

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

SWP No. 2236/2017

Reserved On: 2nd of July, 2026.
Pronounced On: 6th of July, 2026.
Uploaded On: 6th of July, 2026.

Whether the operative part or
full Judgment is pronounced: **Full.**

Mohammad Yaseen Khan, Age: 62 Years
S/O Abdul Gani Khan
R/O Nundresh Colony, Bemina, Srinagar.

... Petitioner(s)

Through: -

Mr B. A. Misri, Advocate.

V/s

- 1. State of Jammu & Kashmir (now UT),**
Through Chief Secretary to Government,
Civil Secretariat, Jammu/ Srinagar.
- 2. Commissioner/ Secretary to Government,**
General Administrative Department, J&K,
Civil Secretariat, Jammu/ Srinagar.
- 3. Director General, Institute of Management,**
Public Administrative and Rural Development
(IMPA), Srinagar/ Jammu.

... Respondent(s)

Through: -

Mr Numan Idrees Malik, Government Advocate.

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

(JUDGMENT)

01. The Petitioner has called in question the note appended to Rule 1 of SRO 28 of 1996 dated 25 January 1996, whereby the cadre of the Drivers has been re-structured. The Petitioner is also seeking a Writ of Mandamus directing the Respondents to grant him promotion upon completion of five years of service as Driver (Grade-I) with retrospective effect from the date of eligibility along with all consequential benefits.

02. The relevant facts are that the Petitioner was appointed as Driver in the pay scale of Rs. 900-1800 vide Order dated 25 March 1989. During his service, he was granted three *in-situ* promotions (Higher Standard Pay Scale) in terms of SRO 14 of 1996 dated 15 January 1996. The details are as under:

<u>Description</u>	<u>Date</u>	<u>Pay Scale</u>
1 st <i>in-situ</i> promotion	17 June 1998	4500-125-3400
2 nd <i>in-situ</i> promotion	11 January 2007	5000-150-8000
3 rd <i>in-situ</i> promotion	09 November 2017	9300-34800+ GP 4210

03. Meanwhile, the pay structure of Drivers in the departmental cadre was re-structured vide SRO 28 of 1996 dated 25 January 1996. The Note appended to Rule 1 of SRO 28, which is central to the controversy, reads as under:

“Note: - Drivers (Grade-II), on completion of five years’ service in the pay scale of Rs. 950-1500, shall be eligible for promotion as Drivers (Grade-I) in the pay scale of Rs. 1200-2040 subject to availability of posts. However, in case of such of the Drivers as have been appointed initially in the pay scale of Rs. 800-1150 as per provisions of sub-clause (a) (i) above, now upgraded to the pay scale of Rs. 950-1500, the period of service rendered by them in the pay scale of Rs. 800-1150 shall count for compulsion of minimum service of five years for purposes of their promotion as Drivers (Grade-I) in the pay scale of Rs. 1200-2040.

Drivers (Grade-II) on completion of minimum five years’ service in the pay scale of Rs.1200-2040 shall be eligible for promotion as ‘Chauffeurs’ in the pay scale of Rs. 1640-2900 **subject to the availability of posts.**”

(Emphasis Supplied)

04. The grievance of the Petitioner precisely is that from the very inception of his appointment, he remained stagnated against the post held by him and was never promoted, despite having filed a Suit which was decreed in his favour, the Respondents did not promote him to the next

higher post on the ground of non-availability of a post of Chauffeur against which he was to be promoted.

05. The bone of contention of the Petitioner is that the note appended to Rule 1 of SRO 28 dated 25 January 1996 prescribes five years' service in the feeding cadre as the eligibility for promotion to the next grade, but makes it subject to availability of the post. According to the Petitioner, completion of five years' service in a particular pay scale ought to have been the sole eligibility criterion for automatic promotion to the next higher pay scale, including the post of Chauffeur. The Petitioner, therefore, prays that the note to Rule 1 of SRO 28 be struck down as arbitrary, unreasonable and *ultra-vires* to the Constitution.

06. It is further contended that owing to small size of the Drivers' cadre, there is only one post of Chauffeur which is occupied by his senior, hence, there is no chance of his promotion to that post.

07. The Respondents, in their Objections, resisted the Petition on the ground that the Petitioner had already been granted the benefit of three *in-situ* promotions in terms of SRO 14 of 1996 dated 15 January 1996. It is submitted that non-promotion to the post of Chauffeur was solely due to the non-availability of vacancy and the Petitioner having been monetarily benefitted by three *in-situ* promotions, cannot claim functional promotion as a matter of right.

08. Heard learned Counsels for the parties and considered the matter.

09. The core issue that falls for determination is whether a Government employee possesses any vested right to demand promotion to the next higher grade by insisting upon an increase in the cadre strength.

10. Indisputably, the Petitioner was financially upgraded by grant of three *in-situ* promotions. There is not a whisper in the Petition, from

which it can be inferred that, on account of non-grant of functional promotion, he suffered any financial loss, particularly when he had already retired from service on attaining the age of superannuation on 31 March 2025. At this stage, if it is found that the Petitioner was entitled to functional promotion and the Respondents failed to consider his claim, resulting in financial loss, relief to that extent could be considered.

11. Since, the Petitioner has miserably failed to plead or disclose that, even after receiving three *in-situ* promotions, which are necessarily in the nature of financial upgradation, he suffered any financial loss due to non-grant of functional promotion to the next post, no relief can be granted to him at this stage.

12. Coming to the legal question as to whether a Government employee possesses any vested right to demand promotion to the next higher grade by insisting upon an increase in the cadre strength. Promotion is not a matter of right; it depends upon the rules, existence of vacancies, eligibility and administrative policy. The Constitution does not prescribe any specific criteria for promotion.

13. The only right an employee has in the matter of promotion is the right to be considered for promotion, which flows from Articles 14 and 16 of the Constitution. Failure to consider an eligible employee may violate this right, but it does not translate into a right to actual promotion or to compel structural changes such as cadre expansion.

14. The Government enjoys wide discretion to determine, review, restructure or re-fix cadre strength on the basis of administrative rules, policy and resources. Employees cannot demand encadrement of additional posts or creation of new posts for enhancement of cadre strength to facilitate promotions. Such demands amount to asking the Court to direct the Government to create a post, which is not a judicially enforceable right.

15. In **'State of Odhisa v. Sreepati Ranjan Dash, 2026 SCC Online SC 879'**, the Hon'ble Supreme Court held that the employees have no vested right or legitimate expectation to compel the Government to fill vacancies through promotion, especially during cadre restructuring of posts.

16. Insofar as the challenge thrown to the note appended to Rule 1 of SRO 28 is concerned, the Petition is lacking in basic material particulars to demonstrate that the said note, in any manner, discriminates similarly situated employees or that the Government has applied it in violation of Articles 14 and 16 of the Constitution. On the contrary, the Rule has been applied uniformly across Departments based on cadre size, therefore, stagnation alone does not render a valid cadre rule unconstitutional.

17. The Hon'ble Supreme Court, in **'UNION OF INDIA & ORS. v. ILMO DEVI & ANR., (2021) 20 SUPREME COURT CASES 290'**, has held that the High Court, in exercise of jurisdiction under Article 226 of the Constitution, cannot issue mandamus to direct Government to sanction and create posts nor can it direct Government and/ or Department to formulate a particular regularization policy. Framing of any scheme or creation and/ or sanction of posts is the sole prerogative of the Government.

18. It is settled law that limited promotional avenues or cadre restructuring are executive/ policy matters and Courts do not strike down rules, merely on the ground of stagnation or direct for creation of posts or grant of functional promotions, unless violation of Articles 14 and 16 of the Constitution is writ large, but that is not the case here.

19. The rider of availability of posts, as provided in SRO 28, is constitutionally valid. Long stagnation in small cadres is a known hardship, but does not justify judicial re-writing of the rules or grant of functional promotions *dehors* the rules

20. Having regard to the foregoing discussion, it is held that the Petitioner cannot claim promotion as a matter of right nor can he have any

legitimate expectation to compel the Government to fill vacancies through promotion, especially during cadre re-structuring, particularly when he has already received three financial upgradations and there is nothing on record to show that he had suffered any financial loss on account of non-promotion to the next higher post.

21. In view of above, the instant Writ Petition is found to be bereft of merit. Accordingly, the same is **dismissed**, along with connected CM(s). Interim direction(s), if any, subsisting as on date, shall stand vacated.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
July 6th, 2026
"TAHIR"

i. Whether the Judgment is approved for reporting? **Yes.**

