

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2779/2025

1. UT of J&K th. Appellant(s)/Petitioner(s)
Commissioner/Secretary to Govt.,
Health & Medical Education Deptt.
(ISM), Civil Secretariat,
Srinagar/Jammu-180001.
2. Director General, Indian Systems of
Medicine, Jammu-180005.
3. Assistant District Medical Officer
ISM, Kishtwar-182204.
4. Assistant District Medical Officer
ISM, Doda-182202.

Through: Mr. Raman Sharma, AAG with
Ms. Jagmeet Kour, Advocate

vs

1. Mr. Mohal Lal, Age 63 years, ... Respondent(s)
S/o Sh. Jai Saran, R/o Sharoti,
Tehsil Drabshalla, District Kishtwar.
2. Mr. Tek Chand, Age 64
S/o Sh. Tej Ram,
R/o Allangotra, Tehsil Gandoh
District Doda.

Through:

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

ORDER (ORAL)
06.10.2025

Sanjeet Kumar 'J'

1. Impugned in this petition, filed by the Union Territory of Jammu and Kashmir and others under Article 226 of the Constitution of India, is an order and judgment dated 21.04.2025 passed by the Central

Administrative Tribunal, Jammu Bench, Jammu [“**the Tribunal**”] in OA No. 570/2021 titled *Mohan Lal & Anr. Vs. U.T. of J&K & Ors.* whereby the Tribunal has quashed the order impugned in O.A. dated 22.02.2016 passed by petitioner no. 2 and held the respondents herein entitled to first and second *in-situ* promotions with monetary benefits from the date they have been permitted notionally.

2. Briefly stated the facts, which led to the filing of this petition, are that the respondents were appointed as Nursing Orderlies in ISM (Indian Systems of Medicine) Department on substantive basis and during their entire service career, they were not granted any substantive/functional promotion. They were, thus, entitled to *in-situ* promotions under Rule 5 of the J&K Civil Services (Higher Standard pay Scale Scheme) Rules 1996 (the Rules of 1996) issued vide SRO 14 of 1996. The cases of the respondents for first and second *in-situ* promotions were not considered in time and the respondent No. 1 was granted first *in-situ* promotion w.e.f. 01.04.1995 notionally and second *in-situ* promotion w.e.f. 01.04.2004 notionally. However, he was given third *in-situ* promotion w.e.f. 01.04.2013 monetarily. Similarly, respondent no. 2 was granted first *in-situ* promotion w.e.f. 01.10.1995 notionally, second *in-situ* promotion w.e.f. 01.10.2004 notionally. However, third *in-situ* promotion, in favour of respondent No. 2, was granted w.e.f. 01.10.2013 monetarily.

3. Since the respondents were not given the monetary benefits of their first and second *in-situ* promotions, as such, they approached the Tribunal by way of O.A. No. 570/2021. They also claimed the monetary benefits of their *in-situ* promotions on the analogy of other similarly situated employees like Riaz Ahmed and Mohd. Rafi. The O.A. was contested by the petitioners herein, who submitted that since there was delay in processing the cases of the respondents for first and second *in-situ* promotions and therefore, they were given the said *in-situ* promotions notionally without any monetary benefits. It was pleaded that under the Rules of 1996, there is no provision for granting the *in-situ* promotions retrospectively.
4. Having considered the rival contentions of the parties and material placed on record, the Tribunal came to the conclusion that the delay, if any, in granting the benefit of *in-situ* promotions to the respondents, was attributable to the petitioners and therefore, the respondents could not have been prejudiced or subjected to monetary loss.
5. The impugned order, whereby the claim of the respondents for grant of *in-situ* promotions with the monetary benefits stood rejected, was, thus, quashed and a direction, as we have referred hereinabove, was issued.
6. Having heard learned counsel for the petitioners and perused the material on record, we are of the considered opinion that the view

taken by the Tribunal is perfectly legal and unexceptional in the given facts and circumstances of the case. There is no dispute with regard to the fact that delay in issuing the formal orders for grant of first and second *in-situ* promotions in favour of respondents was wholly and entirely attributable to the petitioners and that being the position, the respondents could not have been punished for no fault of theirs.

7. There is no obligation cast upon an employee to stake his/her claim for *in-situ* promotion supported by any documents. It is for the employer to consider the case as per the available service record with it and in accordance with screening mechanism provided for regular promotion.
8. It is only if the employee is under suspension on the date of eligibility or is charge-sheeted under J&K Civil Services (Classification, Control and Appeal) Rules 1956 or any other rules for the purpose, the promotion *in-situ* can be denied. Rule 12 of J&K Civil Services (Higher Standard Pay Scale Scheme) Rules, 1996 prescribes the competent authority and the procedure to be followed to grant promotion *in-situ*. It reads thus:

**12. Authority competent to grant Higher Grade Pay Scale-
procedure therefor**

- a) *The Appointing Authority for the post of Higher Grade Scale shall be competent to grant Higher Grade Scale to eligible employee(s);*
- b) *At the time of granting Higher Grade Scale the existing screening mechanism for promotion shall be applied;*

- c) *No Higher Grade Scale shall be granted to the employee who is under suspension on the date of eligibility or who is charge-sheeted under provisions of J&K classification, Control & Appeal Rules, or any other Rules for the purpose. However, when the employee is exonerated in a departmental enquiry against him/her and reinstated on duty, the Higher Grade Pay Scale shall be granted on the basis of eligibility on completion of 9, 18/27 years incremental period of service as the case may be.*
- d) *An employee otherwise eligible for grant of 'Promotion In-Situ' under these Rules shall be deemed to have been exempted from passing the prescribed departmental/any other examination for purposes of grant of 'Promotion In-Situ' only. However, if the employee wants to get the actual functional promotion on Higher post, he/she shall have to pass the prescribed departmental examination:*
- e) *Such period of leave without pay/other allowances as has not been agreed by the Competent Authority to be counted for purposes of Annual increments shall not be taken into account for reckoning of the period of 9, 18/27 years for Higher Grade Pay Scale as the case may be;*
- f) *The service of surplus employee(s) due to discontinuance, abolition of post(s) in the former Department/office shall not be taken into account;*
- g) *g.....*

9. In the instant case, the sub-ordinate office of the petitioners, which was supposed to process the case of the respondents for first and second *in-situ* promotions in time failed to do so and as a result, whereof, the claim of the respondents for *in-situ* promotions was considered belatedly. The petitioners have very fairly granted the benefits of first and second *in-situ* promotions to the respondents from

the dates it was due to them, but, have, without any reason or justification, granted the benefit notionally only.

10. We are, therefore, on all fours with the Tribunal that the monetary benefits accruing from the first and second *in-situ* promotions granted by the petitioners to the respondents cannot be denied without doing violence to Article 14 of the Constitution of India.
11. For all these reasons, we find no merit in this petition and the same is, accordingly, **dismissed**.

Jammu
06.10.2025
Vishal Sharma

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Whether the order is reportable: Yes

Whether the order is speaking: Yes