 31 of Jammu and Kashmir Services (Classification, Control and Appeal) Rule, 1956, Mr. Mudasir Rashid Dar, Assistant Controller, Legal Metrology Department is re-instated with immediate effect, however, the period of suspension shall be decided after the outcome of FIR No.75/2015.

By order of the Government of Jammu and Kashmir.

Sd/-
(Shafiq Ahmed Raina)IAS
Secretary to the Government
Consumer Affairs & PD Department
Dated: 25 .04.2016

No. LM/C-Estt/86/2015

Copy to the: -

1. Controller, Legal Metrology Department, J&K.
2. District Development Commissioner, Bandipora.
3. Director, Consumer Affairs & P.D. Department, Kashmir
4. OSD to Hon'ble Minister for CA&PD Department.
5. Concerned Officer.
6. Incharge website, CA&PD Department.
7. Governmetn Order file/Stock file.

(Javiad Ahmad Reshi)
Under Secretary to Government
Consumer Affairs & P.D Department
25/4