

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 2059/2023

Reserved on: 08.10.2026

Pronounced on: 15.10.2026

Uploaded on: 15.10.2026

*Whether the operative part or full
judgment is pronounced: Full*

1. Union Territory of Jammu &

Kashmir through Additional
Chief Secretary to Govt., Home
Department, Civil Sectt.
Srinagar/ Jammu.

...Petitioner(s)

2. Director General of Police,
J&K, Srinagar/ Jammu.

Through: Ms. Maha Majeed, Assisting Counsel vice
Mr. Mohsin-ul-showkat Qadiri, Sr. AAG

Vs.

1. Nissar Ahmad Mir, Aged 51
years, S/o Gh. Nabi Mir, R/o
Shalimar, Srinagar.

...Contesting Respondent

2. Shri Ab Khalid Khan

4511/NGO (Now SP) (Presently
posted as Addl.SP SIA Kashmir)

3. Shri Rajni Sharma, 4367/NGO
(Now SP) (Presently posted Dy.
Commandant IRP 1st Bn.)

4. Shri Imtiyaz Ahmad Dar

4521/NGO (Now Dy.SP)
(Presently posted as Dy.SP AHJ
Srinagar)

5. Shri Aijaz Ahmad Bhat

4522/NGO (Now Dy.SP)
(Presently posted as Dy.SP CID
Cell New Delhi)

6. Shri Sandeep Kour 4540/NGO
(Now Dy.SP) (Presently Posted a
Dy.SP Security STWS Srinagar)

...Proforma Respondents

Through: Mr. Bhat Fayaz, Advocate with
Ms. Nighat Amin, Advocate

CORAM:HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGEMENT
15.10.2026

Per, Wasim Sadiq Nargal:J

1. The petitioners have filed the present writ petition under Article 226 of the Constitution of India, assailing the judgment dated 24.06.2022 passed by the Central Administrative Tribunal, Srinagar Bench (hereinafter referred to as "the Tribunal"), in O.A. No. 1413/2021, titled Nissar Ahmad Mir v. Union Territory of Jammu & Kashmir and others, whereby the order bearing No.PHQ Order No. 2607 of 2021 dated 26.08.2021 passed by Director General of Police, Jammu and Kashmir, Srinagar, was quashed and the petitioners were directed to extend the benefit of retrospective out-of-turn promotion to respondent No. 1 notionally with effect from 08.06.1998 and monetarily with effect from 29.09.2006.
2. The case of respondent No. 1 is that he was recommended for out-of-turn promotion to the rank of Inspector on operational grounds in the year 1998. As his claim was not accepted at the relevant time, he approached this Court by way of SWP No. 2301/2001 in the earlier round of litigation, seeking, inter alia, promotion with effect from 22.06.2000, the date on which some of his junior batch mates were granted out-of-turn promotion.

3. The aforesaid writ petition was disposed of on 05.05.2006 by this Court. In compliance thereof, respondent No. 1 was promoted to the rank of Inspector with immediate effect vide PHQ Order No. 3007 of 2006 dated 29.09.2006. Thereafter, respondent No. 1 filed another writ petition registered as SWP No. 1965/2007, seeking retrospective effect to his promotion. The said petition was also disposed of by this Court on 15.07.2009, with a direction to the competent authorities to consider his representation in accordance with law. The representation was subsequently rejected by the Director General of Police vide a detailed consideration order bearing PHQ order No. 1230 of 2010 dated 29.03.2010. Upon rejection, the respondent No.1 preferred Contempt Petition No. 77/2010 before this Court. However, later on in the year 2025 the contempt petition was withdrawn by respondent No.1 with liberty to challenge the said rejection order.
4. Thereafter, the respondent No.1 filed yet another petition registered as SWP No. 762/2017 challenging the rejection order dated 29.03.2010. Pertinent to mention that in the year 2020 the Government of Union Territory of Jammu and Kashmir ordered all service matters to be transferred to learned Central Administrative Tribunal (CAT), Jammu and the case of respondent No.1 was also transferred to Learned CAT. Consequently, the respondent No.1 filed amended writ petition before this Court on the ground of accrual of fresh cause of action, however, the same came to be dismissed by this Court.
5. It is after the dismissal of said writ petition by this Court respondent No. 1 approached the Tribunal, by filing O.A. No. 61/104/2020, & MA/61/43/2020, MA/61/42/2020 seeking retrospective effect to his out-of-turn promotion on the analogy of Abdul Khalid Khan. The Learned Tribunal, vide order dated

25.11.2020, directed the petitioners to consider his claim in light of the judgments passed by this Court in the case of Abdul Khalid v/s State of Jammu and Kashmir. Upon reconsideration, the petitioners rejected the claim of respondent No. 1 vide consideration order No. 2607 of 2021 dated 26.08.2021. The said order was challenged before the Learned Tribunal in O.A. No. 1413/2021, which was allowed vide judgment dated 24.06.2022. Feeling aggrieved of the same, the petitioners have approached this Court.

Submissions on behalf of the petitioners

6. Learned counsel for the petitioners submits that the impugned judgment passed by the Tribunal is contrary to law and the material available on record. It is contended that respondent No. 1 was promoted to the rank of Inspector in compliance with the judgment dated 05.05.2006, but no direction was issued granting retrospective effect to his promotion from the date of his initial recommendation.
7. It is further submitted that the claim of respondent No. 1 for retrospective promotion had already been considered and rejected vide PHQ Order No. 1230 of 2010 dated 29.03.2010, which remained unchallenged for more than nine years. According to the petitioners, the subsequent claim raised by respondent No. 1 could not have been accepted without taking into account the delay and the finality attached to the earlier decision.
8. Learned counsel further submits that the case of Abdul Khalid, upon which respondent No. 1 relies, is distinguishable, as Abdul Khalid had consistently pursued his claim for retrospective promotion before the competent authorities

and the court as well. It is contended that respondent No. 1 cannot claim the benefit granted in another employee's case without establishing that the two cases are identical in all material respects.

9. It is also argued that retrospective advancement of the date of promotion would have consequences for the seniority of other police personnel and would disrupt the established procedure governing seniority in the department. On these grounds, the petitioners seek quashing of the impugned judgment dated 24.06.2022.

Submissions on behalf of respondent No. 1

10. Respondent No. 1 has opposed the writ petition, raising preliminary objection regarding maintainability, delay and suppression of material facts. It is contended that the petitioners have approached this Court more than one year after the passing of the impugned judgment and failed to place the complete record of the proceedings before the Tribunal, particularly the rejoinder affidavit filed by respondent No. 1.

11. On merits, respondent No. 1 submits that his case was recommended for out-of-turn promotion in 1998 on account of his operational performance and the risks undertaken by him in combating militancy. It is contended that the petitioners have adopted a discriminatory approach by granting retrospective promotion to other similarly situated police personnel while denying the same benefit to him.

12. Respondent No. 1 further submits that the case of Abdul Khalid demonstrates that retrospective effect can be granted to an out-of-turn promotion and that

the petitioners cannot adopt a pick-and-choose policy in matters of promotion. He accordingly maintains that the Tribunal rightly quashed the order dated 26.08.2021 and directed the grant of retrospective promotion.

Legal analysis

13. We have heard the learned counsel from both the parties and perused the material on record.

14. The moot issue that arises for consideration in the present writ petition is whether the respondent No.1 is legally entitled to claim retrospective promotion to the post of Inspector with effect from 08.06.1998, solely on the basis of a recommendation allegedly made in his favour in the said year and by placing reliance upon the case of another employee, notwithstanding the fact that he was actually promoted to the post of Inspector with effect from 29.09.2006, pursuant to the proceedings culminating in the order dated 05.05.2006 passed by this Court.

15. Before proceeding further, it is necessary to distinguish between a recommendation for out-of-turn promotion and the actual conferment of such promotion. A recommendation, even if made by the competent authority, does not crystallise into an enforceable or indefeasible right to out-of-turn promotion from the date of such recommendation. Unless the applicable service rules or a specific order of the competent authority or the Court confer such entitlement, a recommendation remains a step in the decision-making process and cannot, by itself, be construed as creating a vested right to retrospective out-of-turn promotion. The mere fact that an employee was

recommended for out-of-turn promotion at a particular point in time does not dispense with the requirement of establishing a legal entitlement to the post from the date claimed.

16.The aforesaid principle finds support in the judgment of the Allahabad High Court in *State of U.P. and Others v. Mahaveer Singh and Others*, reported as **2016 SCC OnLine All 4653**, wherein the Court held as under:

“In our view, the aforesaid judgments will not assist the case of the respondents. In fact, as held by the Full Bench of this Court in Anand Kumar Sharma (supra), the mere making of an application would not in a situation such as the present confer an indefeasible or vested right to out of turn appointments or promotions, nor for that matter, would a recommendation made upon the application confer such an indefeasible right. The office memorandum contemplated the creation of ex-cadre posts by the State Government on the recommendation of the Director General of Police. It is only upon the creation of ex-cadre posts and the recommendation of the Director General of Police for an out of turn appointment that the State Government would make an out of turn appointment. A conscious policy decision has been taken by the State Government based on the exigencies of the service to the effect that in terms of the Government Order dated 7 June 2014, the office memorandum would stand rescinded and that the scheme of out of turn appointments would stand substituted by monetary compensation. Emphasis was sought to be laid on behalf of the respondents on the fact that the judgment of the Public Service Tribunal in the case of a Sub-Inspector by the name of Jitendra Singh Kalra accepted the case for the grant of out of turn promotion which has been accepted by the State Government. Even assuming that this is so, we find no reason or basis to extend the benefit in general terms in other cases once the Government Order dated 7 June 2014 has come into force.”

17.The ratio of the aforesaid decision is that a recommendation for promotion does not, by itself, confer an indefeasible or vested right to claim promotion, much less promotion with retrospective effect. The existence of such a recommendation must be distinguished from the accrual of a legally enforceable right to promotion.

18.Adverting to the facts of the present case, the respondent-applicant had earlier invoked the writ jurisdiction of this Court by filing SWP No. 2301/2001, seeking promotion to the post of Inspector, inter alia, with effect from 22.06.2000, stated to be the date on which his junior batchmates had been promoted. The said writ petition came to be disposed of on 05.05.2006. Subsequently, vide PHQ Order No. 3007/2006 dated 29.09.2006, the respondent-applicant was promoted to the post of Inspector with immediate effect. A perusal of the material presently available does not disclose any specific direction issued by this Court mandating that his promotion be accorded retrospective effect from 08.06.1998. Nor does the aforesaid promotion order, on its face, indicate that the promotion was made effective from the said date.

19.In the aforesaid circumstances, the respondent No.1's claim for retrospective promotion cannot be sustained merely on the strength of the recommendation made in his favour in 1998. Significantly, the earlier writ proceedings culminated in his promotion with effect from 29.09.2006, and no material has been shown to establish that the said proceedings resulted in the recognition of his entitlement to promotion with effect from 08.06.1998. In the absence of an express judicial direction to that effect, or an independent right demonstrable under the applicable service rules or other governing legal

provisions, the mere factum of an earlier recommendation cannot be elevated to the status of a legally enforceable right to retrospective promotion.

20. This Court is of considered view that, had this Court intended, while disposing of SWP No. 2301/2001 on 05.05.2006, to direct the grant of promotion with retrospective effect from 08.06.1998, such relief would ordinarily have found mention in the operative part of the order. In the absence of any such direction, the order cannot be construed as having conferred a benefit which it does not expressly grant.

21. A substantial basis of the respondent-applicant's claim before the Tribunal appears to have been the alleged parity between his case and that of Abdul Khalid Khan as well as the claim that other employees had been granted out-of-turn promotion from the dates of their recommendations.

22. However, this Court is of the view that the principle of parity cannot be invoked to claim out-of-turn promotion as a matter of right. Since out-of-turn promotion is considered on the basis of the facts and circumstances peculiar to each individual case, the benefit extended to one employee does not, by itself, entitle another employee to claim the same treatment. Accordingly, the respondent-applicant cannot claim retrospective promotion merely on the ground that another employee has been granted such benefit.

23. The aforesaid position stands authoritatively settled by the Hon'ble Supreme Court in ***The State of Madhya Pradesh & Anr. v. Sanjay Shukla***, Civil Appeal No.2040 of 2023, arising out of SLP (C) No. 1040 of 2021, decided on 27.03.2023, wherein the Court held as under:

“...Now, so far as the parity claimed by the respondent which came to be accepted by the learned Single Judge is concerned, there cannot be any parity so far as claiming out-of-turn promotion is concerned. The facts differ from person to person and officer to officer and Act to Act. Therefore, in case of out-of-turn promotion, there cannot be any parity claimed.”

24. The principle enunciated by the Hon’ble Supreme Court squarely underscores that a claim for out-of-turn promotion cannot be founded solely upon the treatment accorded to another employee. Such a claim must be determined on its own merits, having regard to the individual circumstances and the applicable legal framework, rather than by mechanically invoking the principle of parity.

25. Applying the aforesaid principle to the facts of the present case, we are of the considered view that the respondent cannot claim retrospective promotion with effect from 08.06.1998 merely on the ground that another employee was granted a similar benefit. In the absence of an independent legal entitlement to such retrospective promotion, the plea of parity is insufficient to sustain his claim.

26. Upon perusal of the material on record, this Court finds merit in the order dated 26.08.2021 passed by the Director General of Police, rejecting the respondent’s claim for retrospective effect to his out-of-turn promotion on the ground of parity with Abdul Khalid, as the two cases are materially distinguishable on facts and circumstances. Whereas, the record vindicates that Abdul Khalid had consistently pursued his claim for retrospective promotion and had repeatedly been recommended by the Inspector General of Police, Kashmir Zone, for grant of such promotion with effect from

13.02.1999, the respondent was never recommended for retrospective promotion and, at different stages, had sought reliefs of a different nature. Furthermore, the respondent's claim had already been considered and rejected on merits vide PHQ Order dated 29.03.2010, which remained unchallenged by him for nearly seven years. In these circumstances, the subsequent grant of relief to Abdul Khalid cannot, by itself, confer upon the respondent an enforceable right to claim identical treatment, particularly in the absence of parity in the material facts and circumstances governing the two cases. Accordingly, the respondent's claim for retrospective promotional benefits, founded solely on the principle of parity with Abdul Khalid, is devoid of any merit and is liable to be rejected as unjustified and unwarranted. For the facility of reference relevant part of the consideration order is reproduced as under:

“Whereas, in compliance to the directions of Hon'ble Bench of CAT, the case of the petitioner was examined at PHQ taking into account the facts and circumstances of the case of Sh. Abdul Khalid. During the course of scrutiny, It has been found that there is dissimilarity between the two cases on the following counts:

i. Sh. Abdul Khalid remained consistent towards his claim seeking retrospective effect to his Out-of-Turn promotion w.e.f. 13.02.1999. While as, the petitioner was seeking different reliefs at different point of time as mentioned in earlier paras of this order. It is only when Sh. Abdul Khalid was given retrospective effect vide PHQ Order No. 1933 of 2016 dated 25.06.2016 in compliance to the Hon'ble court judgement dated 07.05.2016, the petitioner woke-up and started praying for retrospective w.e.f. 08.06.1998. Besides, the petitioner remained silent from 2010 to 2017.

ii. Sh. Abdul Khalid was time and again recommended by IGP Kashmir Zone reiterating earlier citation for out of turn promotion w.e.f. 13.02.1999 the day when he was recommended by SSP Baramullah. While as, the petitioner was never recommended for retrospective promotion.

Therefore, having regard to the facts and circumstances of the case discussed above it is hereby ordered that the claim of the petitioner being unjustified and unwarranted is hereby rejected on merits.”

27. Furthermore, a perusal of the impugned order reveals that the learned Tribunal has principally rested its conclusion on the premise that Abdul Khalid Khan and the respondent were similarly situated, without undertaking an independent examination of the facts and circumstances governing their respective claims. The learned Tribunal has neither recorded any specific finding demonstrating the factual similarity between the two cases nor assigned reasons as to how the benefit granted to Abdul Khalid Khan would, by itself, entitle the respondent to retrospective effect to his out-of-turn promotion. Such an approach, in our considered view, fails to take into account the distinction between an ordinary promotion and an out-of-turn promotion, the latter being governed by its own considerations and circumstances. The mere fact that another employee has been granted retrospective benefit cannot, therefore, furnish an automatic basis for extending the same treatment to the respondent, as already discussed hereinabove.

28. The learned Tribunal has, in the process, failed to examine the chronological history of the litigation initiated by the respondent, which assumes significance in determining the nature and sustainability of his claim. The departmental record which has been examined by this Court

indicates that the respondent's claim had already been considered and rejected on merits vide PHQ Order dated 29.03.2010. Thereafter, the respondent did not pursue the matter for nearly seven years and approached the authorities again seeking retrospective effect to his promotion with effect from 08.06.1998, particularly after the benefit had been extended to Abdul Khalid Khan. This aspect of the matter required examination by the learned Tribunal, especially in view of the fact that the respondent's claim had previously been rejected and the subsequent claim was required to be considered in the light of the reasons recorded by the competent authority. The impugned order, however, does not disclose any consideration of this material circumstance by the learned Tribunal.

29. Equally significant is the failure of the learned Tribunal to properly appreciate the rejection order, which sets out the distinguishing features between the cases of Abdul Khalid Khan and the respondent. The record indicates that Abdul Khalid Khan had consistently pursued his claim for retrospective effect to his out-of-turn promotion and had been repeatedly recommended by the IGP, Kashmir Zone, for such benefit with effect from 13.02.1999. In contrast, although the respondent had been recommended for out-of-turn promotion in 1999, no recommendation had been made in his favour for granting retrospective effect to the same. This distinction was material and could not have been brushed aside merely by describing the two employees as similarly situated. The Tribunal was required to examine these differences, assess their relevance to the respondent's claim and record reasons for either accepting or rejecting the justification furnished by the competent authority.

30. It is a settled principle that a judicial or quasi-judicial determination must disclose reasons demonstrating due application of mind to the material facts and the issues arising for consideration. Where the claim for retrospective promotion is resisted on the basis of specific factual distinctions, the adjudicating authority is required to deal with those distinctions and explain why they do not affect the claimant's entitlement. In the present case, the learned Tribunal has neither dealt with the respondent's earlier rejection, the substantial interval during which the claim was not pursued, nor the absence of a recommendation for retrospective promotion. Instead, it has treated the benefit extended to Abdul Khalid Khan as sufficient, in itself, to sustain the respondent's claim. Such reasoning does not adequately address the issues arising from the record and fails to establish the basis on which the respondent could claim an identical benefit despite the material differences highlighted by the department.

31. Another aspect of the controversy, which appears to have escaped the attention of the learned Tribunal, relates to the principles of estoppel, waiver and acquiescence. These principles assume relevance where a claimant, after suffering an adverse decision, allows the matter to remain unchallenged for a considerable period and seeks to agitate the same issue only after a similar benefit has been extended to another person. The effect of such conduct requires consideration in the light of the law laid down by the Hon'ble Supreme Court. It is well settled that waiver involves the voluntary relinquishment of a right available to a person in law. The Hon'ble Supreme Court, in **Waman Shrinivas Kini Vs. Ratilal**

Bhagwandas and Co., reported as AIR 1959 SC 689, while delineating the contours of waiver, observed at paragraph 13 as under:

“13. Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied.”

32. The aforesaid principle was further elucidated by the Hon’ble Supreme Court in *Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants’ Association*, reported as AIR 1988 SC 233, wherein, the Court held as under:

In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.”

33. Likewise, in *P. Dasa Muni Reddy Vs. P. Appa Rao*, reported as AIR 1974 SC 2089, the Hon’ble Supreme Court reiterated the principle that waiver involves the intentional relinquishment of a known right and that a litigant cannot be permitted to approbate and reprobate to secure an advantage through the intervention of a Court. The relevant part of the judgement reads as under:

“Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver party would have enjoyed. Waiver can also be a voluntary surrender of a right... The doctrine which the Courts of law will recognize is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts.”

34.Adverting to the facts of the present case, the departmental record reveals that the claim of the respondent for retrospective promotion had already been considered and rejected on merits vide PHQ order dated 29.03.2010. The respondent, thereafter, did not pursue the matter for nearly seven years. It was only subsequently, upon the extension of the benefit of retrospective out-of-turn promotion to Abdul Khaliq Khan, that the respondent approached the authorities afresh, seeking promotion with effect from the year 1998.

35.The aforesaid chronology makes it clear that respondent's claim had already received consideration at the hands of the competent authority, which rejected his claim. Instead of pursuing the remedy available to him against such rejection, the respondent allowed the matter to remain dormant for a considerable period and sought to revive it only when another employee was extended the benefit of retrospective out-of-turn promotion. The subsequent order passed in favour of Abdul Khaliq Khan appears, therefore, to have furnished the occasion for the respondent to resurrect his own claim, notwithstanding its earlier rejection on merits. Such conduct necessarily calls for scrutiny while determining whether the respondent could legitimately claim the same relief merely by invoking the principle of parity.

36.Equally significant is the distinction between the mere lapse of time and acquiescence in its legal sense. Acquiescence is not established by inaction in the abstract; it must be assessed in the context of the claimant's knowledge, conduct and the surrounding circumstances. In the present

matter, the respondent's prolonged silence following the rejection of his claim, viewed in conjunction with his subsequent attempt to secure the same benefit only after it was extended to Abdul Khaliq Khan, constitutes a circumstance of considerable relevance. His conduct cannot be considered in isolation from the earlier adverse decision or from the fact that the claim was sought to be revived after a substantial interval.

37.In these circumstances, the respondent cannot be permitted to circumvent the consequences of the earlier rejection of his claim by subsequently invoking parity with Abdul Khaliq Khan. The doctrine of acquiescence, in the factual context of the present case, reinforces the necessity of examining the respondent's own conduct before extending to him the relief of retrospective promotion. Even assuming that the grant of such benefit to Abdul Khaliq Khan furnished the respondent with a ground to make a fresh representation, that circumstance, by itself, could not confer substantive entitlement to retrospective promotion or dispense with the requirement of establishing his claim in accordance with law.

38.The learned Tribunal, while extending the benefit of retrospective promotion to the respondent, appears to have placed decisive reliance upon the fact that Abdul Khaliq Khan had been granted similar treatment, without adequately examining the effect of the PHQ order dated 29.03.2010, whereby the respondent's claim had already been rejected on merits, or the significance of his failure to pursue the matter for nearly seven years thereafter. The approach adopted by the learned Tribunal, therefore, suffers from the fundamental infirmity of treating parity as sufficient, in itself, to sustain the relief claimed, without undertaking the

requisite examination of the respondent's independent entitlement and the circumstances militating against the revival of his claim.

39. Viewed cumulatively, the prior rejection of the respondent's claim, his prolonged inaction thereafter, and his subsequent attempt to secure retrospective out-of-turn promotion only upon the grant of such benefit to Abdul Khaliq Khan constitute material circumstances which the learned Tribunal was bound to take into consideration. The principles governing acquiescence and the conduct of litigants, read in conjunction with the requirement that parity must be founded upon a demonstrable legal entitlement, do not support the relief granted by the learned Tribunal merely on the basis of the treatment accorded to another employee.

40. For these reasons, the order passed by the learned Tribunal cannot be sustained merely on the basis of the recommendation made in 1998 or the asserted parity with other employees. Accordingly, the writ petition is allowed. The order dated 24.06.2022 passed by the Central Administrative Tribunal, Srinagar Bench, in OA No. 1413/2021 is set aside, and PHQ Order No. 2607/2021 dated 26.08.2021 is restored. This order shall not disturb the promotion of the respondent-applicant to the post of Inspector with effect from 29.09.2006, granted vide PHQ Order No. 3007/2006 dated 29.09.2006.

(Wasim Sadiq Nargal)
Judge

(Dr. Pushpendra Singh Bhati)
Chief Justice

SRINAGAR
15.10.2026
"Mubashir"

Whether the judgment is speaking: Yes
Whether the judgment is reportable: Yes/No