

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

WP(C) No. 2456/2026

Union Territory of J&K and ors.

...Petitioners

Through: Mr. Ravinder Gupta, AAG with
Mr. Nirmal Kotwal, Advocate

Vs

Sandeep Kumar Sharma.

...Respondent

Through: Mr. N. D. Qazi, Advocate.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT
12.08.2026

(Rajesh Sekhri-J)

1. The petitioner-UT and its instrumentalities have invoked Articles 226 and 227 of the Constitution of India for the quashment of a common order dated 11.07.2025 passed by learned Central Administrative Tribunal, Jammu Bench [for short, "the Tribunal"], in O.A. Nos. 976/2024 and 1006/2024, whereby the Original Application preferred by the respondent came to be allowed and Government Order No. 214-PW(R&B) of 2021 dated 28.06.2021, to the extent it denied benefit claimed by the respondent, came to be set aside.

2. The facts giving rise to the present petition, briefly stated, are that respondent was appointed as Draftsman in the Public Works (R&B) Department during the period 2004-2008. His case before the Tribunal was that though he was appointed in the lower scale, but since similarly situated Draftsmen had subsequently been granted the higher pre-revised scale of

Rs.5150-8300 pursuant to judicial pronouncements and consequential Government Orders, he was entitled to the same treatment. His claim was rejected by Government Order dated 28.06.2021, which led to the filing of the Original Application.

3. The respondent principally relied upon parity with Draftsmen who had already been granted the higher scale pursuant to judgment dated 03.10.2023 of the Srinagar Bench of the Tribunal in O.A. No. 851/2021.

4. The petitioners resisted the claim, *inter alia*, on the ground that since respondent had accepted his appointment on a scale prescribed under the applicable Recruitment Rules, he could not, after several years turn around to seek a higher scale contrary to the terms of his appointment. It was also contended that an erroneous benefit granted to another employee could not confer a right of negative equality. Reliance in this regard was placed upon **Suraj Parkash Gupta v. State of J&K; (2000) 7 SCC 561, State of U.P. v. J.P. Chaurasia; (1989) 1 SCC 121, State Bank of India v. M.R. Ganesh Babu; (2002) 4 SCC 556, Secretary, Jaipur Development Authority v. Daulat Mal Jain; (1997) 1 SCC 35, Basawaraj v. Special Land Acquisition Office; (2013) 14 SCC 81 and State of Haryana v. Ram Kumar Mann; (1997) 3 SCC 321.**

5. Mr. Ravinder Gupta, learned AAG appearing for the petitioners, additionally submitted that respondent was appointed on compassionate grounds under SRO-43 of 1994, whereas applicants in O.A. No. 851/2021 had entered service through a regular selection process. It was, therefore, contended that respondent could not claim parity with the applicants in the said Original Application, as the source and mode of their initial appointment were materially different. Learned counsel further submitted that the judgment in **Sham Paul Randhawa v. State & Ors., 2009 SLJ (II) 490**, could not have been

treated as laying down a binding proposition of law applicable to all Draftsmen merely because Special Leave Petition preferred against the said judgment was dismissed by the Supreme Court by a non-speaking order. Placing reliance upon **Kunhayammed & Ors. v. State of Kerala & Anr., (2000) 6 SCC 359**, learned AAG submitted that dismissal of a Special Leave Petition by a non-speaking order neither amounts to a declaration of law under Article 141 of the Constitution nor results in merger of the judgment under challenge with the order of the Supreme Court. It was, accordingly, contended that the Tribunal fell into error in treating the judgment in **Sham Paul Randhawa** as binding upon the petitioners or as conferring an enforceable right upon the respondent.

6. Learned counsel for the respondent on the other hand has defended the impugned order by submitting that Tribunal had rightly found the respondent similarly situated to Draftsmen who had already been granted the benefit. According to him, the State, having extended the benefit to a number of employees pursuant to judicial and administrative orders, could not deny the same treatment to the respondent without a rational basis.

7. We have considered the submissions and examined the record.

8. It is by far settled now that scope of interference of the High Court under Articles 226 and 227 of the Constitution with an order of the Tribunal is very limited. High Court does not exercise appellate jurisdiction over the Tribunal. Interference is warranted only where there is a jurisdictional error, patent illegality, violation of principles of natural justice, or a finding so perverse that it is unsupported by the material on record.

9. Testing on the aforesaid parameters, we are of the considered view that impugned order does not call for interference.

10. It is not in dispute that several Draftsmen, who had initially entered the department of PWD (R&B) in the lower scale, were subsequently granted the pre-revised higher scale of Rs.5150-8300 pursuant to judicial proceedings and consequential Government Orders. The Tribunal, upon consideration of the material placed before it, found the respondent similarly situated to those employees and also found no rational basis for differential treatment.

11. The principle that Article 14 does not envisage negative equality is well settled. An illegal or erroneous benefit extended to one employee cannot be claimed by another. The question, however, is whether the benefit extended by the petitioners is an isolated illegality or forms part of a consistent course of treatment adopted by the Government pursuant to judicial precedents and administrative decisions.

12. In the present case, the material considered by the Tribunal indicates that higher scale was extended by the petitioner-UT and its agencies to a number of Draftsmen pursuant to judicial proceedings and Government Orders. The Tribunal, therefore, did not grant the relief prayed for merely on the ground that another employee had received an erroneous benefit but it proceeded on the basis of parity with a class of employees whom petitioner-UT had already treated in the same manner.

13. The petitioners have not demonstrated any legally sustainable distinction between the respondent and his counterparts. Consequently, reliance by the petitioners on the doctrine of negative equality is misplaced.

14. The distinction sought to be founded upon respondent's compassionate appointment also does not advance the petitioners' case. No statutory provision or Recruitment Rule has been brought to our notice which makes a particular

mode of initial appointment a disqualification to claim the pay scale attached to a post, once the employee is appointed to and continues to hold that post.

15. Likewise, an employee's appointment and joining on an initial pay scale would not, by itself, amount to his accepting the appointment of that scale and defeat his claim of pre-revised pay scale extended to his similarly circumstanced counterparts. The claim before the Tribunal arose from subsequent judicial and administrative developments and the treatment accorded to similarly situated employees.

16. There cannot be an exception to the proposition of law that fundamental recruitment rules cannot be relaxed. However, the Tribunal in the present case was not called upon to exercise the power of relaxation of recruitment rules. It was considering whether, after the Government extending higher scale to similarly situated Draftsmen pursuant to judicial and administrative decisions, could deny similar treatment to the respondent without any lawful justification.

17. If petitioners were of the view that grant of higher scale pursuant to judicial orders was contrary to the governing rules, it was open to them to challenge the legality of said orders in appropriate proceedings. Having implemented such orders and extended the benefit to a number of employees, the Union Territory cannot, for the purpose of denying parity to the respondent, characterize the earlier benefit as illegal without establishing the legal basis for the distinction sought to be maintained.

18. We may now deal with the contention based upon **Kunhayammed**. Learned AAG has vehemently argued that dismissal of a Special Leave Petition (SLP) by a non speaking order does not amount to a declaration of law under Article 141 of the Constitution and, ordinarily, would not result in the merger of a

judgment under challenge with the order of Hon'ble Supreme Court. We are of the considered view that such a contention deserves outright rejection for the simple reason that claim of the respondent before the Tribunal was not founded solely upon the dismissal of SLP by Hon'ble Supreme Court, but upon the consistent treatment extended to similarly situated counterparts of the respondent pursuant to judicial precedents, followed by government decisions. Therefore, we are unable to accept the submission of learned AAG that Tribunal has committed an apparent error of law in referring to the judgment of **Sham Paul Randhawa** because learned Tribunal considered the said judgment in the context of subsequent course of action adopted by the petitioners in extending the benefit to similarly circumstanced draftsmen.

19. Another contention urged by the petitioners is that learned Tribunal mechanically reproduced the reasoning contained in the judgment dated 03.10.2023 passed by the Srinagar Bench in O.A. No. 851 of 2021 without examining individual facts of the respondent's case.

20. It is true that a Tribunal is required to independently apply its mind to the facts of each case and cannot decide the matters mechanically merely by reproducing the reasoning of another case. However, the mere fact that Tribunal has substantially relied upon its earlier judgment does not, by itself, constitute an error warranting interference. In the present case, learned Tribunal noticed the rival pleadings, considered the Government Orders relied upon by the respondents and specifically recorded that respondent stood on an identical footing with the employees who had already been granted the benefits. It was on that basis that the Tribunal held that there was no justification for differential treatment.

21. On the issue of delay and laches, we find ourselves in agreement with the conclusion drawn by learned Tribunal that since respondent had been pursuing his grievance through various representations, the delay on the part of the petitioner-UT and its instrumentalities in responding the representations and extending similar benefit to the respondent cannot be attributed to him. Reliance placed by the petitioners on **Union of India v. Tarsem Singh; (2008) 8 SCC 648** is thus ill-founded, because the principles regarding arrears in belated service claims may be relevant while working out consequential monetary benefits, but they would not, by themselves, extinguish an otherwise established entitlement where the wrong is found to be continuing and the excuse of financial implications or burden on the public exchequer, in the circumstances of the case, would not be available to the Government.

22. We are conscious that matters of revised pay, pay fixation or equation of posts ordinarily fall within the exclusive domain of the executive and expert bodies. The present case, however, does not involve judicial determination of a new pay scale. The Tribunal has directed extension of a scale which had already been granted to similarly situated Draftsmen pursuant to judicial pronouncement on identical issues and consequent administrative actions.

23. Viewed from any angle, petitioners have not been able to establish before us any jurisdictional error or perversity in the approach adopted by learned Tribunal. The grounds raised in the present petition, though couched as errors of law apparent on the face of the record, essentially seek re-appreciation of the factual determination made by the Tribunal regarding the similarity of the respondent with other Draftsmen, who were similarly circumstanced. Such an

exercise is not permissible in the limited supervisory jurisdiction of this court under Articles 226 and 227 of the Constitution.

24. Having regard to the totality of the circumstances, we are of the considered view that impugned order propounded by the Tribunal does not suffer from any patent illegality, jurisdictional error, perversity or violation of the settled principles governing judicial review so as to warrant interference by this Court. Consequently, present writ petition is found to be devoid of merit, hence **dismissed**. The common order dated 11.07.2025 passed by learned Tribunal in O.A. Nos. 976/2024 and 1006/2024 qua the respondent is upheld and petitioners are directed to comply with the directions contained in the impugned order in accordance with law.

25. The connected application(s), if any, shall stand disposed of.

26. There shall be no order as to costs.

(Rajesh Sekhri)
Judge

(Sindhu Sharma)
Judge

Jammu
12.08.2026
Paramjeet

Whether the judgment is speaking: Yes/No
Whether the judgment is reportable: Yes/No