

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) 1394/2022 CM (3334/2022)

Pronounced on: 22.12.2025.

Uploaded on: 24 .12.2025

Rafiq Nisar Wani

...Appellant/Petitioner(s)

Through: Mr. Zahid Khan, Advocate

Vs.

Union Territory of J and K and Ors.

...Respondent (s)

Through: Mr. Mohd Younis Hafiz, Assisting Counsel for R1-2.

Mr. Bikramdeep Singh, Dy. AG for R3

Mr. Numan Malik, Advocate for R4.

Mr. Shah Amir, Advocate for R5.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER (ORAL)

22.12.2025

Sanjeev Kumar-J

1. Impugned in this petition filed by one Rafiq Nisar Wani W/o Late Nisar Ahmad Wani, an employee of Town Planning Organization of the Housing and Urban Development Department, Srinagar, is an order and judgment dated 23rd April, 2021, passed by the Central Administrative Tribunal, Jammu, Bench Jammu ["the Tribunal"] in TA No. 6805/2020 [SWP No. 629/2017] titled "*Rafiq Nisar Wani vs. State of Jammu and Kashmir and Ors*".

2. In terms of the judgment impugned, the Tribunal has disposed of the petition of the writ petitioner herein with a direction to the official respondents to take necessary steps to redetermine the extension of benefit of notional promotion in terms of orders dated 01.12.2003 and 03.08.2004 and 28.12.2016.

3. Before we advert to the grounds of challenge urged by the learned counsel for the petitioner, we deem it appropriate to set out the facts as are relevant to the disposal of the controversy raised in this petition.

4. The husband of the petitioner namely Nisar Ahmad Wani was appointed as Draftsman in the respondent-Department vide Govt Order No. G-541-WP of 1972 dated 21st June, 1972, whereas one Shri. P.N. Safaya was appointed as such on 18th October, 1972. While Mr. P.N. Safaya continued to perform his duties in the Town Planning Organisation in which he was appointed, while the husband of the petitioner was transferred first to Estate Division, Srinagar, vide Govt Order No. PW-601 of 1975, dated 8th September, 1975 and, thereafter, to the State Editors Gazetteers Unit (GAD) vide Govt Order No. PW-858 of 1976, dated 1st December, 1976. The lien and promotion prospects of the husband of the petitioner were protected in his parent organization, i.e., Town Planning Organisation, Kashmir.

The husband of the petitioner remained out of his parent organisation for long and was repatriated only in the year 1994 in terms of Govt Order No. 281-UD of 1994, dated 28.10.1994, and by that time his junior namely Mr. P.N. Safaya and few others had been promoted to the posts of Planning Assistant and Town Planners. The husband of the petitioner was not

accorded the benefits at par with Shri. P.N. Safaya, as such, he filed SWP No. 1626/1999 before this Court seeking, *inter alia*, a direction to the official respondents to promote him to the higher post at par with his juniors. It seems that the husband of the petitioner was prevailed upon by the respondents to withdraw the writ petition with the assurance that his grievance would be addressed in accordance with the law.

True to the commitment made, the official respondents vide Govt Order No. 300-HUD of 2003 dated 1st December, 2003, refixed the seniority of the husband of the petitioner in the category of Planning Assistant in the Town Planning Organisation showing him above Shri. P.N. Safaya and below Shri. Ramesh Koul. Although, the seniority was restored but there was no formal promotion given to the husband of the petitioner to the post of Town Planner and Senior Town Planner, rather a U-turn was made by the Government to effect amendment to the order seeking clearance/recommendations from the DPC. The DPC/PSC conducted the proceedings and considered the case of the husband of the petitioner as also other employees of the Organisation for regularization/promotion to the higher gazetted posts. Mr. P.N. Safaya, who was admittedly junior to the husband of the petitioner, was promoted as Town Planner w.e.f. 22nd April, 1998, whereas, the husband of the petitioner was promoted as Assistant Town Planner w.e.f. 19th March, 1993. By the time the matter was considered by the DPC, the husband of the petitioner had already died.

5. Feeling aggrieved, the petitioner-herein i.e., wife filed SWP No. 629/2017 before this Court which on transfer to the Tribunal was registered as TA No. 6805/2020.

6. In the petition filed before the Tribunal, the petitioner prayed for the following reliefs:

- i. Writ of Certiorari, quashing the placement of Shri. P.N. Safaya as Town Planner w.e.f 22nd December, 1998,*
- ii. Mandamus, commanding upon the official respondents to accord due place to the deceased husband of the petitioner over and above Shri. P.N. Safaya and accordingly issue corrigendum viz.a.viz. placement/promotion of the deceased in the Town Planner Cadre,*
- iii. Writ of Mandamus, directing the official respondents to fix the pensionary benefits by taking the deceased husband of the petitioner as having been promoted as Town Planner with effect from the date Mr. P.N. Safaya was so promoted.*

7. The writ petition was contested by respondent No. 3-the Chief Town Planner, Kashmir. It was contended that pursuant to the representation made by the deceased husband of the petitioner, the Government considered the matter on the basis of available records and found the grievance projected by the deceased husband of the petitioner having substance.

8. It is submitted that the seniority of the petitioner was fixed above Shri. P.N. Safaya and below Shri. Ramesh Koul. With a view to confer upon the petitioner the benefit of seniority, the Government Order No. 219-HUD of 2004 dated 3rd August, 2004, was passed and the following benefits were conferred upon the deceased husband of the petitioner.

- i. The deceased husband of the petitioner was promoted as Planning Assistant w.e.f 16.08.1978 to 23.04.1984 on notional basis.*
- ii. He was promoted as Assistant Town Planner w.e.f. 24.04.1984 to 28.07.1999 on notional basis.*

iii. He was placed as Incharge Town Planner in his own pay and grade w.e.f. 29.07.1999 to 19.06.2002 against the available post of Sr. Town Planner.

9. However, this Government order too was not given effect to and rather a corrigendum to the Govt Order supra was issued vide Govt Order No. 241-HUD of 2004 dated 27.08.2004, whereby certain corrections were made and the promotions of the petitioner were made dependent upon the recommendations of DPC to be conducted by J&K Public Service Commission.

10. It is in this background, the petitioner was given the benefits on the basis of recommendations of the DPC by issuing Govt Order No. 247-HUD of 2016, dated 28.12.2016.

11. The writ petition/TA was considered by the Tribunal and in terms of the judgment impugned, same was disposed of with the direction which we have already referred to hereinabove.

12. Having heard learned counsel for the parties and perused the material on record, we find merit in the submissions made by the learned counsel for the petitioner.

13. It is not in dispute that the husband of the petitioner and Shri. P.N. Safaya came to be appointed as Draftsmen in the Town Planning Organisation, Kashmir in the year 1972. The deceased husband of the petitioner having been appointed on 21st June, 1972 was admittedly senior to Shri. P.N. Safaya who was appointed on 18th October, 1972. While Shri.

P.N. Safaya continued to work in the Town Planning Organisation, Kashmir, the husband of the petitioner was transferred first to the Estate Division of the Public Works Department and, thereafter, to the State Editors Gazetteers Unit (GAD). He was repatriated to his parent Organisation only on 20th October, 1994.

14. The transfer of the husband of the petitioner from his parent organisation to Estate Division, Srinagar and Gazetteers Unit (GAD) was by way of deputation, as such, his lien and promotional prospects were protected in the Town Planning Organization, Kashmir.

15. Be that as it may, the fact remains that when the husband of the petitioner reported back to his parent department upon repatriation, he found his junior Mr. P.N. Safaya having marched ahead and got two promotions. On the representation made by the deceased husband of the petitioner, the official respondents vide Govt Order dated 1st December, 2003 (supra) found merit in the grievance projected by the petitioner and, accordingly, restored his seniority above Shri. P.N. Safaya and below Shri. Ramesh Koul. This should have a necessary consequence of promoting him to the next higher posts of Assistant Town Planner and Town Planner at par with Shri. P.N. Safaya. This, however, was not done. Firstly, on the pretext that the posts of Assistant Planner and Town Planner are selection grade posts and no promotion could be granted against the said posts without recommendations of PSC/DPC.

16. Anyway, the matter was referred to the DPC and on the recommendations made, the officials respondents vide Govt Order dated 28th December, 2016 cleared the deceased husband of the petitioner for promotion as Assistant Town Planner w.e.f. 19th March, 1993, but did not accord him promotion to the post of Town Planner on the analogy of his junior Shri. P.N. Safaya who was accorded such promotion w.e.f. 22nd April, 1998.

17. We see no reason or justification forthcoming from the side of the respondents which would support Govt Order dated 28th December, 2016. May be, it is true that promotions to the post of Assistant Town Planner and Town Planner are only to be accorded to an employee upon recommendations of DPC/PSC, but the duty to place the case of the husband of the petitioner before PSC along with the case of Shri. P.N. Safaya, (the immediate junior to the deceased husband of the petitioner), was on none other than the official respondents. They forgot the deceased husband of the petitioner who was borne on their cadre but was serving outside his service by way of deputation with his lien and promotion protected in his parent organisation. Had the official respondents taken steps at the right time and considered him also for promotion along with Shri. P.N. Safaya, he would have become Town Planner with or before Shri. P.N. Safaya. This, however, has not happened in this case and, as a result whereof, a grave injustice has been done to the husband of the petitioner. Unfortunately, the meat of the controversy could not be appreciated by the Tribunal which has erred in

passing the impugned judgment paying only lip service to the reliefs prayed for by the husband of the petitioner in his petition.

18. For the foregoing reasons, we find merit in this petition and the same is accordingly **allowed**.

19. The respondents are directed to treat the deceased husband of the petitioner at par with Shri. P.N. Safaya for all purposes i.e. seniority and promotion. The husband of the petitioner shall be deemed to have been promoted on regular basis as Assistant Town Planner w.e.f. 19th March, 1993 and Town Planner w.e.f 22nd April, 1998 on regular basis with the benefit of arrears, refixation of salary and retiral benefits.

20. Let the needful in terms of this judgment be done by the official respondents within a period of two months from the date a copy of this order becomes available to them.

21. The judgment of the Tribunal is, accordingly, modified to the aforesaid extent.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

22.12.2025

"Shahid Manzoor"

Whether the order is reportable?

Yes/No.

Whether approved for reporting?

Yes/No.