Sr. No. 102

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 3183/2026
CM No. 7028/2026
CM No. 7029/2026
Cav No. 1943/2026

Date of Pronouncement: 05.10.2026
Date of uploading: 07.10.2026

1. Kuldeep Singh age 61 years S/o Sh. Birbal Singh, R/o Village Dharmkot Bhaddu District Kathua. J&K, Pincode 184203.
2. Rakesh Singh age 53 years, S/o Sh. Raj Kumar Singh, R/o Village Bassi Jamwal Tehsil Hiranagar District Kathua. J&K, Pincode:184142.
3. Shiv Dev Age 57 years, S/o Sh. Mast Ram, R/o Village Niali, Mahanpur District Kathua. Pincode: 184202.
4. Naresh Chopra age 62 years, S/o Sh. Badri Nath R/o Village Bhaddu Tehsil Billawar, District Kathua, J&K Pincode: 184203.
5. Sudesh Kumar, Age 55 years, S/o Dewan Chand, R/o Village Plassi, Tehsil Basholi, District Kathua, J&K 184201.

.....Applicant(s)/Petitionert(s)

Through :- Mr. Rajnish Raina, Sr. Advocate with
Mr. Rishu Rajeshwar, Advocate and
Mr. Prabhat Sangotra, Advocate

v/s

1. UT of Jammu and Kashmir Through Commissioner/Secretary Power Development Department J&K Govt.
2. Power Development Department Corporation Ltd. through its Managing Director, Address: 5, Narwal Jammu J&K 180001, Office address: Rail Head Complex Jammu. Pincode 180012.
3. Chief Engineer, Power Development Department, Address: Office of Chief Engineer, Canal Road, 180001.
4. Executive Engineer, Sub Transmission Division, Kathua, Address: Office of Sub

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सत्यमेव जयते

Transmission Division Kathua, J&K 184101.

5. Finance Department through its Commissioner Secretary Finance, Office address: Civil Secretariat Jammu/Srinagar, Pincode: 180001.

.....Respondent(s)

Through :-

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

ORDER
05.10.2026

CM No. 7029/2026

This is an application filed by the applicants seeking exemption from filing typed copies of handwritten and misprinted documents at this stage.

Accordingly, the application, for the reasons stated therein, is allowed and filing of typed copies of handwritten and misprinted documents is dispensed with at this stage, and the learned counsel for the petitioner shall file the same within two weeks.

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01. Impugned in this petition filed under Article 226 of the Constitution of India is an order and judgment dated 10.06.2026 passed by the Central Administrative Tribunal, Jammu Bench, Jammu ["**the Tribunal**"] in T.A No. 8164/2021 and O.A No. 141/2024 titled **"Sudhesh Kumar and others v/s State of Jammu and Kashmir and others" and "Kuldeep Singh and others v/s UT of Jammu and Kashmir and others",** whereby the Tribunal, while allowing the petitions of the petitioners herein, has granted the following reliefs:

a) The respondents shall reckon the seniority of the applicants in the cadre of Technician-III notionally w.e.f. 15.12.1998, at par with their counterparts appointed/selected from the same 1997 selection process, strictly according to their merit position in the said selection.

b) The respondents shall redraw/recast the seniority position of the applicants accordingly and shall grant them all consequential notional service benefits, including consideration for notional promotion/placement in higher post/cadre, if their juniors from the same selection process have been granted such benefit, subject to eligibility, rules and availability of vacancy.

c) The applicants shall not be entitled to arrears of salary or wages for the period during which they did not actually work. However, their pay shall be notionally fixed for the purpose of future service benefits and consequential fixation.

d) The impugned communication dated 26.09.2023 rejecting the claim of the applicants for consideration under the Old Pension Scheme is set aside to the limited extent. The competent authority shall reconsider the claim of the applicants for pensionary benefits afresh, after giving effect to their notional seniority/service benefits from 15.12.1998 and after taking into consideration the peculiar facts of the case, relevant rules, Government instructions and parity with similarly situated employees, if any.

e) It is clarified that this Tribunal has not quashed SRO 400 dated 24.12.2009 and has not issued a direct declaration that the applicants are automatically governed by the Old Pension Scheme. The competent

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authority shall take a reasoned decision on the pensionary claim in accordance with law and in lieu of the fact that notional seniority from 15.12.1998 has already been granted.

02. The judgment impugned is challenged by the petitioners only to the extent of direction No. (d) and (e), wherein the issue as to whether the petitioners would be entitled to the benefit of Old Pension Scheme or not has been left to be determined by the respondents. It is submitted that once the petitioners have been entitled to appointment as Technician-III w.e.f. 15.12.1998, they cannot be deprived of the benefit of old pension rules as were in vogue at the time of issuance of SRO 400 of 24.12.2009. It is argued that the petitioners, having been appointed prior to 01.01.2010, would not be covered by the New Pension Scheme and, therefore, would be governed by the Old Pension Scheme.

03. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the directions No.(d) and (e), which leave it to the discretion of the respondents to take a view as to whether the petitioners are entitled to the Old Pension Scheme, needs to be modified. It is not in dispute that the appointment of the petitioners, made somewhere in the year 2013, was later given effect from 15.12.1998 and this notional effect to their appointment was given pursuant to the judgment passed by this Court in SWP No.2034/2009 and SWP No. 1923/2018, read with the judgment of the Hon'ble Supreme Court passed in the case of **"State of J&K and others v/s Vijay Sharma and others" 2005 SCC 13 403**.

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04. In view of the clear position emerging from the record, the respondents cannot be left with the discretion to determine as to whether the petitioners would be covered by a New Pension Scheme or would be governed by the Old Pension Scheme. As is apparent from a reading of SRO 400 of 2009, all employees appointed on or after 01.01.2010 are governed by New Pension Scheme, whereas the employees appointed prior thereto would continue to take the benefit of Old Pension Scheme.

05. For the foregoing reasons, we allow this petition to the limited extent and set aside the direction No.(d) and (e) and direct the respondents to treat the petitioners as having been covered by the Old Pension Scheme. The cases of those of the petitioners who have already retired shall be processed accordingly immediately.

06. Judgment impugned is modified accordingly. We make it clear that notwithstanding what we have stated hereinabove, nothing shall prejudice the right of the respondents to challenge the judgment of the Tribunal, if they so desire.

07. The petition shall dispose of in above terms.

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(MA Chowdhary)
Judge

(Sanjeev Kumar)
Judge

JAMMU
05.10.2026
Sapna

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