Government of Jammu and Kashmir
Home Department
Civil Secretariat, Srinagar

Subject: Order dated 28.08.2015 passed by the Hon’ble High Court at Jammu in SWP No. 2422/2015, MP No. 01/2015 titled Vijay Kumar vs. State of J&K and others.


Whereas, on the recommendations of the Principal Police Training School, Kathua, Director General of Police, J&K amongst others, forwarded the case of the petitioner namely Shri Vijay Kumar, Follower No-13/F, PTS Kathua, PID No EXJ-997151 for his conversion as Constable in J&K Police, in relaxation of height standard by 1 ½ inch; and

2. Whereas, pending revision of the Jammu and Kashmir Police Act and the Rules, the instructions required to be followed for Regularization/rehabilitation of Special Police Officers (SPO’s) and Volunteer Home Guards (VHG’s) are contained in No. Home/PB-III/62/G/2008 dated 09.06.2008 and No. Home/PB-III/62/G/2008 dated 25.09.2009; and

3. Whereas, Home Department after examining the proposal (referred to in para 01 above) in accordance with the relevant rules governing the subject, vide Communication No. Home/PB-III/G/227/2010 dated 27.01.2011, inter-alia, conveyed to PHQ that the criteria for absorption of SPO’s in the Police Department has been prescribed and conveyed to PHQ vide Communication No. Home/PB-III/62/G/2008 dated 25.09.2009. Director General of Police, J&K was further informed that it would not be desirable to encourage further relaxations in individual cases; and

4. Whereas, subsequently, Home department received a copy of order dated 28.08.2015 passed by the Hon’ble High Court at Jammu in SWP No. 2422/2015, MP No. 01/2015 titled Vijay Kumar vs. Commissioner/Secretary to Government, Home Department and Others. The operative part of the order reads as under:-

"Viewed thus, this writ petition is admitted and disposed of with a direction to the respondents to accord consideration to the case of the petitioner on the analogy of aforementioned Government orders, of course, having regard to rule position. Respondents shall do good by taking appropriate decision without any unnecessary delay, preferably within four weeks hereafter......"

1.
5. Whereas, the aforesaid order after being examined in the Home Department was forwarded to PHQ being Cadre Controlling Authority of the non-gazetted Police, vide communication dated 18.01.2016 with the advice to accord consideration to the case of the petitioner strictly as per the rules governing the subject; and

6. Whereas, PHQ vide communication dated 28.08.2016, inter-alia, stated that case of the petitioner is not similarly situated to the case of Follower Rajesh Kumar No. F-08-IR-3rd Bn and Varinder Sen (SRO-43 case) in any manner and is not as such maintainable. However, it was also informed that the case was placed before the Designated Committee for examination/recommendations and the Committee after discussing the matter, recommended for relaxation of height in favour of the petitioner; and

7. Whereas, it has been observed that the case of petitioner is not analogous to the case of Shri Varinder Sen S/o Late Gian Chand, Ex-Head Constable No. 72/D R/o Kuleed, Kishtwar, Follower No. F-08/IRP 3rd Bn,. Case of Shri Varinder Sen was considered on compassionate grounds by the General Administration Department, on the touchstone of SRO 43, which compassion is not involved in the case of petitioner; and

8. Whereas, in service matters, one who asserts infringement of right(s) has to establish his claim. The guarantee of equality before law is a positive concept. A claim based on equality clause can be considered, if the petitioner succeeds to establish, that his claim is just and legal and has been denied to him. In the instant case, DGP, J&K vide letter dated 28-8-2016 intimated that Shri Rajesh Kumar, Follower No. F-08/IRP 3rd Bn. was not converted as constable, as relaxation in age was not accorded by the Competent Authority.

9. Now, therefore, in due deference to the aforesaid orders dated 28.08.2015 of the Hon'ble High Court, the claim of the petitioner after being considered under the relevant rules governing the subject, criteria for absorption of SPOs in Police Department contained in No Home/PB-III/62/G/2008 dated 25.9.2009 and keeping in view cases of Shri Varinder Sen and Shri Rajesh Kumar has been found devoid of merits and not maintainable under the rules governing the subject and is accordingly rejected.

By order of the Government of Jammu and Kashmir

Sd/-

(R.K. Goyal) IAS
Principal Secretary to Government
Home Department

No: Home/PB-IV/79/2015
Copy to:-
1. Director General of Police J&K, Srinagar.

Dated; 26.07.2017
2. Shri Waseem Sadiq Nargal, Senior Addl. Advocate General, Jammu.
3. Director, Archives, Archaeology and Museums, J&K, Srinagar.
4. Private Secretary to Principal Secretary to the Govt. Home Department.
5. PA to Spl. Secretary, (Z), Home Department.
6. Concerned official.
7. Incharge Website, Home Department.

(Nivedita Munshi)
Under Secretary to the Government Home Department