

**GOVERNMENT OF JAMMU AND KASHMIR
JAL SHAKTI DEPARTMENT
CIVIL SECRETARIAT, JAMMU/ SRINAGAR**

Subject:- Assigning of temporary charge of the post of I/c Executive Engineer to Shri Muzamil Ahmad Rafiqui, Assistant Executive Engineer, Jal Shakti Department.

Government Order No. 139-JK(JSD) of 2024

Dated:- 24.06.2024

Whereas, during the year 2005 the Public Works Department had placed the Memorandum for submission to the then Hon'ble Chief Minister through Chief Secretary in co-ordination to the General Administration Department for seeking approval of the then Hon'ble Chief Minister to the proposed amendments in the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules notified vide SRO-380 dated 06-07-1978 to the extent of giving preference to the Post-Graduate Engineers up to 5% of available vacancies at the time of promotion from Assistant Engineers to Assistant Executive Engineers and 10% of the available vacancies at the time of promotion from Assistant Executive Engineers to Executive Engineers. The proposal was approved by the then Hon'ble Chief Minister and the approval was conveyed vide No. GDC-187/CM/05 dated 19.12.2005 to the Public Works (R&B) Department through General Administration Department; and

2. Whereas, the then PHE, Irrigation and Flood Control Department (now, Jal Shakti Department) during the year 2016, issued vide SRO 14 dated 15.01.2016, to the effect that the J&K Engineering (Gazetted) Service Recruitment Rules 1978, as amended vide SRO-297 of 2006, be amended to give effect to above mentioned approved proposal; and

3. Whereas, vide Govt. Order No. 338-PW (Hyd) of 2015 dated 15.12.2015, among others, Shri Muzamil Ahmad Rafiqui was placed as I/c AEE under M.Tech. Category; and

4. Whereas, after the issuance of SRO-14 of 2016 dated 15.01.2016, number of objections were received from the aggrieved quarters regarding the legality and proper procedure to be followed during the issuance of the said SRO; and

5. Whereas the said SRO remained under examination in the department and it also initiated an enquiry into the matter vide Government Order No. 97-PW (Hyd) of 2016 dated 28.03.2016, wherein Shri Pankaj Raj Katoch, the then Additional Secretary to Government (Chief Vigilance Officer) was appointed as Inquiry Officer for ascertaining whether the proper procedure was indeed followed in issuance of the SRO-14 dated 15.01.2016 and tracing out the master file on the subject and in the event of the file being untraceable, proper responsibility be fixed for the same; and

6. Whereas, in the meanwhile, a service writ petition under SWP No. 734/2016 titled Muzamil Hussain Rafiqui and Ors Vs. State and Ors was filed in the matter. The petitioners sought quashment of Government Order 97-PW (Hyd) of 2016 dated 28.03.2016 and for



consideration of their cases in terms of SRO 14 dated 15.01.2016. The Hon'ble High Court passed the following interim directions vide its order dated 05.04.2016:

“Notice. It is provided that while respondents would continue with the enquiry ordered vide Government Order No. 97-PW (Hyd) of 2016 dated 28.03.2016, they shall maintain status quo in respect of SRO 14 of 15.01.2016 till next date before the Bench.”

7. Whereas, Shri Pankaj Raj Katoch the then Additional Secretary to Government, PHE, I&FC Department (Inquiry Officer) vide communication No.PS/AS (K)/PHE/456/2016 dated 23.12.2016 submitted his inquiry report which was referred to the General Administration Department on 08.03.2017 for their opinion/clarification; and

8. Whereas, a meeting was held on 15.07.2017 under the Chairmanship of Chief Secretary regarding reservation in direct recruitment and in promotion for the post graduate engineers wherein it was decided that the Administrative Secretaries of the three Engineering departments viz. Power Development Department, Public Works (R&B) Department and PHE, I&FC Department will hold further discussions in the matter upon which PWD (Nodal Department) will process the necessary proposal for consideration of the Competent Authority. While formulating the proposal, the number of engineers with post-graduate degrees, presently working in these departments vis-à-vis the position in 2005 besides the position obtaining in other States will be kept in mind; and

9. Whereas, the Hon'ble High Court on 26.09.2017 disposed of the matter with directions, the operative part of which reads as under:-

In view of aforesaid submissions made by leaned senior counsel for petitioners and in order to maintain parity with the aforesaid order of this court, it is directed that in the event respondents decide to make promotion against the post of Executive Engineer, same be done strictly in accordance with rules governing the field and as per SRO 14 of 2016 dated 15.01.2016.

With the aforesaid direction, writ petition is disposed of.”

10. Whereas, the Department vide O.M No. PHE, I&FC/HRM/34/2016 dated 18.10.2017, requested the PW (R&B) Department to process the proposal for consideration of the competent authority but the same remains un-replied as on date; and

11. Whereas, upon reference by the department, the Department of Law, Justice & Parliamentary Affairs opined vide their U.O. No. LD (Ser) 2019/15-PHE dated 01.08.2019, as under:-

“Returned. Hon'ble High Court vide its order dated 05.04.2016 passed in SWP No. 734/2016 has directed to maintain status quo with regard to SRO 14 of 2016, till next date before the bench, keeping in view that an enquiry has been initiated. Department needs to complete the enquiry regarding the legality and fairness of action taken while issuing SRO 14 of 2016 and thereafter a



considered decision is required to be taken by all engineering departments in view of pendency of cases before the Hon'ble High Court and also the requirements of the department. This will be in tune with decision taken in the meeting held under the Chairmanship of the Chief Secretary on 15.07.2017. Department may, based on this conclusive exercise, put forth its stand before the Hon'ble High Court and take further action accordingly."

12. Whereas, vide Govt. Order No.178-JK(JSD) of 2021 dated 01.09.2021, Sh. Haris Ahmad Handoo, Special Secretary to the Government, Jal Shakti Department was appointed as an Inquiry Officer to complete the inquiry initiated vide Govt. Order No. 97-PW (Hyd) of 2016 dated 28.03.2016 regarding the legality and circumstance under which SRO 14 of 2016 dated 15.01.2016 had been issued; and

13. Whereas, the Inquiry Officer, vide communication No. PS/ SPL/SECY/JSD/2021/02 dated 26.11.2021, submitted the inquiry report in the department and among other actions, the department, in light of the inquiry report submitted by the I.O., withdrew the benefits conferred upon Shri Rafiqui vide Govt. Order No. 16-JK (JSD) of 2022 dated 25.01.2022 read with addendum dated 25.03.2022, ab-initio; and

14. Whereas, Shri Rafiqui, AEE, claiming his placement as Executive Engineer in pursuance of SRO 14 dated: 15-06-2016, filed Original Application before the Hon'ble Central Administrative Tribunal. The Hon'ble CAT Bench Srinagar on 03.02.2022, granted four weeks of time for filing of counter affidavit which was challenged by him before the Hon'ble High Court by filing petition bearing WP(c) No. 189/2022; and

15. Whereas, the Division Bench of the Hon'ble High Court disposed of the Writ Petition WP (C) No. 189/2022 vide order dated 14.03.2022, the operative part of which reads as under: -

"In the light of the above observations, we dispose of this Writ Petition with a direction to the Tribunal to positively consider and decide the claim of the Petitioner for grant of interim relief on the next date of hearing fixed before it. We further direct that till the next date of hearing before the Tribunal only viz. 13th of April, 2022, the operation of the Government Order dated 25th of January, 2022 shall not be given effect qua the Petitioner and the present position of the Petitioner maintained, whereafter the same shall be governed by the orders to be passed by the Tribunal with regard to the interim relief sought by the Petitioner before it.

Writ Petition disposed of as above, along with the connected."

16. Whereas, on the recommendations of DPC/PSC among others, vide Govt. Order No. 100-JK(JSD) of 2023 dated 12.05.2023, Shri Muzamil Ahmad Rafique has been regularized as Assistant Engineer with effect from 21.10.2014, as per his own seniority; and

17. Whereas, the Hon'ble High Court of Jammu & Kashmir and Ladakh passed an Order dated 22.09.2023 in CCP(S) No. 536/2022 in CM No. 7267/2022, reproduced as under:

"Taken out of turn at the request of outstation counsel.

The instant contempt petition has been preferred by the petitioner for seeking initiation of contempt proceedings against the respondent for violating the order dated 26th September 2017 passed by this Court in SWP No. 1950/2017, whereby it has been directed that in the event respondents decide to make promotion against the post of Executive Engineer, same be done in accordance with rules governing the field and as per SRO 14 of 2016 dated 15th January 2016.

Mr. Pranav Kohli, the learned senior counsel appearing on behalf of petitioner submits that pursuant to the passing of the aforesaid order, which has assumed finality and has been accepted by the respondents, the respondents have accorded promotion by virtue of Government Order No. 246 JK(JSD) of 2022 dated 15th November 2022 (P- 907) and a perusal whereof reveals that the respondents have not adhered to the mandate and spirit of SRO 14 of 2016 dated 15th January 2016, while granting promotion to the rank of Executive Engineer/AEE, as per ratio/quota prescribed under SRO 14 of 2016, wherein it has been emphatically made clear that in the matters of promotion insofar as Post Graduate Engineers are concerned (holding M.Tech Degree) in Roads and Building Public Works Department, Power Development Department and the Public Health Engineering Irrigation and Flood Control Department, to the rank of Executive Engineer/AEE as per ratio/quota preferred under SRO 14.

Mr. Pranav Kohli, the learned senior counsel further submits that SRO 14 of 2016 has not been implemented in letter and spirit while issuing Government Order No. 246 JK (JSD) of 2022 dated 15th November 2022, whereby sanction was accorded to the placement/ assignment of temporary charge as Executive Engineers of the officers whose names figure in the aforesaid order. He further submits that SRO 14 of 2016 continues to be operative as on date and same has also been upheld by the Central Administration Tribunal while deciding T.A. No. 61/43/2020, pursuant to which, the matter landed before Division Bench of this Court and the Division Bench has also upheld the order passed by the Central Administrative Tribunal and thus there is no legal impediment which should come in the way of the respondent to implement the SRO in question.

Confronted with the same, Mr. Jehangir Ahmad Dar, the learned Government Advocate assures the Court that the order passed by this Court will be implemented in its letter and spirit on or before the next date of hearing and the petitioner who is a post-graduate Engineer, holding M.Tech Degree, will be preferred strictly in conformity with the direction passed by this Court on 26th September 2017 in SWP No. 1950/2017, which has assumed finality.

Mr. Jehangir Ahmad Dar, the learned Government Advocate further submits that he has not received the copy of the contempt petition and the same has been provided to him by the learned senior counsel appearing on behalf of the petitioner in the open Court.

Let compliance report be filed by Mr. Jehangir, the learned Government Advocate within a period of two weeks positively, with an advance copy to the learned senior counsel for the petitioner.

....."

18. Whereas, thereupon, on the recommendation of DPC/ PSC, vide Govt. Order No.238-JK(JSD) of 2023 dated 06.10.2023, among other Shri Muzamil Ahmad Rafique, has been regularized as Assistant Executive Engineer, w.e.f. 01.01.2017, subject to the outcome of writ petition pending before the competent court of law; and

19. Whereas, Hon'ble Central Administrative Tribunal Srinagar Bench, Srinagar in O.A No. 54/2022 titled Muzamil Ahmad Rafiqui VS U.T of J&K, vide Order dated 12.03.2024 has passed the following directions:-

"The respondents will consider the case of the petitioner for his next higher promotion based on his merit, seniority and suitability, and in accordance with his entitlement.

The respondents are directed to consider the case of the petitioner within a period of eight weeks from the date a copy of this order is served upon the respondents.

The consideration be accorded on its merits."

20. Whereas, the case has been referred to the Department of Law, Justice & Parliamentary Affairs for their opinion as to whether the department can consider assigning the temporary charge of the post of I/c Executive Engineer to Shri Muzamil Ahmad Rafiqui, Assistant Executive Engineer, in terms of SRO-14 of 2016 dated 15.01.2016, as per the Hon'ble High Court Order dated 22.09.2023, Hon'ble CAT Order dated 12.03.2024 and as per opinion of Legal Section or otherwise; and

21. Whereas, Department of Law, Justice and Parliamentary Affairs vide their U.O. No. LAW-LT10/376/2024-10 dated 24.04.2024 has advised as under:-

"Returned:- Vide Government order No 239-JK(JSD) of 2023 dated 06.10.2023 , the petitioner has been confirmed as Assistant Executive Engineer by the DPC/PSC in terms of SRO 14 of 2016 w.e.f 01.01.2017 meaning thereby that SRO 14 of 2016 is practically in operation. Since the department has not only admitted the implementation of SRO-14 of 2016 before the Hon'ble High Court but has also convened the DPC, as such there is no legal hitch in consideration of the petitioner for placement as I/C Executive Engineer under the said SRO 14 of 2016."



22. Whereas, the matter has been considered in the context of the abovementioned circumstances and legal position, particularly in light of the opinion of the Department of Law, Justice and Parliamentary Affairs and upon such consideration, the Competent Authority has approved placement of Shri Muzamil Ahmad Rafiqui as I/c Executive Engineer.

23. Now, therefore, sanction is hereby accorded to the assigning of temporary charge of the post of I/c Executive Engineer to Shri Muzamil Ahmad Rafiqui, Assistant Executive Engineer.

24. Further, the officer is posted to the J&K WRRRA against an available vacancy.

25. This Order shall be subject to the outcome of pending matter, if any, in the Hon'ble High Court or Hon'ble Central Administrative Tribunal.

By Order of the Government of Jammu and Kashmir.


Sd/-
(Shaleen Kabra) IAS
**Financial Commissioner/Additional Chief Secretary
Jal Shakti Department**

No. JSD JSD-GS/23/2022-A-JSD (CC No. 7083599)

Dated: - 24.06.2024

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Director, Archives, Archaeology and Museums, J&K.
3. All Chief Engineers.
4. OSD to Advisor (B) to the Hon'ble Lieutenant Governor.
5. Secretary, J&K WRRRA.
6. Senior Law Officer, Jal Shakti Department
7. Concerned Officer.
8. Private Secretary to the Financial Commissioner (ACS), Jal Shakti Department.
9. I/c Website, Jal Shakti Department.
10. Govt. order file/ Stock file.


(Sahil Mahajan) JKAS
**Under Secretary to the Government
Jal Shakti Department**