

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

WP(C) No.1819/2023

IRSHAD RASHID SHAH ...**PETITIONER(S)**

Through: - Mr. Z. A. Shah, Sr. Advocate, with
Mr. A. Hanan, Advocate.

Vs.

UT OF J&K & OTHERS ...**RESPONDENT(S)**

Through:- Mr. A. R. Malik, Sr. AAG, with
Ms. Maha Majid, Assisting Counsel.

CORAM: **HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT(ORAL)
22.04.2025

Per Sanjeev Kumar 'J'

1) The petitioner invokes the extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India to throw challenge to an order and judgment dated 13th June, 2023, passed by the Central Administrative Tribunal, Srinagar [“the Tribunal”] in OA No.1752 of 2021 titled “**Irshad Rashid Shah vs. UT of J&K and others**”, whereby the Tribunal has dismissed the Original Application filed by the petitioner seeking Writ of Mandamus to the respondents to appoint him as Sub-Inspector under SRO 43 of 1994.

2) Before we advert to the grounds of challenge urged by learned counsel for the petitioner, we deem it appropriate to take note of few facts which are germane to the determination of the controversy raised in this petition.

3) The father of the petitioner, namely, Abdul Rashid Shah, an Assistant Sub Inspector in Police, was martyred by the militants on 28th August, 2017. Accordingly, on the request, the case of the petitioner for compassionate appointment as Sub Inspector in J&K Police under SRO 43 of 1994 was forwarded to the Department of Home vide PHQ letter No.Pers-A-74/2021/47954-57 dated 12.08.2021, which was returned by the Department of Home to the PHQ to settle the case of the petitioner in terms of Rule 3(1) of SRO 43 of 1994. Accordingly, the PHQ vide its communication dated 10th September, 2021, called upon the Inspector General of Police, Kashmir Zone-Srinagar, to recommend the petitioner for appointment against the post of Constable in J&K Police.

4) On 5th October, 2021, the petitioner submitted an application to SSP, Anantnag, showing his willingness to be appointed as Constable in the J&K Police under SRO 43 of 1994. In view of the consent given by the petitioner, the PHQ vide order No.3521 of 2021 dated 24th November, 2021, accorded sanction to his appointment as Constable in the J&K Executive Police under SRO 43 of 1994 subject to fulfilment of pre-requisite formalities.

5) The petitioner, as is evident, after having accepted his appointment as Constable, filed OA No.1752 of 2021 before the Tribunal, seeking, *inter alia*, a Writ of Certiorari for quashing communication dated 21st October, 2021, and a Writ of Mandamus to direct the respondents to appoint the petitioner against the post of Sub Inspector on compassionate grounds under SRO 43 of 1994. Apart from taking other pleas, the petitioner pleaded before the Tribunal that in the year 2007, 2009, 2014 and 2015, the Government had appointed similarly situated persons as Sub Inspectors in the J&K Police and, therefore, on the same analogy, the petitioner ought to have been offered the post of Sub Inspector instead of post of Constable.

6) The OA was contested by the respondents before the Tribunal. Relying upon Rule 3(1) of SRO 43 of 1994, it was contended by the respondents that the petitioner, in view of his qualification, was entitled to be appointed in the lowest rank of non-gazetted service and, therefore, was rightly offered the post of Constable.

7) The OA was considered by the Tribunal and having regard to the rival contentions and the material on record, the Tribunal found the claim put forth by the petitioner lacking merit and dismissed the OA. The OA was dismissed on two counts; (i) that the petitioner had consented to be appointed

as Constable after his case was turned down by the Department of Home for his appointment against the higher post of Sub Inspector; and (ii) that the relaxation by the Government under the provisions of SRO 43 of 1994 is in the discretion of the Government and, therefore, cannot be claimed as a matter of right.

8) The impugned order and judgment is assailed by the petitioner, primarily, on the ground that the Tribunal has not appreciated the controversy that had arisen before it in its right perspective. The Tribunal has failed to appreciate that sub-rule (2) of Rule 3 of SRO 43 of 1994 preserves power of the Government in the 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.

9) Mr. Shah, learned senior advocate, would argue that the Police Headquarter had found merit in the claim of the petitioner to be appointed as Sub Inspector and, therefore, sent the case to the Department of Home. The Home Department ought not to have returned the file on the ground that no relaxation of rules was called for in the matter. Rather the Department of Home should have forwarded the case to the General Administration Department to take a call in the

matter and to consider the case of the petitioner for appointment as Sub Inspector in the light of the recommendations made by the DGP and similar orders passed in respect of similarly situated persons.

10) Heard learned counsel for the parties and perused the material on record.

11) It is trite law that for offering public employment, all aspirants are entitled to equal opportunity explicit in Articles 14 and 16 of the Constitution. The available vacancies under direct recruitment quota in the Government Departments as well as PSUs are required to be notified for the information of eligible candidates aspiring for such posts and the selection process should be conducted in conformity with Articles 14 and 16 of the Constitution. However, appointment on compassionate grounds offered to a dependent of a deceased employee dying in harness is an exception to the said norms. Indisputably, the compassionate appointment is a concession and, therefore, cannot be claimed as a matter of right.

12) The Central Government as well as various Public Sector Undertakings have made provision for compassionate appointment of a dependent family member of a deceased employee dying in harness by issuing executive instructions. However, in the Union Territory of Jammu and Kashmir and before it, in the State of Jammu and Kashmir, the

compassionate appointments were governed by the statutory rules known as the Jammu and Kashmir (Compassionate Appointment) Rules, 1994 [for short “the Rules of 1994”] issued by the Governor in exercise of the powers conferred by Section 124 of the Constitution of Jammu and Kashmir. These Rules were saved under the J&K Reorganization Act, 2019, and were in vogue till repealed by the Jammu and Kashmir Rehabilitation Assistance Scheme, 2022. Since the compassionate appointment in the Union Territory of Jammu and Kashmir was backed by statutory rules, as such, the petitioner is well within his right to claim that he had a right to be considered for compassionate appointment strictly as per the provisions contained in the Rules of 1994, as were prevalent at the time of consideration of case of the petitioner.

13) Adverting to the Rules of 1994, it is seen that Rule 2 of these Rules deals with application of Rules and, *inter-alia*, provides that a family member of a Government employee who dies as a result of militancy related activities is also entitled to compassionate appointment under the Rules of 1994. Rule 3 is at the core of the controversy raised before us in this petition and, therefore, deserves to be 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 2 may be appointed 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 Controle/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.

14) As is evident, in terms of sub-rule (1) of Rule 3, an eligible family member of a person specified in Rule 2 is entitled to be appointed against a 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 and ordinarily compassionate appointment to be offered to a dependent of deceased employee is either in Class IV or in lowest rank of non-gazetted service of the Government depending upon the qualification of the applicant. Sub-rule (2) of Rule 3 carves out an exception to the above general Rule contained in sub-rule (1) and essentially preserves 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 the relevant Recruitment Rules. This power conferred or reserved in Government is 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 the Rules of 1994. Whether exercised suo-moto or otherwise, it must be only in exceptional cases and reasons must be given for the exercise of this power. This is so apparent from conjoint reading of Rule 3(1) and 3(2). This position, of course, has undergone change with the repeal of the Rules of 1994 by the Rehabilitation Scheme, 2022. Now the compassionate appointment to be offered can only be against the posts of

Multi-Tasking Staff (MTS) or lowest in the non-gazetted cadre posts.

15) Indisputably, when the petitioner applied for compassionate appointment in the year 2018, he was undergraduate and, thus, eligible only to be appointed as Constable in the J&K Police. The petitioner was reluctant to accept his appointment as Constable and, therefore, impressed upon the police authorities to appoint him as Sub-Inspector on the ground that the candidates similarly placed with him had, in the previous years, been considered for the post of Sub-Inspector. While the matter was under consideration of the respondents, the petitioner completed his graduation in the year 2020 and he asserted his claim to be appointed as Sub Inspector on the ground that he had the requisite eligibility to hold the post. On this, the Director General of Police vide his communication dated 12th August, 2021, recommended case of the petitioner for his appointment as Sub Inspector in the J&K Police to the Department of Home in relaxation of the Recruitment Rules under SRO 43 of 1994. The relaxation was recommended by the DGP on the ground that the petitioner was a victim of militancy.

16) Although no relaxation was required for appointment of the petitioner as sub Inspector and the Government in the General Administration Department, in exercise of its

discretion vested in it under sub-rule (2) of Rule 3 of the Rules of 1994, could have accorded consideration to the case of the petitioner, yet the PHQ erroneously recommended the case of the petitioner to the Department of Home for relaxation of Rules of 1994.

17) Be that as it may, the Department of Home returned the case of the petitioner with the request to PHQ to settle the case of the petitioner under Rule 3(1) of SRO 43 of 1994. Thereafter the PHQ took up the matter with the IGP, Kashmir, and requested him to recommend the petitioner for appointment as Constable. This is how the petitioner was recommended by the SSP, Anantnag, for the post of Constable after the petitioner relented and consented for such appointment.

18) Ordinarily, and having regard to the facts and circumstances emerging in the case, no indulgence in the matter by us was called for. Under the Rules of 1994, the petitioner has only right of consideration for compassionate appointment and does not have any vested right to claim a particular post, that too *dehors* the Rules of 1994. There is no dispute with regard to the fact that on the date the petitioner applied for compassionate appointment in the year 2018, he was under-graduate and, therefore, ineligible to be appointed as Sub-Inspector. The petitioner knew this and, therefore,

showed his reluctance to accept the post of Constable offered to him. He successfully persuaded the police authorities to recommend his case for appointment as Sub-Inspector in relaxation of Rule 1994. The basis for seeking appointment as Sub-Inspector, as could be gathered from the material on record, is that in similar circumstances and with regard to similarly placed persons, the Government had exercised its powers under sub-rule (2) of Rule 3 of the Rules of 1994. The PHQ, as is evident from its communication dated 12th August, 2021, recommended the case of the petitioner for appointment as Constable on the ground that it was a militancy related case. The Department of Home, which was approached by the DGP for seeking relaxation of the Rules of 1994, ought to have forwarded the case of the petitioner to the Government in the General Administration Department to take a call in the matter. The Government in the Department of Home was not the competent authority to appoint the petitioner against a higher post in the non-gazetted service and such power was reserved and preserved only in the Government in the General Administration Department in terms of sub-rule (2) of Rule 3 of the Rules of 1994. This process was, seemingly, not followed and the ostensible reason, as we can see, could not only be total non-application of mind on the part of the respondents but also a poor

understanding of the provisions contained in the Rules of 1994.

19) We are aware that appointment against the post of Constable was offered to the petitioner after he has consented for the same but we cannot ignore the attending facts and circumstances which led the petitioner to accept whatever was offered to him at the end of the day. The petitioner had relentlessly followed his case for appointment as Sub Inspector and did not waste much time after his appointment as Constable to seek justice by filing the OA before the Tribunal. We are, therefore, not inclined to accept the plea of the petitioner that the petitioner having accepted his appointment as Constable cannot be permitted to turn around and seek his appointment against the post of Sub Inspector.

20) Be that as it may, the fact remains that the recommendation dated 12th August, 2021, of the Police Headquarter made to the Principal Secretary to the Government, Home Department J&K, were never placed before the competent authority i.e. Government in the General Administration Department, for taking an appropriate decision in accordance with law.

21) We, therefore, find merit in the submission made by Mr. Shah and dispose of this petition by directing the respondents

to place the entire file of the petitioner including communication of the DGP dated 12th August, 2021, before the Government in the General Administration Department for considering the request of the petitioner for his appointment as Sub Inspector in J&K Police in the light of the recommendations made by the DGP/PHQ and also on the analogy of similar appointments, if any, made during the previous years. On receipt of the complete file and the material that may be requisitioned by the General Administration Department, a decision shall be taken on the request of the petitioner for appointment as Sub Inspector in the J&K Police in terms of sub-rule (2) of Rule 3 of the Rules of 1994.

22) The respondents shall place the complete file before the Commissioner/Secretary to Government, General Administration Department, within a period of four weeks from the date of this judgment. On the receipt of file, the requisite decision shall be taken by the Government in General Administration Department within a period of six weeks thereafter.

23) Needless to say, that in case the Government, in the facts and circumstances of the case and the material on record, decides, in its discretion, to offer appointment to the

petitioner against the post of Sub-Inspector, the same shall be prospective in nature.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
22.04.2025
"Bhat Altaf-Secy"

Whether the JUDGMENT is reportable: Yes/No

