

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through virtual mode)**

Reserved on: 03.01.2025
Pronounced on: 06.03.2025

WP(C) No. 336/2023

1. **Mohammad Jamal Sheikh, aged 59 years**Petitioner(s)
S/O Abdul Gani Sheikh
R/O Yarikhah, Tehsil Khan Sahib,
Budgam, Kashmir.
2. **King Kumar, Aged 57 years**
S/O Iachman Dass
R/O House No. 598, Sushil Nagar,
Camp Gole Gujral Road, Jammu.

Through: Mr. Areeb Javed Kawoosa, Advocate.

Vs

1. **Union Territory of Jammu & Kashmir**
Through Chief Secretary, Civil Secretariat,
Jammu/Srinagar.
2. **Principal Secretary to Government,**
Power Development Department,
Civil Secretariat, Jammu/Srinagar.
3. **Commissioner/Secretary to Government,**
General Administration Department,
Civil Secretariat, Jammu/Srinagar.
4. **Commissioner/Secretary to Government,**
Department of Law, Justice and Parliamentary
Affairs, Civil Secretariat, Jammu/Srinagar.
5. **Managing Director, Jammu Power Distribution**
Corporation Limited, Jammu.
6. **Managing Director, Kashmir Power Distribution**
Corporation Limited, Srinagar.
7. **Managing Director, Jammu and Kashmir Power**
Transmission Corporation Limited
Srinagar/Jammu.

..... Respondent(s)

Through: Mr. Furkan Yaqub, GA.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Through the medium of the instant writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs:

- (i) **Issue an appropriate writ, order or direction including one in the nature of Certiorari for quashment of impugned Circular No. 10-JK (GAD) of 2021 dated 05.03.2021 issued by the Respondent No. 3 whereby all the administrative secretaries have been asked to keep the slots meant for reserved employees vacant/unfilled, the same being ultravires to Articles 14 and 16(4A) of the Constitution of India**
- (ii) **Issue an appropriate writ, order or direction including one in the nature of Mandamus commanding the respondents to promote the petitioners as well as other reserved category employees of the UT of J&K to their respective next higher posts on their roster slots under their respective Reserved Categories strictly in terms of J&K Reservation Act, 2004 and J&K Reservation Rules, 2005.**
- (iii) **Issue an appropriate writ, order or direction including one in the nature of Mandamus directing the respondents to regularize the petitioners as well as other reserved category candidates of the UT of J&K on the roster slots under their respective categories strictly in terms of J&K Reservation Act, 2004 and J&K Reservation Rules, 2005.**

- 02.** The petitioners, who have been permitted to file this petition in a representative capacity vide interim order dated 31.10.2024, filed this petition claiming that they represent the Engineers serving in J&K Power Transmission Corporation Limited, Jammu Power Distribution Corporation Limited and Kashmir Power Distribution Corporation Limited, belonging to various reserved categories like Scheduled Casts (SCs), Scheduled Tribes (STs), Residents of Backward Area (RBA), Actual Line of Control (ALC) and Other Social Castes (OSCs), alleging therein that they have been denied reservation in promotions to which they are entitled to in terms of Article 16(4A) of the Constitution of India in the Union Territory of Jammu and Kashmir, due to Circular No. 10-JK (GAD) of 2021 dated 05.03.2021 issued by the respondent No. 3, which has been impugned in this petition, whereby all the Administrative Secretaries have been asked to keep the slots meant for reserved employees vacant/unfilled.
- 03.** It has been alleged in the petition that the respondents have been deliberately not granting reservation in promotions to the members of the petitioners' Association, who are entitled to be considered for promotion not only in terms of Article 16(4A) of the

Constitution of India but in terms of Jammu and Kashmir Reservation Act, 2004 as well as Jammu and Kashmir Reservation Rules, 2005.

04. It has also been pleaded that despite making provision for reservation in promotions in Jammu and Kashmir Reservation Act, 2004 and Rules framed thereunder, to provide 8% reservation in promotions for the candidates belonging to Scheduled Caste category whereas 10% reservation was provided to the Scheduled Tribes category with fixation of rosters as well and finally it was prayed that the impugned Circular, whereby all the Administrative Secretaries have been asked to keep the slots meant for reserved employees vacant/unfilled, be quashed directing the respondents to promote the petitioners as well as other reserved category employees of the UT of Jammu and Kashmir to their respective categories strictly in terms of Jammu and Kashmir Reservation Act, 2004 and Jammu and Kashmir Reservation Rules, 2005 under the roster slots.

05. Learned counsel for the petitioners' Association in line with the pleadings made in the petition has argued that the officers/officials of the reserved categories of Scheduled Castes, Scheduled Tribes and Residents of

Backward Areas despite a provision for their consideration for reservation in promotions, in terms of the of Jammu and Kashmir Reservation Act, 2004 read with Jammu and Kashmir Reservation Rules, 2005, have been denied reservation in promotions for the last about more than a decade. He has argued that in view of the judgment dated 09.10.2015 passed by the Division Bench of this Court in a case titled “**Ashok Kumar & Ors Vs. State of J&K & Ors**” (SWP No. 1290/2014) whereby Section 6 of the Jammu and Kashmir Reservation Act, 2004 and Rules 9, 10 and 34 of the Jammu and Kashmir Reservation Rules, 2005 had been quashed by holding that the 77th Amendment to the Constitution in 1995 had not been extended specifically to the erstwhile State of Jammu and Kashmir (now Union Territory) by Presidential Order under Clause-I of Article 370, consequently, Clause (4A) of Article 16 would not be applicable to the erstwhile State.

- 06.** He has further argued that the judgment passed by the Division Bench of this Court in **Ashok Kumar’s case** (supra) was challenged by the affected persons/candidates belonging to different categories before the Hon’ble Apex Court and in one of the petitions, vide order dated 14.12.2015, status quo was directed to

be maintained while as in terms of an order dated 18.03.2016 in the clubbed SLPs with lead case “**Nasib Singh & Ors Vs. State of Jammu and Kashmir & Ors**”, the operation of the judgment dated 09.10.2015 passed by this Court had been stayed with further direction that the order shall not prevent this Court from considering eligible candidates for promotion to the next higher post, provided any vacancies for such consideration are available.

- 07.** Learned counsel for the petitioners further argued that despite passing of the interim directions by the Apex Court to the judgment passed by the Division Bench of this Court in **Ashok Kumar's case** (supra), the respondents under an intention not to grant reservation in promotions to the reserved categories issued impugned Circular No. 10-JK (GAD) of 2021 dated 05.03.2021 whereby all the Administrative Secretaries have been asked to keep the slots meant for reserved employees vacant/unfilled.
- 08.** Learned counsel for the petitioners further argued that the impugned Circular, being subject matter of Original Application (OA) No. 169/2023 before the Jammu Bench of Central Administrative Tribunal, came to be quashed

vide judgment dated 17.12.2024 passed in case titled **“Satish Chander Vs. UT of Jammu and Kashmir & Ors”** and further submits that in view of the decision of the Central Administrative Tribunal on the impugned Circular, the petitioners’ relief No. 1 seeking quashment of the impugned Circular has already been met and as such, only next two reliefs directing the respondents to consider the petitioners as well as other reserved category employees of UT of Jammu and Kashmir to their respective reserved categories strictly in terms of Jammu and Kashmir Reservation Act, 2004 and Jammu and Kashmir Reservation Rules, 2005 on the roster slots are required to be considered and prayed that the necessary directions be passed so that the officers/officials of the reserved categories are considered for promotion on reservation for the available vacancies in the next higher grades.

- 09.** Learned counsel for the respondents-Corporation, ex adverso, argued that in view of the order passed by this Court in **Ashok Kumar’s case** (supra), the reservation in promotion was held to be unconstitutional and the judgment dated 09.10.2015 passed by the Division Bench of this Court in the said case came to be challenged in various Special Leave Petitions before the

Apex Court and in view of the maintenance of status quo order passed by the Apex Court, the General Administrative Departments of the Government of Jammu and Kashmir in consultation with the Department of Law, Justice and Parliamentary Affairs of the Government of Jammu and Kashmir issued the impugned Circular instructing all the Administrative Departments to keep the slots meant for reserved category employees vacant/unfilled till the matter is finally heard and disposed of by the High Court.

10. He further argued that the respondents cannot consider the members of the reserved categories for consideration in promotions until the Special Leave Petitions filed against the judgment passed by the Division Bench of this Court in **Ashok Kumar's case** (supra) are disposed of.
11. Heard learned counsel for the parties, perused the pleadings on record and considered the matter.
12. The Hon'ble Apex Court in case titled "**Indra Sawhney Vs. Union of India & Ors**" reported as **AIR 1993 SC 477** has held that reservation in promotion is not available, however, the Parliament by 77th Amendment to the Constitution in the year 1995 introduced Article 16(4A)

conferring powers on the State to reserve seats in favour of Scheduled Castes/Scheduled Tribes community in the process of promotion in public service if the communities are not adequately represented in public employment and that the Parliament again vide 85th Amendment to the Constitution of India in the year 2001 provided for consequential seniority in the case of promotion by virtue of rule of reservation for the Govt. servants belonging to Scheduled Castes/Scheduled Tribes category with retrospective effect from June, 1995 and the constitutional validity of Article 16(4A), on being challenged before the Apex Court, was upheld by the Apex Court in a case titled **“M. Nagaraj & Ors Vs. Union of India & Ors”** reported as **AIR 2007 SC 71**.

- 13.** In the aforesaid backdrop with regard to the constitutional developments made in the year 2019 with regard to erstwhile State of Jammu and Kashmir whereby all the provisions of the Constitution of India lock, stock and barrel were applied to the Jammu and Kashmir including Article 16(4A) of the Constitution of India, providing for promotion in reservation. The Division Bench judgment passed in **Ashok Kumar’s case** (supra) had been decided by this Court mainly on the plank that the 77th Amendment of the Constitution of India made in

the year 1995 had not been specifically extended to the erstwhile State of Jammu and Kashmir, therefore, in view of the changed constitutional scheme vis-à-vis applicability of the Constitution of India to the Jammu and Kashmir, the provision with regard to reservation in promotion now stands applied to the State of Jammu and Kashmir since 2019. The Jammu and Kashmir State Legislature had enacted Jammu and Kashmir Reservation Act, 2004 in the year 2004 whereby reservation in promotion was also provided in terms of Section 6 which is reproduced as under:

“Except as otherwise provided in the Act, available vacancies to the extent as may be notified by the Government from time to time, shall be reserved in any service, class, category or grade carrying a pay scale the maximum of which does not exceed the pay scale of the post of Deputy Secretary to Government, for promotion from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes :

Provided that total percentage of reservation shall not exceed of the available vacancies :

Provided further that the Government shall exclude the services and posts, which on account of their nature and skill are such as call for highest level of intelligence, skill and excellence, from the operation of the Act.”

- 14.** The Government of Jammu & Kashmir also framed Rules under the Jammu and Kashmir Reservation Act, 2004 as Jammu and Kashmir Reservation Rules, 2005 providing

the mechanism of reservation in promotions to the reserved categories including the fixation of slots in the form of roster points. In view of the application of the whole of the Constitution of India including the relevant provision of Clause (4A) of Article 16 in the year 2019, the Government of Jammu and Kashmir is under a legal obligation to provide reservation in promotions in accordance with the provisions made in the Jammu and Kashmir Reservation Act, 2004 and Jammu and Kashmir Reservation Rules, 2005.

- 15.** The Government of Jammu and Kashmir, however, instead of providing for reservation in promotions came up with the impugned Circular No. 10-JK (GAD) of 2021 dated 05.03.2021 to deny the reservation in promotions to the officers/officials belonging to reserved categories with instructions to the Administrative departments to keep their slots vacant/unfilled.
- 16.** The impugned Circular, as submitted by the learned counsel for the petitioners, has already been quashed by the Jammu Bench of the Central Administrative Tribunal, vide judgment dated 17.12.2024 passed in OA No. 169/2023 titled “**Satish Chander Versus UT of**

J&K and Others” therefore, no finding is required to be returned on this aspect of the matter.

17. Coming to the second aspect of the matter as to the direction sought to be passed to the respondents for providing reservation in promotions to the members of the reserved categories is concerned, the Apex Court in the case titled **“Indra Sawhney Vs. Union of India”** (supra) had held that the reservation in promotions in favour of backward classes was unconstitutional as the reservations only at the entry level i.e., at the time of recruitment into public service was permissible and not thereafter. The Parliament, after this judgment of the Apex Court, had enacted 77th Amendment Act, 1995, which introduced Article 16(4A) conferring power on the States to reserve seats in favour of Scheduled Castes and Scheduled Tribes communities in the process of promotion in public service if the communities are not adequately represented in public employment. The Constitutional validity of this provision under Article 16(4A) of the Constitution of India came to be challenged before the Apex Court which, in case titled **“M. Nagaraj Vs. Union of India”** (supra), upheld its constitutional validity.

18. The Apex Court in **“Union of India & Ors Vs. Virpal Singh Chauhan & Ors”** reported as **(1995) 6 SCC 684** held that roster point promotees, who were given the benefit of accelerated promotion, would not get the consequential seniority. However, the Government was of the opinion that the concept of ‘catch up’ rule was not in the interest of SCs and STs in the matter of seniority on promotion. Article 16(4A) of the Constitution of India was further amended by 85th constitutional amendment to give the benefit of consequential seniority in addition to accelerated promotion. Article 16(4A) of the Constitution of India as amended reads as follows:

“Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.”

19. Determination of inadequate representation of SCs and STs in services under a State was left to the discretion of the State as the determination depends upon myriad factors which the Apex court cannot envisage. The conscious decision was taken by the Apex Court in

M. Nagaraj (supra) and “**Jarnail Singh & Ors Vs. Lachhmi Narain Gupta & Ors**” reported as **(2022) 10 SCC 595** to leave it to the states to fix the criteria for determining inadequacy of representation.

- 20.** In **M. Nagaraj’s case** (supra), the Apex Court held that it is open to the State to provide for reservation in promotions subject to limitation that there must exist compelling reasons of backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency. While referring to the roster, the Apex Court in the said judgment observed that the appropriate Government has to apply the ‘cadre strength’ as a ‘unit’ in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. Collection of quantifiable data regarding inadequacy of representation as stipulated by the Apex Court in **M. Nagaraj’s case** (supra) is relatable to the cadre concerned accordingly to the judgment passed by the Apex Court in **Jarnail Singh’s case** (supra).
- 21.** A three Judge Bench of the Apex Court in **Jarnail Singh’s case** (supra), on collection of quantifiable data,

laid down the following principles in para 67 which, for ready reference, is reproduced as under:

“Collection of quantifiable data for determining the inadequacy of representation of SCs and STs is a basic requirement for providing reservation in promotions, as laid down by this court in M. Nagaraj (supra). The unit for the purpose of collection of data is a cadre, according to M. Nagaraj (supra) and Jarnail Singh (supra). For the purpose of collection of quantifiable data for providing reservation in promotions, the entire service cannot be taken to be a unit and treated as a cadre, as already stated. The structure of services in the State of Karnataka is along the same lines as that of services in the Central Government. Services are divided into ‘groups’, which are further bifurcated into cadres. There is no confusion that a cadre is not synonymous with a ‘group’.”

- 22.** The Apex Court in the aforesaid case has held that the State should justify reservation in promotions with respect to the cadre to which promotion is made having regard to the quantifiable data to assess representation of SCs and STs for the purposes of providing reservation in promotions, **cadre**, which is a part of a group is the **unit** and data has to be collected with respect to **each cadre**.
- 23.** The Government of Jammu and Kashmir in the Jammu and Kashmir Reservation Act, 2004 and the rules framed

thereunder had fixed the percentage of reservation to be provided to the SCs and STs @ 8% and 10% respectively for promotions in public employment. After the judgment passed by the Division Bench of this Court in **Ashok Kumar's case** (supra) in the year 2015 for over a period of one decade, no such effort has been made to collect the quantifiable data so as to take some other view presumably under the notion that the constitutional provision of Article 16(4A) was not explicitly made applicable to the erstwhile State of Jammu and Kashmir by a Presidential Order. However, it is strange that after making application of whole of the Constitution of India lock, stock and barrel to the Union Territory of Jammu and Kashmir in the year 2019, the impugned Circular was issued by the Government of Jammu and Kashmir in the year 2022 whereby all the Administrative Departments were advised not to fill up the slots meant for the reserved categories in promotion.

- 24.** The Government of UT of Jammu and Kashmir has accepted before the Apex Court in terms of its additional affidavit filed in SLP(C) No. 3786/2016 with regard to providing of reservation in promotions as follows:

“(viii) That during the pendency of the instant petition, various Constitutional developments have

taken place with respect to erstwhile State of Jammu and Kashmir. In this regard, the Constitution (Seventy Seventh Amendment) Act 1995 was extended to the erstwhile State of Jammu and Kashmir by virtue of Constitution (Application to Jammu and Kashmir) Amendment Order 2019 issued by the President under sub clause (d) clause (1) of Article 370 of Constitution of India for giving benefit of promotion in service to the Scheduled Castes and the Scheduled Tribes, in addition to the existing reservation in the State (now Union Territory) of Jammu and Kashmir.

(ix) It is submitted that the basis of the judgment of the Hon'ble High Court that the provision enabling the State Government to enact provision providing for reservations in promotions had not been applied to the erstwhile State of Jammu and Kashmir has eviscerated. As on date, the entire Constitution of India, in its totality, including Article 16(4A) and Article 16(4B) apply to the UT. Therefore, it is submitted that impugned order liable to be set aside."

- 25.** It is strange that on the one hand, the Union Territory of J&K has prayed before the Apex Court for quashment of the judgment of this Court quashing provisions relating to reservation in promotion, stating that the basis of the judgment of this Court that the provision enabling the State Government to enact provision, providing for reservation in promotions had not been applied to the erstwhile State of Jammu and Kashmir has eviscerated, whereas on the other hand the Respondent No. 3-General Administration Department has come up with the impugned Circular No. 10-JK(GAD) of 2021 dated 05.03.2021 directing all the Administrative Secretaries to keep the slots meant for reserved category employees

vacant/unfilled. It is not comprehensible as to how the said directions can be passed in utter disregard to the constitutional provisions applicable to the UT of J&K with the application of the constitutional provisions in the year 2019.

- 26.** The benefit of reservation in promotions is stated to be accorded all across India in accordance with Article 16(4A) of the Constitution of India and applying the directions issued in terms of Circular dated 05.03.2021 in denying benefits of reservation in promotion in UT of J&K amounts to denying/treating reserved category employees/candidates of the UT of J&K differently than the reserved category employees/candidates of the rest of the Country, which amounts to class legislation, which is antithetical to the concept of equality laid down in the Constitution of India. Be that as it may, since in its affidavit referred hereinabove, the respondent-UT of Jammu and Kashmir has taken a stand before the Apex Court with regard to its intentions to implement the reservation in promotions, therefore, denying reservation to all the members of the service, who are entitled to such reservation in promotions, amounts to denying them of their constitutional rights.

- 27.** With the application of relevant Article 16(4A) of the Constitution of India, providing for reservation in promotions being applicable to the UT of Jammu and Kashmir, the respondents should have gone for an exercise to collect the quantifiable data as per the judgment passed by the Apex Court in **Jarnail Singh's case** (supra) to take a view in case the Government was not satisfied with the percentage providing for reservation of 8% and 10% to the SCs and STs in the matter of promotions. The Apex court has, in **Jarnail Singh's case** (supra), simplified the collection of data which, for the UT of Jammu and Kashmir, was an easy task with short cadres unlike other bigger states. This exercise could have been done by the Administrative Departments in a couple of days instead of waiting for years and there was no need to issue the impugned Circular to scuttle the constitutional rights of the reserved SC/ST categories officers/officials to provide for reservation in promotions, there being inadequate representation to the marginalized and disadvantaged communities.
- 28.** For the foregoing reasons and observations made hereinabove, this petition is disposed of with the following directions:

- (i) The respondents shall collect quantifiable data having regard to the 'cadre' as 'unit' for consideration of collection of quantifiable data within a period of six weeks from the date of this judgment and then accord consideration to the reservation in promotions to the petitioners as and when promotions to the next cadres are considered;
- (ii) In absence of collecting any quantifiable data as directed vide direction No. (i), the respondents shall proceed to consider the petitioners for reservation in promotions against the reserved slots in view of Jammu and Kashmir Reservation Act, 2004 and rules framed thereunder till the exercise for collection of quantifiable data is made by the Administrative Departments; and
- (iii) The respondents are restrained from making any promotions unless candidates belonging to the SC/ST reserved categories entitled for consideration for reservation in promotions are considered.

29. This petition is, accordingly, disposed of along with connected application(s), if any.

(M A CHOWDHARY)
JUDGE

JAMMU
06.03.2025
Naresh/Secy

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No