



Government of Jammu & Kashmir
Public Works (R&B) Department
Civil Secretariat, J&K

Subject: OA No.331/2022 titled Rajinder Kumar & Ors V/s UT of J&K and others.

Government Order No. 166 - PW(R&B) of 2022
Dated: 12 - 05-2022

Whereas, applicants (Draftsman) have filed the Original Application before the Hon'ble Court of Central Administrative Tribunal at Jammu, seeking directions to the official respondents to grant them higher pay scale of 5150-8300 with effect from the date of their initial appointments as draftsman pursuant to Government order No. 165-PW(Hyd) of 2008 dated 27.03.2008 and Govt. order No. 283-PW(R&B) of 2007 dated 23.08.2007 in the pay scale of 4000-6000 and also in accordance with the judgment passed by the Honorable court as the applicants are similarly situated ; and

Whereas the Honorable Central Administrative Tribunal, Jammu disposed of O.A.61/331/2022 vide order dated 12.04.2022 with the following directions :-

"Considering the above submissions, this O.A. is disposed of at admission stage, without expressing any opinion on merits of the case, directing the respondents to consider pending representation of the applicant dated 22.04.2022 for grant of higher pay scale as per provisions of SRO-18 of 1998 in view of the Honorable Court order dated 10.03.2020 in other similar cases and other relevant provisions and rules on this subject and decide it with a reasoned order within four weeks from the date of receipt of a certified copy of this order and within one week thereafter to communicate it to the applicants".

Whereas in the year 2003, one Sham Paul Randhawa along with others also filed SWP No. 2047/2003 titled Sham Paul Randhawa & Ors V/s State & Ors in the Honorable High Court, at Jammu, seeking direction to the official respondents to release grade of Rs. 1600-2660, (Pre-revised) inter-alia on the grounds that pursuant to common advertisement notification, for the post of Draftsman for Jammu as well as Kashmir Division, the selection process for both the Divisions were carried out simultaneously, but the selection list as well as appointment orders to the candidates/selectees belonging to the Kashmir Division were

issued prior to the issuance of SRO-75 dated 30.03.1992 and the SRO-174 dated 30.07.1992 because of which such Draftsmen belonging to the Kashmir Division were initially placed in the Grade pay of Rs. 1200-2170 and after the issuance of SRO-174 of 1992 placed in the Grade pay of Rs. 1600-2660. It was submitted in the writ petition that the select list and the subsequent appointment of Draftsman pertaining to the Jammu Division were issued after the issuance of the said SRO's, as a result of which the Draftsman belonging to the Jammu Division were placed in the Grade pay of Rs. 1200-2040; lower to that of allowed in favour of appointees of Kashmir Division; and

Whereas, the said writ petition was disposed off by the Hon'ble High Court vide judgment dated 21.11.2008, the operative part is reproduced as under:-

"For what has been stated herein above, it is manifest that once the State Government has complied the direction of the Court in various judgments, where similar question was raised, the petitioners also claimed that they are also entitled to the same benefit. Even though the State Government has granted this, be the similarly situated persons without amending the aforesaid SRO. But it has to be assumed in law and by implication that this power has been exercised by the State Government by relaxing this condition in the SRO. To put it straight, the State Government after relating the aforesaid condition, have permitted the persons to be appointed directly in higher grade and not in the lower grade at the entry level. The same power is also required to be exercised by the State in the present writ petition. Therefore, direct the respondent to pass appropriate orders placing the petitioners in higher grade initially from the date of their appointments as Draftsman instead of lower grade to which they have been appointment and consequently they be also given all the consequential benefits. This exercise be completed within a period of three months from the date copy of this order is received by the respondents".

Whereas, the case was taken up with the Department of Law Justice and PA vide this departments U.O. dated 05.5.2021 for their advice/opinion and the case was returned with the following advice:-

"Similar issue was forwarded to this department by Power Development Department and a meeting was held on the subject in which the Law Officer of PW(R&B) Department also participated. The copy of the U.O. LD(Lit) 2011/811-PDD dated 10.4.2019 is accordingly forwarded to the department for information and necessary action"

Whereas, the minutes of the meeting held by the Law Department on 10.4.2019 reference of which have been made in the opinion conveyed on 02.6.2021 reads as under:-



"A meeting was held under the chairmanship of Secretary to the Government, Department of Law, Justice and Parliamentary Affairs on 02.4.2019 in which Deputy Secretary PDD, the Law Officer of Power Development Department, PHE Department and R&B Department participated and unanimous decision was taken in the meeting that a common stand be projected by all the concerned Engineering Department before the Hon'ble Court in such type of litigation in order to defend the interests of the State. The Law Officer of PHE Department informed that they have already rejected the claim of the petitioners in SWP No. 2081/2015 titled Vikas Bhagat and Ors V/s State and Ors by way of a speaking Government order No. 431- PW(hyd) of 2018 dated 28.12.2018, whose claim is similarly situated. It has been decided in the meeting that the Department be advised to issue a speaking consideration order in the present case also. The petitioners in the present case have accepted the terms and conditions of employment based on the Recruitment Rules governing the appointment of Draftsman at the time of their appointment and the said rule has not been quashed by the Hon'ble High Court and the petitioners are to be governed by the said rule which can't be relaxed keeping in view the judgment passed by the Hon'ble Supreme Court of India titled Suraj Parkash Gupta Vs State before the writ court in SWP No. 2047/2003 in which the basic judgment has been passed in 2008, without objections of the other side. The Hon'ble High Court vide order/judgement dated 22.05.2017 passed in SWP No. 156/2011 has directed the respondent to consider the claim in light of the order dated 21.11.2018 passed in SWP No. 2047/2003 by way of passing a speaking consideration order on the subject and has not expressed any view on the merits and facts of the case. The Hon'ble Court has left it for consideration of the competent authority to examine the claim of the petitioners.

The department may consider to issue a speaking consideration order on the above line in compliance to Hon'ble High Court directions dated 22.2.2017 passed in SWP No. 156/2011 and Division Bench judgment dated 28.01.2019 passed in LPASW No. 12/2019 , with the approval of the competent authority"

Whereas, the matter was examined in the department in light of Hon'ble High Court directions passed in SWP NO. 2394/2014 MP No. 3841/2014 dated 22.08.2017 along with the other connected similar matters pending in the department and examined in light of the opinion rendered by the Department of Law, Justice and PA; and

Whereas, in order to take a decision in the matter, a speaking consideration order No. 214-PW(R&B) of 2021 dated 28.06.2021 was passed in which the cases of the petitioners in SWP No. 2410/2017 titled Mr. Sandeep Kumar Sharma and the petitioners in SWP No. 1426/2009 titled Suhail Majeed & others V/s State and others, SWP No. 1276/2008 titled Mohammad Maqbool Dar & Ors V/s State and others, SWP No. 2394/2014 MP No. 3841/2014 titled Abdul Gani Dar and another V/s State of J&K and others, SWP No. 2387/2014 titled Zeenat Shafi V/s State and others, SWP No. 1038/2014 titled Kailash Kumar Pushp and others V/s State and others, Contempt No. 341/2015 in SWP No. 1239/2014 titled Rajeev Gupta V/s Shri Rohit Kansal & Ors, SWP No. 538/2015 titled



Ravinder Kour and others V/s State and others, SWP No. 1124/2014 titled Anil Chouhan & Ors V/s State & Ors, SWP No. 964/2014, CMA No. 1268/2014 titled Vinod Kumar & Ors V/s State & Ors, SWP No. 340/2011 titled Nazima Rashid V/s State and others, CCP(C) No. 296/2019 in SWP No. 1127/2014 titled Rajinder Sharma and others V/s State of J&K and others, CCP No. 144/2020 in SWP No. 2410/2017 titled Sandeep Kumar V/s UT of J&K and others, O.A No. /2020 titled Manzoora Nazir V/s UT of J&K and others, T.A. No. 62/3194/2021 titled Hilal Ahmad Wani and others V/s State of J&K and other, O.A No. 61/496/2020 titled Rajender Kumar and Ravinder Kaur V/s UT of J&K and others, O.A No. /2020 titled Nimpu Bhat and another V/s UT of J&K and others and O.A No. /2020 titled Afroza Bano and others V/s UT of J&K and others were examined and found devoid of any merit.

Now, therefore, in view of the factual position coupled with the legal aspect, the claim of the petitioners has been examined and considered with due deference to the order dated 12.04.2022 passed by the Hon'ble CAT and in light of opinion rendered by the Department of Law, Justice & Parliamentary Affairs in similar situated cases and have been found devoid of merit.


By order of the Government of Jammu and Kashmir.

Sd/-
(Shailendra Kumar) IAS
Principal Secretary to Government
Public Works(R&B) Department
Dated: 12-05-2022

No: PWD-LIT/165/2022-05

Copy to the:

1. Principal Secretary to the Hon'ble Lieutenant Governor.
2. Joint Secretary(J&K), Ministry of Home Affairs, Government of India, New Delhi.
3. Director Archeology Archives and Museums, Jammu & Kashmir.
4. Chief Engineer, PW(R&B) Department Kashmir.
5. Advocate Mr. Hunar Gupta, D.A.G . for information.
6. Private Secretary to Commissioner/ Secretary to Government, PW(R&B) Department.
7. In-charge website, PW(R&B) Department.
8. Concerned.
9. Monday Return file (w.2.s.c).
10. Government order file.


(Vikas Chander)
Senior Law Officer
Public Works (R&B) Department

