

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2785/2024
CM No. 6785/2024
CM No. 7424/2024
c/w
CCP(D) No. 2/2025

Date of Pronouncement: 10.10.2025

Uploaded on: 13.10.2025

**1. Union Territory of Jammu and
Kashmir**

Through Commissioner Secretary
to Govt. General Administration
Department, Civil Secretariat,
J&K at Jammu

**2. Union Territory of Jammu and
Kashmir**

Through Commissioner Secretary
to Govt. Jal Shakti (PHE)
Department, Civil Secretariat,
J&K at Jammu.

**3. Chief Engineer,
Jal Shakti (PHE) Department,
Jammu.**

.....Appellant(s)/Petitioner(s)

Through: Ms. Monika Kohli, Sr. AAG.

vs

Bhavtej Singh Isher,
S/O Late. S. Upinder Singh Isher, R/O
42/13, Nanak Nagar, Jammu

..... Respondent(s)

Through: Mr. Farhan Mirza, Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT (ORAL)

(Sanjeev Kumar J)

WP(C) No. 2785/2024

1. Impugned in this petition, filed by the Union Territory of Jammu and Kashmir under Article 226 of the Constitution of India, is an order and judgment dated 24.04.2024 passed by the Central Administrative Tribunal, Jammu (Tribunal) in OA No. 61/1001/2021 titled “*Bhavtej Singh Isher vs. UT of J&K and others*”, whereby the Tribunal while allowing the OA has quashed the order No. JSD/NGJ/101/2020 dated 05.02.2021 and directed the petitioners herein to appoint the respondent as Junior Engineer (Mechanical) on compassionate grounds with effect from the day he was initially appointed as Fitter. The respondent has also been granted the notional seniority from the date but has not been held entitled to any back wages.
2. The impugned judgment is challenged by the petitioners on the ground that the Tribunal has not appreciated that the respondent, having accepted the compassionate appointment as Fitter made vide order dated 21.06.2021 by submitting his joining report on 24.06.2021, is not permitted to turn around and claim that he is entitled to be appointed against the higher post of Junior Engineer.
3. *Per contra*, the argument of the learned counsel for the respondent is that though it is not denied that the order of appointment as Fitter in terms of SRO 43 of 1994 was issued by the petitioners on 21.06.2021 and in response thereto, the respondent submitted his joining report on 24.06.2021, yet the respondent, without wasting any further time, assailed his appointment as Fitter by filing OA before the Tribunal on 06.07.2021 i.e. within a period of twelve days. He would further

submit that his appointment as Fitter was accepted by the respondent because he was in financial distress due to untimely demise of his father, who was the sole bread winner for the family, and therefore, was left with no choice but to make his livelihood by accepting the job as Fitter.

4. Having heard learned counsel for the parties and perused the entire record, the facts emerging in the case are not in dispute. The father of the respondent who was working as Executive Engineer in PHE Department died in harness on 17.09.2020. The respondent possessing the B.Tech (Mechanical) degree submitted his application for appointment as Junior Engineer on compassionate grounds under SRO 43 of 1994. Case of the respondent was processed by the petitioners and was recommended to General Administration Department by the Chief Engineer for appointment of the respondent as Junior Engineer as is evident from the communication No. PHEJ/GE/8429 dated 19.11.2020. The General Administration Department, however, did not accept the recommendation of the Chief Engineer concerned and returned the file with an advice to the Department of Jal Shakti (PHE) to settle the case at its own level against the post in the lowest non-gazetted service instead of Junior Engineer. This facilitated the Department to issue an order of appointment of the respondent as 'Fitter' in the Department. The order of appointment dated 21.06.2021 was initially accepted by the respondent by submitting his joining report against the post on 24.06.2021. The appointment as Fitter, as is

claimed by the respondent, was accepted under the peculiar circumstances in which the respondent and his family was placed due to untimely demise of their sole bread winner. The respondent immediately and without any waste of time approached the Tribunal by way of OA No. 61/1001/2021 on 06.07.2021. Apart from claiming that the respondent was entitled to be appointed as Junior Engineer in view of his B.Tech qualification, it was specifically pleaded by the respondent that more than three persons, similarly situated with the respondent, with similar qualifications, had been appointed by the General Administration Department as Junior Engineers, and therefore, the respondent could not have been discriminated.

5. The OA was contested by the respondent by taking the usual plea like estoppel-by acceptance of appointment as Fitter and that the appointment to the post higher than the lowest post in the non-gazetted service is in the discretion of the Government and cannot be claimed as a matter of right, etc. etc.
6. The Tribunal having considered the rival contentions of the parties and perused the record, came to the conclusion that Rule 3 (2) of SRO 43 of 1994 as amended vide SRO 177 dated 20.06.2014 has conferred special power on the Government in General Administration Department to appoint at its discretion family member of an employee who has died in harness to a higher post in the non-gazetted service for which he or she is eligible and qualified in terms of the Recruitment Rules. It was also found by the Tribunal that the petitioners, in

particular the General Administration Department has exercised such power by offering the benefit of post of Junior Engineer to Ishan Jasrotia, Mohsin Shakeel Khan, Akumjeet Singh Dhillon and Abhishek Ashok Charak, therefore, the respondent being similarly situated ought not to have been discriminated. On returning these findings, the Tribunal allowed the OA and issued the direction which we have taken note of hereinabove.

7. The issue which has been raised by the petitioners in this petition stands already considered and concluded by this Court in several judgments. So far as the plea of estoppel raised by the petitioners is concerned, the same would not be attracted in the given facts and circumstances of this case. What was offered to the respondent vide order dated 21.06.2021 was an appointment as Fitter in the Department on compassionate grounds. The respondent, who was in dire financial stress on passing away of his father who was the sole bread winner of the family, had no option but to accept whatever was offered to him. It is under these circumstances that the respondent complied with the order of his appointment and submitted his joining report on 24.06.2021. However, the respondent did not take much time to register his protest. He filed OA before the Tribunal on 06.07.2021. Viewed thus, it cannot be argued that the respondent had accepted the appointment as Fitter offered to him by the petitioners voluntarily and without any protest. The plea raised by the learned counsel for the

petitioner is without any substance and, therefore, deserves to be rejected out rightly.

8. So far as the other argument of the learned counsel for the petitioners that the respondent was not similarly situated with four persons, namely, Ishan Jasrotia, Mohsin Shakeel Khan, Akumjeet Singh Dhillon and Abhishek Ashok Charak is concerned, the same is factually incorrect and devoid of any merit.

9. It is equally an untenable argument to say that since the Government has discretion under Rule 3 (2) of SRO 43 of 1994 to offer appointment against the higher post in the non-gazetted service commensurate to qualification and subject to eligibility, as such, the same cannot be claimed by the applicant for compassionate appointment as a matter of right.

Clause (2) of Rule 3 of SRO 43 of 1994 has been explained by this Court in WP(C) No. 2749/2024 decided on 16.12.2024 in the following manner:

“12. Clause (2) of Rule 3 of the Rule of 1994 carves out an exception and enables the General Administration Department to appoint a candidate to a higher post in the non-gazetted service, if the applicant is a family member of a deceased Government employee or a civilian killed in militancy related actions. This, however, has been left to the discretion of the Government in the General Administration Department.”

10. The Tribunal has also set out the relevant clause of SRO in paragraph 14 of the judgment, a perusal whereof clearly indicates that ordinarily an appointment on compassionate grounds envisaged under SRO 43 of

1994 cannot be claimed as a matter of right and is provided by way of exception to normal method of recruitment to enable the family of the deceased employee to tide over the financial crises, which the family has plunged in due to untimely demise of their bread winner.

11. For facility of reference, Rule 3 of SRO 43 of 1994 is set out below:

3. Appointment under these Rules-

(1) Notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or post under the Government, an eligible family member of a person specified in rule appointed 2 may be against a vacancy in the lowest rank of non-gazetted service or Class-IV post having qualification as prescribed under the relevant Recruitment Rules.

Provided that the applicant is eligible and qualified for such post or acquires such eligibility and qualification within a period of five years from the date of death of the deceased person specified in rule 2:

Provided further that no application for compassionate appointment under these rules shall be entertained after the expiry of one year from the date of death of the deceased person.

(2) Nothing in sub-rule (1) shall derogate from the powers of the Government in General Administration Department to appoint, at its discretion a family member of a person specified in Rule 2, 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.

(3) Notwithstanding the provisions of the rules contained herein for compassionate appointment, the family members of the civilians killed in militancy related action or a civilian who dies as a result of law and order situation and is not found directly involved in the actual violence, or due to enemy action on the Line of Actual Control/International Border within the State of Jammu and Kashmir as specified in clause (iii) of Rule 2 shall be entitled to a cash compensation in lieu of appointment in Government service of an

amount specified by the Government which shall be payable in their favour in a manner to be notified by the Government.

Provided that if any one among the family members of the deceased civilian fulfills the eligibility criteria prescribed under the aforesaid Rules for appointment into the government service or acquires such eligibility within five years from the date of death of the deceased person, then they shall have the option either to choose the government service or the cash compensation.

Explanation: *All cases pending on the date of issuance of SRO Notification 177 of 2014 dated 20.06.2014 shall be decided in accordance with the said notification provided that the candidate has applied within one year from the date of death of the deceased person*

12. As is evident from bare reading of Sub-Rule (1) of Rule 3 an eligible family member of an employee dying in harness is entitled to appointment against the vacancy in the lowest rank of non-gazetted service or Class-IV post having qualification as prescribed under the relevant Recruitment Rules. The power to make compassionate appointment under Rule 3 (1) is conferred upon the head of the Department concerned. Rule 3 (1) is a general provision prescribing that ordinarily the compassionate appointment to be offered to the dependent of the deceased employee should be either in Class-IV or in the lowest rank of the non-gazetted service of the Government depending upon the qualification of the applicant.
13. Sub Rule (2) of Rule 3, however, carves out an exception to the above general rule contained in Sub Rule (1) and essentially prescribes and conserves the power of the Government in General Administration Department to appoint, at its discretion, a family member of a person

to a higher post in the non-gazetted service for which he/she is found eligible and qualified in terms of relevant Recruitment Rules. The power conferred or reserved in the Government is of course discretionary in nature and may be exercised in appropriate cases, either suo-moto or on the recommendations of the authority competent to make compassionate appointment under Sub-Rule (1) of Rule 3 of SRO 43 of 1994. Whether exercised suo-moto or otherwise, it must be only in exceptional cases and competent authority must spell out reasons for exercise of this power. This is borne out from the conjoint reading of Rule 3(1) and 3(2) of SRO 43 of 1994.

14. In the instant case, as is found by the Tribunal and is otherwise writ large on record that in the year 2018 itself, General Administration Department exercised its power under Rule 3(2) of SRO 43 of 1994 and offered appointment to three persons as Junior Engineer on compassionate grounds, having regard to the qualification for the post held by them. Order passed in case of one Ishan Jasrotia is reproduced by the Tribunal in the judgment impugned in para 17, a perusal whereof clearly indicates that the order is without any reason and offers appointment to Ishan Jasrotia as Junior Engineer (Mechanical) in terms of Sub-Rule (2) of Rule 3 of SRO 43 of 1994. Similar orders have been passed in case of Akumjeet Singh Dhillon and Abhishek Ashok Charak in terms of Government Order No. 305-GAD of 2018 dated 22.02.2018 and Government Order No. 362-GAD of 2018 dated 02.03.2018 respectively.

15. The petitioners have not placed on record any material to show as to how the case of the respondent, which was recommended by the Chief Engineer for his appointment as Junior Engineer (Mechanical) is different from the aforementioned three individuals. Nor the petitioners have been able to explain the special reasons necessitating the appointment of Ishan Jasrotia, Akumjeet Singh Dhillon and Abhishek Ashok Charak as Junior Engineer (Mechanical) with similar qualifications.
16. The Tribunal has taken note of all these facts and circumstances and has rightly come to the conclusion that the respondent also deserved to be appointed as Junior Engineer (Mechanical) on the analogy of the aforementioned persons by issuing an appropriate order in exercise of power conferred upon the Government in the General Administration Department under Sub-Rule (2) of Rule 3 of SRO 43 of 1994.
17. In view of what has been discussed hereinabove, we see no good reason or justification to take a view different from the one taken by the Tribunal.
18. For all these reasons, we find no merit in this petition and the same is accordingly dismissed along with the connected applications. We, however, clarify that while implementing the judgment of the Tribunal and offering appointment to the respondent, it shall be open to the petitioners to verify his qualification and other eligibility conditions for such appointment.

CCP(D) No. 2/2025

19. With the dismissal of the writ petition being WP(C) No. 2785/2024, this contempt petition has been rendered infructuous, as such, the contempt proceedings are closed.

(SANJAY PARIHAR) (SANJEEV KUMAR)
JUDGE JUDGE

Jammu
10.10.2025
Sahil Padha

