

Government of Jammu and Kashmir

Home Department

Civil Secretariat, Jammu/Srinagar.

Subject: OA No. 61/258/2023 titled Kewal Krishan and Anr. vs. UT of J&K.

Reference: Order dated 15.03.2023, passed by the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu.

Government Order No.:260–Home of 2023

Dated:15.05.2023

Whereas, in the year 1990, the applicants namely, S/Shri Kewal Krishan and Mushtaq Ahmad were appointed as Sub-Inspectors in the J&K Police, promoted as Inspector(s) in the year 1999 and Deputy Superintendent of Police in the year 2009. Subsequently, the applicants were placed in the Selection Grade of Deputy Superintendent of Police, vide Government Order No. 284-Home of 2021 dated 01.11.2021; and

2. Whereas, Shri Mushtaq Ahmad and Shri Kewal Krishan retired from service on 30.11.2021 and 31.12.2021, respectively, on attaining the age of superannuation; and

3. Whereas, the applicants filed a representation dated 30.11.2022 in the Home Department requesting therein for their promotion to the rank of Superintendent of Police, with effect from the date of convening of meeting of the Departmental Promotion Committee of the J&K Public Service Commission i.e 18.11.2022, in which among other officers their case was considered for promotion to the post of Superintendent of Police; and

Qu. file 4. Whereas, while the representation ibid was under examination in the Home Department, the applicants filed OA No. 61/258/2022 titled *Kewal Krishan and Anr vs. UT of J&K through Additional Chief Secretary/ Financial Commissioner (Home)* in the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu, praying therein for the following reliefs :

“(i) Directing the respondent to promote the applicants to the post of SsP pursuant to the recommendations of the DPC meeting held on 18.11.2021.

(ii) Directing the respondent to issue formal promotion order in favour of the applicants for the post of SsP pursuant to the recommendations of the PDC meeting held on 18.11.2021.

(iii) Directing the respondent to issue decide the representations of the applicants dated 28.03.2022 and 30.11.2022 by passing a reasoned and speaking order."

5. Whereas, the Hon'ble Tribunal was pleased to dispose of the aforetitled O.A. vide Order dated 15.03.2023, with the following directions:

"Keeping in view the aforestated limited prayer made by learned counsel for the applicants, I deem it appropriate to dispose of the present Original Application at the admission stage itself without entering into the merits of the case.

Accordingly, the Original Application is disposed of with a direction to the Additional Chief Secretary to Government, Department of Home, Union Territory of Jammu & Kashmir to decide the applicants' pending representation dated 30.11.2022 and pass a reasoned and speaking order in accordance with law. Before taking such a decision, the applicants shall also be afforded an opportunity of hearing. The whole exercise shall be undertaken within a period of eight weeks from the date of receipt of a certified copy of this order."

6. Whereas, in compliance of the directions of the Hon'ble Tribunal contained in the order *ibid* dated 15.03.2023, a notice bearing No. Home-PG/1282/2022(CC-7086159) dated 31.03.2023 was issued to the applicants for affording them an opportunity of hearing by the Financial Commissioner/ Additional Chief Secretary, Home Department, as directed by the Hon'ble Tribunal. In response to the notice *ibid*, the applicants appeared before the Financial Commissioner/ Additional Chief Secretary, Home Department on 03.04.2023, and also submitted a representation in support of their submissions. The applicants were given patient hearing by the Financial Commissioner/ Additional Chief Secretary, Home; and

7. Whereas, upon examination of the matter in light of the representation dated 30.11.2022 of the applicants and the submissions made by them during the personal hearing, it was observed that the applicants had not been placed as incharge Superintendent of Police (SP) during their

service. It was further observed that though the applicants were also considered for their promotion as Superintendent of Police (SP) by the Departmental Promotion Committee of the J&K Public Service Commission in its meeting held on 18.11.2021, however, in terms of Rules 66 & 67 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 2021, the recommendations of the Departmental Promotion Committee are to be circulated among all the members for comments and thereafter the final list is approved by the J&K Public Service Commission and forwarded to the concerned Administrative Department under the signatures of the Secretary of the Commission; and

8. Whereas, the General Administration Department vide Government Order No: 743-GAD of 2007, dated 28.06.2007 has laid-down broad guidelines in matters of promotion. These guidelines provide that the 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 and 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. It further provides that 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; and

9.15/15 9. Whereas, in the instant case, the applicants had in the interregnum retired on 30.11.2021 (Sh. Mushtaq Ahmad) and 31.12.2021 (Sh. Kewal Krishan) from the Government service well before the receipt of the recommendations dated 14.01.2022 of the J&K Public Service Commission through the Secretary of the Commission, as provided in rule 67 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 2021, as such, no right had accrued to the applicants for their promotion as Superintendent of Police, notwithstanding the recommendations of the J&K PSC, which are always subject to further examination in the Administrative Department, and approval of the Competent Authority, in terms of the Business Rules and the guidelines issued by the General Administration Department mentioned in para 8 above.

10. Now, therefore, in due deference of the order dated 15.03.2023 of the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu passed in O.A No. 258/2023 titled *Kewal Krishan and Anr vs UT of J&K through Additional Chief Secretary/ Financial Commissioner (Home)*, and after hearing the applicants, the representation dated 30.11.2022 submitted by the applicants having been examined, with reference to the relevant legal provisions, is found devoid of merit and accordingly rejected, for the reasons recorded hereinbove.

By Order of the Government of Jammu and Kashmir.

Sd/-

(Raj Kumar Goyal)IAS
Financial Commissioner/
Additional Chief Secretary
Home Department.

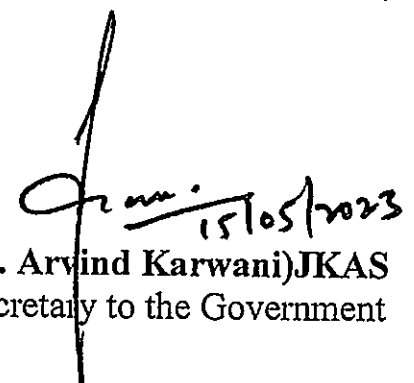
Dated:15.05.2023.

No.HOME-PG/282/2022(CC-7086158)

Copy to the:

1. Director General of Police, J&K.
2. Principal Secretary to the Hon'ble Lieutenant Governor.
3. Director Archives, Archeology and Museums, J&K.
4. Shri Sudesh Magotra, Ld. AAG, Hon'ble Central Administrative Tribunal, Jammu Bench.
5. Pvt. Secretary to the Financial Commissioner/Additional Chief Secretary, Home Department.
6. I/c Website, Home Department.
7. Government Order file.

Copy also to the Joint Secretary, (JKL), Ministry of Home Affairs, Government of India.


(Dr. Arvind Karwani)JKAS
Additional Secretary to the Government