

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

RP No. 44/2024 in WP (C) No. 2502/2022

1. **Union of India, through**
Secretary Ministry of Defense,
1010-A South Block, New Delhi.
2. Managing Director General of Staff Duties,
SD-7 (ADM CIV), General Staff Branch,
Integrated Headquarter, MOD (Army),
Sena Bhawan, New Delhi.
3. Deputy Director, SD-7 (ADM CIV),
General Staff Branch, Integrated Headquarter,
MOD (Army), Sena Bhawan, New Delhi.
4. General Officer Commanding,
Headquarter Northern Command,
Udhampur, Jammu & Kashmir.
5. General Officer Commanding,
Headquarter 15 Corps,
B.B. Cantt, Srinagar.
6. General Officer Commanding,
Headquarter 31 Sub Area,
B.B. Cantt, Srinagar.
7. Station Commander, Station Headquarter,
Khrew, Pampore, District Pulwama.
8. Administrative Commandant,
Station Headquarter, Khrew, Pampore,
District Pulwama.

... Petitioner(s)

Through: -

Mr Tahir Majid Shamsi, DSGI with
Mr Faizan Ahmad Ganai, CGC.

V/s

1. **Mohammad Shafi Wani**
S/O Mohd Ramzan Wani
R/O Sharshali, Khrew,
Tehsil Pampore, District Pulwama.

... Contesting Respondent

2. Principal Collector of Défense Accounts,
(PCDA) (P), Draupatighat, Allahabad.

... Proforma Respondent

Through: -

M/S Shafqat Nazir and M. D. Bhat, Advocates for R-1.

Clubbed with:

CCP (S) No. 288/2024 in WP (C) No. 2502/2022

Mohammad Shafi, Age: 63 Years

S/O Mohammad Ramzan Wani

R/O Sharshali, Khrew,

Tehsil Pampore, District Pulwama

... Petitioner(s)

Through: -

M/S Shafqat Nazir and M. D. Bhat, Advocates.

V/s

1. **Dr. Renuka Tyagi,**
Director General of Staff Duties,
SD-7 (ADM CIV), General Staff Branch,
Integrated Headquarter, MOD (Army),
Sena Bhawan, New Delhi.
2. CR Biswal,
Deputy Director, SD-7 (ADM CIV),
General Staff Branch,
Integrated Headquarter, MOD (Army),
Sena Bhawan, New Delhi.
3. Colonel Vikram J Meloor,
Station Commander,
Station Headquarter, Khrew,
Pampore, District Pulwama.
4. Colonel Kesu Prasad Nair,
Administrative Commandant,
Station Headquarter, Khrew,
Pampore, District Pulwama.

... Respondents

Through: -

Mr Tahir Majid Shamsi, DSGI with
Mr Faizan Majeed Ganai, CGC.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

RP No. 44/2024 in WP (C) No. 2502/2022:

01. Through the medium of the present Review Petition, the Petitioners-Union of India & Others, who were Respondents in Writ Petition-WP (C) No. 2502/2022 filed by the Writ Petitioner (Respondent No.1 herein), seek review of Judgment dated 8th of May, 2024 passed by this Court in the aforesaid WP (C) No. 2502/2022, whereby, while allowing the Writ Petition, this Court quashed the impugned communications dated 15th of June, 2022, 30th of September, 2022 and 7th of October, 2022, besides, directed the Respondents therein (Petitioners herein) to release the pensionary benefits in favour of the Writ Petitioner (Respondent No.1 herein), including gratuity against the post of Sanitary Inspector lastly held by him, before attaining the age of superannuation.

02. Pursuant to notice, the contesting Respondent No.1, in his Reply to the Review Petition, pleaded that he came to be promoted to the post of General Supervisor vide Order dated 8th of May, 1998, whereafter, he was considered for promotion to the post of Sanitary Inspector, which post was created in terms of Order No. 18010/5/Addl/GS(SD)(I) dated 7th of July, 2001; that, pursuant to the creation of the aforesaid post of Sanitary Inspector, Order dated 27th of September, 2001 was issued by the Competent Authority, whereby the Respondent No.1 came to be promoted to the post of Sanitary Inspector w.e.f. 13th of September, 2001, on which post he is stated to have attained the age of superannuation on 31st of March, 2022.

03. The Respondent No.1 has further stated that upon his superannuation, he submitted his documents for the grant and release of pensionary benefits in his favour, however, on account of digitalization of various services since August, 2021, he could not upload his necessary

details and documents for the release and grant of pensionary benefits on the digital database portal, commonly known as “SPARASH”; that, therefore, the Respondent No.1 claims to have approached the Petitioners herein, with a request underlining the difficulties faced by him in uploading his necessary details, as aforesaid; that the data sheet and other relevant documents were approved by the Concerned Controller of Defense Accounts, Srinagar, but, while uploading the details on the Project “SPARASH”, the Respondent No.1 was not able to access the same, inasmuch as, the post of Sanitary Inspector was not available in the category of “POST LAST HELD” and Cadre on the “SPARASH” Portal, as such, the Respondent No.1 was, accordingly, informed that the said difficulty is faced on account of the non-existence of the post of Sanitary Inspector on the “SPARASH” Portal; that the Respondent No.1, accordingly, took steps to submit all the requisite and necessary details in terms of which he was promoted to the post of Sanitary Inspector by the Petitioners herein, however, instead of rectifying the error on the portal or accepting the documents, the Petitioners herein sought conduct of review DPC for promotion of the Respondent No.1 to the post of Sanitary Supervisor and recovery of the alleged additional pay grade drawn by him, despite strong recommendations of competent authority in favour of the Respondent No.1.

04. Mr Tahir Majid Shamsi, the learned Deputy Solicitor General of India (DSGI), appearing for the Petitioners-Union of India and Others, submits that this Court has granted the relief of release of pensionary benefits in favour of the Writ Petitioner (Respondent No.1 herein) on the basis of parity with one Ashok Kumar, as observed by this Court in Paragraph No.15 of the Judgment under review, who as per the contention of the Writ Petitioner was holding the post of Sanitary Inspector in HQ 71 Sub Area Station Headquarters and, having superannuated in the year 2021, was receiving pensionary benefits on the said post. In this behalf, Mr

Shamsi would submit that the aforesaid observation made by this Court in the Judgment under review is, in fact, contrary to the factual position, inasmuch as, the said Shri Ashok Kumar, whose name was referred by the Writ Petitioner during the course of hearing of the Writ Petition, has since been reverted back to the post of General Supervisor from the post of Sanitary Inspector and, on his superannuation, is receiving pensionary benefits in relation to the post of General Supervisor only and not for the post of Sanitary Inspector. He further submits that six other employees who were promoted to the post of Sanitary Inspector have also been reverted back to the post of General Supervisor by conducting review DPC and that their cases now stand settled.

05. Learned Deputy Solicitor General of India (DSGI) further argued that there was no sanctioned post of Sanitary Inspector with the Review Petitioners, as there was only a proposal from the Northern Command for creation of this post, nevertheless, the Army Headquarters, which was the competent authority, had not sanctioned the same; that some of the officials, including the said Ashok Kumar and the Respondent-Writ Petitioner, had been wrongly promoted and placed against a non-existent post without any legal sanction, as such, in Review DPCs, they were reverted back to the post of General Supervisor; that Shri Ashok Kumar, after his superannuation, was also ordered to be reverted back on 27th of April, 2023 and the Respondent-Writ Petitioner has also been reverted back from the post of Sanitary Inspector to General Supervisor with the issuance of DOPT-II Order No. 50/Civ/2023 on 28th of April, 2023, therefore, granting pensionary benefits to the Writ Petitioner with respect to a non-authorized post of Sanitary Inspector is not permissible. In order to buttress his contention, the learned Deputy Solicitor General of India has produced copy of Order dated 28th of April, 2023 before this Court, in terms whereof, Shri Ashok Kumar, Sanitary Inspector, ex-employee of HQ 71 Sub Area (Stn HQ Cell) C/O 56 APO, has been reverted back to the post of General

Supervisor with pay band of Rs. 9,300-34,800, with Grade Pay of Rs.4,600/-, Pay Level-7, w.e.f. 23rd of November, 2002. A copy of said Order, as produced by Mr Shamsi, is taken on record.

06. Learned Counsel appearing for the Respondent-Writ Petitioner submits that pursuant to the creation of the post of Sanitary Inspector, the Respondent No.1 came to be promoted to the post of Sanitary Inspector w.e.f. 13th of September, 2001 vide Order dated 27th of September, 2001 issued by the Competent Authority and that the Respondent No.1, at the time of attaining the age of superannuation on 31st of March, 2022, was holding the said post of Sanitary Inspector, as such, he is entitled to get the pensionary amount on the basis of the said post, as has been held by this Court in terms of the Judgment under review.

07. Having heard the learned Counsel for the parties and after going through the pleadings available on record, including the Writ Court record, coupled with the perusal of the aforesaid Order dated 28th of April, 2022 as produced by Mr Shamsi, this Court is of the considered opinion that there appears to be merit and substance in the submission of Mr Shamsi to the extent that the ground of parity, urged by the Writ Petitioner in his Petition with Shri Ashok Kumar in the matter of his pensionary benefits was not available to him. This Court, while accepting the contention of the Writ Petitioner *qua* parity with Shri Ashok Kumar in the matter of release of pensionary benefits, as raised in the Writ Petition, directed the Respondents in the Writ Petition (Petitioners herein) to grant pensionary benefits in favour of the Writ Petitioner (Respondent No.1 herein), including gratuity on the basis of post of Sanitary Inspector. However, having said so, it is equally important to note that the Order dated 28th of April, 2023, whereby the said Shri Ashok Kumar was reverted back to the post of General Supervisor, w.e.f. 23rd of November, 2002, was not brought to the notice of this Court during the pendency of the Writ Petition by either

of the parties, more particularly the Respondents in the Writ Petition (Petitioners herein), who had also been reverted back.

08. In view of the fact that Shri Ashok Kumar, on the basis of which the Writ Petitioner had claimed parity for purpose of release of pensionary benefits on the post of Sanitary Inspector, having been reverted back to the post of General Supervisor, vide Order dated 28th of April, 2023 w.e.f. the date he was promoted as Sanitary Inspector; that the Respondent No.1-Mohammad Shafi Wani had also been reverted back on 23rd of April, 2023, the instant Review Petition is **allowed** and the Judgment dated 8th of May, 2024 passed in WP (C) No. 2502/2022 shall stand modified to the limited extent of directing the Respondents therein (Petitioners herein) to release the pensionary benefits in favour of the Petitioner therein (Respondent No.1 herein), including gratuity, on the basis of last pay drawn by him, regardless of the post held, before attaining the age of superannuation.

09. Review Petition is, thus, **disposed** of on the above terms.

10. This Order shall be read in continuation to Judgment dated 8th of May, 2024 passed in WP (C) No. 2502/2022 and shall form part thereof.

CCP (S) No. 288/2024:

11. In view of disposal of Review Petition bearing RP No. 44/2024, hereinabove, this Contempt Petition shall stand **disposed** of with a direction to the Respondents to comply with the directions passed by this Court in terms of Judgment dated 8th of May, 2024 in WP (C) No. 2502/2022 read with Order passed today in RP No. 44/2024, hereinabove, expeditiously, preferably within a period of two months from the date of receipt of copy of this Order. In the event, the Petitioner is still dissatisfied with respect to the implementation of the Judgment dated 8th of May, 2024

read with Order passed today, he shall be at liberty to approach this Court again in appropriate proceedings.

12. **Disposed of.**

13. Copy of this Order be placed across both these files.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
June 4th, 2026
"TAHIR"

