

**Government of Jammu and Kashmir
Agriculture Production Department
Civil Secretariat- Jammu**

Subject: O.A 61/151/2021 titled Ravi Pandotra V/s Union Territory of J&K and others.

**Government Order No: 01 -JK(APD) of 2022
Dated: 10.05.2022**

Whereas, 156 vacancies of Junior Agriculture Assistant, State Cadre were referred to the J&K Services Selection Board for selection of eligible candidates as per the prescribed Recruitment Rules; and

Whereas, J&K Services Selection Board vide Notification No. 01 of 1996 dated 29.03.1996 advertised these posts and then released the recommendations of the selected candidates vide their letter No. SSB/PS/530/97 dated 28.03.1997; and

Whereas, 78 candidates were selected under Open Merit category, however the Administrative Department vide Government Order No 34-Agri of 1997 dated 04.09.1997 issued appointment orders in favour of only 68 selected candidates without mentioning any reason; and

Whereas, Selection list was challenged in the Hon'ble Court through medium of Writ Petition No.SWP No.539 of 1997 titled Ravi Pandotra and others vs State others CDL. LPA (SW) No. 91 of 2002 titled J&K, Service Selection Board vs Ravi Pandotra and others.

Whereas, the Hon'ble Court disposed off the Writ Petition and passed order dated 22.08.2000 with the following directions:-

- a) That a person figured at S.No. 49 i.e. Tahir Ahmad Mir Haidiri apparently did not possess requisite qualification .Therefore, it can be concluded that he has been wrongly appointed. His appointment, however not being upset at the same time a direction is given to the respondents to offer any post which has been wrongly offered to Tahir Ahmad Mir Haidiri, One of the petitioner who is high in merit be so adjusted. This direction is given in view of Law laid down by supreme court in the case reported as Air 1991 SC-295.
- b) Again one post which would become available as Petitioner No. 12 Atul Kumar has opted to remain out of selection process.
- c) That the vacancies so arising to be filled up on the basis of merit. Any of the petitioner who become eligible for the post be offered the post on the basis of merit obtained by him.
- d) With regard to the vacancies which now occurred after the selection list was prepared the respondent State would take decision to fill the vacancies as be deemed proper.



Whereas, in light of above directions the J&K Services Selection Board released the recommendation of following candidates for appointment as Junior Agriculture Assistant in the Agriculture Production Department vide letter No. SSB/123/92/204-04 dated 20.01.2004.

S.No	Name of the candidate
1.	Sanjeev Kumar S/o Pushpinder Kumar R/O Sunderbani, District Rajouri
2.	Paramvir Singh S/o Karamjeet Singh R/O Allochi Bagh, Srinagar
3.	Ravi Pandotra S/o Dhrub Raj R/O Village Nonah, Tehsil Hiranagar, Kathua

Whereas, vide Government Order No. 191-Agri of 2004 dated 30.07.2004, the petitioner alongwith other two candidates was temporarily appointed as Junior Agriculture Assistant in the pay scale of Rs. 6500-10500 in the Directorate of Agriculture Jammu against available vacancy was subject to certain conditions including that the inter-se-seniority of the appointees shall be in the order their names appears in the selection list furnished by the J&K Services Selection Board; and

Whereas, some other candidates who were earlier dropped approached the Hon'ble Court at Jammu and filed Writ Petition SWP No. 744/1997 titled Rakesh Khajuria & Ors V/s State of J&K & others which was disposed by judgment/order dated 08.12.1998 with the direction to the State authorities to issue appointment orders in favour of the petitioners; and

Whereas, in pursuant of Court order vide Government Order No. 161-Agri of 1999 dated 21.04.1999 issued order in favour of all petitioners candidates were temporarily appointed as Junior Agriculture Assistant in the pay scale of Rs. 6500-10500 in the Directorate of Agriculture Jammu against available vacancy was subject to certain conditions that the inter- se-seniority of the appointees shall be in the order their names appears in the selection list furnished by the J&K Services Selection Board; and

Whereas these petitioner filed again Writ Petition SWP No. 1254/2006 titled Rakesh Khajuria & others v/s State of J&K and others and was disposed of by the Hon'ble High Court at Jammu vide judgment dated 02.12.2016 with the following directions:-

"the writ petition is disposed of with the direction to the respondents to consider the case of the petitioners at par with other candidates selected in pursuance of the advertisement notification dated 26-03-1997 and to place them at appropriate places as per their merit in the seniority list and to accord all consequential benefits....."

Whereas, in light of Hon'ble High Court order dated 02.12.2016 passed in SWP No. 1254/2006, it is has been ordered to place the petitioners at appropriate places as per their merit in the seniority list

at par with other candidates, who were selected vide recommended by Service Selection Board letter No. SSB/PS/530/97 dated 28.03.1997 and to place them notionally from the date their counterparts were appointed i.e. 09.04.1997 and monetarily with effect from 21.04.1999 in the Pay Grade of Rs.2000- 200-3200 in pursuance of Government Order No. 325-Agri of 2018 dated 12.12.2018.

Whereas, Shri Ravi Pandotra has again approached the Hon'ble High Court through medium of Writ Petition No.SWP No. 3371 of 2019 titled Ravi Pandotra and others vs State others seeking his seniority to be reckoned from the year 1997 alongwith consequential benefits as has been done in case of petitioners of SWP No. 1254/2006 titled Rakesh Khajuria & other V/s State of J&K & others vide Government Order No.325-Agri of 2018 dated 12.12.2018.

Whereas, Hon'ble High Court was pleased to pass an interim order on 18.09.2019 which read as under:-

Under WP(C) 3371/2019

Notice to the respondents returnable within four weeks.

Requisites for service within one weeks.

List on 08.11.2019.

CM(7061/2019)

It is contended in the application that respondents may be directed to consider and decide the representation dated 20.05.2019 (Annexure VI) filed by the petitioner for considering his claims in light of Judgment passed in SWP No. 1254/2006 dated 02.12.2016.

Heard and considered.

Respondents are directed to consider the representation dated 20.05.2019, if already filed by the petitioner before the respondents, and pass speaking order under Rules by or before the next date.

CM(7061/2019) is disposed of accordingly.

Whereas, the case was referred to the Department of Law, Justice and Parliamentary Affairs who while returning with the same vide U.O.No.LD(Lit)2020/28/Agri dated 02.06.2020 with the following advice:-

Returned. Rule 24 of the Jammu and Kashmir Civil Services (Classification), control and appeal) rules, 1956 read as under:-

"The Seniority of a person who is subject to these rules has reference to the service, Class Category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, Class, Category or Grade as the case may be:-

The Hon'ble Supreme Court in case titled Suraj Parkash Gupta v/s State of J&K 2000 AIR SC 2386 has held as under:-

"A direct recruit can claimed seniority only from the date of his regular appointment he cannot claim seniority from a date when he

was not born in the service. This principal is well settled. In **N.K.Choughan V/s .State of Gujrat(1977) 1 SCC 308(at P.321) (AIR 1977 SC 251 at P.259:1977 Lab IC 38 at P 46) Krishana Iyer, J.Stated "Later direct recruit cannot claim deemed dates of appointment for seniority w.e.f the time when direct recruitment vacancy arise. Seniority will depend upon length of service."**

Again, in **A. Janardhana V/s Union of India,(1983) 2 SCR 936 (AIR 1983 SC 769 Lab IC 849)** it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college similarly it was appointed out in **A.N.Pathak V/s Secretary to the Government,1987 Suppl SCC 763(at P.767) (AIR 1987 SC 716 at P.718 1987 Lab IC 638 at P.651)** that slots cannot be kept reserved for the direct recruits for retrospective appointments.

In **Sunaina Sharma and others V/s state of J&K and Ors 2017 AIR (SC)5101 Hon'ble Supreme Court** held that it is apparent that the normal rule is that a person is entitled to seniority only from the date when the said person actually joins the post.

Department is advised to consider the representation of the petitioner in terms of interim court order dated 18.09.2019, passed in **WP (C) 3371/19 Titled Ravi Pandotra Vs State of J&K** in accordance with the relevant rules governing the subject and issue a self speaking order. While issuing such consideration order the department may keep in view the aforesaid position.

Whereas, in light of the aforementioned opinion of the Department of Law, Justice and Parliamentary Affairs and Hon'ble High Court Order dated 18.09.2019 passed in SWP No. 3371 of 2019, the claim of the petitioner found devoid of any merit and rejected in pursuance of Government Order No. 204-JK(Agri) of 2020 dated 23.11.2020.

Whereas, the petitioner namely Ravi Pandotra challenged the said order before the Hon'ble Central Administrative Tribunal Jammu Branch through medium of O.A 61/151/2021 seeking the following relief:-

- a) To quash Government Order No.204-JK(Agri) of 2020 dated 23.11.2020, issued by the respondents by virtue of which the claim of the applicant seeking reckoning of the seniority from the year 1997 alongwith consequential benefit has been rejected and also Direct the respondents to reckon of the seniority of the applicant from the year 1997 along with consequential benefit as has been done on the analogy of the Government Order No. 325-Agri of 2018 dated 12.12.2018.
- b) Pass such other appropriate order as facts of the case demand and Hon'ble court may deem just and proper in favour of the applicant.

Heard Mr. Anuj Dewan Raina, Learned Counsel for the applicant and Mr. Amit Gupta, Learned AAG for the respondents and perused the records.

The following points emerge from the contentions of both the counsels:-

- i. Applicants in the case of Rakesh Khajuria and the present OA both have been selected through the same examination.
- ii. Rakesh Khajuria and others had filed a Writ Petition in the Hon'ble High Court which was decided on 02-12-2016 and the respondents

implemented the directions of the Hon'ble High Court vide their Order number G.O No. 325-Agri of 2018 on 12-12-2018.


From the above, it is clear that the cause of action has arisen for the applicant only on 12.12.2018. Therefore, we find that the case of the applicant in the present OA is identical to that of Rakesh Khajuria in as much as the same relief is to be granted for candidates belonging to the same select list/selection. The only difference being their merit position in the select list. It is also worth mentioning that in the appointment order No. 191-Agri of 2004 dated 30.07.2004 of the applicant, it has been categorically mentioned in the last para that the inter-se-seniority of the appointees shall be in the order to which their name appears in this order which is accordingly to the select list furnished by J&K Service Selection Board.

Keeping in view the above mentioned facts and circumstances of the case, we find that the applicant deserves the same benefits as have been extended to the petitioners of SWP No. 1254/2006 titled Rakesh Khajuria Vs State & Ors. The respondents are directed to issue the same benefits as have been extended in Govt. Order No. 325-Agri of 2018 dated 12.12.2018 to the applicant of the present O.A. He should be placed notionally from the date their counterparts were appointed i.e 09.04.1997 and monetarily w.e.f 30.07.2004 (date of his appointment) in the pay grade of Rs.2000-200-3200. This exercise should be completed within a period of six weeks from the date of receipt of a certified copy of this order.

Whereas the matter was again referred to the Department of Law, Justice and Parliamentary Affairs vide U.O No. Agri-Legl/8/2020 dated 11.02.2022 and the Department of Law, Justice and Parliamentary Affairs returned the departmental file vide their U.O. No. Law Lit4/4/91/2022-10 dated 28.02.2022, and has advice as under:-

Returned: The rejection order stands challenged by the applicant before Hon'ble Tribunal in OA No. 61/151/2021 which has been disposed of with the observation that the case of the applicant in the present O.A. is identical to that of Rakesh Khajuria in as much as the same relief is to be granted for candidates belonging to the same select list/selection. The only difference being their merit position in the select list. Accordingly the directions for extension of same benefits have been issued with the further direction that the applicant shall be placed notionally from the date their counterparts were appointed i.e. 09.04.1997 and monetarily with effect from 30.07.2004 (date of his appointment) in the pay grade of Rs. 2000-200-3200.

The legal position as regards to the determination of seniority continues to be the same as has been communicated to the department earlier vide U.O No. LD (Lit) 2020/78-Agri dated 22-06-2020. The Hon'ble CAT while disposing of the present OA has reflected the opinion of this department in its order, however has not expressed any opinion on it and have decided the case of applicant on parity. Since the case of the applicant has been decided on parity and analogy of Rakesh Khajuria, which has been implemented by the Department at their own level without consulting the Law Department, therefore, the department is advised to take decision in the instant matter also at their own level in view of the facts and circumstances of the case.



In light of the above and after thoughtful consideration of the facts/records pertaining to the case of the petitioner the order/judgment dated 29.12.2021 passed by the Hon'ble Central Administrative Tribunal Jammu Bench O.A 61/151/2021, it is hereby ordered that the petitioner is hereby placed notionally from the date their counterparts were appointed i.e 09.04.1997 and monetarily with effect from 30.07.2004 (date of his appointment) in the pay grade of Rs.2000-200- 3200 (pre-revised) on the analogy given to Shri Rakesh Khajuria and others V/s State and others vide Government Order No. 325-Agri of 2018 dated 12.12.2018 in SWP No. 1254/2006.

By order of the Government of Jammu and Kashmir.

**Sd/-
(Atal Dulloo) IAS,
Financial Commissioner
(Additional Chief Secretary)**

No: Agri-Legal/8/2022

Dated: 10.05.2022

Copy to the:-

1. Joint Secretary (J&K) Ministry of Home Affairs Government of India.
2. Director, Archives, Archaeology and Museums, J&K, Jammu.
3. Director, Agriculture, Jammu.
4. Private Secretary to Financial Commissioner (Additional Chief Secretary), Agriculture Production Department for information of the Financial Commissioner.
5. In-charge Website,
6. Concerned official.
7. Government order file (w.2.Sc)/Stock file.


(Kritika Raina) JKAS

Under Secretary to Government