

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

WP (C) No. 1379/2025

**Balbir Singh, aged 63 years
Son of Lachman Singh
R/o Margh Bagh, Jammu.**

.....Applicant(s)/Petitioner(s)

Through :- Mr. Navyug Sethi, Advocate

v/s

- 1. The Union Territory of Jammu and Kashmir
Through Financial Commissioner
Additional Chief Secretary (Home)
Civil Sectt. Jammu/Srinagar**
- 2. Director General of Police,
Jammu and Kashmir,
Police Headquarters, Jammu/Srinagar**
- 3. Additional Director General of Police
(Coordination),
Police Headquarters, Jammu/Srinagar.**
- 4. Director Police Telecom,
J & K, Jammu.**
- 5. Sr. Superintendent of Police,
Telecom (ACS) Jammu.**



सत्यमेव जयते

.....Respondent(s)

Through :- Ms. Monika Kohli, Sr. AAG

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER(ORAL)

26.08.2025

Sanjeev Kumar J

1. Impugned in this petition filed by one Balbir Singh, under Article 226 of the Constitution of India, is an order and judgment dated 23.04.2025 passed by the Central Administrative Tribunal, Jammu

Bench, Jammu (“the Tribunal”) in OA No. 339/2023 titled “*Balbir Singh vs. UT of J & K and Ors.*”, whereby the Tribunal has dismissed the OA filed by the petitioner seeking monetary benefits of his promotion as Selection Grade Constable (Driver) being devoid of merit.

2. Impugned judgment is challenged by the petitioner on multiple grounds. However, before we proceed to examine the grounds of challenge urged by the learned counsel for the petitioner, we deem it appropriate to notice few facts which are relevant to the disposal of this petition.
3. The petitioner was appointed as Constable (Driver) vide PHQ J&K Order No. 1194 of 1985 dated 16.11.1985. While the petitioner was undergoing his training at PTC Udhampur, the Principal PTC, Udhampur doubted the qualification certificate, i.e., (middle pass) produced by the petitioner at the time of his selection and appointment. He took up the matter with the SSP Telecom and requested for referring the qualification certificate of the petitioner to the Crime Branch for verification. During the course of the inquiry, the qualification certificate produced by the petitioner was *prima facie* found fake and as a consequence whereof, FIR No. 85/1988 was registered in the Police Station Gandhi Nagar for offences under Sections 420, 467, 468, 471, 472 RPC.
4. Simultaneously, DIG Crime and Railways J&K, recommended discharge of the petitioner from service. The recommendations made by the DIG Crime and Railways were challenged by the

petitioner in SWP No. 845/1988. A Bench of this Court stayed the recommendations and, in this way, the attempt of the respondents to discharge the petitioner was for the time being, averted. The investigation in FIR No. 85/1988 led to the filing of challan before the 3rd Additional Session Judge, Jammu. The prosecution could not succeed to prove its case and as a consequence whereof, the petitioner was acquitted of all the charges leveled against him. After the acquittal, the PHQ was approached by the Telecom Headquarters for release of consequential benefits in favour of the petitioner. However, PHQ J&K directed the pending departmental inquiry against the petitioner in respect of production of false documents to be kept in abeyance till the disposal of SWP No. 845/1988. Later the aforesaid SWP filed by the petitioner also came to be dismissed by a Bench of this Court vide order dated 15.11.1996.

5. Since the departmental inquiry against the petitioner was not dropped by the respondents even after his acquittal, the petitioner again knocked the doors of this Court by filing SWP No. 1444/2000 and challenged the departmental proceedings on the ground that no such departmental inquiry could be conducted against the petitioner after he had earned an acquittal on the self same allegations from the competent Court of jurisdiction. The writ petition was allowed and the respondents were directed not to proceed against the petitioner departmentally on the basis of charge, for which he stood acquitted by the Criminal Court.

6. The LPA preferred against order dated 06.04.2005 passed by the Single Bench in SWP No. 1444/2000 also came to be dismissed with a clear observation that the acquittal recorded by the Criminal Court was honourable acquittal and that the Court had found that the middle pass certificate produced by the petitioner at the time of his appointment, was genuine.
7. After termination of the entire litigation qua the charges leveled by the respondents against the petitioner, the matter was processed for release of consequential benefits in favour of the petitioner. On consideration of the matter through a Special Departmental Promotion Committee, the petitioner was recommended to be promoted as Selection Grade Constable (Driver) with effect from 05.06.1992 (notionally) and Head Constable (Driver) with effect from 09.06.1997 (notionally), i.e., from the dates his immediate juniors already stood promoted. The recommendation was accepted by the Additional Director General of Police (Coordination), and vide his order no. 337 of 2021 dated 05.06.2021 notional promotion to the petitioner as Selection Grade Constable (Driver) with effect from 05.06.1992 and Head Constable (Driver) that too notionally with effect from 09.06.1997 was granted. This order was passed when the petitioner already stood retired on attaining the age of superannuation with effect from 30.04.2021.
8. Vide order no. 40 of 2022 dated 18.02.2022, and in partial modification of the earlier order dated 05.06.2021 (supra), the petitioner was given promotion as Head Constable (Driver)

notionally with effect from 09.06.1997 and monetarily with effect from 01.04.2021. This apparently was done to enable the petitioner to avail pensionary benefits. The petitioner was also held entitled to third promotion as ASI (Driver) in terms of order no. 3125 of 2021 dated 12.10.2021. The promotion of the petitioner to the rank of ASI (Driver) was given with effect from 30.12.2009 on notional basis.

9. Feeling dissatisfied and aggrieved, the petitioner filed OA No. 339/2023 before the Tribunal and called in question all the three orders referred to above, whereby and whereunder the benefit of promotion to the petitioner had been given with effect from 05.06.1992, 09.06.1997 and 30.12.2009 notionally. A short grievance that was projected by the petitioner before the Tribunal was that the petitioner was not granted the promotion along with his juniors against the posts of Selection Grade Constable (Driver), Head Constable (Driver) and ASI (Driver) on due dates for the reason that the respondents had involved him in a totally false case and uncalled for litigation.
10. The OA was contested by the respondents on the solitary ground that the petitioner having not worked against the higher promotional posts was not entitled to the arrears of salaries against the promoted posts on the principle of “no work no pay”.
11. The Tribunal having heard both the sides and having gone through the material on record, came to the conclusion that the plea of the respondents that the petitioner was not entitled to monetary benefits

attached to his promotions on the principle of “no work, no pay” had substance. Relying upon couple of judgments passed by the Supreme Court on the aforesaid principle, the Tribunal dismissed the OA holding it to be devoid of merits.

12. Impugned judgment is challenged by the petitioner primarily on the ground that principle of “no work, no pay”, as enunciated by the Hon’ble Supreme Court in the cases relied upon by the Tribunal, is not attracted in a case where an employee is prevented to perform the duties of higher post because of an illegal and arbitrary order passed by the employer. It is argued that in the instant case, the petitioner was all along in the service of respondents and performing his duties as a driver and his promotion to the post of Selection Grade Constable (Driver), Head Constable (Driver) and ASI (Driver) did not involve any change in his duties. He would further argue that in the instant case, the promotion to the aforesaid three ranks were denied to the petitioner only on the ground that a criminal case with regard to forging of a document was pending adjudication before the trial Court, which criminal case ultimately ended in honourable acquittal of the petitioner. He would, therefore, conclude by submitting that the respondents, who denied promotions to the petitioner, illegally and arbitrarily by involving him in a false and frivolous legal criminal charge, cannot be permitted to take the benefit of their own wrong and penalize the petitioner who has been found innocent by the competent Court of law.

13. *Per contra* Ms. Monika Kohli, learned Sr. AAG supports the judgment of the Tribunal and submits that since the petitioner has not actually worked against the posts of Selection Grade Constable (Driver), Head Constable (Driver) and ASI (Driver) and, therefore, cannot be granted the pay scale of the post and the monetary benefits accruing therefrom. A great deal of emphasis was laid by Ms. Monika Kohli, learned Sr. AAG on the judgments of the Supreme Court which have been elaborately discussed and relied upon by the Tribunal in the impugned judgment.
14. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the Tribunal has not appreciated the matter in correct perspective and, therefore, the judgment made by it is totally fallacious and unsustainable in law. The Tribunal has failed to appreciate that the petitioner was not out of action during the period he has been held entitled to promotions. He was all along working with the respondents as driver and continued to work till he retired on superannuation with effect from 30.04.2021.
15. The timely promotions to the petitioner were not granted by the respondents because departmental proceedings/criminal case with regard to forgery of his qualification certificate were pending adjudication before the competent forums. The criminal case was instituted at the instance of the respondents, which, as noted above, ended in honourable acquittal of the petitioner. An attempt to proceed with departmental proceedings against the petitioner

notwithstanding his honourable acquittal from the Criminal Court, was averted by this Court when the petitioner approached it by way of SWP No. 1444/2000.

16. Viewed thus, it can be conclusively held that the promotions were denied to the petitioner for no fault of his. It is because of this reason only, the respondents, after the conclusion of entire litigation, found the petitioner entitled to promotions as Selection Grade Constable (Driver), Head Constable (Driver) and ASI (Driver) from different dates.
17. Needless to say, that even on the promotional posts, the petitioner would have performed the same duties which he performed as a Constable, i.e., the duties of a driver. It is not the case of the respondents that on being promoted to the higher post of Selection Grade Constable (Driver), Head Constable (Driver) or ASI (Driver) he was supposed to perform duties different from or higher than the duties which he had been performing in his capacity as Constable. It is thus not the case of the petitioner having not performed the duties of the promotional posts.
18. The reliance placed by the Tribunal on the judgment of the Supreme Court in the case of **Union of India and Ors. vs. Tarsem Singh, (2008) 8 SCC 648** and **State of Haryana vs. O.P. Gupta, (1996) 7 SCC 533** was totally misplaced. It is trite law that if a promotion is denied to an employee because of the mistake committed by the employer and due to no fault of the said employee, then employer is bound to pay arrears of salary etc. upon

giving him the benefit of retrospective promotion after realizing that mistake. The principle would be extended even to those cases where due to sheer negligence, or on account of mala fides or filing of false case or institution of baseless disciplinary proceedings, an employee is deprived of benefit of promotion on due date and is given the said benefit later retrospectively. Judgment of Apex Court in “**Union of India vs. K.V. Jankiraman AIR 1991 SC 2010 and State of Kerala and Ors. vs. E.K. Bhaskaran Pillai (2007) 6 SCC 524**” may be referred with advantage. In the latter judgment, Supreme Court in para 4 held thus: -

We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some

other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where Courts have granted monetary benefits also.

It is, thus, clearly deducible from above judgments that question as to whether or not an employee is entitled to pay and allowances for the period of notional promotion preceding the date of actual promotion depends upon facts and circumstances of each case viz. grounds on which he is acquitted by the Court in criminal prosecution or the grounds on which he is exonerated in the disciplinary proceedings etc. In the instant case, the petitioner has been acquitted by the criminal Court honourably holding that the charge of forgery qua his qualification certificate was groundless and that the certificate of qualification was genuine. And also, that the petitioner, who was deprived of promotions when his juniors were promoted, was supposed to perform same duties, i.e., the duties of a driver and was not to shoulder any higher responsibility. The Constable (Driver), Head Constable (Driver) and ASI (Driver) perform same duties, i.e., driving of an official vehicle. The principle of “no work, no pay” was not attracted.

19. For the foregoing reasons, we find merit in this petition and the same is, accordingly, allowed. The order impugned passed by the Tribunal is set aside and as a consequence, the OA filed by the petitioner before the Tribunal is allowed by providing as under: -

- a. Order no. 337 of 2021 dated 05.06.2021 read with Order no. 40 of 2022 dated 18.02.2022 and order no. 3125 of 2021 dated 12.10.2021 are quashed to the extent they have been challenged in the OA.
- b. The petitioner is held entitled to all the monetary benefits on the promotional posts, i.e., to the post of Selection Grade Constable (Driver) with effect from 05.06.1992, Head Constable (Driver) with effect from 06.06.1997 and on the post of ASI (Driver) with effect from 30.12.2009.
- c. That the arrears on account of aforesaid promotions shall be worked out and paid to the petitioner within a period of three months from the date copy of this order is served upon the respondents.
- d. That the respondents shall do well to revise the pensionary benefits including the pension and gratuity of the petitioner so as to enable him to avail the enhanced benefits in terms of the directions which we have passed hereinabove.
- e. That in case the arrears, in terms of direction no. (c), are not released within the aforesaid period, the same shall become payable along with interest at the rate of 6 % per annum from the expiry of three months stipulated period.

20. The needful shall be done within the aforesaid period.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
26.08.2025
Manik

Whether this order is speaking: yes/no
Whether this order is reportable: yes/no