

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 373/2026
CM No. 875/2026
Caveat No. 3010/2025

Reserved on: 07.04.2026
Pronounced on: 16.04.2026
Uploaded on: 16.04.2026
Whether the operative part or full judgment is pronounced:

1. State (Now Union Territory) of Jammu & Kashmir through Commissioner-cum-Secretary, Power Development Department, Civil Secretariat, Jammu/Srinagar. Petitioner(s)
2. Development Commissioner (Power) J&K, Power House Janipur, Jammu.
3. Chief Engineer, EM&RE Wing (Now JPDCL), Canal Power House Canal Road, Jammu.
4. Superintending Engineer, EM&RE Wing Circle-I, Jammu.
5. Executive Engineer, EM&RE Division-II Jammu.
6. J&K Services Selection Board, through its Chairman, Shehkari Bhawan, Rail Head Complex, Jammu.

Through:- Mr. Raman Sharma, AAG with Ms. Saliqa Sheikh, Assisting Counsel

Vs.

Raghu Singh Jandla
S/o Sh. Janak Singh Jandla
R/o Village Garh Samna Banj, Tehsil
Majalta, District Udhampur.

.....Respondent(s)

Through:- Mr. Rahil Raja, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

SHAHZAD AZEEM-J

Caveat No. 3010/2025

1. With the appearance of Mr. Rahil Raja, Advocate, the Caveat stands discharged.

WP(C) No. 373/2026

2. With the consensus of learned counsel for the parties, the matter is taken up.

3. Challenge in this writ petition is thrown to order and judgment dated 27 December 2024 passed by the learned Central Administrative Tribunal, Jammu Bench, Jammu ('the Tribunal') in TA No. 1571/2020 titled "Raghu Singh Jandla Vs. State of J&K & Ors.", whereby and whereunder, the appellants-respondents were directed to reckon the appointment of the respondent herein (hereinafter referred to as "the applicant") as Junior Engineer (Electrical), Grade-II, notionally w.e.f. 22 August 2009, the date on which, other selected candidates of the same selection process, in which the applicant participated, were appointed and further directed to re-fix the seniority and also to grant benefit of promotion/placement etc.

4. The controversy that has come to the fore is short and also is no more *res integra*, therefore, it is appropriate to note that the applicant had applied for the post of Junior Engineer (Electrical), Grade-II in pursuance of Advertisement Notices No. 04 of 2007 dated 19.11.2007 and No. 09 of 2008 dated 14.07.2008, respectively along with other eligible candidates under RBA Category, however, it appears that the applicant was not considered under RBA Category on the ground that he has submitted his category certificate issued under the J&K Reservation Rules (promulgated vide SRO 294 of 2005 dated 21.10.2005) after the cut-off date for receipt of application forms, however, the fact remains that the applicant stated to have submitted his earlier category certificate issued under J&K Reservation Rules, 1994 (promulgated vide SRO 126 of 1994) and also

has duly submitted the fresh certificate issued under the Rules of 2005 well before the conclusion of process of selection.

5. On conclusion of selection process, it was found that the last selected candidate under RBA Category has obtained 58.34 points, whereas, the applicant had secured 59.54 points, therefore, despite the applicant had secured more points than the last selected candidate under RBA Category, he was not selected.

6. The applicant filed writ petition being SWP No. 1149/2009 titled “Raghu Singh Jandla Vs. State of J&K & Ors.”, which came to be disposed of vide judgment dated 21 February 2014, in the following terms:-

“Viewed thus, this petition is allowed. Respondent no. 5 SSRB shall take steps for including the petitioner in the select list under RBA category and to recommend him for appointment, based on which respondents nos. 1 to 4 shall finalize the process of appointment in accordance with rules. Said exercise be undertaken by respondents at their respective levels and completed within a period of six weeks from the date of receipt of copy of order”

7. Accordingly, the respondent-Board vide its communication No. SSB/Sel/Secy/014/3854-55 dated 20.05.2014, recommended the candidature of the applicant to the Government for his appointment against the post of Junior Engineer (Electrical), Grade-II, State Cadre at Serial No. 70 of the select list issued under RBA category, which post was kept reserved under the orders issued by this Court in the said writ petition. The recommendation of the respondent-Board was duly considered and accepted by the Government and vide Government Order No. 145-PDD of 2014 dated 02.07.2014, the applicant came to be appointed as Junior Engineer (Electrical), Grade-II under RBA Category.

8. Since the other selected candidate, who have applied in pursuance to the same advertisement and have undergone same selection process, came to be appointed w.e.f 22 August 2009, therefore, being aggrieved of his appointment, which was reckoned from 02 July 2014, the applicant filed a representation before the competent authority, but when no decision was taken, he filed another representation, but same was though processed but met with the same fate, resultantly, the applicant has filed writ petition before this Court, which was subsequently transferred to the Tribunal and the Tribunal has allowed the T.A vide impugned order, with the following directions:-

“25. That in the backdrop of the aforesaid discussions and the instant Transferred Application is allowed with the following directions:

- i) The respondents are directed to reckon the appointment of the applicant as Junior Engineer (Electrical) Grade-II notionally w.e.f. 22.08.2009 i.e. the date on which the other selected candidates of the same selection process, in which the applicant participated, were appointed;*
- ii) Respondents are further directed to re-fix the seniority of the applicant amongst his counterpart selectees of the same selection process in the order of the comparative merit obtained by them in the process of selection conducted by respondent-Board;*
- iii) The respondents are also directed to grant of similar benefit of promotion/placement in favour of the applicant against the next higher post of Assistant Engineer as would found to have been granted to those who would figure below the applicant in such refixed seniority;*
- iv) The applicant is held entitled to be governed under the Old Pension Scheme as was in existence before the promulgation of SRO-400 of 2009 dated 24.12.2009 and the respondents are directed to take requisite steps in that regard;*
- v) The respondents, further, directed to refund of monthly deductions @ 10 % made from the salary of the applicant awaiting decision of his*

claim for retrospective appointment and for his governance under the Old Pension Scheme.
26. The whole exercise shall be completed within 2 months from the receipt of the certified copy of this order.”

9. The appellants have assailed the impugned judgment passed by the Tribunal mainly on the ground that once the applicant did not raise any objection at the time of joining in the service with regard to his prospective appointment, thereafter, he forfeits his right to question the same. It is further contended by the appellants that the appointment cannot be pre-dated and seniority cannot be fixed for the period in which the employee has not put in actual service or work.

10. The other limb of argument is that the applicant was appointed vide order dated 02 July 2014 as such, he did not draw monthly emoluments for the period prior to cut-off date, i.e. 01 January 2010, therefore, he is not entitled for the benefit under Old Pension Scheme.

11. On the other hand, Mr. Rahil Raja, Advocate appearing for the respondent has advanced argument in line with the judgment under challenge, therefore, same need no reiteration.

12. Heard learned counsel for the parties.

13. Before coming to the merits of the case, it needs to be noted that the Tribunal has placed reliance on the judgment passed by the Hon'ble Supreme Court in case reported as *2000 (8) SCC 182* titled *“Sanjay Dhar Vs. Jammu & Kashmir Public Service Commission & Anr.*, whereby, the relief of appointment with retrospective effect was granted to the petitioner, who was found to have been denied appointment in an earlier initiated selection process against the post of Munsiff, without any fault on his part. The Tribunal has also taken into consideration the case of Mr.

Rakesh Warikoo, who was given similar treatment. Furthermore, the Tribunal has come to the conclusion that if the applicant is found entitled for the appointment w.e.f 22 August 2009, notionally, then necessary consequence is that he would be governed under the Old Pension Scheme and not under the New Pension Scheme which has come into effect w.e.f 01.01.2010.

14. We are confronted with a case where, admittedly, the applicant had competed with other candidates under the same advertisement, who are selected and subsequently appointed but the applicant was found to have been denied the appointment on erroneous grounds by the Selection Board by declaring him ineligible but later on, the Court found that the applicant being fully eligible and is entitled to be selected, thus, directed for his appointment.

15. Under this backdrop, the question which falls for consideration is as to whether the applicant is entitled to the seniority as per the merit secured in the selection process or from the date, he was appointed. In this regard, since law is no more *res integra*, therefore, it is relevant to make reference to the law laid down by the Hon'ble Supreme Court in ***C. Jayachandran Vs. State of Kerala & Ors.;***(2020) 5 SCC 230, wherein, it was found that the appellant though participated in the same selection process but was not appointed on account of adoption/moderation of marks and subsequently, finding of the High Court was held to be illegal and as such, the appellant was appointed subsequently. The matter when reached before the Hon'ble Supreme Court, the appellant was held entitled to the notional appointment and consequential seniority in the backdrop of the fact that

once it is found that the appointment has been denied wrongfully, in that event, the benefit of notional appointment/seniority, cannot be denied. In similar circumstances, Hon'ble Supreme Court in Sanjay Dhar's case (supra) directed that the appellant shall be deemed to have been appointed along with other appointees under the appointment order dated 06.03.1995 and assigned a place of seniority consistently with his placement in the order of the merit in the select list prepared by J&K PSC and later forwarded to the Law Department.

16. It is a settled proposition of law that if a candidate is wrongly excluded from the appointment due to arbitrary action of the appointing authority in a same selection process, he is entitled to the notional seniority from the date, similarly situated persons were appointed. Such candidate, of course is to be treated as part of the original appointment for seniority purposes and consequential benefits, because wrongful action of the appointing authority, cannot be used to prejudice a candidate for none of his fault,

17. It is the consistent view of the Courts that such wrongful denial, when subsequently stand rectified under the Court direction, he is entitled to the notional benefit of seniority and all the consequential benefits. Arbitrary denial or delay caused by the appointing authority violates the right to equality as envisaged under Article 14 of the Constitution, therefore, once same stands rectified by a judicial process, then, as a necessary corollary, the seniority must be determined on the basis of the original merit position in the common select list, otherwise, the candidates would be penalized for none of his fault.

18. In terms of Rule 24 of the J&K Civil Services (Classification, Control And Appeal) Rules, 1956 ('Rules of 1956'), seniority of a person shall be determined by the date of his first appointment to such service, class, category or the grade as the case may be. Therefore, the seniority is generally from the date of substantive appointment but notional fixation is an equitable exception when the delay is attributable to the appointing authority, i.e. so to preserve the integrity of the common select list and to guard the right to equality as guaranteed under the Constitution of India.

19. The delay caused in offering the appointment to a meritorious candidate and which was found to have been attributable solely to the appointing authority, in that event, penalizing a selected candidate would amount to rewarding to the lapse of the appointing authority which is of course violative of the Article 14 of the Constitution.

20. Once, it is found that the applicant is entitled to the notional seniority from the date, the similarly situated appointees have been given, in that event, no fault can be found with the findings of the Tribunal in holding applicant entitled to Old Pension Scheme, that was in vogue at the time when the similarly situated selectees were offered the appointment but the applicant was wrongfully denied the same.

21. In view of the above, no error of law or fact is found to have been committed by the Tribunal in allowing the T.A, accordingly, the petition is *dismissed* along with connected CMPs.

**(Shahzad Azeem)
Judge**

**(Sindhu Sharma)
Judge**

Jammu:
16.04.2026
Tarun/PS

Whether approved for reporting:
Whether the order is speaking

: *Yes*
: *Yes*