

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1645/2025

1. UT of J&K
through Principal Secretary to Govt.,
General Administration Department, J&K,
Civil Sectt., Jammu
2. Director Estates Department,
Government of J&K, Civil Sectt., Jammu.
3. Deputy Director Estates Department
Manda, Jammu now at present
Quarter No.4/5-C, Gandhi Nagar, Jammu.
4. Yash Paul
S/o Jagu Ram R/o Pallanwalla, Jammu
at present Storekeeper, Deputy Director Estates,
Manda Hills, at present Gandhi Nagar, Jammu.
5. Sudershan Kumar, Work Supervisor
at Office of Executive Engineer,
Estates Division-II, Jammu.
6. Hans Raj, Work Supervisor
at Office of Executive Engineer,
Estates Division II, Jammu.

.... Petitioner(s)

Through:- Mrs. Monika Kohli, Sr. AAG.
V/s

Abdul Latif Wani
S/o Abdul Gani
R/o Village and Post Office Toopneel,
District Doda.

.....Respondent(s)

Through:- Mr. Y.E Tak, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER
08.07.2025

Per:- Shahzad Azeem, J

1. Petitioners have challenged the order and judgment dated
27.12.2024 passed by the Central Administrative Tribunal, Jammu Bench,

Jammu, (hereinafter referred to as '*the Tribunal*'), in **TA No.8721/2020** titled "***Abdul Latief Wani vs. State of Jammu and Kashmir and others***", whereby and whereunder the Tribunal while allowing the application filed by the respondent herein (applicant before the Tribunal) quashed the order No. 207-DE of 2011 dated 11.03.2011 and further petitioners herein (respondent before the Tribunal) were directed to release the charge allowance along with interest @ 7% in favour of the respondent (applicant) w.e.f the date he has been given charge of Supervisor in the department.

FACTUAL MATRIX

2. The controversy lies within a short compass, the respondent herein stated to be initially appointed as Farash-cum-Chowkidar (FCC) on temporary basis on 01.04.1986 and thereafter was made quasi permanent and brought on the regular establishment of the department vide order dated 20.10.1993. While serving in the department, the respondent also continued his studies and passed 10+2 examination in the year 1992.

3. Vide order dated 07.02.1998, respondent was assigned additional charge of Supervisor in addition to his own duties along with some other FCCs of the department. However, respondent though continuously made to perform additional duties of Supervisor, but charge allowance was not granted in his favour despite numerous representations.

4. Be it further noted that petitioner No.4 herein was appointed in the year 1994 on temporary basis and was made quasi permanent in the year 1997, and was figuring below in seniority list to respondent, but in the similar circumstances, the charge allowance in favour of the petitioner No.4 was released vide order dated 04.12.2003 against the post of Junior Assistant, and

as per said order he was holding the charge of rent recovery, vide order dated 06.01.2003.

5. Conversely, petitioner No.2 herein, has also accorded sanction to the promotion of Sh. Sudershan Kumar, Helper (petitioner No.5) and Hans Raj, FCC (petitioner No.6) on stop gap arrangements, against the post of Work Supervisor on their own pay and grade and also granted charge allowance in their favour.

6. Despite submission of numerous representations, when the charge allowance was not released in favour of the respondent herein and he has been discriminated *qua* similarly situated employees, the respondent filed a writ petition being **SWP No.519/2004** titled "**Abdul Latief Wani vs. State of Jammu and Kashmir and others**", which came to be disposed of by the learned Single Judge vide order dated 20.10.2010 with the following directions:-

"This petition is accordingly, disposed of by directing the respondents to consider grant of charge allowance to the petitioner from the date he is holding the higher post. This exercise be completed within a period of two months from the date a copy of this order is served on the respondents."

7. In compliance to the said direction, the petitioners-respondents have considered the case of the respondent-applicant vide order dated 11.03.2011 and same was rejected on the ground that no post of Sanitary Supervisor is available/created in the office of Deputy Director Estates, Jammu, against which charge allowance could be released in favour of the respondent-applicant. Further reasoning given is that the respondent was assigned the job of Supervisor in addition to his own duties merely to run the smooth functioning of cleaning work of the said Section.

8. It was this order dated, 11.03.2011 which was assailed and vide impugned judgment and order dated 27.12.2024, the Tribunal has allowed the same and directed the petitioners-respondents to release the charge allowance along with interest @ 7 per cent in favour of the respondent-applicant w.e.f the date he has been given charge of Supervisor in the department. It is this order and judgment of the Tribunal against which petitioners-respondents have thrown challenge by way of instant writ petition.

GROUND AND SUBMISSIONS

9. Now the petitioners have assailed the order passed by the Tribunal mainly on the ground that the respondent has no legal right to claim the post of Sanitary Supervisor as there is no sanctioned post available in the department. It is further submitted that mere discharge of additional duties does not establish a legal right to charge allowance and further according to the petitioners herein, the Tribunal did not consider that as per SRO No. 908 of 2019, only three posts of Sanitary Supervisor exist in the Estate Department and all belong to UT Cadre, therefore, charge allowance legally could not be granted to the respondent. Furthermore, it is also urged that neither respondent was eligible for promotion to the post of Sanitary Supervisor nor entitled to the charge allowance in view of Article 85 of CSR.

10. The main thrust of the petitioners is that the respondent was not eligible for promotion to the higher post, and merely he was asked to supervise the duties of Supervisor, therefore, he is not entitled to the charge allowance.

11. On the other hand, learned counsel appearing for the respondent has placed on record rejoinder affidavit and further took us to “**The Jammu and Kashmir Estates (Subordinate) Service Recruitment Rules, 1997**” (hereinafter referred to as ‘*the rules of 1997*’), wherein as per Schedule-I at

Sr. No.33, three posts of Sanitary Supervisor are shown to exist on the permanent cadre strength of the department and further against Schedule-II of the rules of 1997, the feeding cadre for promotion to the post of Sanitary Supervisor is 100% by promotion from Class-VI, which pertains to Orderlies, Farash-cum-Chowkidar/Cycle Boy/Farash/Watchman.

12. Therefore on the basis of rule position and the discrimination meted out to the respondent *qua* similarly situated employees, the learned counsel for the respondent submits that the petitioners have concealed the fact that the schedule to rules of 1997 specifically contains three posts of Sanitary Supervisor, on the permanent cadre strength of the department and further similarly situated employees i.e., petitioners No.4 to 6 have been granted the benefit, but the respondent herein has been singled out for no reason.

ANALYSIS

13. Admittedly, the respondent herein was appointed as FCC in the year 1986 and was assigned the additional duties of Supervisor, vide order dated 07.02.1998. At the same time, it is important to note that the respondent (applicant before the Tribunal) has specifically averred in TA No. 8721/2020 that the petitioner No.4 (respondent No.4 before the Tribunal) was appointed in the year 1994 on temporary basis and was made quasi permanent in the year 1997. He was figuring below the respondent herein and charge allowance in his favour was released by the petitioner No.2 vide order dated 04.12.2003 on the ground that he has been given charge of rent recovery vide order dated 06.01.2003.

14. Further, similarly situated persons i.e., petitioner Nos.5&6 (respondent Nos.5&6 before the Tribunal) were promoted on stop gap arrangement against the post of Work Supervisor and not only charge

allowance was released, but against the post of Junior Assistant, charge allowance came to be released.

15. On going through the objections to the application filed by the petitioners herein (respondents before the Tribunal), one would find that the petitioners-respondents did not deny the averments contained in the application, *qua* release of charge allowance and discriminatory treatment meted to the respondent-applicant viz-a-viz, the similarly situated employees of the Estate Department.

16. Once the respondent has been assigned the charge of higher post in addition to his own duties along with similarly situated employees, in that event, the writ petitioners cannot deny the charge allowance on hypertechnical objection; particularly, when charge allowance was not only allowed in favour of one set of employees but allowance released against the post of Junior Assistant in favour of similarly situated employee, holding the charge of Supervisor.

17. There is another aspect of the matter, which cannot be lost sight of that as per the rules of 1997, the post of Sanitary Supervisor was very much in existence and feeding cadre for promotion to the said post is 100% from Class-VI, to which class respondent-applicant belongs, therefore, the petitioners are not expected to invoke extra ordinary jurisdiction of writ Court by concealment of fact that too when they are expected to act as a Model Employer. So, to say that the respondent-applicant was not eligible for being promoted to the post of Sanitary Supervisor is contrary to the statute and record.

18. The State as a Model Employer is expected to show fairness in action and it is the constitutional duty to ensure that the Executive acts fairly

and gives a fair deal to its employees consistent with the requirements of Article 14 and 16 of the Constitution.

19. We are fortified in our view by the judgment passed in case titled ***“Bhupundra Nath Hazarika and another vs. State of Assam and others”***, reported in (2013) 2 SCC 516, wherein Hon’ble the Supreme Court has observed thus:

“53. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspiration of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized.”

20. In the impugned judgment, the Tribunal has taken note of the fact that the petitioners (respondents) have released the charge allowance in favour of similarly situated employees and also have accorded promotion to them to the higher post, however, in the case of respondent-applicant, they have adopted a different yardstick, therefore, on being noticed that hostile treatment has been meted out to the respondent-applicant vis-à-vis similarly situated employees in violation of Article 14 and 16, the indulgence is rightly shown by

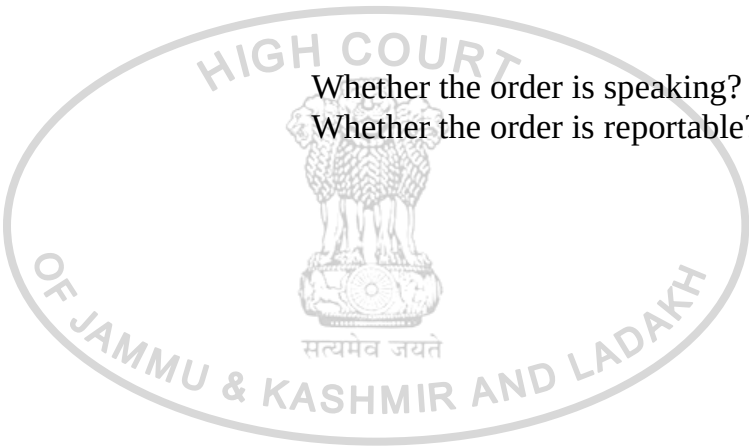
quashing the order dated 11.03.2011, and directed the petitioners-respondents to release the charge allowance.

21. In view of the preceding analysis, no perversity or illegality is found in the impugned judgment dated, 27.12.2024 passed by the Tribunal in **TA No.8721/2020**, as such, this petition along with connected application, **dismissed**, accordingly.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

JAMMU
08.07.2025
Surinder



Whether the order is speaking? :
Whether the order is reportable?:

Yes/No
Yes/No