Serial No. 86
Supplementary Cause List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

(Through Virtual Mode)

WP(C) No. 3472/2026

UT Of J And K Th Commissioner Secretary To Government Home Department And Others **…Appellant/Petitioner(s)**

Through: Ms. Monika Kohli, Sr. AAG with Ms. Priyanka Bhat, Advocate.

Vs.

Surinder Kumar **...Respondent(s)**

Through:

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

ORDER
31.10.2026

1. Impugned in this petition filed by the Union Territory of Jammu and Kashmir under Article 226 of the Constitution of India is an order and judgment dated 9th of April 2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu [('the Tribunal')] in TA No. 6322 of 2021 (SWP No. 25 of 2012), whereby the Tribunal has, while allowing the OA of the respondent, quashed Order No. 09 of 2012, by which the respondent was demoted from the post of Head Constable to the post of Selection Grade Constable.

2. The impugned judgment is challenged by the petitioners primarily on the ground that the Tribunal failed to appreciate that the order dated 5th of January 2012, impugned before the

Tribunal, was passed only to rectify a bona fide and inadvertent mistake, and therefore, the respondent being the beneficiary of the error was not entitled to be heard.

3. Before we appreciate the submissions made by the learned counsel for the petitioners, we deem it appropriate to set out a few facts as are relevant to the disposal of this petition. The respondent was promoted as Head Constable from the post of Selection Grade Constable in the year 1999. He continued as such till 5th of January 2012, when the petitioners, without any notice to the respondent, rescinded his promotion as Head Constable earned by him in the year 1999.

4. The order dated 5th of January 2012, whereby the respondent was demoted, was called in question by the respondent in SWP No. 25 of 2012 filed before this Court. The writ petition was later transferred to the Tribunal and was registered as TA No. 6322 of 2021. It also comes out from the record that when this Court entertained SWP No. 25 of 2012, it had stayed the operation of Order No. 09 of 2012.

5. This petition, on its transfer before the Tribunal, was contested by the petitioners herein by submitting that the order dated 5th of January 2012 was passed only to correct an inadvertent error committed while promoting the respondent from the post of Selection Grade Constable to Head Constable, and therefore, the same was rectified as and when it came to the notice of the petitioners.

6. The Tribunal, having given consideration to the rival contentions and the material on record, came to the conclusion that the order dated 5th of January 2012 had been passed in breach of the principles of natural justice, in that no opportunity of being heard was ever given to the respondent. The Tribunal thus quashed the order dated 5th of January 2012 and directed the petitioners herein to allow the respondent to function as Head Constable and grant him all consequential benefits by treating his promotion ordered vide order dated 7th of May 1999 as intact.

7. Having heard learned counsel for the parties and perused the material on record, there is no dispute with regard to the fact that a regular promotion was granted to the respondent by the competent authority vide Order No. ZPHQ-J No. 139 of 1999 dated 7th of May 1999. It is not the case of the petitioners that the said promotion was earned by the respondent by committing any fraud or through any manipulation or misrepresentation. As a matter of fact, similar promotions were granted to a few others who, too, had not undergone the requisite departmental training prior to their promotion as Head Constable.

8. Be that as it may, the promotion remained in operation, and the respondent continued to perform the duties of Head Constable till it was allegedly detected by the petitioners that the

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promotion of the respondent was not in accordance with law and had been granted inadvertently in the year 1999.

9. It is true that if a promotion is granted to an employee by sheer mistake or oversight, the same can be withdrawn. However, the correction of the mistake has to be immediate and without unnecessary loss of time. In the instant case, the promotion remained in operation for more than 13 years. In case the petitioners were of the view that the promotion was *dehors* the rules and had been granted to the respondent inadvertently, the least that was required of the petitioners was to put the respondent on show-cause notice and give him an opportunity to put forth his explanation and point of view.

10.Strictly speaking, the order dated 5th of January 2012, which was challenged before the Tribunal, was an order reducing the respondent in rank, and therefore, amounted to a major penalty. Needless to say, a major penalty cannot be imposed unless a regular departmental inquiry is conducted in consonance with the principles enshrined in Article 311 of the Constitution of India and the applicable service rules. In the instant case, not even a notice was issued to the respondent before withdrawing his promotion, which he had been enjoying for more than 13 years.

11.The Tribunal has also noted that because of the intervention made by this Court, the order dated 5th of January 2012 remained in abeyance, and therefore, the respondent had been

working as Head Constable ever since his promotion, that is, with effect from 7th of May 1999 till today. Viewed from any angle, we do not find any infirmity in the view taken by the Tribunal.

12.It has also come to our notice that the respondent has since retired from service, in that situation, no fresh inquiry would even be called for or envisaged in the matter.

13.For the foregoing reasons, we find no merit in this petition; the same is accordingly ***dismissed.***

(M A CHOWDHARY)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
31.10.2026
"Shaista-PS"

