

Government of Jammu and Kashmir.
Jal Shakti Department
Civil Secretariat, Jammu

Subject: - M.A. No. 391/2023 in OA No. 314/2023 titled Rania Kounser Vs
UT of J&K and Ors.

Government Order No. 85 -JK-JSD of 2024.

Dated: 22 -04-2024

01. Whereas, Smt. Rania Kounser filed a Original Application bearing O.A No. 314/2023 before the Hon'ble Central Administrative Tribunal, Srinagar Bench to place the applicant in the pay scale of Rs. 9300-34800+4200 retrospectively with effect from the date of initial appointment of the applicant i.e, 11.04.2008 with all consequential benefits including revised pay scale, grade, seniority etc and to accord the same treatment to the applicant as has been accorded to similarly situated Draftsmen (Electrical, Mechanical and Civil) who were placed in the said higher grade of Rs. 5150-8300 which corresponds with the pay scale of Rs. 9300-34800+4200; and
02. Whereas, the Hon'ble Central Administrative Tribunal, Srinagar Bench considered the case on 17.04.2023 disposed of the matter, the relevant portion, whereof, is reproduced as under:-

“In view of the limited prayer made by learned counsel for the applicant, this OA is disposed of with the direction to the respondents to consider the present OA as representation of the applicant and decide the same as per rules governing the field taking into consideration order issued by respondent No. 1 bearing No. 63- PW(R&B) of 2020 dated 17-02-2020, which has the effect of revising the pay scale/grade of the similarly circumstanced Draftsmen working in the respondent - Department. Respondents are also directed to consider the case of the applicant in light of judgement dated 21-11-2008 passed by Hon'ble High Court, UT of J&K and Ladakh in case titled Sham Paul Randhawa and others versus State and others, reported in 2009 (II) SLJ 490 by passing a speaking



and reasoned order, provided the applicant herein is similarly situated with the petitioners of the aforementioned case. In the aforementioned backdrop, this OA is disposed of."

03. Whereas, petitioner has filed Misc. Application bearing No. 391/2023 in OA No. 314/2023 titled Rania Kouser Vs UT of J&K and Ors, and the Hon'ble Central Administrative Tribunal, Srinagar Bench on 14.06.2023 disposed of the said MA with the following directions:-

"In this view of the matter, the direction issued in order dated 17.04.2023 in OA NO. 314/2023 needs to be modified/rectified and it is directed that the last but one paragraph of the said order shall now read as under:-

"This exercise shall be done by the respondents within a period of four weeks."

With this, MA 391/2023 is disposed of.

This order shall form part of the order dated 17.04.2023, passed in OA No. 314/2023."

04. Whereas, the matter was examined in the department in another identical matter and was taken up with the Finance Department and the Finance Department returned the case with the following opinion:-

- i. **The issue shall be put up separately to the Pay Anomaly Committee for having a look on the recommendations.**
- ii. **In case of court interventions, the department is advised to ensure appropriate defense of the writ petitions. The two-tier pay scales for Draftsman continue to be in force and these pay scales have not been unified till date, and merger of pay scales shall mean that they will enjoy higher pay scales than then Junior Engineers.**
- iii. **However, in cases wherever the court orders have assumed the finality, the department should settle all such cases at its level without reference to the Finance Department on the analogy of similarly situated cases settled by the Department**

05. Whereas, after thorough examination, the case was taken up with the Department of Law justice and parliamentary Affairs and the Department of Law, Justice and Parliamentary Affairs returned the case with the observations:-



“Returned. It is settled law that significance of judgment having been decided without reference to the statutory provision is not to be followed as precedence. In that case, the State will have another opportunity to persuade the Hon’ble Court and defend the matter in its right perspective. Therefore in the facts and circumstances of the case, it would be advisable for the department to examine all these cases in its right perspective and have an informed decision in the matter, so as to reduce the burden of litigation, where the state does not have any chance to succeed. The Law Officer posted in the Department is required to be equipped with all the facilities who shall play a key role in minimizing the burden of litigation after critical appreciation of all these cases. The department may as such after taking an independent and informed view/ decision in the matter can also send the concrete proposal to this department, if need arise for further examination and opinion in the matter ”

06. Whereas, the applicant has applied for the post of Draftsmen borne in the cadre of Engineering Service and came to be appointed by way of Government No. 73-PW(Hyd) of 2008 dated 11.04.2008. The service of the Draftsmen is governed by the Jammu and Kashmir Engineering Subordinate Services Recruitment Rules, 1997 notified vide SRO-180 dated 26th May, 1997 and the pay scale attached with the post is notified with the recruitment rules and have been revised, pursuant to the Rule 15(f) of Jammu and Kashmir Civil Services (Revised Pay) Rules, 1998 notified vide SRO-18 of 1998 dated 19th January, 1998 which provides that all the Draftsmen (2 years diploma/certificate holders) carrying the existing pay scale of Rs. 1600-2600 will be placed in the revised pay scale of Rs. 5000-8000. The fresh recruitment to the posts of Draftsmen will be made in the pay scale of Rs. 4000-6000 and such fresh appointees will be placed in the pay scale of Rs. 5000-8000 after putting 8 years of service; and
07. Whereas, it has been found that by considering the claim of the petitioner, it would disturb the whole hierarchy position as the Junior Engineers, after passing three years diploma/ degree course, are appointed in the scale of Rs. 4500-7000 (pre-revised) and how a less



- qualified person or lower rank officials can be appointed at entry level against a post carrying a higher scale of Rs. 5150-8300; and
08. Whereas, the petitioner has accepted the terms and conditions of employment based on the recruitment rules governing the appointment of Draftsmen at the time of appointment and the said rules have not been quashed by the Hon'ble Court, as such the petitioner has to work within the parameters of the said rules and there is no reasonable cause to relax the said rule in order to confer the higher grade to the petitioner ; and
09. Whereas, the petitioner cannot seek parity with that of cases referred in the Original Application (OA), as the said cases were considered in different facts and circumstances as the Department of Law Justice & Parliamentary Affairs has advised that it is settled law that significance of judgment having been decided without reference to the statutory provision is not to be followed as a precedenence.

Now, therefore, the claim of the petitioner having been considered with due deference to the order dated 07.04.2023, passed by the Hon'ble Central Administrative Tribunal, Srinagar Bench in O.A No. 314/2023 titled Smt. Rania Kunser Vs State of J&K and others and has been found to be bereft of any merit for the aforesaid reasons and is accordingly rejected.

By order of the Government of Jammu and Kashmir.

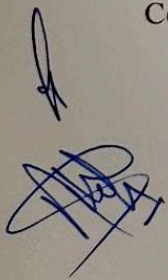
Sd/-
(Shaleen Kabra)
Financial Commissioner (ACS)
Jal Shakti Department.

No: JSD-LS02(1)/214/2023-Legal-JSD (7228297)

Dated: -04-2024

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.



2. Chief Engineer, (I&FC) Jal Shakti Department, Kashmir for information and necessary action.
3. Ld. Government Advocate Hon'ble Central Administrative Tribunal, Srinagar Bench for information and filing of compliance before the Hon'ble Court.
4. Private Secretary to the Financial Commissioner (ACS) Jal Shakti Department for information of the Financial Commissioner (ACS)
5. PA to Additional Secretary to Government, Jal Shakti Department for information to Additional Secretary
6. Applicant.
7. Incharge website, Jal Shakti Department.
8. Monday Return file (w.2.s.c).
9. Government order file.



(Rehmatullah Shah)

Under Secretary to Government,
Jal Shakti Department

