



**Government of Jammu and Kashmir  
Public Works (R&B) Department  
Civil Secretariat, Jammu/Srinagar**

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Subject: O.A. No. 332/2021 titled Shazia Mushtaq V/s UT of J&K and others.

**Government Order No. 357 –PW(R&B) of 2023**

**Dated:- 29 .08.2023**

Whereas, Ms. Shazia Mushtaq was appointed as Assistant Research Officer (ARO) vide Government order No. 240-PW(R&B) of 2010 dated 29.06.2010 on substantive basis; and

Whereas, after completion of her six years of service, she requested for her placement as Deputy Research Officer in terms of SRO- 297 of 2006.

Whereas the final seniority list of Assistant Research Officer of the department was issued vide order dated 25-10-2016 and Shazia Mustaq was the lone candidate working against the said post; and

Whereas, Shazia Mushtaq, Assistant Research Officer appointed in 2010 through PSC was not considered for placement as Deputy Research Officer (DRO), owing to the constraints of Recruitment Rules issued vide SRO-297 of 2006; and

Whereas, the case was referred to the GAD on 02.07.2021 for placement of Ms.Shazia Mushtaq as DRO in relaxation of recruitment rules. The GAD vide UO dated 23.07.2021, returned the case file with the following observations:-

"The Departmental proposal is returned with the following advice:-

- i. The proposal seeking relaxation of recruitment rules for promotion of Ms Shazia Rasool, Assistant Research Officer as Deputy Research Officer is in violation of the policy of Government and judgment dated 28.04.2000 passed by the Hon'ble Supreme Court in the case titled Suraj Parkash Gupta & Ors Vs State of J&K and Ors.
- ii. The department instead of seeking relaxation of basic recruitment rules, may initiate proposal for amendment in the SRO-297 dated 14.09.2006, for correcting the error in the numbering of reflected Class/ Category forming the feeding post for promotion as Deputy Research Officer,

*Handwritten signature and date: 29.08.2023*



although these rules clearly indicate that "Assistant Research Officer" is the feeding category for the said post and not Chief Foreman."

Whereas the department accordingly took up the matter with the Department of ARI & Trainings vide this department U.O. no. PWDHRM1/25/2021-05-Deptt. of PWD R&B dated: 29-09-2021, for modifications of the rules so that the applicant could be promoted as DRO.

Whereas, in the meantime she approached the Hon'ble Central Administrative Tribunal (CAT) and filed a petition that the amendment of rules is a time consuming process, till then she may get retired from the services and she has already suffered for so many years.

Hon'ble Central Administrative Tribunal vide Order dated 14.02.2022 directed the department

*"to consider her promotion by rectifying the error and consider her claim for the post of Deputy Research Officer before the direct recruits are inducted. In view of the above discussion, the respondents are hereby directed to dispose off letter dated 03.02.2021(supra) and make requisite rectification in the SRO-247 of 2006, thereafter consider the case for promotion as Deputy Research Officer of the applicant well before the induction of direct recruits so that she is not made suffer for the long administrative delay in considering her for promotion. The respondents are directed to pass a reasoned and Speaking Order treating this OA as representation within a period of four weeks from the date of receipt of certified copy of this order."*

Whereas, in compliance to the orders of the Hon'ble CAT a reasoned/speaking order was issued by this department vide Govt. Order No. 162-PW(R&B) of 2022 dated 11.05.2022, where under the claim of the Ms. Shazia Mushtaq, Assistant Research Officer for her elevation as Deputy Research Officer under Promotion quota was considered and was found not on merit as the modification of the rules ibid was pending.

Whereas, vide SO 455 dated 24 Sept 2022, the necessary amendments in the SRO-297 of 2006 of J&K Engineering (Gazetted) Service Recruitment was made.

Whereas, the Department accordingly submitted the proposal for her promotion to the post of Deputy Research Officer from Assistant Research Officer to JKPSA after the requisite documents like APR, Work & conduct, Integrity certificate and Vigilance clearance were obtained/available vide this department no. PWD/HRM1/25/2021-05 Dated 12.12.2022.



Whereas, the DPC was held on 17.01.2023 under the Chairmanship of Chairman JK PSC and subsequently vide letter No. PSC/DPC/PWD/DRO/2023 Dated 14.06.2023, JKPSC recommended the promotion of Shazia Mushtaq as Deputy Research Officer prospectively.

Whereas, as per the recommendations of JKPSC the department vide Govt. Order No. 276-PW(R&B) of 2023 dated 03.07.2023, accorded sanction to the promotion of Shazia Mushtaq, Assistant Research Officer as Deputy Research Officer in the pay scale with grade pay level of 10A (56600-179800) with immediate effect.

Whereas, aggrieved of the prospective effect of the promotion Ms. Shazia Mushtaq again approached the Hon'ble CAT submitting that a part of judgement for rectifying the SRO was affected and but the regularization order has been issued with prospective effect and in that case she would become junior to the direct recruits.

Whereas, vide order Dated 04.07.2023, the Hon'ble CAT directed the respondent to address the matter specifically and file a compliance report within one month and the relevant para of the judgement is as under:

*"Heard the counsel for both sides. Serve a copy of the contempt application to the learned counsel for the 3rd respondent. Learned counsel for the applicant submits that a part of the judgment for rectifying the SRO has already been done, and according to learned counsel, yesterday they passed an order for regularization, but due to absence of a clause granting retrospective operation, she would become junior to the direct recruits. Meanwhile, the respondents shall address this matter specifically and file a compliance report within one month".*

Whereas, the instant matter was re-examined in the department and it was found that while recommending the proposal to the JKPSC and allotting a year to any candidate, the guidelines of GAD issued vide Govt. Order No. 743-GAD of 2007 dated 28.06.2007, are adhered in letter and spirit wherein, the relevant part of the Govt. Order is as:

*"Promotion of a Government employee shall take effect from the date, he has been formally put in charge of the higher post subject to his eligibility in accordance with the recruitment rules and availability of the vacancy. His clearance/regularization shall take effect from the date of the placement against the higher post or availability of vacancy or the date of his eligibility, whichever is later. In all other cases, the promotion of a Government employee to the*



*next higher post shall take effect from the date of issuance of the order."*

Accordingly this department neither proposed for retrospective effect of the promotion nor could issue any such order on the basis of following grounds:-

1. The competent authority never gave the charge of the higher post to the applicant.
2. The rules for promotion of an ARO were not clear and accordingly the rules were first modified and then her name was proposed for promotion to the JKPSC.
3. Since rules were modified in the year 2022, therefore the candidate cant be given the effect retrospectively when rules for such promotion were non existent.
4. The DPC/JKPSC did'nt recommend any retrospective effect of promotion to be given to the candidate.

Further, the department adheres to the recommendations of JKPSC in letter and spirit. In the backdrop of the above given facts and figures, the claim of retrospective promotion of Shazia Mushtaq as Deputy Research Officer was considered and found devoid of merit and not covered under rules.

By the order of Government of Jammu & Kashmir.

Sd/-  
(Shailendra Kumar), I  
Principal Secretary to the Governme  
Public Works Departmer.

No. PWD-HRM2/31/2023-01 (CC:7218595)

Dated:

29.08.2023

Copy to the : -

1. Joint Secretary (J&K) Ministry of Home Affairs, Government of India, New Delhi.
2. Director, Achieves, Archaeology and Museum Department, J&K Jammu.
3. Chief Engineer, DIQC, J&K, Jammu.
4. Deputy Advocate General Central Administrative Tribunal Jammu Bench, Jammu/Srinagar.
5. Private Secretary to the Principal Secretary to Government, PW(R&B) Department.
6. Concerned.
7. I/C Website, PW(R&B) Department.
8. Government Order file/ Monday return.

Copy also to :

1. Joint Secretary (J&K), Ministry of Home Affairs, GOI.



(Dr.Zeba Suleman) JKAS  
Under Secretary to the Government  
Public Works(R&B) Department