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

Subject: CCP(S) No. 144/2020 in SWP No. 2410/2017 titled Sandeep Kumar Sharma V/s UT of J&K and Others.

**Government Order No: 214 : PW(R&B) of 2021**  
**Dated: 28 /06/2021**

Whereas, initially one Naresh Kumar Gupta and others (Draftsmen) filed SWP No. 352/1993 before the Hon'ble High Court at Jammu seeking parity in respect of grade pay being enjoyed by their similarly situated colleagues and counterparts; and

Whereas, the Hon'ble High Court vide its interim order dated 25.08.1995 directed the official respondents to extend the benefit of notification no. SRO-174 dated 30.07.1992 to the petitioners; and

Whereas, the petitioners also filed contempt petition registered as CCP(S) No. 144/2020 for not implementing the said order of the Hon'ble Court subsequently The Department implemented the said interim order by issuing Government Order No. 102-PW of 1996 dated 23.02.1996 placing all the petitioners of this writ petition in the pay scale of Rs. 1600-2660, retrospectively from date of their appointment,

Whereas, some Junior Engineers who were appointed in PDD between 30.04.1993 to 15.06.1993 in the grade of Rs. 1400-2300 also filed SWP No. 1300/1996, titled Roshan Din Choudhary & Ors V/s State Of J&K & Ors for giving them the similar treatment

Whereas, the said writ petition was allowed by the Hon'ble Court vide judgment dated 05.11.1999, with the directions to give the same grade, which has been given to the Junior Engineers vide Government Order No. 355-PDD of 1997 dated 24.11.1997 which was implemented by the PDD.

Whereas, aggrieved, some more Draftsmen posted in different Engineering departments of the then State of J&K now called UT also approached the Hon'ble High Court at Jammu through the medium of SWP No. 05/1998 titled Manohar Singh & Ors V/s State of J&K & Ors, seeking direction to place all the petitioners in the pre-revised grade of Rs. 1600-2660 w.e.f. their joining and finally the case was decided in review by the Hon'ble Division Bench in light of the decision/ judgment rendered in case titled Roshan Din Choudhary and Ors V/s State of J&K & Ors and while disposing of review (LPA) SW 81/99, the Hon'ble Division Bench vide order dated 21.05.2002 directed the State Government to consider the case of petitioners in light of the decision/ judgment, rendered in case of Roshan Din Choudhary & Ors V/s State of J&K & Ors; and

Whereas, the Public Works Department in compliance to the said order dated 21.05.2002 issued Government Order No. 58-PW(R&B) of 2003 dated 13.06.2003, whereby the petitioners in SWP No. 05/1998 were placed in the Grade of Rs. 1600-2660 pre-revised, in place of Rs. 1200-2040 (pre-revised); and

Whereas, in the year 2003, one Sham Pal Randhawa alongwith others also filed SWP No. 2047/2003 titled Sham Paul Randhawa & Ors V/s State & Ors in the Hon'ble 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 Draftsmen 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 its judgment dated 21.11.2008, the operative part whereof reads as under:-

**"For what has been stated hereinabove, 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 Draftsmen 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 department assailed the above judgement in the Division bench of the Hon'ble High Court through the medium of LPA(SW) No. 146/2009 which was disposed off by the Hon'ble Division Bench vide its order dated 28.12.2016 the operative part whereof reads as under:-

**"The writ court also followed the said judgment of Division Bench and granted relief to the writ petitioners by giving directions to pass appropriate order placing the writ petitioners in higher grade initially from the date of their appointments as Draftsman instead of Lower grade to which they have been appointed and consequently, give them all the consequently, given them all the consequential benefits within a period of three months.**

**Since the writ court has followed the said judgment of Division Bench which has been implemented vide Government Order dated 06.12.2007, no case is made out to interfere with the order of the writ court".**

Whereas after dismissed of the LPA, the department took up the matter with the Department of Law, Justice & Parliamentary Affairs for their opinion and agreement to file SLP. The Law department returned the file with the following opinion/ advice:-

**"Returned. Department is advised to file SLP against the judgment/order dated 28.12.2016 passed by the Division Bench of Hon'ble High Court of J&K at Jammu in LPASW No. 146/2009, MP No. 193/2009 titled State of J&K and others V/s Sham Paul Randhawa and others through Sh. Mohammad Shoeb Alam, Standing Counsel for J&K State at New Delhi who has been engaged vide letter No. LD(Lit) 2016/122-SC/PWD, dated 1303.2017(copy of the engagement letter is placed alongside of the file. Department is further advised to conduct and hold an enquiry into the matter as to under what circumstances the benefits have been granted to the petitioners who are not eligible for the same and even in some cases the appeals were pending against the orders of Hon'ble Single Judge and the said enquiry can be made a ground for challenging the present order of the Division Bench in SLP".**

Whereas, on the advice of Law Department, SLP was filed by the department, registered as Diary No(s). 16729/2017 titled State of J&K and others V/s Sham Paul Randhawa and others which was also dismissed by the Hon'ble Supreme Court vide order dated 03.10.2017 reproduced below:-

**"We don't find any ground to interfere with the impugned order. The special leave petition is, accordingly, dismissed".**




Whereas, a large number of litigation is pending on the issue in the various departments of the State, which are seeking parity on the strength of decision rendered by the Hon'ble High Court in SWP No. 2047/2003 titled Sham Paul Randhawa and others V/s State of J&K and others, and the decision in the said case shall be applicable in uniformity on all the similarly situated cases, which may result in huge financial implications. Some of the cases has been disposed off by the Hon'ble High Court detailed below directing the official respondents to grant the benefit of the grades to the petitioners of the writ petitions as allowed to their similarly situated counterparts from their from their initial appointments:

S. No	Title of the Case	Disposed off vide
1.	SWP No. 1426/2009 titled Suhail Majeed & others V/s State and others	Order dated 15.07.2014
2.	SWP No. 1276/2008 titled Mohammad Maqbool Dar & Ors V/s State and others.	Disposed off vide Order dated 21.02.2014
3.	SWP No. 2394/2014 MP No. 3841/2014 titled Abdul Gani Dar and another V/s State of J&K and others.	Disposed off vide Order dated 22.08.2017 passed by the Hon'ble Court.
4.	SWP No. 2387/2014 titled Zeenat Shafi V/s State and others.	Disposed off vide Order dated 30.12.2014 passed by the Hon'ble Court.
5.	SWP No. 1038/2014 titled Kailash Kumar Pushp and others V/s State and others	Disposed off vide Order dated 23.04.2014 passed by the Hon'ble Court.
6.	Contempt No. 341/2015 in SWP No. 1239/2014 titled Rajeev Gupta V/s Shri Rohit Kansal & Ors	Disposed off vide Order dated 20.05.2014 passed by the Hon'ble Court in SWP.
7.	SWP No. 538/2015 titled Ravinder Kour and others V/s State and others.	Disposed off vide Order dated 09.04.2018 passed by the Hon'ble Court.
8.	SWP No. 1124/2014 titled Anil Chouhan & Ors V/s State & Ors.	Disposed off vide Order dated 13.05.2014 passed by the Hon'ble Court.
9.	SWP No. 964/2014, CMA No. 1268/2014 titled Vinod Kumar & Ors V/s State & Ors.	Disposed off vide Order dated 04.04.2014 passed by the Hon'ble Court.
10.	SWP No. 340/2011 titled Nazima Rashid V/s State and others.	Disposed off vide Order dated 15.07.2014 passed by the Hon'ble Court.
11.	CCP(C) No. 296/2019 in SWP No. 1127/2014 titled Rajinder Sharma and others V/s State of J&K and others.	Disposed off vide Order dated 12.05.2014 passed by the Hon'ble Court in SWP.



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12.	CCP No. 144/2020 In SWP No. 2410/2017 titled Sandeep Kumar V/s UT of J&K and others	Disposed off vide Order dated 06.10.2017 passed by the Hon'ble Court in SWP.
13.	O.A No. /2020 titled Manzoora Nazir V/s UT of J&K and others.	Order dated 21.01.2021 passed by the Hon'ble CAT
14.	T.A. No. 62/3194/2021 titled Hilal Ahmad Wani and others V/s State of J&K and other.	Order dated 26.04.2021 passed by the Hon'ble CAT
15.	O.A No. 61/496/2020 titled Rajender Kumar and Ravinder Kaur V/s UT of J&K and others.	Disposed off vide Order dated 19.08.2020 of the Hon'ble CAT
16.	O.A No. /2020 titled Nimpu Bhat and another V/s UT of J&K and others.	Disposed off vide Order dated 19.01.2021 of the Hon'ble CAT
17.	O.A No. /2020 titled Afroza Bano and others V/s UT of J&K and others.	Disposed off vide Order dated 13.10.2020 of the Hon'ble CAT

Whereas, the instant case titled Sandeep Kumar V/s U.T. of J&K was decided on 06.10.2017 by the Hon'ble High Court with the following directions:-

**"Accordingly, this writ petition is disposed of with a direction to the respondents to consider the claim of the petitioner in terms of averments made in the writ petition and having regard to judgment dated 28.12.2016 passed by the Hon'ble Division Bench of this Court in LPASW No. 192/2016 titled State of J&K and others V/s Kailash Kumar Pushp and others, provided the same is applicable to the case of the petitioner. Let the respondents to consider and decide the case of the petitioner, of course, under rules within a period of six weeks from the date of receipt of copy of this order".**

Whereas, the petitioner has also filed a Contempt petition being aggrieved off the non implementation of judgment which is pending consideration before the Hon'ble High Court and

Whereas, the matter was taken up with the Department of Law Justice and PA vide this departments U.O. dated 05.5.2021 for their advice/opinion who returned the case file 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 read 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 case of the petitioner in all above referred cases have been examined and considered in light of the judgment referred in their respective cases and it has been found that the petitioners have accepted the terms and conditions of advertisement notice in response to which they had applied and subsequently appointed which had mentioned the Pay Scales in which the petitioners were appointed and which advertisement notice(s) were based on recruitment rules governing the post to which the petitioners were appointed. The said rules cannot be relaxed in view of the law laid down by the Hon'ble Supreme Court of India in case titled Suraj Parkash Gupta V/s State of J&K






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Now therefore, the case of the petitioner in SWP No. 2410/2017 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 and have been examined and considered in compliance to the orders of the Hon'ble High Court passed in their cases as well as in light of the opinion rendered by the Department of Law, Justice and PA, and have been found devoid of any merit.

Sd/-

(Shailendra Kumar)IAS

Principal Secretary to the Government  
Public Works (R&B) Department

No: PWD-LIT/62/2021

Dated: 28.06.2021

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 General, Economics & Statistics Srinagar.
4. Director, Achieves, Archaeology and Museum Department, J&K, Jammu.
5. Chief Engineer, PW(R&B) Department Kashmir/Jammu.
6. OSD to Advisor (B) to the Hon'ble Lieutenant Governor
7. Pvt. Secretary to Principal Secretary to the Government, PW(R&B) Department
8. Concerned official.
10. Incharge Website, PW(R&B) Department.
11. Government order file/Monday Return.

  
(Farooq Ahmad Malik)
Under Secretary to the Government  
Public Works (R&B) Department

