



GOVERNMENT OF JAMMU AND KASHMIR
HEALTH AND MEDICAL EDUCATION DEPARTMENT
HUMAN RESOURCE BRANCH
Civil Secretariat, Jammu

Subject: Assignment of charge of the post of Controller, Drugs and Food Control Organization, J& K Jammu.

Government Order No. 817 -HME of 2015
D a t e d: 22-12-2015

Whereas, vide Govt. Order No. 550-HME of 2014 dated 01-10-2014, that Mr. Nazir Ahmad Wani I/c Deputy Controller, Drugs and Food Control Organization, Kashmir was asked to look after the charge of the post of Controller, Drugs and Food Control Organization, J&K in addition to his own duties; and

Whereas, the said assignment was challenged by Smt. Lotika Khajuria, I/c Deputy Controller, Drugs and Food Control Organization, by way of SWP No. 2878/2014 in the Hon'ble Court. The Hon'ble Court disposed of the petition on 24-11-2014 with the following orders:

"Since admittedly both the petitioner as also respondent No. 2 are ineligible to hold the post of Controller Drugs either on substantive basis or on temporary basis, the prayer of the petitioner that she should be considered for appointment as I/c controller cannot succeed. It would only perpetuated the illegality by permitting one ineligible officer to be substituted by another. Keeping in view the prayers so made and in view of the fact that respondent No 2 has more than seven years experience of having work as deputy controller, Drugs, this petition along with connected CMAs is disposed of with the following directions;-

- i) The respondents shall take steps to fill up the post of Deputy Controller Drugs and Controller Drugs on a substantive basis strictly in terms of rules within a period of 03 months.
- ii) The arrangement ordered by virtue of Govt. order dated 01-10-2014 bearing No.550-HME of 2014 allowing the respondents No. 2 to function as Incharge Controller Drugs and Food Control Organization shall cease to exist by the 20th of February, 2015. within these three months the

officials respondents shall initiate steps to finalize the promotion at the level of both Deputy Controller Drugs and equivalent grades as also against the post of controller Drugs J&K on substantive basis. Till then respondents no. 02 shall continue to act as Incharge Controller drugs and Food Control organization as ordered by virtue of order dated 01-10-2014.

- iii) *In case there is no person eligible to hold the post of Controller on substantive basis, it would be open for the respondents to initiate steps for amendment of the relevant rules and also to ensure that the vacancy is filled up”.*

Whereas, in pursuance to above court directions, Nazir Ahmad Wani continued to look after the work of Controller Drugs Food and Control Organization in addition to his own duties as I/c Deputy Controller, Drugs and Food Control Organization, Srinagar; and

Whereas, in the case titled Nazir Ahmad Wani V/S State and others under No. LPASW/NO.11/2015 & 12/2015 Caveat No. 95/2015 c/w MP No. 54/2015 in LPASW No. 1/2015 and MP No.1/2015, the Hon'ble High Court vide order dated 13-05-2015 has disposed the LPAs and its connected MPs with the following directions:

- a) *The State Public Services Commission shall immediately after it is constituted, accord consideration to the proposal received from respondents for filling up the posts of Deputy Controller, Drugs and Food Control Organization on substantive basis and conclude the matter latest by eight weeks after the Commission is constituted.*
- b) *The respondents, once the posts of Deputy Controllers are filled up on regular basis shall accord consideration to the eligible Deputy Drugs Controllers for filling up the post of Controller, Drugs and Food Control Organization and complete the process within eight weeks, after Deputy Drug Controllers are in place on substantive basis.*
- c) *The respondents shall within four weeks from today, accord consideration to all the In-charge Deputy Drugs Controllers in accordance with the rules, regulations, Government Instructions issued in this behalf, for placement of one of them as In-charge controller, Drugs and Food Control Organization and the officer so placed shall hold such*

position till the State government on recommendation of PSC takes a decision as regards filling of posts of Deputy Controllers on substantive basis.

- d) *The respondents for the intervening period i.e. the date posts of the Deputy Drug Controller are filled up on substantive basis and the date Post of Controller Drugs is so filled up, shall give the stop-gap charge of Controller Drugs to senior most Deputy Drug Controller. However, this arrangement shall not extend beyond a period of eight weeks, and as by that time Controller Drugs must necessary be in place.*

Whereas, in another petition titled Nazir Ahamad Wani V/s state and others under No. Review (LPA) No. 10/2015 in LPASW No. 11/2015 MP No. 01/2015 Hon'ble Court has given the following directions on 26-05-2015:

"Learned Counsel for the Appellant would argue that petitioner with seven years of experience, as noticed by the writ court would have an edge over his colleagues in the Department.

We leave it to the respondents to take notice of this aspect of the case and take a decision in compliance of para 10 (c) of the judgment in accordance with rules, regulations and Government instructions governing the field."

Whereas, Sh. Nazir Ahmad Wani was allowed to continue as I/C Controller in his existing capacity as per the Govt. Order No. 550-HME of 2014 dated 01-10-2014 issued by the Health and Medical Education Department. Accordingly objections were filed before the Hon'ble Court on 22-09-2015 as the Hon'ble High Court had passed the following directions on 20-11-2015;

" Statement of facts have been filed by the respondent, where a stand is taken that the cases of all eligible officers have been considered for making Incharge arrangement against the post of Controller drug, pending the formal selection by the J&K Public Services Commission".

"Learned counsel for the respondent shall produce the relevant records pertaining to the accord of consideration of all Deputy Controllers for the post of Controller Drugs on the next date of hearing".

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Whereas, the case was listed before the Hon'ble High court on 04-12-2015 and the Hon'ble Court has passed the following directions on 04-12-2015:

" On request of learned counsel for the official respondents, adjourned to 10-12-2015 for production of relevant record to show consideration in terms of order passed in LPASW/ No. 11/2015 dated 13-05-2015".

Whereas, the relevant record was produced in the Hon'ble High Court and the Hon'ble High Court on 10-12-2015 has passed the following directions:-

"After arguing for some time, learned counsel for the respondent seeks a short adjournment to pass a fresh order in compliance of direction No. C in Paragraph No.10 of the order of the Hon'ble Division Bench dated 13th may, 2015 in LPA (SW) No. 11/2015, so as to accord consideration to all the In-charge Drugs Deputy Controllers including the petitioner in accordance with the rules/regulations, Government instructions issued in this behalf for placement of one of them as Incharge Controller, Drugs and Food Control Organization".

Whereas, vide Govt. Order No. 550-HME of 2014 dated 01-10-2014, Mr. Nazir Ahmad Wani I/c Deputy Controller, Drugs and Food Control Organization, Kashmir had been asked to look after the charge of the post of Controller, Drugs and Food Control Organization, J&K in addition to his own duties and that arrangement had continued to remain in place in view of Hon'ble Court's orders dated 24.11.2014 and 20.04.2014

Whereas, in pursuance of Hon'ble Court's order dated 13.05.2015, the Department had allowed continuation of Shri Nazir Ahmad in his existing capacity as per Govt. Order No. 550-HME of 2014 dated 01-10-2014 without going into the seniority related and other issues and that no consideration order was issued in this regard;

Whereas, Hon'ble Court, after perusing the record produced by the Department on 10.12.2015, has reiterated the directions for the Department to pass a fresh order in compliance of direction No. C in Paragraph No.10 of the order of the Hon'ble Division Bench dated 13th may, 2015 in LPA (SW) No. 11/2015, so as to accord consideration to all the In-charge Drugs Deputy Controllers including the petitioner in accordance with the rules/regulations, Government instructions issued in

this behalf for placement of one of them as Incharge Controller, Drugs and Food Control Organization;

Whereas, as per the above Court directions, necessary consideration has to be accorded to one of the I/c Deputy Controllers for assigning the charge of the post of Controller Drugs and Food Control Organization, and as per the rules, regulations and government instructions in this behalf; and

Whereas, as per the Jammu & Kashmir Drugs and Food Control (Gazetted) Services Recruitment Rules issued under SRO 56 of 1997 dated 3rd February, 1997, the method of recruitment for filling up of the post of Controller is "100% by promotion by selection from Class II (Deputy Controller Drugs and Food/ Drug Analyst) with a minimum of seven years service as such"; and

Whereas, the three officers viz. Mrs. Irfana Ahmad, Mrs. Lotika Khajuria and Mr. Nazir Ahmad have served in the capacity as I/c Deputy Controller for more than 7 years as on date all are eligible in this regard;

Whereas in the afore-stated context, resort to seniority position of the three officers would be the basis of accord of consideration;

Whereas, as per the seniority list of Assistant Drug Controllers/ Assistant Drug Analysts as updated by the Department, and issued vide circular dated 22.04.2014, out of the existing three seniormost I/c Deputy Controllers, Mrs. Irfana is the senior most, followed by Mrs. Lotika Khajuria and then followed by Mr. Nazir Ahmad; and

Whereas, Smt. Lotika Khajuria, who figures next in the seniority to Mrs. Irfana Ahmed challenged the DPC order of 2008 vis a vis the date from which substantive post of Assistant Controller had been accorded to Irfana Ahmed before the Hon'ble Court, and the Hon'ble High Court in SWP No.2220/2012 & CMA No. 3398/2012 dated 04-10-2012 has passed the interim order as under:

"Subject to objections and till next date before the bench, it is provided that private respondent shall not be considered for further promotion."

Whereas, in light of the above orders of the Hon'ble Court in respect of Mrs. Irfana Ahmad, the most prudent course of action would be to place the next senior most Assistant Controller i.e. Mrs Lotika Khajuria, who is I/c Deputy Controller as Controller, Drug and Food Control Organization till further orders, replacing Mr. Nazir Ahmad I/c Deputy Controller who is junior to her in the seniority list of Assistant Controllers;

Now, therefore, in pursuance of Hon'ble High Court's orders dated 10.12.2015, it is hereby ordered to give temporary charge of the post of Controller, Drugs and Food Control Organization, J&K to Mrs Lotika Khajuria, I/c Deputy Controller replacing Mr. Nazir Ahmad, I/c Deputy Controller, Drug and Food Control Organization till further orders.

By order of Government of Jammu and Kashmir

Sd/-

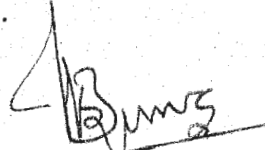
(Dr. M. K Bhandari), IAS
Secretary to Government,
Health and Medical Education Department.

No. HD/Legal/Drugs/MR-412/2012-L

Dated: 22-12-2015

Copy to the:-

1. Commissioner/Secretary to Government General Administration Department.
2. Commissioner, Food Safety J&K Jammu.
3. OSD with Hon'ble Minister for Health & Med. Education Department.
4. Deputy Controller, Drugs and Food Control Organization, Jammu/ Kashmir.
5. Private Secretary to Hon'ble Minister of State for Health.
6. Pvt. Secretary to Secretary to Government, Health, and Medical Education Department.
7. Concerned.
8. Archives Department.
10. Government Order file/ Stock file.



(Krishan Lal) KAS

Additional Secretary to Government,
Health & Medical Education Department

