

(2025) 12 CAT CK 1273

Central Administrative Tribunal

Case No: Transfer Application No. 6162 Of 2021

Yash Paul

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision: Dec. 29, 2025

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16, 226

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

Bench: Division Bench

Advocate: Sudershan Sharma, Rajesh Thapa

Final Decision: Allowed

Judgement

Rajinder Singh Dogra, Member J

1. The SWP No.566/2016 was transferred from the Honble High Court of Jammu & Kashmir at Jammu and was registered as T.A No.6162/2021 by the Registry of this Tribunal.

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

a) For issuance of an appropriate writ, order or direction in the nature of writ of certiorari for quashing the Govt. Order No.05-Home (Jail) of 2014 dated 3.1.2014 issued by respondent No.1, whereby, the case of the petitioner seeking regularization against the post of Dental Technician retrospectively from the date the petitioner has been promoted on the said post in his own pay and grade, alongwith all the consequential benefits flowing out of the same, has been rejected, which is patently unjustified, arbitrary and against the mandate of the judgment passed by this Hon'ble Court in SWP No.829/2012 filed by the petitioner.

b) For issuance of an appropriate writ, order or direction in the nature of writ of mandamus whereby directing the respondents to regularize the services of the petitioner as Dental Technician retrospectively from the date the petitioner is working on the said post in his own pay and grade alongwith all the consequential benefits flowing out of the same, on the same analogy as has been adopted in the cases of the private respondents.

c) For issuance of any other writ, order or direction which this Hon'ble Court may deems fit in the facts and circumstances of the case may please also be issued in favour of the petitioner and against the respondents.

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

a) The present Transfer Application arises out of SWP No. 566/2016, which was originally filed before the Honble High Court of Jammu & Kashmir and, upon transfer, has been registered as T.A. No. 6162/2021 before this Tribunal

b) The applicant, a permanent resident of the erstwhile State of Jammu & Kashmir and belonging to the Scheduled Caste category, was appointed as a Nursing Orderly in the Prison Department on 09.01.1984 after having successfully competed in the selection process. He continued to discharge his duties satisfactorily and without any adverse remark.

c) In the year 1999, the applicant was deputed by the department for undergoing Dental Assistant Training Course at AMT School, Jammu, vide Order dated 02.06.1999. Pursuant thereto, the applicant successfully completed the said training in April, 2001 and was awarded the requisite Diploma.

d) Upon completion of the training, the applicant resumed duties and was promoted vide Order No. 910 of 2002 dated 11.12.2002 as Dental Technician in his own pay and grade against a vacant post, subject to confirmation by the Departmental Promotion Committee. It is specifically pleaded that one post of Dental Technician was transferred from Central Jail, Srinagar to District Jail, Jammu, for facilitating the posting of the applicant. Despite this, the applicant was never granted the pay and grade attached to the post of Dental Technician, though he continued to discharge duties of that post continuously since 2002 in District Jail Ambphalla, Kot Bhalwal Jail, and other prison institutions.

e) It is further pleaded that the applicant remained the only trained Dental Technician available in the concerned jails for more than a decade and his performance was consistently appreciated. His posting and duties as Dental Technician were reflected in official duty rosters and service records.

f) The applicant asserts that two posts of Dental Technician were available one at Jammu and one at Srinagar but despite repeated Departmental Promotion Committees having been convened, his services were not regularized. Aggrieved, he approached the Honble High Court by filing SWP No. 829/2012 seeking release of

the pay scale attached to the post of Dental Technician. The said writ petition was disposed of on 03.12.2013 with a direction to the respondents to consider his case in light of their own reply.

g) Despite service of the said order, the respondents failed to comply, compelling the applicant to file a contempt petition. Thereafter, the Home Department passed Government Order No. 05-Home (Jail) of 2014 dated 03.01.2014 rejecting the applicants claim for regularization, which order was supplied to him only in October, 2015. The applicant assails the said order as arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution, particularly in view of similarly situated private respondents having been granted promotions and higher placements despite comparable qualifications and service backgrounds.

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

a) The respondents have filed a detailed reply opposing the Transfer Application and have contended that the applicant has not suffered violation of any fundamental, statutory, or legal right warranting interference under Article 226 of the Constitution of India.

b) It is submitted that although two posts of Dental Technician exist in the Prison Department, no Recruitment Rules have been framed governing these posts. In the absence of such rules, no promotion or regularization could legally be effected. It is further stated that, even by adopting the Recruitment Rules applicable to the Health Department by analogy, the post of Dental Technician is to be filled 100% by direct recruitment, and not by promotion.

c) The respondents admit that the applicant was deputed for Dental Technician training in 1999 and that, upon completion of the course, he was placed as Dental Technician in his own pay and grade vide Order dated 11.12.2002. However, it is contended that such placement was not backed by the Jammu & Kashmir Jail (Subordinate) Service Recruitment Rules, 1985, and therefore could not be confirmed by the Departmental Promotion Committee.

d) It is further averred that the applicants nomination for training was made without adopting any formal selection criteria and that his placement as Dental Technician was merely a temporary arrangement, subject to confirmation. Since the existing rules did not provide any channel for promotion of Nursing Orderlies to the post of Dental Technician, the applicants claim could not be legally sustained.

e) The respondents further submit that the department has already initiated the process of framing revised Recruitment Rules, wherein a promotional avenue has been proposed for Nursing Orderlies possessing requisite qualifications and experience. It is asserted that once the revised rules are finalized, the case of the applicant shall be considered strictly in accordance with merit and seniority.

f) With respect to the applicants reliance on cases of private respondents, it is stated that any earlier adjustments or promotions made in deviation of rules cannot constitute a precedent or confer an enforceable right upon the applicant. The impugned Government Order dated 03.01.2014 is stated to have been issued after due consideration and in compliance with the directions issued by the Honble High Court.

g) The respondents, therefore, pray that the Transfer Application being devoid of merit and based on an unsustainable claim for regularization in absence of statutory rules, be dismissed with costs.

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

6. The present Transfer Application has arisen out of SWP No. 566/2016, which stood transferred from the Honble High Court of Jammu & Kashmir and has been registered as T.A. No. 6162/2021 before this Tribunal.

7. The applicant was appointed as **Nursing Orderly** in the Prison Department on **09.01.1984**. Thereafter, he was deputed for **Dental Assistant/Dental Technician training** in the year 1999, successfully completed the course in **April, 2001**, and on that basis, the competent authority issued **Order No. 910 of 2002 dated 11.12.2002**, placing/ promoting him as **Dental Technician** in his own pay and grade against a vacant post, subject to confirmation by the DPC.

8. The applicant has pleaded that despite being made to continuously discharge duties of Dental Technician for years, and despite availability of posts/vacancies, the pay/benefits attached to the post were not extended to him, and his regularization/confirmation was denied, culminating in **Govt. Order No. 05-Home (Jail) of 2014 dated 03.01.2014** rejecting his claim.

9. The respondents, while not disputing that the applicant was placed as Dental Technician vide Order dated 11.12.2002, have taken the stand that the same could not be confirmed as the J&K Jail (Subordinate) Service Recruitment Rules, 1985 did not provide a channel for promotion of Nursing Orderlies to Dental Technician, and further that Recruitment Rules for the post were not framed; they also pleaded that revised rules were under process and the applicant would be considered as and when rules are finalized.

10. The controversy, in substance, is whether after the applicant has been placed/working as Dental Technician for a long period and **the DPC has now approved his case**, the respondents can still withhold issuance of the consequential formal order and service benefits on the plea of departmental delay/administrative formalities.

11. At the outset, it is evident from the record that the applicant was deputed for training by the department itself and thereafter placed as Dental Technician against

a vacant post vide Order dated 11.12.2002, with the arrangement being subject to DPC confirmation. The respondents principal justification for non-confirmation earlier was the absence of an express promotional provision in the 1985 Rules and the alleged non-framing of recruitment rules for the post.

12. However, the position placed before this Tribunal is that **the DPC has already approved the applicants case** and only the **intending department** is required to issue the consequential order. Once that stage is reached, what remains is not an adjudicatory or discretionary exercise but a **ministerial act**issuance of the formal order giving effect to the DPC recommendation and extending consequential service benefits as per rules.

13. Administrative delay cannot be used as a tool to defeat an accrued service benefit, particularly where (i) the employee has been made to work on the higher post for a long period, (ii) the employer itself deputed him for the requisite training and utilized his services thereafter, and (iii) the competent mechanism (DPC) has already returned a positive recommendation. The State cannot be permitted to take advantage of its own inaction, especially where the employee is not at fault.

14. The respondents plea that **rules are under process** and that the applicant **will be considered as and when revised rules are finalized** cannot now survive once the respondents themselves state that **DPC approval has been accorded**.

15. If the department has taken a considered view through the DPC process and approved the applicants case, withholding the consequential order thereafter becomes arbitrary and directly offends the mandate of fairness in public employment.

16. The impugned Government Order rejecting the claim proceeds on a reasoning of non-permissibility **under rules**. In the present situation, with the DPC approval having been obtained, the continued denial of confirmation/regularization and benefits is rendered unsustainable. The impugned order, therefore, cannot be allowed to operate to the prejudice of the applicant once the competent process has culminated in approval and only the consequential issuance remains.

17. This Tribunal is conscious that service benefits are to be regulated by rules. At the same time, where the employer itself has (a) deputed an employee for training, (b) placed him on the post, (c) extracted work for years, and thereafter (d) approved his case through DPC, the respondents cannot lawfully keep the matter in limbo indefinitely. Such an approach would amount to unfair labour practice in substance and arbitrary State action in form.

18. In view of the above, the Transfer Application is **allowed**, and the following directions are issued:

a) The impugned **Govt. Order No. 05-Home (Jail) of 2014 dated 03.01.2014**, to the extent it rejects/declines the applicants claim, is **quashed**.

b) The respondent-department shall **issue the formal order** giving effect to the **DPC approval** in favour of the applicant for the post of Dental Technician, against the available vacancy, within a period of **12 weeks** from the date of receipt of a certified copy of this order.

c) On issuance of the said order, the applicant shall be granted **all consequential service benefits**, including **fixation of pay** in the applicable scale of Dental Technician and recalculation of further consequential benefits.

19. No order as to costs.