

Government of Jammu and Kashmir  
**Forest, Ecology & Environment Department**  
Civil Secretariat, Srinagar/Jammu

Subject: - Consideration of the claim of Ms. Namy Jan D/O Qasim Ali Bulbul R/O Alamgiri Bazar, Hawal, Srinagar in deference to the order dated 22.10.2021 passed by the Hon'ble Tribunal in O.A. No. 62/1574/2021 titled Ms. Namy Jan Vs. UT of J&K and others.

Government Order No: **95** - JK (FST) of 2022  
Dated: **27-06-2022**

*Whereas*, the above-named person had approached the Hon'ble Tribunal through the medium of afore-cited application and had sought, *inter alia*, direction upon the respondents, for issuance of order of regularization of services of the applicant against Class IV post in terms of decision held in 59<sup>th</sup> meeting of Empowered Committee, followed by communication O.M. No. PS/DC/Misc-363/14 dated 11.08.2017 issued by the Director Codes, Finance Department;

*Whereas*, the afore-cited application came to be disposed of by the Hon'ble Tribunal vide its order dated 22.10.2021, operative part whereof reads as under: -

*"...Looking to the limited prayer made by the learned counsel for the applicant, we dispose of the O.A. with direction to the respondents to treat O.A. as representation of the applicant and take a decision on the claim of the applicant by passing a reasoned and speaking order...";*  
and

*Whereas*, in compliance with the aforesaid direction of the Hon'ble Tribunal, the matter was examined in light of available records and following factual/legal position came to fore: -

- i) That the applicant herein was engaged on consolidated basis by the Divisional Forest Officer, Sindh Forest Division, Ganderbal vide Order dated 15.03.2005, for operating computer in the division, citing the ground that there was no Computer Operator available for the job.
- ii) That subsequently, the Principal Chief Conservator of Forests (HoFF), J&K had recommended the case of the applicant to this department, for regularization of the services of the applicant under and in terms of the provisions of the J&K Civil Services (Special Provisions) Act, 2010. Accordingly, the matter was referred to the Finance Department, for placing the same before the Empowered Committee constituted for the purpose.
- iii) That the Empowered Committee in its 59<sup>th</sup> meeting held on 30.05.2017 had recommended the case of applicant for regularization against the post of Class IV. Accordingly, this department had submitted the proposal for regularization of services of the applicant to the General Administration Department, for placing the same before the Competent Authority, for consideration.



- iv) That in response, the General Administration Department vide its U.O. No. GDC-141/CM/2018 dated 06.09.2018 had conveyed as under: -

*"Has the incumbent been appointed by a Competent Authority?"*

*Have the department certified the conditions laid down by the Empowered Committee (i.e., furnish the salary statement w.e.f. 05/12 onwards of the incumbent to the Member Secretary, Empowered Committee)?*

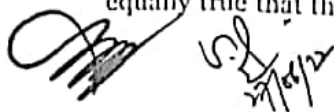
*Further, the department is advised to clearly the conditions 01 to 07 laid down by the Empowered Committee vide O.M. dated 11.08.2017 and thereafter submit a revised note for consideration/approval of the Hon'ble Governor through Chief Secretary in coordination."*

- v) Accordingly, the case was re-examined in the department and thereafter re-submitted to the General Administration Department vide U.O. dated 23.01.2019. However, the General Administration Department had returned the file with the following observations: -

*"Returned. The initial engagement order of Ms. Namy Jan would reveal that she has been engaged for operating the Computer in Forest Division, Ganderbal on consolidated basis, as there was no Computer Operator available for the Job. Her regularization has been proposed against the post of Class-IV.*

*Accordingly, the department is advised to re-examine as to whether her case would be covered under the provisions of J&K Civil Services (Special Provisions) Act, 2010."*

- vi) That post receipt of aforesaid opinion from the General Administration Department, the present matter remained under correspondence with the office of Principal Chief Conservator of Forests (HoFF), J&K and in the meantime, the applicant had approached the Hon'ble Tribunal and had obtained aforesaid direction from the Hon'ble Tribunal.
- vii) That the issue involved in the present case was examined afresh in compliance with the aforesaid order of the Hon'ble Tribunal together with the advice received from the General Administration Department and it came to fore that notwithstanding that the case of applicant was cleared by the Empowered Committee in its 59th meeting held on 30.05.2017 and was recommended for regularization against the post of Class IV, however, same was done subject to certain conditions prescribed therein, which included, *inter alia*, that the appointment was originally made against a clear vacancy by the competent authority.
- viii) That subsequently, Finance Department vide its O.M. dated 11.08.2017 had, of course, forwarded the name of applicant to this department, for issuance of regularization order in favour of the applicant herein in accordance with the provisions of the J&K Civil Services (Special Provisions) Act, 2010. However, it is equally true that the said recommendation was also subject to certain conditions

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laid down therein. It is apposite to state that the said recommendation was subject to the condition, *inter alia*, that the consolidated employee fulfills the eligibility criteria for regularization as laid down under the Act.

- ix) As far as the J&K Civil Services (Special Provisions) Act, 2010 is concerned, although, it is an undisputed fact that same stands repealed on 31.03.2020 vide J&K Reorganization (Adaptation of State Laws) Order, 2020, however, the regularization under the provisions of Act (supra) was subject to certain conditions as were laid down u/s 5 of the Act (supra) and one of the pre-conditions to be eligible for regularization under the provisions of Act (supra) was that the person concerned should have been appointed against a clear vacancy or post, and post means a post borne on the establishment of department. However, the Divisional Forest Officer concerned vide his communication No. 1916-17/E dated 23.07.2019 has stated that the initial engagement order of the applicant herein suggests the fact that she was engaged for operating computer as there was no Computer Operator available for the job but has further stated that there is no sanctioned post of Computer Operator in the said division.
- x) That it is quite palpable from the above-stated position that the applicant was initially appointed against a non-existent post and Divisional Forest Officer concerned had no authority to make appointment against a non-existent post, which is unknown to law. Therefore, claim of the applicant is hit by section 5 of the Act (supra), which otherwise also is a repealed law as on date. Besides, the recommendation of the Empowered Committee was also conditional, which are not fulfilled in its entirety in the present case. Therefore, the applicant herein cannot base her claim merely on the recommendation of Empowered Committee that was conditional more so when the conditions are not entirely fulfilled.

Now, therefore, keeping in view the afore-stated position, claim of the applicant having been considered in compliance with the order dated 22.10.2021 passed by the Hon'ble Tribunal in O.A. No. 62/1574/2021 titled Ms. Namy Jan Vs. UT of J&K and others is found meritless. Accordingly, the claim of applicant is rejected.

By Order of the Government of Jammu and Kashmir.

Sd/  
(Sanjeev Verma) IAS  
Commissioner Secretary to Government

No: - FST-Lit/145/2021-02-81888

Dated: - 27.06.2022

Copy for information to the:-

1. Pr. Chief Conservator of Forests (HoFF), J&K.
2. Ms. Namy Jan D/O Qasim Ali Bulbul R/O Alamgiri Bazar, Hawal, Srinagar.
3. Government Order file/Stock file.

  
(Suhail-ul-Islam) JKAS  
Deputy Secretary to Government

12/2022