

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. 61/584/2020



Pronounced on: This the 08th day of September 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

1. Subash Chander, Aged 44 years, S/o Krishan Chand, R/o Sehswan, Tehsil Marheen, District Kathua.
2. Vinod Kumar, Aged 40 years, S/o Rattan Chand, R/o Village Phinter (Dher), Tehsil Billawar, District Kathua.
3. Jai Pradeep Singh, Aged 45 years, S/o Kulwant Singh, R/o Janglote, Tehsil and District Kathua.
4. Lal Hussain, Aged 36 years, S/o Qasim Din, R/o Kishanpur Dungara, Tehsil Billawar District Kathua.
5. Kulbir Singh, Aged 46 years, S/o Gandharb Singh, R/o HiranagarMohraChanjal, Tehsil Hiranagar, District Kathua.
6. Prem Singh, Aged 37 years, S/o Churu Ram, R/o Baggan Tehsil Billawar, District Kathua.



7. Jagdish Chander, Aged 28 years, S/o Chandi Ram, R/o Durang Tehsil Billawar, District Kathua.
8. Harbans Lal, Aged 50 years, S/o Des Raj, R/o Ghagwal, District Samba.
9. Balwant Raj, Aged 38 years, S/o Rattan Chand, R/o Village Dhan, PO Nagrota, Tehsil Billawar, District Kathua.
10. Kishore Kumar, Aged 39 years, S/o Kaku Ram, R/o Pallan, Tehsil Billawar, District Kathua.
11. Asrar Ahmed, Aged 39 years, S/o Abdul Rehman, R/o Thal Lohai, Tehsil Billawar, District Kathua.
12. Ishtiaq Ahmed, Aged 50 years, S/o Abdul Rehman, R/o Thal Lohai, Tehsil Billawar, District Kathua.
13. Manzoor Ahmed, Aged 47 years, S/o Abdul Rashid, R/o Chandal PO Lowang, Tehsil Bani, District Kathua.
14. Surinder Gupta, Aged 37 years, S/o Sudesh Kumar Gupta, R/o Bhaddu, Tehsil Billawar District Kathua.

15. Sham Lal, Aged 40 years, S/o Sh. Nek Ram, R/o Village Mahanpur, District Kathua.



16. Kubir Singh, Aged 42 years, S/o Isher Dass, R/o Village Parnalla Tehsil Billawar District Kathua.

17. Parmod Kumar, Aged 36 years, S/o Mohan Lal Sharma, R/o Village Sukrala, Tehsil Billawar, District Kathua.

18. Uttam Chand, Aged 39 years, S/o Lal Chand, R/o Village Mahanpur, District Kathua.

19. Mohd. Latif Butt, Aged 40 years, S/o Mohd. Riaz Butt, R/o Ward No. 11, Tehsil Basoli, District Kathua.

20. Mangal Singh, Aged 38 years, S/o Sh. Achhru Ram, R/o Dhaggar Tehsil Basoli, District Kathua.

21. Shafique Ahmed, Aged 40 years, S/o Ghulam Mohd. R/o Dhan Jhankar, Basoli District Kathua.

22. Rajeev Sharma, Aged 41 years, S/o Kuldeep Raj, R/o Hut Tehsil Basoli District Kathua.

23. Vijayent Singh, Aged 37 years, S/o Hans Raj, R/o Plakh, Tehsil Basoli, District Kathua.



24. Mohd. Imtaz Butt, Aged 36 years, S/o Mohd. Ayaz Butt, R/o Ward No. 11, Tehsil Basoli, District Kathua.
25. Mohd. Rafiq Ansani, Aged 38 years, S/o Sh. Id Mohd. R/o Village Sabar District Kathua.
26. Anil Kumar, Aged 35 years, S/o Achhru Ram, R/o Village Bhakoge District Kathua.
27. Atul Khajuria, Aged 40 years, S/o Late Surinder Kumar, R/o Village Kanthal District Kathua.
28. Mohinder Kumar, Aged 43 years, S/o Sh. Des Raj, R/o Village Dullangal, District Kathua.
29. Sanjay Kumar, Aged 37 years, S/o Sh. Hari Lal, R/o Tehsil Bani, District Kathua.
30. Akram Khan, Aged 35 years, S/o Ghulam Ali, R/o Village Gati, Tehsil Fatehpuri, District Kathua.
31. Major Singh, Aged 36 years, S/o Sh. Shanku Ram, R/o Village Sitti, Tehsil Bani, District Kathua.

32. Kishore Kumar, Aged 44 years, S/o Om Parkash, R/o Tehsil Bani, District Kathua.



33. Mohd. Hidayatullah, Aged 42 years, S/o Sh. Abdul Rashid, R/o VPO Lowering Tehsil Bani, District Kathua.

34. Sher Singh, Aged 35 years, S/o Sh. Maan Singh, R/o Fatehpuri, Tehsil Bani, District Kathua.

.....Applicants.

By advocate: Mr. Sunil Sethi, Sr. Advocate assisted by Mr. Ankesh Chandel

VERSUS

1. State of Jammu and Kashmir through Commissioner/Secretary Revenue Department, Civil Secretariat, Jammu.
2. Financial Commissioner (Revenue) J&K Government, Rail Head Complex, Jammu.
3. Divisional Commissioner, Jammu.
4. Deputy Commissioner Kathua.
5. Shesh Kumar, Age 48 years, S/o Jewa Nand, R/o Galigad, Tehsil & District Kishtwar.
6. Abid Rashid Mughal, Age 47 years, S/o Abdul Rashid Mughal, R/o Gudhali Mohalla, Tehsil and District Kishtwar.
7. Tanveer Ahmed, Age 47 years, S/o Gh. Hassan, R/o Link Road, Tehsil & District Kishtwar.
8. Dharminder Singh, Age 42 years, S/o Bansi Lal, R/o Village Trigam, Kishtwar.



9. Bashir Ahmed, Age 34 years, S/o Maya Khan, R/o Village Anjole Thakrie, Tehsil and District Kishtwar.
10. Asif Rashid Butt, Age 35 years, S/o Abdul Rashid Butt, R/o Village Pochhal, Tehsil and District Kishtwar.
11. Anzar Ahmed Kalal, Age 42 years, S/o Nissar Ahmed Kalal, R/o Near Astan Pain, Ward No. 1, Kishtwar, Tehsil and District Kishtwar.
12. Fida Hussain, Age 46 years, S/o Late Abdul Gani, Giri, R/o Village Poochal, Tehsil and District Kishtwar.
13. Javed Iqbal, Age 52 years, S/o Ghulam Nabi, R/o Asrarabad, Kishtwar, Tehsil and District Kishtwar.

....Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G/Mr. Faheem Shokat Butt/Mr. Danish Butt, Mr. M R Qureshi, Mr. Mohsin Bhatt, Mr. P N Bhat

c/w

T.A No. 717/2020

1. Anzar Ahmed Kalal, Age 39 years, S/o Nissar Ahmed Kalal, R/o Near Astan Pain, Ward No. 1, Kishtwar, Tehsil and District Kishtwar
2. Fida Hussain, Age 46 years, S/o Late Abdul Gani Giri, R/o Village Poochal, Tehsil and District Kishtwar.
3. Javed Iqbal, Age 49 years, S/o Ghulam Nabi, R/o Asrarabad, Kishtwar, Tehsil and District Kisthwar.

.....Applicants.

By Advocate: Mr. Faheem Shokat Butt

VERSUS

1. State of Jammu and Kashmir through Financial Commissioner (Revenue), Civil Secretariat, Srinagar/Jammu.

2. Commissioner Secretary to Govt. Revenue Department, Civil Sectt., Srinagar/Jammu.
3. Divisional Commissioner, Rail Head Complex, Jammu.
4. Deputy Commissioner, Kishtwar.



....Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G/Mr. Sunil Sethi, Sr.

Advocate assisted by Mr. Ankesh Chandel

c/w

T.A No. 1274/2020

1. Shesh Kumar, Age 45 years, S/o Jewa Nand, R/o Galigad, Tehsil & District Kishtwar.
2. Abid Rashid Mughal, Age 44 years, S/o Abdul Rashid Mughal, R/o Gudhali Mohalla, Tehsil and District Kishtwar.
3. Tanveer Ahmed, Age 44 years, S/o Gh. Hassan, R/o Link Road, Tehsil & District Kishtwar.
4. Dharminder Singh, Age 39 years, S/o Bansi Lal, R/o Village Trigam, Kishtwar.
5. Bashir Ahmed, Age 31 years, S/o Maya Khan, R/o Village ANjole Thakrie, Tehsil and District Kishtwar.
6. Asif Rashid Butt, Age 35 years, S/o Abdul Rashid Butt, R/o Village Pochhal, Tehsil and District Kishtwar.

.....Applicants.

By Advocate:Mr. Faheem Shokat Butt

VERSUS



1. State of Jammu and Kashmir through Financial Commissioner (Revenue), Civil Secretariat, Srinagar/Jammu.
2. Commissioner Secretary to Govt. Revenue Department, Civil Sectt., Srinagar/Jammu.
3. Divisional Commissioner, Rail Head Complex, Jammu.
4. Deputy Commissioner, Kishtwar.

....Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G./Mr. Sunil Sethi, Sr.

Advocate assisted by Mr. Ankesh Chandel

c/w

TA No. 6565/2020

1. Vinay Kumar, Aged 45 years, S/o Late Sh. Hari Chand, R/o Mondalla (Bhalla) Tehsil, Bhalla, District Doda.
2. Irshad Hussain, Aged 43 years, S/o Abdul Sitar, R/o Village Mangot, Tehsil Dodrmat, District Doda.
3. Jaswant Singh, Aged 38 years, S/o Swami Raj, R/o Indralla, Tehsil Thathri, District Doda.
4. Suresh Kumar, Aged 46 years, S/o Sh Bansi Lal, R/o Panjgarine, Tehsil Bhalla, District Doda.
5. Mohd Ashraf, Aged 45 years, S/o Din Mohd, R/o Chakka, Bhadarwah, Tehsil Bhadarwah, District Doda.
6. Bashir Ahmed, Aged 41 years, S/o Mohd Ismail, R/o Bhargi, Tehsil Bhalesha, District Doda.
7. Prem Lal, Aged 51 years, S/o Sh. Durga Dass, R/o Shamthi, Tehsil Katigarh, District Doda.



8. Riaz Ahmed, Aged 43 years, S/o Ghulam Hassan, R/o Village Cherrote Tehsil Gundua, District Doda.
9. Anayat Hussain Zargar, Age 47 years, S/o Hassam Din Zargar, R/o Kulhotran, Tehsil Gundoh, District Doda.
10. Rafia Akhter, Aged 39 years, D/o Manzoor Ahmed Wani, R/o Kilhotran, Tehsil Gundoh, District Doda.
11. Bansi Lal, Aged 42 years, S/o Sh Amar Chand, R/o Chakka, Tehsil Rajgarh, District Ramban.
12. Jatinder Singh Manhas, Age 43 years, S/o Sh. Ram Lal, R/o Bhaderwah, District Doda.
13. Shabir Ahmed, Aged 47 years, S/o Mohd Safir Lone, R/o Roat, Tehsil Marmat, Tehsil Marmat, District Doda.
14. Mirza Mohd Aslam Beig, Aged 34 years, S/o Mirza Mohd Amin Beg, R/o Udhyampur, Tehsil Bharat, Bagla, District Doda.
15. Khadim Hussain, Aged 43 yars, S/o Ali Mohd. R/o Tehsil Gundoh, District Doda.

.....Applicants.

By advocate: Mr. Sunil Sethi, Sr. Advocate assisted by Mr. Ankesh Chandel

VERSUS

1. State of Jammu and Kashmir through Commissioner/Secretary Revenue Department, Civil Secretariat, Jammu.
2. Financial Commissioner (Revenue) J&K Government, Rail Head Complex, Jammu.
3. Divisional Commissioner, Jammu.
4. Deputy Commissioner, Doda.

....Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G./Mr. Faheem Shokat Butt

c/w

T.A No. 61/3433/2020



1. Mansur-ul-Amin, Age 46 years, S/o Sh. Abdul Aziz, R/o Village Majhoor, Tehsil Thanamandi, District Rajouri.
2. Mushtaq Ahmed Age 47 years, S/o Mohd Rashid, R/o Village Badi Darhal, Tehsil Badi Darhal, Tehsil Darhal District Rajouri.
3. Mohd. Khalid, Age 44 years, S/o Mohd Afsar, R/o Village Thanamang, Tehsil Darhal, District Rajouri.
4. Iftkhar Ahmed Mirza, Age 47 years, S/o Mirza Mohd Hafiz, R/o Village Behrote, Tehsil Thanamandi, District Rajouri.
5. Abdul Maid Age 52 years, S/o Nazam Din, R/o Village Panhad, Tehsil Koteranka District Rajouri.
6. Modh Shafiq Age 42 years, S/o Abdul Majid, R/o Village Ujhan, Tehsil Darhal District Rajouri.
7. Raghubir Singh, Age 40 years, S/o Ram Lal, R/o Village Panhar, Tehsil Kalakote, District Rajouri.
8. Anjum Javed Raina, Age 48 years, S/o Abdul Qayoom, R/o Village Hasplote, Tehsil Thanamandi, District Rajouri.
9. Jamila Tabbasum Age 44 years, W/o Rashid Hussain, R/o Village Badhnanoo, Tehsil Darhal District Rajouri.
10. Sadhat Ara, Age 45 years, W/o Abdul Qayoom, R/o Village Hayatpura, Tehsil Manjakote, District Rajouri.
11. Sarfraz Ahmed, Age 45 years, S/o Ghulamn Rasool, R/o Village Panhad, Tehsil Koteranka District Rajouri.
12. Mohd Wasim Khan, Age 40 years, S/o Mohd Akram Khan, R/o Village Dabrote, Tehsil Manjakote District Rajouri.



13. Mohd Munim Age 51 years, S/o Ghulam Nabi, R/o Village Sigrawat, Tehsil Darhal District Rajouri.
14. Fazal Bhatti, Age 45 years, S/o Mohd. Shafiq, R/o Village Saaj, Tehsil Thanamandi, District Rajouri.
15. Mahesh Kumar, Age 39 years, S/o Om Parkash, R/o Village Bareri (Nowshera), Tehsil Nowshera District Rajouri.
16. Javed Iqbal Age 45 years, S/o Mirza Mohd. Iqbal, R/o Village Behrote, Tehsil Thanamandi District Rajouri.
17. Zulafkar Ahmed Age 47 years, S/o Quresh Ahmed, R/o Village Saaj, Tehsil Thanamandi District Rajouri.
18. Mohd Farooq Shah Age 45 years, S/o Hakam Shah, R/o Village Dodasanbal, Tehsil Thanamandi District Rajouri.
19. Balwinder Kumar Age 47 years, S/o Tara Chand, R/o Village Gagrote, Tehsil Nowshera District Rajouri.
20. Niaz Ahmed Malik, Age 41 years, S/o Mohd Fazal, R/o Village Khoriwali, Tehsil Darhal, District Rajouri.
21. Mohd. Azee, Age 32 years, S/o Abdul Aziz, R/o Village Muradpur, Tehsil and District Rajouri.
22. Kala Khan, Age 46 years, S/o Mohd Yousuf, R/o Village Kalalkass, Tehsil and District Rajouri.
23. Alam Din Age 50 years, S/o Ghulam Hussain, R/o Village Agrati, Tehsil and District Rajouri.
24. Haroon Rashid, Age 38 years, S/o Abdul Rashid, R/o Village Gambir Mughlan, Tehsil Manjakote District Rajouri.
25. Murtaza Ahmed, Age 37 years, S/o Abdul Majid, R/o Village Saim Smuth, Tehsil Thanamandi, District Rajouri.

26. Qaiser Latief, Age 37 years, S/o Abdul Latief, R/o Village Hasplote, Tehsil Thanamandi District Rajouri.

27. Mohd. Rafi Khan, Age 35 years, S/o Tanveer Hussain Khan, R/o Village Hasplote, Tehsil Thanamandi District Rajouri.



By advocate: Mr. Ahsan Mirza

.....Applicants.

VERSUS

1. State of Jammu and Kashmir through Commissioner/Secretary Revenue Department, Civil Secretariat, Srinagar.
2. The Financial Commissioner (Revenue) J&K Government, Rail Head Complex, Jammu.
3. Divisional Commissioner, Jammu.
4. Deputy Commissioner Rajouri.
5. Tilak Raj, S/o Late Sh. Thakar Dass, R/o Ward No. 4, Court Road, Udhampur.
6. Arshad Hussain, S/o Safder Hussain, R/o Ward No. 11, Udhampur.
7. Ghulam Mohd, S/o Sraaj-ud-Din, R/o Udhampur
8. Rakesh Kumar, S/o Sh. Sagar Chand, R/o Latti Udhampur

....Respondents

By Advocate:- Mr. Amit Gupta, learned A.A.G./Mr. Faheem Shokat Butt

ORDER

By Hon'ble Mr Rakesh Sagar Jain, Member (J)



1. The present T.A. No. 61/584/2020 titled Subash Chander and ors. v/s State of J&K stands clubbed with T.A No. 717/2020 titled Anzar Ahmed Kalal v/s State of J&K and Ors, T.A No. 1274/2020 titled Shesh Kumar & Ors v/s State of J&K and ors, T.A. No. 6565/2020 titled V. Kumar v/s State of J&K and ors and T.A. No. 3433/2020 titled Mansur-ul-Amin and ors v/s State of Jammu and Kashmir and ors.
2. Applicant Subash Chander and 33 other applicants have filed the present T.A. seeking the following reliefs:
 - (a) An appropriate writ, order or direction in the nature of writ of mandamus declaring sub-section (2) of Section 10 of the Jammu and Kashmir, Civil Services Decentralization & Recruitment Act, 2010 alongwith Rule 19 of the Jammu and Kashmir Civil Services Decentralization & Recruitment Rules, 2010 promulgated vide notification SRO 375 of 2010 dated 21.10.2010 as ultra-virus the Constitution of India, Constitution of J&K, discriminatory and contrary to the spirit of J&K Revenue (Subordinate) Service Recruitment Rules, 2009 and J&K Civil Services (Classification, Control and Appeal) Rules, 1956.



- (b) An appropriate writ, order or direction in the nature of writ of mandamus commanding the respondents to hold DPC for promotion to the available posts of Girdawars (Divisional Cadre) after picking up the senior Patwaris District Cadre Kathua including the petitioners out of the final seniority list of Patwaris District Cadre Kathua dated 21.07.2016 strictly in accordance with the J&K Revenue (Subordinate) Service Recruitment Rules, 2009 without following the spirit of section 10 (2) of the Civil Services Decentralization & Recruitment Act, 2010 and Rule 19 of the J&K Civil Services Decentralization and Recruitment Rules, 2010.
- (c) Any other relief which this Hon'ble Court in the facts and circumstances of the case deems fit and proper.

3. Case of the applicants is that they were selected and consequently appointed as Patwaris in District Cadre Kathua and their seniority is maintained in District Kathua, as per, the final seniority list dated 21.07.2016 issued by Respondent No. 2. The service conditions of the applicants are governed by Jammu and Kashmir Revenue (Subordinate) Service Recruitment Rules, 2009 promulgated vide notification SRO 74 of 2009 dated 31.03.2009 (hereinafter referred to as 'Rules of 2009'). The promotion of Patwaris is to the post of Girdawar which is a Divisional Cadre post and is to be made from amongst the confirmed Patwaris of different Districts. As per Schedule II appended to the

Rules of 2009, promotion of a Patwari to the post of Girdawar is as below:-



Class	Category	Pay scale	Designation	Minimum qualification	Method of Recruitment
III		5000-8000	1. Saddar Qanungo. 2. Girdwar, office Quanugo & Naib Saddar Qnungo 3. PeshiQanungo 4. Instructor Girdwar 5. Statistical Girdwar 6. Consolidation Girdawar		By promotion from class III in accordance with the following ratio having regard to seniority in each category namely:- (i) 25% from Patwaries who are Graduates and above. (ii) 5% from Patwaries of survey teams who have worked satisfactory for 5 years in settlement. (iii) 70% from



					Patwaries as are not covered under (I & II) above.
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4. It is the further case of applicants that Jammu & Kashmir Civil Services Decentralization & Recruitment Act, 2010 (hereinafter referred to as 'Act of 2010') came to be passed by J&K State Legislature and received the assent of the Governor on 10.05.2020, whereas Jammu and Kashmir Civil Services Decentralization & Recruitment Rules, 2010 (hereinafter referred to as 'Rules of 2010') was promulgated vide notification SRO 375 of 2010 dated 21.10.2010. Sub-section (2) of Section 10 of Act of 2010 reads as under:-

“10. Promotions to the Divisional cadre:-

- (1) xx xxxxxxx
- (2) While making such promotions from District to Divisional Cadre posts shall be allocated to each district in the ratio and proportion as the cadre strength of each district bears to the total cadre strength of the division as far as practicable.”

5. Rule 19 of the Rules of 2010 reads as under:-

“19. Promotions from district cadre to the Divisional Cadre:- while making promotions from the District Cadre posts to the Divisional

Cadre posts, the competent authority shall allocate to each district such number of posts as the ration and proportion of the cadre strength of each district bears to the total cadre strength of the Division concerned as far as practicable and make promotions accordingly.”



6. It is the further case of the applicants that as per sub-section (2) of Rule 10 of the Act of 2010 and Rule 19 of Rules of 2010, for the purpose of promotion to the post of Girdawar, which is a Divisional Cadre post, the competent authority is required to allocate the post of Girdawar for the Districts thereby doing away with the concept of District Cadre and therefore, these provisions are ultra-virus the constitution and impermissible and run counter to the Rules of 2009. The respondents in past while promoting the Patwaris have not followed the Act and Rules of 2010 but followed the Rules of 2009 which is clear from the order no. DIVCOMJMU (ESTT) No. 55 of 2014 dated 26.08.2014 whereby 38 Patwaris were promoted on the recommendation of DPC which did not follow the Act and Rules of 2010.
7. It has been further averred in the T.A. that respondents are in the process of making promotion under the Act of 2010 as well as Rules of 2010 which would result that various Patwaris borne on the cadre



strength of new districts of Jammu Division, though far-far junior to the applicants shall get promoted and in such an eventuality the applicants and various other Patwaris who are much seniors shall be deprived of their right to get promoted as proportionately number of posts of Girdawars get shortlisted for their Districts resultantly denial of promotion to the applicants who are otherwise senior and fully eligible for their promotion to the posts of Girdawars. The respondents are intending to effect promotions to the posts of Girdawars in terms of Rule 19 of Rules of 2010 by allocating the posts of Girdawars to the District thereby defeating the very purpose of the seniority.

8. Therefore, the impugned provisions of the Act of 2010 and Rules of 2010 deserves to be declared as illegal on the following grounds:
 - a) Settled law is that service conditions of the employees are governed by rule in force at the time of their appointment which cannot be replaced by the Act and Rules of 2010 and the implementation of the said Act and Rules adversely affect the promotion of the applicants;



b) The impugned provisions contravene Section 10 (1) of the Act of 2010, J&K Civil Services (CCA) Rules, 1956 (hereinafter referred to as 'CCA Rules') and J&K Revenue (Sub-Ordinate) Service Recruitment Rules, 2009;

c) The Act of 2010 and Rules of 2010 are arbitrary as persons with lesser service will steal a march over their seniors (applicants) in matter of promotion to the post of Girdawar since junior in a district shall be promoted to the Divisional Cadre post prior to the seniors in other districts and proportionately number of posts of Girdawars get reduced for the district of applicants resulting in denial of promotion to them.

9. In the clubbed T.As i.e., TA No. 61/1274/2020 titled Shesh Kumar & ors vs State of J&K and ors and T.A. No. 61/717/2020 titled Anzar Ahmed Kalal & ors vs State of J&K and ors, the applicants therein while opposing the prayer of the present applicants Subash Chander and others seek direction to calculate the quota of Patwaris of District Kishtwar as per provisions of Section 10 (2) of the Act of 2010 read with Rule 19 of Rules of 2010 and promote the Patwaris after

calculating the allocation in the ratio and proportion as the cadre strength of district Kishtwar bears to the total cadre strength of Jammu Division.



10. Official respondents filed the counter affidavit wherein it has been averred that seniority of members of service is maintained according to Rule 24 of CCA Rules but the manner in which the seniority is to be framed is governed by Act of 2010 and Rules of 2010 thereby removing the disparity between the districts. The Act and Rules of 2010 have been enacted in order to give equitable opportunities of employment and promotion in the civil services of all the districts.

11. Whereas the impleaded respondents filed their counter affidavit averring therein that the impugned provisions of Act of 2010 and the Rules of 2010 stand implemented in other departments of the Government, so much so, the impugned Act and Rules have been implemented in Kashmir province in respect of promotion of Patwaris to Girdawars. The impugned provisions of Act and Rules of 2010 are not ultra-vires the Constitution as the rules prescribe allocation of Divisional Cadre post to District Cadre and does not in any manner

infringe any of the Constitutional provisions. The impugned provisions are not in conflict with J&K Civil Services (CCA) Rules, 1956 and the Revenue (Sub-Ordinate) Recruitment Rules of 2009 or are contrary to Section 10 (1) of the Act of 2010.



12. We note the following factual matters:

- I. J&K Civil Services (CCA) Rules 1956 was enacted vide Govt. Order No. 962-C of 1956 dated 14.06.1956 in exercise of the powers conferred by sub-Section (1) of Section 3 of the (J&K Civil Servants Removal of Doubts and Declaration Rights) Ordinance 1956. Rule 24 of the CCA Rules deals with seniority and Rule 25 is with regard to the provisions of promotion but the said provisions do not provide that how and in which manner the seniority and promotions are to be made except that how the seniority is determined and the promotions shall be made on ground of merit and ability and shall be subject to passing of test that government may prescribed in this behalf.
- II. The Ordinance of 1956 was repealed by J&K Civil Servants Removal of Doubts and Declaration Rights, Act 1956. Section 3 of the said Act pertains to recruitment and conditions of service of persons serving in the State and as per Section 3 (2) “Until other



provisions is made in this behalf under this Act, all Rules, Regulations, Orders and Notifications in force immediately before the commencement of this Act and applicable to any Public Service or any post which continues to exist after the commencement of this Act as service or post under the State shall continue in force so far as consistent with the provisions of this Act.”

- III. As per Section 157 of Constitution of Jammu and Kashmir which came into force w.e.f 26.01.1957, all the laws, notifications, rules etc made under any law, order or regulation immediately before coming into operation of the Constitution shall be deemed to have been made under the Constitution and shall remain in force until repealed or modified.
- IV. Jammu and Kashmir Civil Services (Decentralization of and Recruitment to Non-Gazetted Cadres), Rule, 1969 and Sub-Ordinate Service Recruitment Rules, 1992 was enacted and dealt with the criteria for promotion, method of promotion and that the seniority is to be maintained in the State, Divisional and District Cadres. Both the enactments have been repealed by Rule 26 of

J&K Civil Services (Decentralization and Recruitment) Rules, 2010.



V. The Decentralization Act, 2010 and the Rules made there under provides the mechanism for preparing seniority list and making promotions from District Cadre to Divisional Cadre and from Divisional Cadre to State Cadre and has thus primacy over the CCA rules of 1956 or any other service rule.

VI. The said Rules of 2010 have been made in exercise of Section 124 of the Constitution of Jammu and Kashmir and Section 15 of Civil Services (Decentralization and Recruitment) Act, 2010 and in order to remove the discrimination in the matter of promotion from district cadre post to divisional cadre, Section 10 (2) and Rule 19 has been enacted.

13. The impugned sections/rules are very clear and do not violate the provisions of the Constitution. Sub-Section (2) of Section 10 of the Act of 2010 and Rule 19 of the Rules of 2010 does not in any manner violates sub-Section (1) of Section 10 which provides that the promotion from district cadre post to divisional cadre post shall be subject to qualification prescribed in the Rules or Order regulating



promotions to such posts, and be made on the basis of merit and ability with due regard to seniority. The seniority as referred with the said Sub Section is with reference to seniority made at district level and on the basis of said seniority of district cadre employee at district level, the promotions are to be made to Divisional Cadre post in accordance with sub section (2) of Section 10 read with Rule 19 by allocating to each district in the ratio and proportion as the cadre strength of each district bears to the cadre strength of the division.

14. As per preamble of Act of 2010, the Act of 2010 was promulgated to provide for equitable opportunities of employment in the Civil Services in the State and brought into force from 10.05.2010. Section 15 of the Act of 2020 confers power and subject to the approval of the Government to frame such rules and it is deemed expedient for promotions in the Civil Services. Therefore, Act of 2010 and Rules of 2010 prescribe the process of promotion. The Rules of 2010 framed under the Act of 2010 are in supersession of all the rules on the subject. The Rules of 2010 are framed under the delegated legislative power and, therefore, have overriding effect on the contrary Rules of 2009

framed in exercise of power conferred by the Proviso to Section 124 of the Constitution of Jammu & Kashmir.



15. The Act of 2010 has overriding effect upon any Rules of 2009. The said Recruitment Rules of 2009 has been made in exercise of powers conferred by the proviso to Section 124 to the Constitution of J&K (corresponding to Article 309 of the Constitution of India) and the proviso provides that the Rules are effective, subject to the provision of any law made by the Legislature after coming into force of the Constitution. The Act of 2010 is a piece of Legislation promulgated after coming into force the Constitution of J&K and supersede CCA Rules of 1956 and also the Revenue (Sub-Ordinate) Recruitment Rules of 2009 made under Article 124 of the Constitution of J&K.
16. The contention of learned counsels for the applicants that the Rules of 2009 are applicable to the promotions cannot be accepted, as Rule of 2009 have framed by the Governor in exercise of proviso to Section 124 of the Constitution of Jammu and Kashmir and therefore these Rules are subservient to law, if any made by the legislature to regulate the equitable opportunities of employment in the Civil Services in the

State. Section 124 of the Constitution of Jammu and Kashmir reads as under:-



“124. Recruitment and conditions of service of persons serving the State.- subject to the provisions of this Constitution, the Legislature may by law regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State: Provided that it shall be competent for the Governor, or such person as he may direct, to make rules regulating the recruitment, and the conditions of service of person appointed, to such services and posts until provision, in that behalf is made by or under an Act of the Legislature under this section and any rules so made shall have effect subject to the provisions of any such Act.”

17. Section 124 is clear that overall power to regulate the conditions of persons appointed to Public Services lie with the legislature and the same is to be regulated by the hand of legislature. It is only when such legislative enactment is not available, the Governor is empowered by Section 124 to make Rules regulating the recruitment and conditions of service of Civil Servants in the State, unless the provisions in that behalf is made by or under an Act of Legislature. The language of the proviso to Section 124 is clear and unequivocally provides that Rules made by the Governor under proviso to Section 124 would hold ground till provisions in this behalf is made by or under of legislature. In the present case, the provisions for making promotions has been laid down



in the Act of 2010 enacted by the Jammu and Kashmir and State Legislature and under the State Act, the Rules of 2010 have been framed. Therefore, looking to the settled position it cannot be said that Rules of 2009 framed by the Governor under Section 124 would override the Act of 2010 and the Rules made there under. The Rules of 2009 have to give way to the Act of 2010 and Rules made thereunder.

18. In other words, rules made under proviso to Section 124 of the Constitution of J&K/proviso to Article 309 of the Constitution of India are for a transitory period and the same would give way to the special rules once framed. Section 124 of the Constitution which was corresponding to Article 309 gives power to Governor or any such person as he may direct to make rules relating to recruitment and condition of service until provision in that behalf is made by or under an Act of Legislation after coming into force of the Constitution and any such rules so made have effect subject to the provisions of any such Act. Therefore, by virtue of these powers after coming into force the Constitution, the Act of 2010 and Rules of 2010 have been enacted and over-ride the previous rules on promotion of the Patwaris.



19. Coming to the basic challenge of the applicant, we may notice that opportunity for promotion is a service condition. By amendment in the rules opportunity for promotion has not been taken away in any manner. Earlier promotion used to be by way of a common seniority list of all the Patwaris of the Division from where the promotions were made as per the seniority. Now, at present the allocation of posts for promotion from each district cadre to Division cadre by way of Act and Rules of 2010, shall be allocated in the ratio and proportion as the cadre strength of each district bears to the total cadre strength of the division cadre.

20. The contention of applicants that the impugned provisions narrow down the promotional avenues of district cadre employees and the juniors in other districts will steal march over the seniors in the matter of promotion and the service conditions of employees are governed by such rules which were in force at the time of appointment and service conditions cannot be forced to be governed by new set of rules has no force, it is apparent that the impugned provisions have been made to remove the anomaly in the matter of promotions and in the interest of large number of employees of each district thereby removing

anomaly/disparity created earlier whereby large number from a particular district from where recruitment was made at the first instance was taken up for the promotion to the detriment of the Patwaris from the other district.



21. Unless it is brought to the notice of the Tribunal that keeping in view the strength of the feeding cadre of each district to the total cadre strength of Division, the mode of promotion is disproportionate or arbitrary, no interference is warranted. Merely because mode of promotion has been altered to make it dependent upon the ratio and proportion as the cadre strength of each district bears to the total cadre strength of the division, *per se* does not amount to either alteration of the service conditions or can be termed as arbitrary. The policy decision taken by the department is not arbitrary or meaningless. It is settled law that to lay down service conditions is the prerogative of the employer. The Hon'ble Supreme Court in the matter of P. U. Joshi and others v The Accountant General, Ahmedabad and others[(2003) 2 SCC 632], held as under:-

“10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition,



prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no

right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”



22. In Union of India and others v S. L. Dutta and another[(1991) 1 SCC505], the Hon’ble Supreme Court has held as under:-

“14. In connection with the question as to whether the conditions of service of respondent No. 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni, (1981) 4 SCC 130 : (AIR 1981 SC 1990). There it was held by a Bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount a change in the conditions of service. A right to be considered for promotion is a term of service chances of promotion are not. (See para 16 at page 141) of the Report). Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India, (1990) 1 JT 247 : (AIR 1990 SC 1072) where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni, (AIR 1981 SC 1990) was followed.”

23. Reference may made to Roshan Lal Tandon v/s Union of India, 1968 1 SCR 185, wherein it was held by Hon’ble Apex Court that once appointed, an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by the consent of the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government.



24. No facts have been brought to our notice that by bringing another promotion procedure, promotional chances of the applicants have been reduced or minimised to such an extent that to avail promotion has been rendered an illusion. The applicants have failed to produce at least on record sufficient material to establish that the distribution of the posts at the promotional level is arbitrary, which may warrant interference by the Tribunal. The impugned provisions of the Act and the Rules gives equal opportunity to district cadre employees for their promotion to Divisional cadre post.

25. We also note the observation of the Hon'ble Apex Court in I.C.A.R. v/s T.K. Suryanarayan, AIR 1997 SC 3108 that:

“8. We are, however, unable to accept the submission made by the learned Counsel appearing in both these SLPs. Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective of 1st October, 1975 should not be adhered to because in some cases erroneous promotions had been given.”



26. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The Court/Tribunal sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

27. We may also refer to State of J&K v/s Ulfat Ara, 2020 (6) JKJ 355 (HC) wherein the Hon'ble High Court has held that it is beaten law that there is presumption in the Constitutionality of an Act of Legislature and the provisions thereof and the courts are loath to declare them unconstitutional unless a cast iron case for such declaration is made out. In the present case, it cannot be said that the rules are so manifestly



arbitrary so as to negate the legislation under challenge. The arguments of the applicants go to the policy of the law laid down by the Government, not to its constitutionality, unless, while implementing the impugned legislation, any provision of the Constitution is infringed, which is not so, in the present case.

28. We also refer to arguments of learned counsel for respondents wherein he referred to the order dated 02.09.2014 passed in SWP No. 2379/2014 titled Abid Rashid Mughal v/s State of J&K by of Hon'ble High Court at Jammu wherein the respondents-State were directed to make promotion to the post of Girdawar strictly in accordance with Jammu & Kashmir Civil Services Decentralization & Recruitment Act, 2010 and the rules framed thereunder.

29. We may also note the judgment dated 21.07.2018 of the Hon'ble High Court of J&K at Jammu in SWP No. 432/2015 titled Ali Asghar v/s State, wherein it has been directed as under:

“4. Having heard learned counsel for the parties, I am of the view that the controversy raised in this petition can be resolved by directing the respondents to strictly adhere to the provisions of Section 10 of the Act of 2010 while making promotions of Patwaris to Girdawars of the Jammu Division. Needless to say that in terms of



Section 10 of the Act of 2010, the promotions from District Cadre posts to the Divisional Cadre posts are required to be made subject to the qualifications prescribed for the post under the rules and on the basis of merit and ability with regard to seniority. Sub-section 2 of Section 10 further provides that while making such promotions from District Cadre to Divisional Cadre, the posts shall be allocated to each district in the ratio and proportion as the cadre strength of each district bears to the total cadre strength of the Division.

5. Learned counsel for the petitioners is, therefore, right in his submission that while making promotions to the posts of Girdawars, the respondents are under an obligation to work out the number of posts allocable to each districts keeping in view the provisions of sub-section 2 of Section 10.
6. As pointed by learned counsel for the petitioners, the respondents are going to convene DPC on 23.07.2018, it is expected that the respondents will strictly adhere to the provisions of Section 10 and make promotions accordingly.
7. Needless to say that the petitioners, if eligible against the posts allocated to their districts shall also be considered.
8. Disposed of.”

30. In the present case, no strong case has been made out by the applicants for declaring Sub-section 2 of Section 10 of Jammu and Kashmir Civil Services Decentralisation & Recruitment Act, 2010 and Rule 19 of Jammu and Kashmir Civil Services Decentralisation & Recruitment Rules, 2010 as ultra-vires the Constitution of J&K or contrary to J&K

Revenue (Subordinate) Service Recruitment Rules, 2009 and J&K Civil Services (Classification, Control and Appeal) Rules, 1956.



31. In view of the facts and the settled law, we do not find any valid ground to interfere in the impugned Act and Rules of 2010. This TA accordingly fails and is dismissed. No costs.

(ANAND MATHUR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)