

(2025) 12 CAT CK 1272

Central Administrative Tribunal

Case No: Transfer Application No. 262 Of 2022

Yogeshwar Sharma

APPELLANT

Vs

Commissioner/ Secretary To
Government, Finance
Department, J&K Government,
Civil Secretariat, Jammu & Ors

RESPONDENT

Date of Decision: Dec. 29, 2025

Acts Referred:

- Jammu And Kashmir Classification, Control And Appeal Rules, 1956 - Rule 24

Hon'ble Judges: Rajinder Singh Dogra, Member (J); Ram Mohan Johri, Member (A)

Bench: Division Bench

Advocate: Anuj Dewan Raina, Rajesh Thappa, Sudesh Magotra

Final Decision: Partly Allowed

Judgement

Rajinder Singh Dogra, Member J

1. The SWP /WPC/2770/2016 was transferred from the Honble High Court of Jammu & Kashmir at Jammu and was registered as T.A No.262/2022 by the Registry of this Tribunal.

2. The present matter was filed before the Honble High Court seeking following relief: -

PRAYER:

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

a) Issue writ in the nature of Certiorari quashing Govt order No57-F of 2016 dated 29-02-2016, issued by the respondents whereby the date of regularization of the petitioner against the post Junior Scale Accounts Officer

has been reflected as 21-10-2011 instead of reckoning the date as 27-07-2010 i.e. from the date the petitioner is discharging his duties as Junior Scale Accounts Officer.

b) Issue writ in the nature of Certiorari seeking quashment of the seniority list of the post of Accounts Officer working in the J&K Accounts Gazetted Service, as it stood on 01-01-2015, issued vide Govt. order No 24-F of 2015 dated 04-02-2015, to the extent to reckon the private respondent figuring at Si No 66 to 161 over and above the petitioner.

c) Issue writ in the nature of Mandamus commanding the respondents to place the petitioner over S.No. 66 and below 65 at its appropriate place by reckoning the date of placement as Junior Scale Accounts Officer w.e.f. 27-07-2010 in the seniority list as it stood on 01-01-2015, issued vide Govt Order No24 -F of 2015 dated 04-02-2015.

d) Issue writ in the nature of Mandamus commanding the respondents to regularize the services of the petitioner as Junior Scale Accounts Officer we.f. 27-07-2010 in place of 21-10-2011.

e) Issue writ in the nature of Mandamus commanding the respondent authorities to promote the petitioner as Chief Accounts Officer at par with the junior counter part employees i.e. the private respondents herein.

f) Pass such other appropriate order as facts of the case demand and this Hon'ble Court may deem just and proper.

3. The facts of the case as pleaded by the petitioner in his pleadings are as follows: -

a) The applicant, Yogeshwar Sharma, is a permanent resident of the Union Territory of Jammu and Kashmir and a serving employee of the Finance Department, J&K Government. He entered government service in the year 1981 as an Accounts Assistant and, over the years, served in different departments and offices of the State. On account of his experience and seniority, he was promoted as Assistant Accounts Officer on 20.07.1999 and continued to discharge duties in the said capacity for more than a decade.

b) On 27.07.2010, the applicant was placed as In-charge Junior Scale Accounts Officer vide Government Order No. 216-F of 2010 and was posted in the Directorate of Audit and Inspections. According to the applicant, his placement was against an available vacancy and he was fully eligible for promotion under the applicable recruitment rules, having rendered more than seven years of service, including the requisite period in the feeder cadre.

c) The applicant asserts that as per SRO-210 of 1994, the cadre of Junior Scale Accounts Officers is to be filled in the ratio of 50:50 between promotees and direct recruits. Being a promotee falling within the promotional quota and fulfilling all

eligibility conditions, he claims a vested right to be regularized from the date he assumed charge as Junior Scale Accounts Officer, i.e., 27.07.2010.

d) However, the respondents issued Government Order No. 57-F of 2016 dated 29.02.2016, whereby the services of the applicant were regularized as Junior Scale Accounts Officer with effect from 21.10.2011 instead of the earlier date of placement. The applicant contends that this delayed regularization has caused serious prejudice to him, as several private respondents, who were appointed later through direct recruitment under the Combined Competitive Examination (KAS), have been placed above him in the seniority list.

e) The grievance of the applicant is further aggravated by the issuance of the seniority list of Accounts Officers as on 01.01.2015, wherein the private respondents, appointed in 2011, have been placed above the applicant, despite his earlier placement on In-charge basis in 2010. The applicant asserts that this has adversely affected his chances of promotion to the post of Chief Accounts Officer, particularly when some of his juniors have already been promoted on In-charge basis.

f) The applicant submits that the delay in his regularization is wholly attributable to the respondents and that he cannot be made to suffer for administrative inaction. He relies upon settled principles of service jurisprudence, including the law laid down in **Suraj Prakash v. State of J&K**, to contend that in-charge or stop-gap service rendered beyond six months against a promotional vacancy cannot be treated as non-est and is liable to be regularized from the date of initial placement, subject to eligibility and quota.

g) On these premises, the applicant seeks quashing of the impugned Government Order dated 29.02.2016 to the extent it fixes his date of regularization as 21.10.2011, seeks correction of the seniority list, and prays for consequential benefits including promotion to the post of Chief Accounts Officer.

4. The respondents have filed their reply statement wherein they have averred as follows: -

a) The respondents have filed a joint reply opposing the Transfer Application and have submitted that the applicant has no legally enforceable right to claim retrospective regularization from the date of his placement as In-charge Junior Scale Accounts Officer. It is stated that no constitutional or statutory right of the applicant has been violated and the application is misconceived and liable to be dismissed.

b) The respondents submit that Government Order No. 57-F of 2016 dated 29.02.2016 has been issued strictly in accordance with the applicable recruitment rules and service jurisprudence. Mere placement on In-charge or stop-gap basis does not confer any vested right of regularization or seniority. The applicants adjustment vide Government Order No. 216-F of 2010 was purely temporary, stop-gap in nature, and expressly subject to reversion upon availability of

candidates under the direct recruitment quota.

c) It is further stated that under the recruitment rules governing the Jammu and Kashmir Accounts (Gazetted) Service, the post of Junior Scale Accounts Officer is required to be filled 50% by promotion and 50% by direct recruitment. Eligibility alone does not create a right to promotion unless a vacancy exists within the promotional quota. The applicant was not adjusted against a vacancy earmarked for promotion in 2010, and therefore cannot claim regularization from that date.

d) The respondents contend that the applicant was regularized w.e.f. 21.10.2011 after availability of a promotional vacancy and after following the prescribed procedure. Thus, no delay or arbitrariness can be attributed to the department. The seniority list issued thereafter has been prepared strictly in accordance with rules, and the private respondents, having been appointed through direct recruitment, have rightly been placed above the applicant.

e) It is specifically denied that the applicant is senior to respondent Nos. 5 to 99 or that his promotion prospects have been illegally curtailed. The respondents submit that the applicant cannot claim parity with direct recruits or seek retrospective regularization against vacancies not meant for promotion. Reliance placed by the applicant on **Suraj Prakash v. State of J&K** is misconceived, as the said judgment itself recognizes the primacy of quota and eligibility and does not support regularization against posts earmarked for direct recruitment.

f) The respondents further submit that there is no violation of Rule 24 of the J&K Classification, Control and Appeal Rules, 1956, nor has the applicant been subjected to any discrimination or harassment. The application is based on an erroneous interpretation of the in-charge arrangement order and seeks benefits beyond what is permissible under law.

g) In view of the above submissions, the respondents pray that the Transfer Application be dismissed as being devoid of merit.

5. Heard learned counsel for the parties and perused the material available on record.

6. The present Transfer Application has its genesis in SWP/WPC No. 2770/2016, which stood transferred to this Tribunal and registered as T.A. No. 262/2022. The applicant assails Government Order No. 57-F of 2016 dated 29.02.2016 to the extent it regularizes him as Junior Scale Accounts Officer w.e.f. 21.10.2011 and not from 27.07.2010, the date from which he was placed and made to discharge duties as In-charge Junior Scale Accounts Officer. He also questions the consequential seniority list position, and seeks promotion benefits.

7. The admitted factual position emerging from the pleadings is that the applicant entered service decades back as Accounts Assistant, earned promotion as Assistant Accounts Officer on 20.07.1999, and continued in the feeder stream. Vide

Government Order No. 216-F of 2010 dated 27.07.2010, the applicant was placed as In-charge Junior Scale Accounts Officer and posted in the Directorate of Audit and Inspections. Thereafter, by Government Order No. 57-F of 2016 dated 29.02.2016, his regularization as Junior Scale Accounts Officer was ordered w.e.f. 21.10.2011. The applicants grievance is that although he discharged higher duties since 27.07.2010, the later date of regularization caused him loss of seniority vis-à-vis direct recruits/private respondents and impaired his promotional prospects, particularly when one post is stated to have been kept reserved by the Honble High Court.

8. The respondents, on the other hand, maintain that the applicants placement in 2010 was purely stop-gap/in-charge, expressly subject to reversion on availability of direct recruits, and did not confer any right to retrospective regularization or seniority. They further contend that the cadre is governed by a 50:50 quota between promotees and direct recruits and that the applicant could be regularized only upon availability of a vacancy within the promotional quota, which according to them arose on 21.10.2011.

9. From the pleadings and submissions, the determinative questions are:

- Whether the applicant is entitled to a direction to shift his date of **regularization/seniority** as Junior Scale Accounts Officer from 21.10.2011 to 27.07.2010; and
- If not, whether he is at least entitled to **pensionary benefits attributable to the period he actually discharged higher duties as In-charge Junior Scale Accounts Officer w.e.f. 27.07.2010**, without unsettling the seniority of direct recruits/private respondents and without disturbing appointments already made.

10. It is well settled in service jurisprudence that an in-charge/stop-gap arrangement does not, by itself, ripen into a vested right to claim regular appointment or seniority from the date of such arrangement, particularly where recruitment rules prescribe quota/rota between channels. The respondents have specifically pleaded that the applicants in-charge adjustment was made subject to reversion on availability of direct recruits and that it was not against a vacancy earmarked for promotion quota. In such circumstances, a blanket command to antedate regularization and re-draw seniority against the direct recruits would have a cascading civil consequence on a large number of incumbents, many of whom are not only private respondents but are also borne on the cadre through a separate channel. The Tribunal, therefore, is required to balance individual equity with cadre stability.

11. At the same time, the record also discloses an equally important and undisputed facet: the applicant was **made to discharge the duties** of the higher post from 27.07.2010 onwards under orders of the competent authority. When the administration extracts work of a higher post for a substantial period under an official order, elementary fairness in service law requires that such period cannot be treated as a complete nullity for all purposes. Even where seniority/regularization cannot be antedated due to quota constraints, the employee cannot be denied the legitimate financial and retiral consequences attached to the pay he actually drew/was entitled to draw for duties actually performed, subject of course to the limits imposed by rules and principles governing officiating arrangements.

12. In the facts of this case, such a limited relief is both workable and just. It preserves the cadre structure and the placement of direct recruits/private respondents, while remedying the inequity of depriving the applicant of retiral consequences of a period during which he actually manned a higher responsibility under a valid governmental order.

13. As regards the submission that **one post was kept reserved by the Honble High Court vide order dated 22.12.2016**, the Tribunal notes that the existence of such reservation, by itself, cannot automatically translate into a direction to appoint/promote the applicant against it, unless the record clearly establishes that the reserved post pertains to the same cadre/post, that the applicant falls within the zone of consideration against that reserved vacancy, and that no superior claimant exists as per rules. The present record, as placed, is insufficient for issuing a final mandamus of promotion/appointment against the reserved post.

14. In view of the above discussion, this Transfer Application is **partly allowed** to the limited extent indicated below, and is otherwise disposed of:

a) The date of regularization of the applicant as Junior Scale Accounts Officer **shall remain** as reflected in Government Order No. 57-F of 2016 dated 29.02.2016 (i.e., w.e.f. 21.10.2011), and the seniority position of direct recruits/private respondents **shall not be disturbed** on the basis of the present order.

b) However, for the purposes of **pensionary/retiral benefits**, the respondents are directed to treat the period w.e.f. **27.07.2010** (the date on which the applicant was placed and made to discharge duties as In-charge Junior Scale Accounts Officer) till **21.10.2011** as **officiating/in-charge service on the higher post** and to grant the applicant the corresponding **pensionary benefits only** flowing from such officiation, strictly in accordance with the applicable rules governing pay, qualifying emoluments and pension fixation.

c) The respondents shall, accordingly, **re-compute and revise** the pensionary benefits of the applicant (including pension/family pension where applicable, gratuity and other admissible retiral components linked with qualifying emoluments), by taking into account the above in-charge/officiating period for the

limited purpose stated.

d) The above exercise shall be completed within a period of **12 weeks** from the date of receipt of a copy of this order.

e) It is clarified that this order does not direct re-drawing of the seniority list, **does not** confer any right to retrospective regularization/seniority from 27.07.2010, and does not affect the appointments/promotions of private respondents or any action taken on the basis of existing seniority lists.

15. No order as to costs.