

Government of Jammu and Kashmir
Department of Hospitality and Protocol Department
Civil Secretariat, Srinagar/Jammu

Subject: Adjustment of Shri Nissar Ahmad Kumar, Chowkidar' against the post of Driver (Grade-II) in the Resident Commission Office, New Delhi.

- Ref:- I. SWP No. 1761/2017 titled Nisar Ahmad Kmar v/s State and others.
II. LPA SW No. 144/2018 titled State of J&K and others V/s Nisar Ahmad Kumar,
III. GAD-CORD/121/2021-09-GAD dated 13.09.2021.
IV. Concurrence of Finance Department conveyed vide U.O No FD-Code/99/2021-917 dated 08.09.2021.

Government Order No. 13 (JK) H&P of 2021

Dated: - 22 - 09 - 2021

Whereas, Shri Nissar Ahmad Kumar, was initially appointed as 'Chowkidar' in the pay scale of Rs.2550-50-2660-60-3200 in the Resident Commission Office, New Delhi and was subsequently confirmed after completion of two years.

Whereas, Sh. Nissar Ahmad Kumar, claiming parity with the case of Shri Raj Kishore, approached the Hon'ble J&K High Court and filed a writ petition bearing SWP No. 1761/2017 seeking directions to regularize his services against the post of 'Driver' from the date he has been discharging his duties as 'Driver' in the office of Resident Commission, New Delhi.

Whereas, the Hon'ble High Court passed interim direction in the matter on 31-08-2017 as under:-

"Notice in MP also. In the meanwhile respondents 1 and 2 are directed to take decision in the case of petitioner for the regularization of his services against the post of Driver in light of the recommendation made in terms of communication supra on the same lines adopted in the case of Sh. Raj Kishore Singh. The Consideration be made and orders issued within the notice period. "

Whereas, in compliance to the directions of the Hon'ble High Court, the Resident Commission Office, New Delhi passed a consideration order vide Order No. 263-KRC of 2017 dated 30-10-2017 and rejected the claim of the petitioner.

Whereas, aggrieved by the above said rejection order, the petitioner again approached the Hon'ble High Court and filed CMP No. 02 of 2017 challenging the consideration order dated 31-10-2017. The Hon'ble Court disposed off the Writ Petition No. 1761/2017 along with connected CMP No. 01/2017 as under:-

"In the above background, the instant petition is allowed and the impugned order bearing NO. 263-KRC of 2017, along with the requisition made by the respondent Department to the Services Selection Board for filing up the post of Driver shall stand quashed, consequently, the petitioner shall be regularized against the vacant post of

Driver (Grade-I) in the pay scale of Rs. 4000-6000 (pre-revised), retrospectively from the date he has been performing his duties in the respondent Department, on the same analogy as has been adopted in the case of Sh.Raj Kishore Singh.”

Whereas, subsequently, the Hon'ble High Court vide its order dated 10-05-2018 modified its earlier order dated 16-04-2018 to the effect that petitioner shall be regularized against the post of 'Driver (Grade-II)' carrying the pay scale of Rs. 3050-4590, later revised to Rs.5200-20200+Grade Pay of Rs.1900/- instead of the post of 'Driver (Grade-I)' which carries a higher pay scale of Rs. 4000-6000.

Whereas, Law Department, vide it's U.O dated 29-06-2018 advised to file LPA against the judgment dated 16-04-2018.

Whereas, Hon'ble Division Bench on 18.02.2021 dismissed the LPA, as under:-

“From the comparative analysis of the facts of the case pertaining to Shri Raj Kishore Singh and the facts of the case pertaining to the case of the writ petitioner, it is clear that there is hardly any difference in the two cases. Both writ petitioner as well as Shri Raj Kishore Singh were appointed as Chowkidars. Both of them were made to discharge the duties of a Driver on account of exigency of service and they continued to do so for years together against the available vacancies of Drivers. In fact, the case of the writ petitioner stands on a higher pedestal because while Shri Raj Kishore Singh was, by a written order, directed to join back the post of Chowkidar but the writ petitioner was never reverted back to his original posting. In the case of Shri Raj Kishore Singh, despite his writ petition having been dismissed by Delhi High Court, though not on merits, sanction was accorded to regularization of his services as a Driver. In the case of the writ petitioner, he was armed with an interim order of the writ Court directing consideration of his case for regularization of his services as Driver. Thus, his case stands on a better footing.

It is on the basis of aforesaid analysis of the facts obtaining in the two cases that the learned Single Judge has reached a conclusion that the writ petitioner is entitled to similar relief and treatment as has been accorded to Shri Raj Kishore Singh. The finding of the learned Single Judge in this regard is quite lucid and well reasoned. The same does not call for any interference from this Court.

Even otherwise in a welfare State, the Government is expected to act as a model employer and not as an exploiter of workers. We have come across from the perusal of the record that appellants have been utilizing the services of Chowkidars including the writ petitioner and other similarly situated employees for discharging the duties of drivers for years together without paying them the salaries attached to said post in spite of the recommendations of the officers in this regard.....

So far as the contention of the appellants that in the impugned judgment date of retrospective effect has not been mentioned, the same is without any basis as the writ petitioner has placed on record documents to show that he has been working as a Driver since the year 2010. The appellants do not deny the said fact though they have disputed the competence of the officer who has issued the certificate to this effect. Thus, there should not be any difficulty for the appellants to determine the relevant date.

For the foregoing discussion, we do not find any infirmity or illegality in the impugned judgment passed by the learned Single Judge. The appeal, being without any merit, is dismissed along with connected CM.”

Whereas, Law Department vide its U.O. No. LD(SC) 2021/06-H&P, Dated 04.03.2021 advised to file SLP before the Hon`ble Supreme Court.

Whereas, the SLP was dismissed by the Hon`ble Supreme Court vide its Order dated 16.04.2021 as under:-

“Having heard the learned counsel for the petitioner and in the peculiar facts of this case, we are not inclined to interfere with the order passed by the High Court. The Special Leave Petition is, accordingly, dismissed pending application(s), if any, shall stand disposed of.”

Whereas, after dismissal of SLP, Law Department vide U.O. No. LIT3/3/2021-10, Dated 03.05.2021 advised to implement the Judgment after seeking concurrence of the Finance Department. The Finance Department vide No. U.O. No. FD-Code/139/2021-03, Dated 12.07.2021 and No. FD-Code/99/2021-917 dated 08.09.2021 conveyed concurrence.

Whereas, the petitioner filed a Contempt Petition bearing CCP(S) No. 319/2021 for implementation of the Court Judgment. The Hon`ble Court vide Order Dated 29.07.2021 directed to file the Compliance by or before the next date of hearing i.e. 13th August, 2021 and subsequently granted final opportunity for compliance by or before 24-09-2021.

Whereas the case for absorption of the petitioner, namely Shri Nisar Ahmad Kumar, Chowkidar against the post of Driver Grade II in the office of Resident Commissioner, New Delhi was examined as per the directions of the Hon`ble Court and advice rendered by Law Department and Recruitment Rules governing the post and the service. It was observed that in the normal course the appointments to the cadre/service posts are made as per the Recruitment Rules framed for that Cadre/Service. In the instant case the appointment of Petitioner will be outside the framework of the existing relevant Recruitment Rules and in order to implement the Hon`ble Court directions, the same shall have to be seen as an isolated case in his personal capacity and the adjustment/appointment shall have to be in relaxation of the rules.

Accordingly the case was placed before the Competent Authority who vide U.O. No. GAD-CORD/121/2021-09-GAD dated 13.09.2021 conveyed approval for the adjustment of the petitioner as driver Grade II.

Now, therefore, in compliance to the Hon'ble Court judgment dated 16.4.2018 and order dated 10.5.2018 passed in SWP No. 1761/2017 titled Nisar Ahmad Kumar V/s State and others read with judgment dated 18.2.2021 passed in LPA SW No. 144/2018 titled State of J&K and others V/s Nisar Ahmad Kumar, Sanction is hereby accorded to the adjustment of Shri Nisar Ahmad Kumar, Chowkidar against the post of Driver Grade-II in the Pay Scale of Level-2 (19900-63200) retrospectively, from the date he has been performing his duties as such in the office of Resident Commissioner, New Delhi, in relaxation of rules.

This is in deference to the Hon'ble Court Judgment and shall be in personal capacity of the petitioner as an isolated case and shall not set a precedence for any similar adhoc/ interim arrangements.

By order of the Government of Jammu and Kashmir.

Sd/-

(Talat Parvez Rohella)

**Commissioner/ Secretary to Government,
Hospitality and Protocol Department**

No. HP/Estt/Legal/28/2017(40058)

Dated: 22 09-2021

Copy to the: -

1. Additional Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Principal Resident Commissioner, New Delhi
3. Principal Secretary to Hon'ble Lieutenant Governor J&K
4. Mr B A Dar Sr. AAG J&K High Court Srinagar. He is requested to file compliance report accordingly.
5. Senior Law Officer, H&P Department.
6. Private Secretary to the Chief Secretary
7. Private Secretary to the Financial Commissioner Finance Department.
8. Private Secretary to the Commissioner Secretary to the Government, H&P Department.
9. Government Order File /Stock file



(Manzoor Ahmad Jan)

Under Secretary to Government