



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

Subject: Order dated 02.11.2022 passed by the Hon'ble Central Administrative Tribunal, Bench Srinagar in O.A. 273/2022 titled Mohd. Sultan Lone vs. Home Department.

Government Order No. 4/10 -Home of 2023
Dated: 23.08.2023

Whereas, the applicant namely, Mr. Mohd Sultan Lone was appointed as Superintendent Jail Grade-II in the Prisons Department, J&K; and

2. Whereas, subsequently, vide Government order No. 36-Jail of 2006 dated 03.02.2006, the applicant was promoted to the post of Superintendent Jail, Grade-I w.e.f 01.05.2000 and the post was later upgraded and re-designated as Sr. Superintendent Jail; and

3. Whereas, the applicant was later on promoted as DIG, Prisons w.e.f 15.10.2009 vide Government order No. 237-Home of 2011 dated 10.03.2011; and

4. Whereas, the DG, Prisons, J&K vide letter No. Estt/1052/202/7908 dated 21.12.2021 forwarded a representation dated 20.12.2021 of the applicant, the then DIG Prisons (now retired), requesting therein for considering his promotion to the post of Inspector General of Prisons, J&K, in terms of the relevant Recruitment Rules governing the Gazetted service of the Prisons Department, J&K; and

5. Whereas, while the representation ibid of the applicant was under process in the department, the applicant retired from the service on 31.12.2021, on attaining the age of superannuation; and

6. Whereas, after his retirement, the applicant approached the Hon'ble Central Administrative Tribunal, Srinagar Bench by filing an

application which was registered as OA No. 273/2022 titled *Mohd Sultan Lone vs. Home Department*, praying therein for the following reliefs:

" a) An order or Direction commanding upon the respondents to promote the petitioner/applicant with retrospective effect to the post of IG Prisons with all service benefits w.e.f 2014

b) An order or Direction commanding upon the non-applicants/respondents to release all the pay as well as service and pensionary benefits as are admissible to the petitioner w.e.f 2014

c) Any other order or direction which this Hon'ble Tribunal may deem fit in the circumstances of the case may also be passed in favour of the applicant/petitioner 2/5 and against the non-applicants/respondents in the interest of justice and equity."

7. Whereas, the Hon'ble Tribunal upon consideration of the O.A, in terms of its order dated 02.11.2022 was pleased to dispose of the O.A. *ibid* with the following direction:

"In view of the limited prayer made by the learned counsel for the applicant, respondents are directed to consider the claim of the applicant for promotion w.e.f. 2014 if he is entitled under the rules specially in the light of the order dated 22.4.2010 passed by CAT, Principal Bench and with reference to para 6 of the said judgment. This exercise be completed within six weeks from today by passing a reasoned and speaking order and communicate the same to the applicant."

8. Whereas, in pursuance of the order *ibid* of the Hon'ble Tribunal, the case of the applicant was examined in light of the J&K Prisons (Gazetted) Service Recruitment Rules, 1982, which were holding the field at the relevant point in time and it was found that the method of

recruitment to the post of Controller Prisons (re-designated as IG Prisons, J&K in the year 2001) was as under:

"By promotion from Class-II (Dy. Controller of Prisons now called DIG Prisons, J&K) with at least 5 years as such. "

9. Whereas, in terms of the aforesaid Recruitment Rules of 1982, only one post of the Controller of Prisons was sanctioned for which the method of recruitment was by way of promotion of Deputy Controller of Prisons (DIG, Prisons) as well as by deputation from IPS/any other service; **and**

10. Whereas, on the issue of considering cases of promotion of the eligible officers, the General Administration Department, vide Government Order No. 743-GAD of 2007 dated 28.06.2007 has issued the following guidelines:

"Promotion of a Government employee shall take effect from the date he has been formally put in-charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/regularization shall take effect from the date of his placement against the higher post or availability of vacancy or the date of his eligibility, whichever is later. In all other cases the promotion of a Government employee to the next higher post shall take effect from the date of issuance of the order".

11. Whereas, the General Administration Department in another case pertaining to the Home Department relating to 3/5 of a promotion from the retrospective date after the retirement of a government official opined that promotion takes effect or can be said to have taken place only when the incumbent officiates at the higher position/post; **and**

12. Whereas, Hon'ble the Supreme Court in its judgment dated 26.10.2017 delivered in the case of *Sunaina Sharma vs. the State of Jammu and Kashmir and Others*, relating to the grant of retrospective promotion, Hon'ble Apex Court has, inter-alia, observed as under:

“In our view the rules in question clearly provide that not only vacancies should have been existing from an earlier date but the person to be granted retrospective promotion should have also been working against the post. To give an example in the context of the present Rules, a vacancy in the promotional cadre existed on 01.01.10. However, a person from the feeder category is promoted on temporary/officiating/adhoc/or on any other basis to work against the post on 01.01.11. He is thereafter regularly appointed on 01.01.12. Though the vacancy may have existed from 01.01.10 the employee can get promotion only from 01.01.11 when he actually started working against the said post”.

13. Whereas, the claim of the applicant for considering his promotion w.e.f. 2014, in light of the order dated 22.4.2010 passed by the Hon'ble CAT, Principal Bench, Delhi in O.A No. 1409/2009 titled *Shri P.G George vs. Union of India and Ors* with reference to para 6 of the said order has also been examined and it has been observed that the case of the applicant is not covered by the order *ibid* of the Hon'ble CAT, Principle Bench, Delhi, as he is not similarly situated to applicant referred to in the order dated 22.04.2010. In the said case, the petitioner, who had retired from service, was aggrieved of the promotion of his juniors and he was left out. While as, in the instant case, no junior of the applicant has been considered for his promotion as Controller of Prisons Department (re-designated as IG, Prisons); and

14. Whereas, the applicant has not been formally put in charge of the higher post, before his retirement on superannuation, as such, his promotion after his retirement is not covered under the relevant rules. Further, while considering such cases, the instructions/opinions of the General Administration Department and the Department of Law, Justice & PA are strictly adhered to.

15. Now, therefore, in due deference to the order dated 02.11.2022 passed by the Hon'ble CAT Bench, Srinagar in OA No. 273/2022 titled *Mohd Sultan Lone vs. Home Department*, the claim of the applicant for his promotion as Controller of Prisons (IG, Prisons)

w.e.f. 2014, specially in light of the order dated 22.4.2010 passed by the CAT, Principal Bench, Delhi, with reference to para 6 of the order ibid, having been considered and found devoid of merit for the reasons recorded hereinabove and accordingly rejected.

By Order of the Government of Jammu and Kashmir.

Sd/-
(R.K.Goyal)IAS
Financial Commissioner/
Additional Chief Secretary,
Home Department.

No. HOME-Jail/210/2021-01-HOME

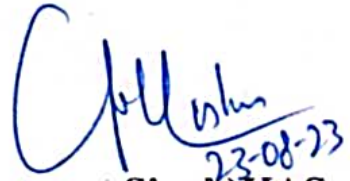
Dated: 23 .08.2023

Copy to the:

1. Principal Accountant General, J&K, Srinagar.
2. Director General of Prisons, J&K.
3. Shri Waseem Gul, Standing Counsel, CAT Bench, Srinagar.
4. Concerned.
5. Pvt. Secretary to the FC(ACS), Home Department.
6. I/C Website.
7. Government order file.

Copy also to the:

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


(Gurpreet Singh)KAS
Deputy Secretary to the Government,
Home Department.