



Government of Jammu and Kashmir

Finance Department

Civil Secretariat, Srinagar.

Subject:- Hon'ble High Court's judgement dated 13-08-2015 passed in SWP No.06/2015 titled Shameem Ahmad Shameem Vs. State and others-accord of consideration thereof.

Government Order No.181-FD of 2015

Dated:- 11-09-2015

Whereas, the Hon'ble High Court passed judgement dated 13-08-2015 in SWP No.06/2015 titled Shameem Ahmad Shameem Vs. State & others, operative part of which reads as under:-

"For what has been stated above, the writ petition is disposed of in the following terms:

- (i) Respondents shall make regular promotions against the post(s) of ETOs/CTOs in terms of the applicable rules expeditiously, preferably within a period of six months. All the temporary/adhoc promotions made against the posts of ETOs/CTOs shall cease to operate after six months. The case of the petitioner alongwith other eligible candidates be also considered for regular promotions.*
- (ii) Respondents shall also consider the claim of the petitioner with reference to the retrospective benefits of seniority against the post of Inspector if permissible under law.*

Disposed of along with all connected MPs."

Whereas, the matter was taken up with the Excise Commissioner, J&K for furnishing of statement of facts alongwith documentary evidence in terms of the above said judgement dated 13-08-2015 enabling this department to consider the issue; and

Whereas, the Excise Commissioner vide communication dated 26-08-2015 submitted that Shameem Ahmad Shameem was initially appointed as Sub-Inspector vide Order No. 774/Adm dated 02-12-1989 in relaxation of rules and subsequently passed the prescribed departmental Examination of Part-I (Sub-Inspector standard); and

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Whereas, during the year 2000, the Excise Commissioner vide Order No. 536-Exc/2000 dated 29-02-2000 ordered the petitioner to look after the work as I/c Inspector although being semiqualfied as he had passed only five papers of Part-II Departmental Examination (Inspector Standard). As per the J&K Excise and Sales Tax (Subordinate Service) Recruitment Rules, 1991, the method of recruitment to the post of Inspector-II has been reflected as under:-

"i) 50% by direct recruitment.

ii) 50% by promotion from Class-III category (a) having rendered not less than 10 years service in that category and passed the departmental examination prescribed for Excise & Taxation Inspectors. 15% of promotion quota posts will be reserved for graduate Sub-Inspectors who have passed the Departmental examination of the standard of Inspectors and have rendered not less than 5 years service as Sub-Inspector."

Whereas, the petitioner has subsequently passed the Part-II Departmental Examination (Inspector Standard) by qualifying remaining paper 'A' on 17-01-2005 vide Notification No. PSC/EXAM/ETI/2004/06 dated 17-01-2005 issued by the J&K PSC. As such, the petitioner became eligible for considering his promotion/regularization as Inspector J&K Excise & Commercial Taxes (Subordinate) Service having passed all requisite papers. On the recommendation of the DPC the petitioner was immediately promoted as Inspector by the Excise Commissioner, vide Order No.166 of 2005 dated 6-7-2005 w.e.f 01-02-2005 having fully passed the requisite prescribed examination; and

Whereas, at the time of issuance of Tentative Seniority List of Inspectors of the J&K Excise and Commercial Taxes (Subordinate) Service, the petitioner was not having any objection with regard to his assigned seniority position and did not prefer to represent against his assigned position; and

Whereas, the Finance Department has issued Final Seniority List of Inspectors of the J&K Excise and Commercial Taxes (Subordinate) Service vide G.O. No. 159-F of 2012 dated 04-06-2012, wherein the particulars of the petitioner have been mentioned as under:-

S. No.	Name of the Inspector	Qualification	D.O.B	Date of first appointment	Date of appointment to the present post.
119	Shameem Ahmad Rather (RBA)	Matric	01-04-1963	04-12-1989	01-02-2005

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Whereas, the petitioner has passed the Part-III departmental examination(ETO/CTO standard) pursuant to the following notifications of the J&K Public Service Commission as under:-

- (i) No. PSC/EXAM/2010/58 dated 28-07-2010, the official passed in paper C, D and F under Roll No. 15.
- (ii) No. PSC/EXAM/2009/29 dated 27-08-2009, the official passed in paper B and E under Roll No. 97.
- (iii) No.PSC/EXAM/2011/80 dated 04-07-2011, the official passed in paper A under Roll No. 23.

Whereas, as per the J&K Excise and Commercial Taxes (Gazetted) Service Recruitment Rules issued vide SRO-80 dated 12-3-2007, the mode/method of recruitment to the post of ETO/CTO & equivalent is reproduced as under:-

- a) **50% by recruitment by competitive examination as laid by the Government for such Competitive examination.**
- b) **50% by promotion from Inspectors in the Excise and Commercial Taxes Department having not less than five years service and having passed departmental examination for ETO/CTO as prescribed in this behalf."**

Whereas, pursuant to above rule position and passing of Part-III departmental examination(ETO/CTO standard) in full, the petitioner became eligible for considering his placement as ETO/CTO on 04-07-2011, subject to the condition that there is an availability of post and he is senior most eligible Inspector; and

Whereas, number of Inspectors including the petitioner have passed the departmental examination part-III(ETO/CTO standard) and on the basis of availability of posts of ETOs/CTOs, the senior most qualified Inspectors have been/are being placed as I/c ETOs/CTOs by the Department from time to time as per the relevant Recruitment Rules. Moreover, various qualified eligible Inspectors admittedly senior to the petitioner, have not yet been considered for placement/promotion due to non-availability of posts; and

Whereas, vide Excise Order No.379 of 2011-12-23 dated 23-12-2011, issued by the Excise Commissioner, J&K, Mr. Shameem Ahmad Rather, Inspector, Excise Department Kashmir province was temporarily ordered to lookafter the work of Excise Range Kashmir till further orders, however, such arrangement was neither any placement nor any promotion; and

Whereas, all the facts of the case were examined in the department in accordance with relevant rule position and it was

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decided to issue consideration order to the effect of rejecting the claim of the petitioner with regard to his retrospective benefits of seniority against the post of Inspector in compliance of the judgement dated 13-08-2015 passed in SWP No.06/2015 titled Shameem Ahmad Shameem Vs. State & others.

Now, therefore, having accorded consideration to the case of Mr. Shameem Ahmad Shameem for his retrospective benefits of seniority against the post of Inspector of the J&K Excise and Commercial Taxes (Subordinate) Service in compliance of the judgement dated 13-08-2015 passed by the Hon'ble High Court in SWP No.06/2015, the claim of the petitioner is rejected being devoid of merit. However, case of the petitioner shall also be placed before the PSC/DPC, alongwith all other eligible candidates, for considering regular promotions under rules, as & when it meets.

By Order of the Government of Jammu and Kashmir.

Sd/-

(Navin K. Choudhary), IAS

Commissioner/Secretary to Government
Finance Department

No. ET/Estt/154/2014

Dated: 11-09-2015

Copy to the:-

1. Commissioner, Commercial Taxes, J&K, Srinagar.
2. Excise Commissioner, J&K Srinagar.
3. OSD to Hon'ble Minister for Finance.
4. Private Secretary to Hon'ble MoS, Finance.
5. Public Law Officer, Finance Department.
6. Private Secretary to the Commissioner/Secretary to the Government, Finance Department.
7. Concerned.
8. P.A to Special Secretary to Government, Finance Department.
9. Government order file/Stock file/ Incharge website Finance.

(Bharat Singh)KAS

Additional Secretary to Government
Finance Department