

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP (C) No. 2596/2025
CAV No. 1722/2025**

1. UT of J & K through its Applicant(s)/Petitioner(s)
Commissioner/Secretary to Govt.
Power Development Department,
Civil Secretariat, J & K at Jammu-180001.
2. Commissioner/Secretary to Govt.
General Administration Department,
Civil Secretariat, J & K at Jammu-180001.
3. Chief Engineer,
EM&RE Wing, Jammu-180001.
4. Superintending Engineer,
EM&RE Wing, Poonch-185111.
5. Executive Engineer,
EM&RE Division Poonch-185111.

Through :- Mr. Raman Sharma, AAG with
Ms. Saleeqa Sheikh, Advocate

v/s

1. Safiya Bi, W/o late Mohd. Bashir, ...Respondent(s)
R/o Gohlad, Tehsil Mendhar, District Poonch-185111.
2. Zaffer Iqbal, S/o late Mohd. Bashir,
R/o Gohlad, Tehsil Mendhar, District Poonch-185111.
3. Zulfqar Ahmed, S/o late Mohd. Bashir,
R/o Gohlad, Tehsil Mendhar, District Poonch-185111.
4. Kanchan Devi, W/o late Ashok Kumar,
R/o Dharana, Tehsil Mendhar, District Poonch-185111.
5. Ashu Sharma, S/o late Ashok Kumar,
R/o Dharana, Tehsil Mendhar, District Poonch-185111.

Through :- Mr. Ravi Abrol, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER (ORAL)

19.09.2025

(Sanjeev Kumar J)

1. This petition, filed under Article 226 of the Constitution of India,
seeks to challenge an order/judgment dated 13.11.2024 passed by

the Central Administrative Tribunal, Jammu Bench, Jammu [**“the Tribunal”**] in OA No. 1711/2022 titled *“Safiya Bi & Ors. Vs. UT of J & K & Ors.”*, whereby the Tribunal has, while allowing the OA filed by the legal representatives of late Mohd. Bashir and late Ashok Kumar, quashed the Chief Engineer’s Order No. CEJ/Adm/Court/DPC/65 of 2022 dated 12.07.2022 and directed the petitioners to regularize the services of late Mohd. Bashir and late Ashok Kumar, as has been done in the cases of similarly situated persons. The deceased employees have also been held entitled to all the consequential monetary benefits.

2. The impugned judgment is challenged by the petitioners, primarily on the ground, that the Tribunal has not appreciated that in the absence of existence of the relevant Government Order and the superannuation of the employees, namely, Mohd. Bashir and Ashok Kumar, no mandamus could have been issued to the petitioners to regularize the services of the predecessor-in-interest of the respondents, that too, from a retrospective date.
3. The impugned order is also called in question on the ground that the Tribunal has failed to appreciate that the regularization order in favour of the two employees (now deceased) could not be passed because they were not eligible to hold the post and required relaxation of minimum age prescribed by the competent authority.
4. Before we appreciate the submissions made by learned AAG, we deem it appropriate to briefly state the facts, as are germane to the disposal of the controversy raised in the instant petition.

5. The predecessor-in-interest of the respondents namely Mohd. Bashir and Ashok Kumar were appointed as Class-IV on adhoc basis for 89 days along with nine others against the available vacancies in Maintenance & RE Division, Poonch in terms of Order No. 82 dated 05.09.1988 issued by the Superintending Engineer, Electrical Maintt. & RE Wing, Jammu. The adhoc appointment of the said employees was extended vide order dated 20.01.1989. With a view to conferring the benefit of regularization on eligible adhoc appointees, the petitioners came up with the Government Order No. 1220/GAD dated 11.09.1989 [**“the Government Order of 1989”**] which, *inter alia*, provided for regularization of adhoc appointments made to the non-gazetted posts in various departments up to 29.12.1988 provided they were in service on the date of issuance of Government Order of 1989. The predecessor-in-interest of the respondents abovementioned fell within the timeline prescribed under the Government Order of 1989 and, therefore, were entitled to regularization of their services under the Government Order, subject to fulfilling the eligibility *viz.-a-viz.* qualification and age. Both Mohd. Bashir and Ashok Kumar were over aged at the time of their engagement as Class-IV on adhoc basis, in that, Mohd. Bashir was over aged by one year, eight months and 24 days, whereas Ashok Kumar was over aged by three years and seven months. The regularization of their services, therefore, required formal order of relaxation of their age, to be issued with the approval of Chief Minister in Co-ordination. This was so provided in the Government Order of 1989 itself.

6. Accordingly, the department of the deceased employees forwarded their case with all requisite documents through proper channel to the competent authority for regularization. This happened in the year 1992 when the Executive Engineer, EM & RE Division, Poonch sent a communication to the Superintending Engineer, EM & RE Wing, Poonch bearing No. 310-11 dated 19.05.1992. So far as other nine employees who fulfilled both the eligibility conditions viz.-a-viz. the age and qualification were immediately regularized. The case of Mohd. Bashir and Ashok Kumar, however, remained pending with their Administrative Department and never reached the competent authority for taking appropriate decision. The matter with regard to the regularization of Mohd. Bashir and Ashok Kumar also came up for consideration before the Departmental Promotion Committee [“DPC”] of PDD, Jammu in its 69th meeting held on 31.03.2010. The DPC recommended the case of both the employees for regularization w.e.f. the date of eligibility as per Government Order of 1989 and the said recommendations were forwarded to Development Commissioner vide order dated 03.06.2010. The Development Commissioner, in turn, forwarded the case recommended by DPC to the competent authority for age relaxation.
7. When nothing was done at the level of competent authority, both the employees filed a writ petition being SWP No. 1279 of 2012 before this Court which, on transfer to the Tribunal, was registered as TA No. 3198/2020. The TA (supra) was disposed of by the Tribunal vide its order dated 24.12.2021 directing the petitioners

herein to treat the petition as representation and pass appropriate orders, keeping in view the letters dated 31.12.2021, 03.06.2010 and the Government Order of 1989.

8. In compliance with the directions passed by the Tribunal, the representation of both the employees came to be considered by the Chief Engineer, Distribution (JPDCL), Jammu, who vide Order No. CEJ/Adm/Court/DPC/65 of 2022 dated 12.07.2022 rejected the same on the ground that as per the opinion rendered by the Department of Law, Justice and Parliamentary Affairs, the case of the erstwhile employees of the PDD abovementioned i.e. predecessor-in-interest of the respondents could not be considered for regularization for the reason that they had attained the age of superannuation and the Government Order on which they were seeking regularization had ceased to exist. It is this consideration order which was called in question by the respondents in OA No. 1711/2022, which the Tribunal has allowed in terms of the judgment impugned.
9. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the judgment rendered by the Tribunal, impugned in this petition, does not suffer from any error of facts and law and, therefore, cannot be interfered with by this Court while exercising its extraordinary jurisdiction vested under Article 226 of the Constitution of India.
10. The facts are not in dispute. The predecessor-in-interest of the respondents namely Mohd. Bashir and Ashok Kumar were both

entitled to the benefit of regularization under the Government Order of 1989, subject to relaxation of their age. The Government Order of 1989 itself provided for age relaxation, which was to be granted by the Chief Minister in Co-ordination. For facility of reference, Paragraph 2 of the Government Order of 1989 is set out below:

“All cases of non gazette appointments where an incumbent did not fulfill the prescribed qualifications and/or was over aged by more than one year as on the date of adhoc appointment shall be submitted to the Chief Minister in Co-ordination for cases for relaxation with sufficient reasons and justification seeking such relaxation. All such cases shall be sent to the General Administration Department in a consolidated manner by each department with a period of one month and no individual case shall be entertained in the General Administration Department.”

11. It is in the light of aforesaid provision in the Government Order of 1989, the DPC recommended the case of the respondents with the request for age relaxation in the year 2010 but no decision on the recommendations of the Chief Engineer/DPC was taken during the life time of the employees. Needless to say that, in the meantime, not only they retired from the adhoc service but they also left for heavenly abode, leaving their legal heirs to fend for the right which they had been agitating throughout their service career.
12. Since the recommendations made by the Chief Engineer in the year 2010 remained pending before the competent authority without decision for more than one decade, as such, we are of the firm opinion that it is a fit case where the relaxation in their age shall be deemed to have been granted by the competent authority.

13. The Tribunal has taken note of all these aspects of the matter including the inordinate delay committed by the petitioners in taking decision with regard to the regularization and has come to the rescue of the legal heirs of the deceased employees by allowing their OA with the directions which we have already adverted to hereinabove.
14. Before we put our imprimatur to the decision of the Tribunal, we would like to deal with the two grounds taken by the petitioners to reject the claim of the deceased employees.
15. The plea of the petitioners, that the case of the deceased employees/predecessor-in-interest of the respondents herein cannot be considered for regularization at this stage as both the employees have attained the age of superannuation, is totally ridiculous and preposterous to say the least. The right to regularization, subject of course to the relaxation of age by the competent authority, accrued to both the deceased employees w.e.f. 11.09.1989. This Government Order had one time operation and, therefore, its existence and non-existence is insignificant. Otherwise also, a vested and accrued right cannot be taken away subsequently by any executive order or instructions, that too, when such executive order or administrative instructions are not even retrospective in operation. As a matter of fact, no such order rescinding Government Order of 1989 was brought to our notice.
16. That similarly, the other plea of the petitioners that formed the basis of rejection of the claim of the deceased employees to the extent that no regularization can be ordered after superannuation is equally

preposterous and needs to be noticed only for rejection. Not only the right to regularization, subject to age relaxation under the Government Order of 1989 accrued to both the deceased employees during their service career but also the delay, if any, committed by the petitioners to take a decision on the recommendations of the DPC for according relaxation on the analogy of similarly situated persons cannot work to the advantage of the petitioners and to the prejudice of deceased employees. As a matter of fact, when no decision was taken on the recommendations of the DPC made in the year 2010, it was a case of deemed relaxation.

17. Be that as it may, both the grounds enumerated in the order impugned before the Tribunal to reject the claim of the deceased employees for their regularization w.e.f. 11.09.1989 are devoid of any substance and have rightly been rejected by the Tribunal.

18. For the reasons given above, we fully concur with the view taken by the Tribunal. For all these reasons, **we dispose of this petition by providing as under:**

- i. **The deceased employees namely, Mohd. Bashir and Ashok Kumar are entitled to regularization of their services w.e.f. 11.09.1989 and the relaxation in their age as was required in their case shall be deemed to have been granted by the competent authority.**
- ii. **The respondents herein who are claimably the legal heirs of the deceased employees shall be entitled to all monetary benefits accruing as a result of this regularization.**

19. The petitioners shall pass formal orders of their regularization w.e.f. the date of their entitlement i.e. 11.09.1989 within a period of two months and release in favour of the respondents herein all the

arrears of salary and other post-retiral benefits that would accrue to the respondents consequent upon the regularization of Mohd. Bashir and Ashok Kumar w.e.f. 11.09.1989.

20. **The judgment of the Tribunal to the extent aforesaid is modified to introduce clarity.** It is made clear that the aforesaid exercise be completed by the petitioners within the timeframe abovementioned from the date of passing of this order, failing which, the entire arrears shall become payable to the respondents along with 6% interest per annum to be reckoned from two months hereinafter.

JAMMU
19.09.2025
Manan

