

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

WP(C) No. 412/2026

Date of Pronouncement: 03.03.2026.

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UT of J&K and others

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

Through :- Mr. Raman Sharma, Sr. Adv (AAG) with
Ms. Saliqa Sheikh, Advocate

v/s

Pawan Kumar

.....Respondent(s)

Through :- Mr. Nitin Bhasin, Advocate

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

ORDER(ORAL)

SANJEEV KUMAR J

1. This petition, filed by the UT of J&K and three others under Article 226 of the Constitution of India, challenges an order and judgment dated 28.03.2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu ["the Tribunal"] in TA No. 61/168/2020 titled "*Pawan Kumar Vs. UT of J&K and others*", whereby the Tribunal has allowed the TA of the respondent and directed the petitioners herein to issue formal order of confirmation of his services with all consequential benefits. The judgment, however, does not indicate the date from which the respondent has been held entitled to such benefit.
2. Briefly stated the facts leading to filing of this petition are that the respondent came to be adjusted as Nursing Orderly in the then pay scale of Rs. 2550-3200 plus usual allowances as admissible under

rules for a period of 89 days only against the vacancy that had fallen vacant due to the OPG promotion of the incumbent namely Sh. Karnail Chand, Nursing Orderly against the post of Dawasaz.

3. The engagement of the respondent was extended vide order dated 30.12.1998 passed by the Director Indian System of Medicine, J&K, Jammu. The incharge Dawasaz namely Karnail Chand retired on superannuation on 30.09.2012 without having been confirmed against the post of Dawasaz. The respondent was, however, continued as a Nursing Orderly on *ad hoc* basis, but could not be regularized for the reason that he was not holding a lien free post of Nursing Orderly.

4. Feeling aggrieved, the respondent approached this Court by way of SWP No. 214/2020, which on transfer to the Tribunal, came to be registered as TA No. 61/168/2020. In the petition transferred to the Tribunal by this Court, the respondent, *inter alia*, prayed for a *Writ of Mandamus* to command the petitioners herein to issue a formal order of confirmation of his services on the ground of long officiation against the post of Nursing Orderly left vacant by incumbent Sh. Karnail Chand. The writ petition was contested by the petitioners herein by contending that the respondent having not held a vacant and lien free post of Nursing Orderly was not entitled to confirmation of his service as a permanent government employee. It was also brought

to the notice of the Tribunal that the post against which the respondent was engaged as Nursing Orderly fell vacant only on the superannuation of Sh. Karnail Chand, a Nursing Orderly, who had been promoted in its own pay and grade to the post of Dawasaz but could not be confirmed till his retirement.

5. The Tribunal considered the rival contentions of the parties in light of the material on record and came to conclusion that the respondent who had been in the service of petitioners for more than 24 years, may be in *ad hoc* capacity, could not be denied the benefits as available to a permanent government employee. It is in these circumstances, the petition filed by the respondent was allowed and a direction was issued to the petitioners to issue a formal order of his confirmation with all consequential benefits in terms of the judgment impugned.
6. Having heard learned counsel for the parties and perused the material on record, we find that the facts are not much in dispute in this petition. Indisputably, the respondent was appointed as Nursing Orderly on 24.09.1998 against the post which had temporarily fallen vacant due to the adjustment of its incumbent Sh. Karnail Chand against the post of Dawasaz in his own pay and grade. The promotion of said Sh. Karnail Chand was subject to his qualifying Dawasaz examination. It is, thus, evident that the post against which the

respondent was adjusted as Nursing Orderly was not a lien free substantively vacant post. It is also not in dispute that Sh. Karnail Chand, who held lien on the post of Nursing Orderly occupied by the respondent, was never substantively promoted as Dawasaz and retired on completion of his age of superannuation on 30.09.2012 as Nursing Orderly only.

7. In that view of the matter, there should be no dispute that the post of Nursing Orderly became lien free and substantively vacant only on 01.10.2012 and, therefore, the engagement of the respondent against the post of Nursing Orderly against a clear vacancy can be said to be made w.e.f. 01.10.2012. Be that as it may, we cannot ignore the fact that before the respondent came to occupy the lien free post of Nursing Orderly, he had already rendered more than seven years service in ad hoc capacity and, therefore, had acquired a right of consideration for regularization under the J&K Civil Services (Special Provisions) Act 2010, at least w.e.f. the date he came to occupy the lien free post of Nursing Orderly i.e. 01.10.2012. The respondent, therefore, cannot be denied the benefit of regularization, at least, from 01.10.2012.

8. For the foregoing reason, we *dispose of* this petition by modifying the judgment of the Tribunal in the following manner:

- (i) The respondent is held entitled to regularization of his services as Nursing Orderly w.e.f. 01.10.2012.
- (ii) The respondent is also entitled to be considered the benefit of In-situ promotion in terms of SRO 14 of 1996.
- (iii) He shall be entitled to all the arrears of salary w.e.f 01.10.2012 till his superannuation i.e., 28.02.2023.
- (iv) He shall be entitled to refixation of his pension alongwith the arrears of pension w.e.f the date of his superannuation till this judgment is implemented in its letter and spirit.
- (v) The emoluments, if any, received by the respondent during the aforesaid period shall be taken into account while working out the arrears payable to him.
- (vi) The petitioners shall do well to issue a formal order of his regularization in terms of this judgment within period of two months from today, failing which, the arrears directed hereinabove shall be come payable to the respondent along with interest @ 6 % per annum.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
03.03.2026
Rahul Sharma

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No