



Government of Jammu and Kashmir
Department of Food, Civil Supplies & Consumer Affairs
Civil Secretariat, J&K,
Jammu/Srinagar

Subject:-O.A. No. 79 of 2024 titled Fouzia Rubeen & Others Vs Union Territory of Jammu and Kashmir through Commissioner/Secretary to Government, General Administration Department and Others-consideration order thereof.

Government Order No. 28 -JK(FCS&CA) of 2025
Dated: 4 -04-2025.

WHEREAS, Mrs. Fouzia Rubeen, Sh. Mohd. Amin Bhat & Sh. Manzoor Ahmad Hakim, retired Incharge Assistant Controller, Legal Metrology Department have filed O.A. No. 79 of 2024 titled Fouzia Rubeen and Others Vs. Union Territory of Jammu and Kashmir through Commissioner/ Secretary to Government, General Administration Department and Others before the Hon'ble Central Administrative Tribunal seeking the following reliefs:

- (i) *An order or direction directing the respondents to regularize/confirm the applicants against the post of Assistant Controller Legal Metrology without any further delay from the date the applicants have been working against the post, with all consequential benefits.*
- (ii) *An order or direction directing the respondents to regularize/confirm the services of the applicants as Assistant Controllers from the date the applicants have been working against the post of Assistant Controller Legal Metrology.*
- (iii) *An order or direction directing the respondents to explain why the services of the applicants have not been confirmed against the post of*

Assistant Controller Legal Metrology, despite the applicants fulfilling all the requirements and eligibility in terms of the recruitment rules.

WHEREAS, the aforementioned O.A was disposed of at the pre-admission stage by the Hon'ble Tribunal vide order dated 08-02-2024, operative part of which is reproduced as under:-

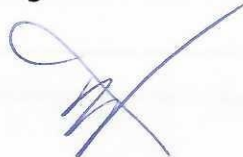
"In view of the limited prayer made by the learned counsel for the applicants, the respondents are directed to consider the present OA as a representation of the applicants and consider the claim of the applicants for their regularization on the posts of Assistant Controller within a period of eight weeks from today, in accordance with law and rules, by passing a speaking and reasoned order. With this, OA No. 79/2024 is disposed of accordingly."

WHEREAS, meanwhile, the applicant (Mrs. Fouzia Rubeen) has filed a Contempt Petition No. 166/2024 in A.O. 79 of 2023 titled Mrs. Fouzia Rubeen Vs. GAD and Anr. before the Hon'ble Tribunal, with the contention that the respondents have not complied with the order dated 08.02.2024 passed by Hon'ble Tribunal.

WHEREAS, perusal of available record reveals that the department has issued the final seniority list of Assistant Controllers, LMD vide Govt. Order No. 15- CA&PD of 2016 dated 05.02.2016 which was agitated by the direct recruits of year 2012 and ultimately challenged by them before the Hon'ble High Court of J&K through SWP No. 1347/2016 and who also succeeded in obtaining court order in terms of which the respondent department was restrained from giving effect to further promotions in the department on the basis of seniority notified on 05.02.2016. The operative part of said order is as under:

"Impugned seniority list shall not be given effect to for further promotions, regular or officiating."

WHEREAS, the Hon'ble High Court has decided the writ petition SWP No. 1347/2016 vide Judgment dated 24.11.2017 and the final seniority list




issued vide Govt. Order No. 15- CA&PD of 2016 dated 05.02.2016 as also the order of retrospective promotion of promotes promoted vide Govt. Order No. 65-CA&PD of 2012 dated 28.09.2012 were quashed. The operative part of the said order is as under:-

"...For the reasons assigned in the preceding paragraphs, it is not necessary for this Court to examine several other contentions raised by the parties. The impugned order dated 05.02.2016 by which final seniority list of Assistant Controllers, (State Cadre) of Legal Metrology Department was issued is hereby quashed. The order dated 28.09.2012 insofar as it pertains to retrospective promotion of respondents 3 to 8 as Assistant Controllers, Legal Metrology is also hereby quashed. The competent authority is directed to decide the objections preferred by the petitioners with regard to tentative seniority list by a speaking order after affording an opportunity of hearing to them within a period of two weeks from today and thereafter to issue the final seniority list depending upon the decision taken by the competent authority, the decision shall also be taken with regard to grant of benefit of retrospective promotion to respondents 3 to 8."

WHEREAS, the private respondents (promotes) filed LPA No. 233/2017 titled Ajay Kumar & Ors Vs. State of J&K and Ors before Divisional Bench of Hon'ble High Court, wherein, the Hon'ble Court vide Order dated 21.12.2017 directed the Department as under:-

"The respondent-department can prepare the tentative seniority list of Assistant Controllers and place it before this court for consideration on the next date of hearing before the Bench. Such list will be subject to the outcome of the appeal."

Considering the scope of the appeal and to balance the right of the appellants and that of the successful writ petitioners –respondents, it will be appropriate to stay the impugned order, insofar as it relates to quashing of the final seniority list as also the retrospective promotion. There will be

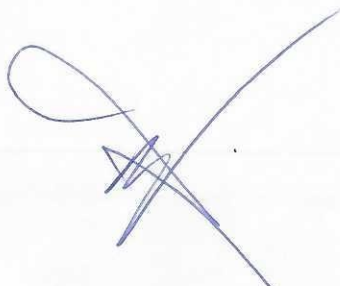


an and ad interim order of stay above, till the next date of hearing”

WHEREAS, in compliance to the order of the Hon'ble High Court passed in the LPA No. 233/2017 dated 21.12.2017, the tentative seniority list of the Assistant Controller (Gazetted/State Cadre) of Legal Metrology Department as it stood on 23.04.2018 was issued by the Department vide No. CAPD/Legal/19/2016 dated 23.04.2018 for information of all the concerned. However, this list is further subject to outcome of LPA No. 233/2017 dated 21.12.2017 titled Ajay Kumar & Ors Vs. State of J&K and Ors, pending for disposal before Hon'ble High Court.

WHEREAS, while considering the case of the applicant (Fouzia Rubeen) based on relevant rules/regulations/seniority position, it was found that in order to meet the exigency of service in the department, the applicant was placed as Incharge Assistant Controller, Legal Metrology in her own pay and grade vide Government Order No. 35-CAPD of 2013 dated 23-05-2013, against the resultant vacancy of Mrs. Dilshada Bano, Assistant Controller, who had been placed as Incharge Deputy Controller but had not been confirmed at that point of time. The lien-free vacancy will become available once the placement of Mrs. Dilshada Bano as Incharge Deputy Controller is confirmed by the Department. Whereas, similar was the case position in respect of other two applicants (Sh. Mohd. Amin Bhat & Sh. Manzoor Ahmad Hakim) who were also placed as In charge Assistant Controller, Legal Metrology in their own pay and grade against the vacancies made available upon placement of eligible Assistant Controller as I/c Deputy Controllers.

WHEREAS, Government Order No. 84-CAPD of 2013 dated 20-12-2013 clearly reveal that the placement of the applicants were issued with the rider that the official will work in their own pay and grade. This arrangement under law does not confer any preferential right to applicants for their promotion to the post of Assistant Controller as they were holding the post of Inspector on substantive basis at the time of their placement as I/c Assistant Controller till the time they retired from service.



WHEREAS, the contention of the applicants were considered in the department and it came to fore that confirmation/promotion of the applicants could not be made in the department as of now for non- availability of clear & lien free vacancies due to non-confirmation of I/c Deputy Controllers.

WHEREAS, promotion or confirmation/regularisation of a government employee is always contingent on the availability of vacant position in the higher ladder, which in the present case is lacking, in view of the peculiar situation faced by the department as a consequence of litigation brought in by direct recruit Assistant Controllers appointed vide Govt. Order No. 28-CA&PD of 2012 dated 20.03.2012 & those promoted/confirmed as Assistant Controllers vide Govt. Order No. 65-CA&PD of 2012 dated 28.09.2012 .

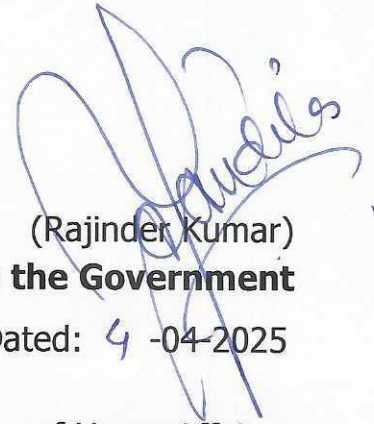
Whereas, the Hon'ble High Court of J&K in WP(C) No.1170/2020 titled Charanjit Kour Sudan Vs. Union Territory of JK & Ors, at para 11 observed as under:

“ Law on this point is now well-settled. Incharge arrangement is not a recognition of right to a higher post. An incharge arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities, or expectations could be built upon it asking an officer/ official, who substantively holds a lower post, merely to discharge the functions of a higher post cannot be treated as promotion. It is also well settled that when incharge arrangement is made, it has to be, as far as possible, for a short duration; not exceeding six months and such an arrangement does not confer any right whatsoever on the officer/ official holding the post on incharge basis, except entitling him/ her to the charge allowance... ”

NOW THEREFORE, in compliance to the Orders of the Hon'ble Tribunal passed in O.A. 79 of 2024, matter has been examined and the claim of the applicants is found devoid of merits, being premature at this stage, until conclusion/disposal of LPASW No. 233/2017 titled Ajay Kumar & Ors Vs. State of J&K and Ors (c/w LPASW No. 234/2017, LPASW No.04/2018, LPASW No.05/2018 & SWP No.1150/2018), which is pending adjudication before

Hon'ble High Court of J&K and consequent non- availability of lien free vacancies in the cadre.

By order of the Government of Jammu and Kashmir



(Rajinder Kumar)

Under Secretary to the Government

No:7430530/FCSCA/Legl/22/2024

Dated: 4 -04-2025

Copy to the:-

1. Joint Secretary, (Jammu-Kashmir and Ladakh) Ministry of Home Affairs, Government of India, New Delhi.
2. Controller, Legal Metrology Department, J&K.
3. Director, Achieves, Archaeology and Museums, J&K.
4. Private Secretary to the Commissioner/Secretary to the Government, General Administration Department, for the information of Commissioner/Secretary.
5. Private Secretary to the Commissioner/Secretary to the Government, FCS&CA for the information of Commissioner/Secretary.
6. Concerned applicant.
7. Incharge website, FCS&CA.
8. Government Order file/stock file.