

Government of Jammu and Kashmir
Revenue Department
Civil Secretariat, Jammu/Srinagar

Subject: Transfer Application No. 180/2021 titled Basharat Saleem V/s UT of J&K & Ors.

Government Order No: 123-JK(Rev) of 2022
Dated: 24.06.2022

Whereas, the Government in the years 2002, 2005 and 2008 referred **111 posts** of Naib Tehsildars to the Service Selection Board and the Service Selection Board vide advertisement Notices dated **26.02.2002**, **14.12.2005** and **26.05.2008**, advertised all the posts. The written tests for the said posts were conducted by the Service Selection Board on **22.02.2009**, and result of the written test was declared vide Notification published on **21.07.2009**. Candidates who qualified the written test were called for interview. The merit of the last selected candidates notification-wise was determined by the Service Selection Board as under:-

a. Notification No.01 of 2002

OM	83.42
RBA	92.41
SC	94.27
ST	93.60
OSC	101.47
ALC	88.93
HC	89.21

b. Notification No.09 of 2005

OM	97.32
RBA	94.93
SC	95.60
ST	92.75
ALC	99.61

c. Notification No.04 of 2008

OM	90.86
RBA	95.82
SC	93.08
ST	92.79
ALC	99.89

Whereas, against the selection of the candidates, two types of Writ Petitions were filed before the Hon'ble High Court at Jammu and Srinagar Wing. In 1st batch of writ

petitions, the question paper set by the Service Selection Board was challenged and the Hon'ble Court vide Judgment dated **31.12.2014**, returned its findings in SWP No.487/2009 and the 2nd batch of writ petitions were filed against the candidates who were lacking the qualification of "URDU" at matric level but were selected and appointed in relaxation of rules; and

Whereas, both the Judgments stand considered by the Government, vide Government Order No.84-Rev of 2016 dated 30.06.2016 (*titled Inam-ul-Haq Hajam & Ors V/s State of J&K & Ors*) and Government Order No.164-Rev of 2016 dated 10.11.2016 (*titled Hamid-Ullah Dar & Ors V/s State of J&K & Ors*); and

Whereas; in the 1st type of litigation, the Hon'ble Court vide Judgment dated **31.12.2014**, in SWP No.487/2009, directed as under:-

- "i) The respondent Board shall delete 23 questions i.e. question nos.3, 9, 31, 32, 35, 42, 47, 52, 64, 70, 71, 80, 83, 84, 95, 105, 106, 107, 109, 111, 113 and 115 from the question paper and thereafter assess and evaluate performance of petitioners in SWP No. 487/2009 and the selected (now appointed) candidates respondents 4 to 110, as if the question paper comprised of 97 questions only. The respondent Board thereafter shall prepare category wise merit list, redraw the select list and recommend the candidates on the bases of merit for appointment as Naib-Tehsildar accordingly. The exercise shall be completed within four weeks from the date of receipt of copy of this judgment.***
- ii). The respondent No.1 and 2 acting on the recommendations so received shall consider appointment of candidates recommended, thereafter, in accordance with rules within four weeks.***
- iii). The Selection list date September 8th, 2009 and the appointment order(s) issued on the basis of the selection list to the extent of such of the selectee/appointees who do not find place in the redrawn select list shall stand quashed.***
- iv). The seniority of such of selectees/appointees (respondents 4 to 110) who find place in the redrawn selection list shall remain unaffected by the exercise to be undertaken by the respondents 1 to 3 in compliance of this judgment".***

Whereas; in the said Judgment dated **31.12.2014**, Para 25 reads as under:-

"The Board can be asked to delete 23 questions from the Test Booklet, identified in the writ petition and declared as wrong/vague, with more than one correct answers or the correct answers not tallying with the Answer Key, evaluate merit of the selected candidates and petitioners in the present petition or such of the petitioners who questioned the written test without participating any further in the selection process and before the provisional selection list was issued on 08.09.2009, on the basis of their performance, taking the written test to comprise of 97 questions i.e. 120 questions less by 23 questions, held by the Experts Committee to be wrong/ vague with more than one correct answers or correct answer not tallying with the answer key. Such of the candidates who participated in the selection process after the written test was

conducted on 22.02.2009 and questioned the written test thereafter or did not question the written examination, are to be ignored as they after their failure to question the written examination before participating any further in the selection process or waiting for selection process to get finalized, cannot be allowed to turn around and question the written examination or selection process. This would in tune with law laid down in Romes Chandra Shah and Ors. V/s Anil Joshi and ors. reported in Civil Appeal Nos. 2802-2804 of 2013 decided on 03.04.2013".

Whereas; in the second type of litigation, the Hon'ble High Court vide judgment dated **19.08.2015**, directed as under:-

"..... for the above stated reasons this writ petition alongwith connected CMP (s) is disposed of in the following manner:-

The official respondents are directed to consider and appoint the petitioners on the posts of Naib Tehsildars against the vacancies which stand already reserved in terms of the Court Orders in these writ petitions. The appointment orders in this behalf be issued within four weeks from the date of copy of this order is served. In case of those of the petitioners who might have crossed the upper age limit for entering into Government Services, it shall be deemed that relaxation is granted in the upper age limit. The petition in his fact situation shall be given all the service benefits including the seniority from the date the private respondents have been appointed in the posts of Naib Tehsildars. The petitioners, however, will not be entitled to any monitory benefits for the period between appointment of privat respondents and till the date of their appointments. Besides, this the petitioner in SWP No. 1941/2009, 1820/2009 and 1709/2009 shall also be extended the benefit of Judgment dated 31st December, 2014 passed in SWP No. 487/2009".

Whereas; the claim of the petitioner, Shri Basharat Saleem, in pursuance of Honble High Court order dated 02.04.2019 in SWP No. 65/2017 titled Basharat Saleem Vs State and others has already been rejected by virtue of Government Order No.83-Rev of 2019 dated 19.7.2019 read with corrigendum to Govt Order No.83-Rev of 2019 dated 30.9.2019 on the ground that his case is not similarly circumstanced. The petitioner has thrown challenge to the said rejection order in the Hon'ble High Court through a medium of writ petition bearing WP(C)3924/19. The Hon'ble High Court vide order dated 17.08.2020 has transferred the case to Hon'ble Central Administrative Tribunal for further proceedings. The said rejection order has not been set aside by the Hon'ble Tribunal and in the meanwhile the petitioner has filed a miscellaneous application before the Hon'ble Tribunal in T.A. No. 180/2021 titled "Basharat Saleem Vs Financial Commissioner, U.T. of J&K" seeking therein the disposal of the said TA in view of the order/judgement dated 28.01.2022 passed by the Hon'ble Division Bench, Jammu in LPA 176/2018 titled State v/s Rajinder Kumar & Others. The Hon'ble Central Administrative Tribunal vide order dated 12.04.2022 without commenting on the merits of the case, has disposed of the case with the direction to the respondents/ competent authority to consider and decide the case of the applicant in light of the judgement and order dated 28.01.2022 passed by Division Bench of Hon'ble High Court of J&K in TA No. 176 of 2018, TA-161 of 2018 and TA No. 171 of 2018 within a period of four weeks from the dated of receipt of certified copy of this order.



Whereas; the Division Bench of Hon'ble High Court vide order dated 28.01.2022 has partly allowed LPASW No. 176/2018 titled State vs Rajinder Kumar & Others. The Hon'ble Court has upheld that the judgment of the writ court dated 18.08.2018 passed in SWP No. 360/2017 to the extent it quashes the Govt. Order No. 158-Rev of 2016 dated 09.11.2016 and directs the official respondents to consider the appointment of the petitioners therein against the posts of Naib-Tehsiladars including grant of relaxation in upper age limit and to grant to them similar benefits as have been granted to the petitioners in Inamul Haq Hajjam's case whereas the directions made by the writ court to the extent of placing the writ petitioners over and above 29 selected candidates (appellants) in the seniority list as well as the directions regarding quashment of their appointment and consequent stoppage of their salaries etc. are set aside.

Whereas; in Rajinder Kumar's case, the Court has earlier quashed the Govt. Order No.158-Rev of 2016 dated 09.11.2016 vide order dated 18.08.2018 and the said order was upheld by the Division Bench in LPA No. 176/2018. In the Basharat Saleem's case, the rejection order (Govt. Order No. 83-Rev of 2019 dated 30.09.2019) has not been set aside and there is no specific direction of the writ court in his case. His case is not similarly situated as that of Rajinder's Case. The relief granted in Rajinder's case cannot be given to Basharat Saleem's Case.

Now, therefore, in light of the CAT order dated 12.04.2022, the case of the petitioner has been considered and it has been found that the case of the petitioner namely Shri Basharat Saleem is not similar with that of petitioners in SWP No. 360/2017 which came to be decided vide Judgment dated 18.08.2018 and LPASW No. 176/2018 decided on 28.01.2022. As such, the claim of the petitioner is devoid of any merit and accordingly rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Vijay Kumar Bidhuri) IAS

Commissioner/Secretary to the Government

Dated: 24.06.2022

No.REV-LIT/276/2022(187880)

Copy to the:

1. Financial Commissioner (Revenue), J&K.
2. Additional Secretary (JKL), Ministry of Home Affairs, GOI, New Delhi.
3. Principal Secretary to Hon'ble Lieutenant Governor, J&K.
4. Principal Secretary to the Government, General Admn Department
5. Divisional Commissioner, Kashmir
6. Chairman Service Selection Board, J&K.
7. Sh S. S. Nanda, Senior Addl Advocate General, J&K High Court, Jammu.
8. Director Information, J&K
9. Director, Achieves, Archaeology and Museum, J&K.
10. Secretary, J&K Services Selection Board, J&K.
11. OSD with Advisor (B) to the Hon'ble Lieutenant Governor, J&K.
12. Pvt Secretary to the Commissioner/Secretary to the Govt., Revenue Deptt.
13. I/C Website
14. Government Order file.


(Surjeet Singh)

Under Secretary to the Government