

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 under SRO-43 of 1994.**

- Refs:** (i) 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, and;
- (ii) Order dated 12.08.2024 in CP/22/2021(Jammu) in T.A/596/2020 titled Naveen Kumar Vs. Manoj Kumar Dwivedi passed by the Hon'ble CAT Bench Jammu

Government Order No. 519-Home of 2024

Dated: 19.11.2024

Whereas, Smt. Indra Devi W/o Late Dy.SP Bodh Raj R/o District Doda, Tehsil Bhalla filed an application stating therein that her husband namely, Shri Bodh Raj posted as Dy.SP 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

02. 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

03. 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 Rule 3(1) of SRO-43 of 1994, if otherwise eligible; and

04. 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 Vs. 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 dehors Rule 3(2) of SRO-43 of 1994. which empowers the General Administration Department to appoint a person on compassionate 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

05. 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 direction:

"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".

06. 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

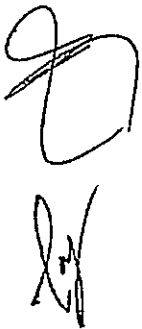


various cases involving identical circumstances and appointed the dependents of the deceased employees on higher post i.e. Prosecuting Officer in J&K Police, Sub-Inspector in J&K Police and Jr. Engineers in Power Development Department and prayed that the case of the applicant be also considered for appointment as Sub-Inspector under SRO-43 of 1994 dated 22.02.1994; and

07. Whereas, the matter has been examined in reference to the provisions contained in the Jammu and Kashmir (Compassionate Appointment), Rules 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 provides 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

08. 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 touchstone 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 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.

09. 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 the 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 the Hon'ble Supreme Court cannot be cited as precedence for making another similar appointment ; and

11. Whereas, pursuant to the direction passed by the Hon'ble Tribunal on 09.09.2020, in the main case T.A No. 061/596/2020 titled Naveen Kumar vs. State of J&K and others, the Home Department passed a detailed speaking Order vide No. 24-Home of 2022 dated 25.01.2022 and rejected the claim of the applicant being devoid of merit; and

12. Whereas, the applicant filed Contempt Petition and in Contempt petition bearing No. CP/22/2021(Jammu) in T.A/596/2020 titled Naveen Kumar Vs. Manoj Kumar Dwivedi the Hon'ble Tribunal vide order dated 07.11.2022 directed the General Administration Department to file detailed compliance report: and

13. Whereas, the General Administration Department filed detailed Statement of Facts/ Compliance Report on 04th January, 2024 and prayed therein, for dismissal of the contempt petition in view of the detailed reasons recorded in the Compliance Report; and


14. Whereas, the Hon'ble Tribunal instead of dismissing the Contempt Petition, vide order dated 12.08.2024, directed the Home Department to file a detailed reasoned and speaking order before the next date of hearing; and

15. Whereas, the matter was again examined and it has been found that details of cases referred by the petition and is seeking party with their case has also been examined and found that they have different for the reason that the applicant has already covered the prescribed age for appointment to the post of Sub. Inspector at the time of death of his father, being more than 28 years of age; and


16. Whereas, Rule 176 of J&K Police Rules, 1960 as amended vide SO 214/2021, provides as under:-

176. Qualification for direct appointment as Sub-Inspector:

- 1) In order to be eligible to compete in the examination, a candidate must satisfy the following condition namely:
 - (a) he holds a Bachelor's degree of a recognized university.
 - (b) he is a domicile of Jammu & Kashmir.
 - (c) he has attained age of 18 years but has not crossed the age of 28 years on 1st January of the year in which the notification inviting applications is issued by the JKSSB.



17. Whereas, it is clear that the applicant had already crossed the prescribed age for appointment to the post of Sub-Inspector at the time of his father's death, being more than 28 years of age and this is not a normal cases of age/qualification relaxation. Instead, the case involves relaxation in recruitment rules for the post of Sub-Inspector as prescribed under J&K Police Rules, 1960.



18. Whereas, the details of cases cited by the applicant in which the Government has allegedly shown colorable discretion to appoint the applicants against higher posts has been examined by the GAD and

apprised the Hon'ble Tribunal by filing Compliance Report on 05.01.2024 wherein, the GAD has made the following analysis:-

Name of the appointee	Remarks
Mr. Hemanshu Mahajan S/o Late Sunil Kumar Gupta (Ex-SP(M) R/o H.No. 421, Shastri Nagar Jammu.	The applicant has been appointed against the post of Prosecuting Officer, in terms of sub Rule 2 of Rule 3 of SRO 43/1994. No. relaxation in recruitment rules was involved. The candidate had requisite age and was having relevant qualification for the post (degree in Law).
Mr. Wasiq Umar Amin S/o Late Mohammad Amin Bhat Ex-DIG Crime) R/o H. No. 06 Near Fire & Emergency Service Station Lalded Enclave Ralwalpora Srinagar.	The applicant has been appointed against the post of Prosecuting Officer, in terms of sub Rule 2 of Rule 3 of SRO 43/1994. No relaxation in recruitment rules was involved. The candidate had requisite age and having degree in law.
Mr. Zahid Ahmad Kana S/o Late HC Manzoor Ahmad R/o Baba Yousuf, Sopore, Baramulla.	The applicant has been appointed against the post of Sub-Inspector and was only 22 years of age at the time of his father's death. The appointment has been made in terms of sub Rule 2 of Rule 3 of SRO 43/1994.

19. Whereas, the comparative statement of the applicant and the cases cited by the petitioner is reproduced for ready reference:-

Name of the applicant/petitioner	Whether eligible as per Recruitment Rules	Reasons for exercising discretion.
Shri Naveen Kumar (Applicant)	No	As per the available records the case was not recommended by the Home Department for Higher Post and was rejected at its own level for not being eligible under the Recruitment Rules.
Mr. Himanshu Mahajan (Case cited by the Petitioner)	Yes	As per the available records the case was recommended by the Home Department justifying the case by considering the valuable services of the

		deceased Police Officer. The competent authority (Hon'ble Chief Minister) after giving a thoughtful consideration to the recommendations of the Home Department considered the case of the applicant while exercising discretion under Sub-Rule 2 of Rule 3 of the Compassionate Appointment Rules. As such the discretion used was not a colorable discretion.
Mr. Wasiq Umar Amin (Case cited by the Petitioner)	Yes	As per the available records the case of the applicant was considered by the competent authority keeping in view the supreme sacrifice by the father of the applicant who was a Deputy Inspector General of Police and who was martyred by the militants. Hence in this case also no colorable discretion was used.
Mr. Zahid Ahmad Kana (Case cited by the applicant)	Yes	As per the available records the case of the applicant was considered by the competent authority keeping in view the supreme sacrifice by the father of the applicant who was a Head Constable in Police Department and was martyred by the militants.

20. Whereas, it is clear that the applicants has tried to mislead the High Court by citing irrelevant examples of compassionate appointment cases, as per records, such appointments have been made against the higher posts but not in relaxation of recruitment rules in terms of Sub Rule 2 of Rule 3 of SRO 43/1994.

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 dated 12.08.2024, of the Central Administrative Tribunal, Bench Jammu in C.P No. 22/2021 titled Naveen Kumar vs. Manoj Kumar Dwivedi, is for the reasons indicated herein above, found devoid of merit and rejected, accordingly.

By order of the Government of Jammu and Kashmir.

Sd/-

(Chandraker Bharti) IAS

Principal Secretary to the Government

No. HOME-SRO/187/2021-05-HOME CC 48805

Dated: 19.11.2024

Copy to:

1. Director General of Police, J&K.
2. Principal Secretary to the Hon'ble Lieutenant Governor.
3. Commissioner/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 for information of the Principal Secretary Home Deptt.
6. In-charge Website, Home Department.
7. Government order file/Stock file.

Copy also to the Joint Secretary, Jammu Kashmir and Ladakh, Ministry of Home Affairs, Government of India, New Delhi.

(Rouf Ahmad Lone) JKAS

Under Secretary to the Government

19.11.24.

