

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

Subject: Appointment under SRO-43 of Shri Naveen Kumar S/o Late Dy.SP Bodh Raj R/o District Doda, Tehsil Bhalla- reg;

Ref: Order dated 09.09.2020 of the Central Administrative Tribunal, Jammu Bench Jammu in T.A No. 061/596/2020 titled Naveen Kumar vs. State of J&K and others.

Government Order No: 24 - Home of 2022
Dated: 25 .01.2022

1. Whereas, Smt. Indra Devi W/o Late Dy.SP R/o District Doda, Tehsil Bhalla filed an application stating therein that her husband namely, Shri Bodh Raj posted as DySP in District Kupwara expired on 23.11.2018 due to an accident, while performing election duties at Keran Sector near International Border and prayed for appointment of her son namely, Naveen Kumar, as Sub-Inspector in the Police Department; and.
2. Whereas, in terms of communication dated 29.05.2019, the application submitted by Smt. Indra Devi was forwarded to the Director General of Police, J&K, for taking appropriate action in the matter, being a competent authority in such matters, in terms of Rule 4 of SRO-43 of 1994 dated 22.02.1994; and
3. Whereas, the PHQ vide communication dated 07.06.2019, while forwarding the details of Shri Naveen Kumar, son of the deceased Dy.SP, recommended that the case of the applicant may be considered for his appointment as Sub-Inspector in J&K Police, in relaxation of recruitment rules/ upper age limit under SRO-43 of 1994. The matter was examined in the department and it was observed that the case of the applicant is not covered under the relevant rules and accordingly, vide communication dated 23.07.2019, PHQ was advised that the applicant may be appointed as a Follower in J&K Police, in terms of rules 3(1) of SRO-43 of 1994, if otherwise eligible; and
4. Whereas, the representations filed from time to time by the applicant and his mother for appointment under SRO-43 on the higher post in Non Gazetted rank before various authorities were received in the department, which included the representation dated 25.11.2019. Aggrieved by the communication dated 23.07.2019 of the Home Department, the applicant filed a writ petition, *WP(C) No. 3732/2019 titled Naveen Kumar v/s UT of J&K and others*, challenging therein, the aforesaid communication dated 23.07.2019 on the ground that such communication is illegal and arbitrary and de hors Rule 3(2) of SRO-43 of 1994. which empowers the General Administration Department to appoint a person on compassionate

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appointment to a higher post in the Non-Gazetted service for which he/she is eligible and qualified in terms of the Recruitment Rules prescribed for that post; and

5. Whereas, the aforesaid petition was transferred to the Central Administrative Tribunal, Jammu Bench Jammu, which, vide its order dated 09.09.2020 disposed of the petition in the following terms:

" In view of the above submissions, this O.A is disposed of with direction to the respondents number-1 & 2 to consider the applicant's application/representation dated 22.11.2019 for appointment as police Sub Inspector on compassionate grounds as per the provisions of Rule 3(2) of SRO-43 of 1994 and pass a reasoned and speaking order within one month from the date of receipt of certified copy of this order and communicate the decision to the applicant within two weeks thereafter".

6. Whereas, while the case was under examination, the applicant filed one more representation on 14.01.2021 stating therein that the Government has from time to time considered various cases involving identical circumstances and appointed the dependents of the deceased employees on higher post i.e. Prosecuting Officer in J&K Police, Sub-Inspector in J&K Police and Jr. Engineers in Power Development Department and prayed that the case of the applicant be also considered for appointment as Sub-Inspector under SRO-43 of 1994 dated 22.02.1994; and
7. Whereas, the matter has been examined in reference to the provisions contained in the J&K compassionate appointment Rules of 1994, notified vide SRO-43 of 1994 dated 22.02.1994, which govern the appointments to be made on compassionate grounds. It is observed that the claim for appointment on compassionate grounds is not absolute and is an exception to the general rule of appointment to meet certain contingencies of the family of the deceased, falling within the ambit of Rule 2 of the aforementioned rules. Rule 3 (1) of these rules provide that the appointment can be offered to an eligible family member of a person specified in Rule 2 against a vacancy in the lower rank of Non-Gazetted service or Class-IV post. These rules have been framed with a specific purpose and object to provide immediate succor to the dependent family members to tide over uncertain situations they may be trapped in.; and
8. Whereas, the applicant in the instant case is seeking parity with the cases already decided by the Government, The applicant cannot base his claim on the strength of the cases cited by him and is required to sustain his claim, which is based on legal and justifiable grounds. The issue, whether by means of an executive order, conferring a particular benefit on a person to which he was not entitled in law can be a ground to claim and confer a similar benefit on another similarly situated person on the touch stone of Article 14 of the constitution of India, was considered by the Hon'ble Supreme Court of India in the matter of *Chandigarh Administration vs. Jagjit Singh (1995) 1 SCC 745* and the Hon'ble Supreme Court

para 1.

vide its judgment dated 10.01.1995, in paragraph 8 had observed as under;-

"We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order".

The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination.

9. Whereas, the matter was referred to the General Administration Department for considering the claim of the applicant. General Administration Department vide their U.O. dated 27.04.2021 has conveyed that :-

"The department is advised to settle the case of the applicant at their own level against a lowest non-gazetted post instead of Sub Inspector under SRO-43 of 1994, if otherwise eligible and issue a reasoned and speaking order accordingly".

10. Whereas, Supreme Court in State of M.P. vs. Ramesh Kumar Sharma (1994) SUPP (3) SCC 661, held that under the Rules of Compassionate Appointment, the applicant has no right to appointment to any particular post of his choice even if on an earlier occasion the Government gave compassionate appointment to a higher post, that would be no ground for claiming such post and also in another case of Hon'ble Supreme Court in case titled "Umesh Kumar Nagpal Vs. State of Haryana" (JIT 1994 (3) SC 525) has laid down the important

principle with regard to the present facts of the case. It has been held that neither the qualification of the applicant (dependent family member) nor the post held by the deceased or medically retired government servant is relevant. If the applicant finds it below his dignity to accept the post offer, he is free not to do so. The post is offered not to cater his status but to see family through the economic calamity. With respect to the parity claimed by the petitioner, it is clear that one wrong does not justify another and any appointment made in violation of settled principles and law laid down by Hon'ble Supreme Court cannot be cited as precedence for making another similar appointment.

11. Now, therefore, the case of the applicant for his appointment as Sub Inspector or to any other higher Non-Gazetted post in J&K Police, after being considered in reference to the provisions contained in the J&K Compassionate Rules, 1994 notified vide SRO-43 of 1994 dated 22.02.1994, and in due deference of the order dated 09.09.2020 of the Central Administrative Tribunal, Bench Jammu in T.A No. 061/596/2020 titled Naveen Kumar vs. State of J&K and others, is for the reasons indicated herein above, found devoid of merit and rejected, accordingly.

By order of the Government of Jammu and Kashmir.

Sd/-

(Shaleen Kabra) IAS

Principal Secretary to the Government

No. Home/SRO-43/78/2019/CC-9412

Dated: 25 .01.2022

Copy to the:-

1. Director General of Police, J&K.
2. Principal Secretary to the Hon'ble Lieutenant Governor.
3. Principal Secretary to the Government, General Administration Department.
4. Private Secretary to Chief Secretary for information of the Chief Secretary.
5. Private Secretary to the Principal Secretary to the Government, Home Department.
6. In-charge Website, Home Department.
7. Government order/stock file.

Copy also to :

1. Joint Secretary, JKL, MHA, GoI.

(Parveen Kumar)JKAS

Additional Secretary to Government
Home Department