

Government of Jammu and Kashmir
Home Department
Civil Secretariat, Jammu/Srinagar

Subject: T.A. No.1311/2020 in SWP No.743/2004, titled Kareeb Akhtar Vs Union territory of J&K and others.

Reference: Order dated 24.05.2021, passed by the Hon'ble Central Administrative Tribunal, Bench Jammu.

131
Government Order No: -Home of 2023
Dated: 14.03.2023

1. Whereas, Sh. Kareeb Akhtar, was appointed as Follower (Water Carrier) in Armed Wing of J&K Police, in the year 1997. He applied for conversion/appointment to the post of Constable, in terms of guidelines issued by the Police Headquarters, J&K; and
2. Whereas, height of Sh. Kareeb Akhtar was recorded in service records at the time of his initial appointment as 5ft 4¾ inch. The same was subsequently got re-measured in the year 2004, on the request of the applicant and was found to be 5 ft 5 inch, which is still deficient by one inch (1'), with reference to the standard height of 5 ft.6 inch, prescribed for the post of Constable, in terms of Rule 176 of Jammu & Kashmir Police Rules, 1960; and
3. Whereas, the case of the applicant for relaxation in height was examined, and it was observed that the basic eligibility condition for appointment to the service could not be relaxed, in light of the judgment dated 28.04.2000, passed by the Hon'ble Supreme Court of India in the case of *Suraj Prakash Gupta Vs State and others*. The Police Headquarters, J&K vide communication No.Home/439/G/PB-III/2001 dated 23.02.2004, was conveyed accordingly; and
4. Whereas, Sh. Kareeb Akhtar, approached the Hon'ble High Court through the medium of *SWP No.743/2004 titled Kareeb Akhtar Vs State of J&K & Other*, wherein, the applicant prayed for the following relief:

"(i) to quash Order No. Home/439/G/PB-III/2001 dated 23.02.2004 issued by the Home Department by which the respondents have rejected the case of the petitioner for appointment as Constable, by issuance of writ of Certiorari;

(ii) to convert/appoint the petitioner as Constable and to give similar treatment to the petitioner as has been given to the respondents No.7, by issuing writ of Mandamus;

(iii) to issue direction to the official respondents to give benefit of relaxation in height as has been given in case of private respondent and also give effect of conversion/appointment to the post of Constable

retrospectively w.e.f dated i.e July, 2000 the date when the private respondent No. 7 has been converted/appointed as Constable and to give all the consequential benefits to the petitioner attached to the post of Constable retrospectively, w.e.f date the private respondent has been given, by issuing writ of Mandamus;"

5. Whereas, the Hon'ble High Court transferred the writ petition to the Hon'ble Central Administrative Tribunal, Jammu Bench, which came to be registered as TA No. 1311/2020; and

6. Whereas, the Hon'ble Tribunal disposed of the TA No.1311/2020 in SWP No.743/2004, in terms of judgement dated 24.05.2021, with the following observation and directions:

"7. Had the State of Affairs remained the same, there would not have been necessity to proceed further. The reason is that the tribunal cannot issue any direction, which runs contrary to the judgment of the Hon'ble Supreme Court. However, across the Bar, it is brought to our notice by the learned senior counsel for applicant that in Abhay Kumar Singh & others v. State of Bihar & others (2014)7 SCC6, the Hon'ble Supreme Court held that selection of a candidate for the post of Constable cannot be denied solely on the ground of his shortfall in the height. If that is so, the applicant can make a representation enclosing the said judgment.

8. We, therefore, dispose of the T.A, leaving it open to the applicant to make a representation, enclosing the copy of judgment of Hon'ble Supreme court, Abhay Kumar Singh (supra). If such a representation is made, the concerned authority shall pass appropriate orders thereon, within a period of two months from the date of receipt of a copy of the same."

7. Whereas, representation of the applicant was considered in light of the direction passed by the Hon'ble Tribunal, and it was observed that the case of the applicant is different from Abhay Kumar Singh case, in which matter, the minimum height requirement was 1.65 cms. for general candidates and 160 cms. for scheduled castes candidates, and the petitioners were above the minimum prescribed height. However, in the instant case, the applicant does not meet the requirement of the basic minimum prescribed height of 5 ft 6 inch, by one inch (1") and as such has sought relaxation in height for the post of Constable. The relevant portion of the Judgment of Abhay Kumar Singh case, wherein factual narration has been made is reproduced as under:

"This matter has been placed before us in view of the dis-agreement by a Bench of Two Judges with the earlier order of this Court on the question whether the height can be the sole criteria for the selection of a police Constable. the Order dated referring the matter to a larger Bench, reads as follows:-

The dispute relates to the selection of Constables in the State of Bihar. The minimum height requirement was 1.65 cms. for general candidates and 160 cms.

Now, therefore, in due deference of the Order dated 24.05.2021, passed by the Hon'ble Central Administrative Tribunal, Jammu Bench, in TA No.1311/2020 titled *Kareeb Akhtar Vs Union territory of J&K and Others*, the representation dated 23.06.2022 of the applicant, having been considered, in light of the relevant rules governing the subject and found devoid of merit, inter-alia, for the reasons recorded herein above, is accordingly rejected.

By Order of the Government of Jammu and Kashmir.

Sd/-
(Raj Kumar Goyal) IAS
Financial Commissioner/
Additional Chief Secretary

No.Home/NG-IV/153/2022/(CC-217164)

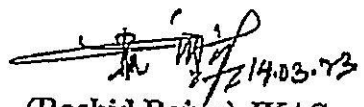
Dated: 14 .03.2023

Copy to the:

1. Director General of Police, J&K.
2. Additional Director General of Police (Armed), J&K.
3. Commandant JKAP-7th Bn., Channi Himmat, Jammu.
4. Director Archives, Archaeology and Museums, J&K.
5. Private Secretary to the Chief Secretary, J&K.
6. Private Secretary to the Financial Commissioner (Additional Chief Secretary), Home Department.
7. Incharge Website, Home Department.
8. Government Order file/Stock file.

Copy also to the:

Joint Secretary (JKL), Ministry of Home Affairs, Government of India.


(Rashid Raina) JKAS
Under Secretary to the Government