Serial No.01
REGULAR LIST

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) 1173/2025 CM(3095/2025

FAROOQ AHMAD WANI …Petitioner/Appellant(s)

Through: Mr. Gulzar Ahmad Bhat, Advocate

Vs.

UT OF JK AND OTHERS ...Respondent(s)

Through: Mr. Ilyas Nazir, GA

CORAM:

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

ORDE R
31.05.2025

Sanjeev Kumar-J (Oral):

1. This is a petition under Article 226 of the Constitution of India filed by the petitioner to assail an order and judgment dated 27th September, 2024, passed by the Central Administrative Tribunal (CAT), Srinagar Bench ["the Tribunal"] in TA No. 3355 of 2020 (SWP No. 2283 of 2012) titled ***"Farooq Ahmad Wani Vs. State of JK & Ors.",*** whereby the Tribunal has dismissed the petition filed by the petitioner seeking a direction to the respondents for compassionate appointment in lieu of his brother, a serving police personnel killed by the militants on 11th February, 2003, at Rajpura Chowk, Pulwama.

2. Briefly put, the facts leading to the filing of this petition are that the younger-brother of the petitioner, Constable-Mohammad Ramzan Wani, died in harness on 11th February, 2003, when he was martyred by the militants at Rajpura Chowk, Pulwama. The deceased Constable left behind his aged father and two brothers, namely Ghulam Nabi Wani and

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Farooq Ahmad Wani. Immediately after the death of the brother of the petitioner, a sum of Rs. 11.00 lacs was received by the father of the deceased, along with a regular family pension. The other brother of the petitioner namely Ghulam Nabi Wani was a government employee in the Jammu & Kashmir Government. The petitioner himself was an able-bodied person aged more than 37 years. Apparently, there was none in the family of the deceased dependent upon his earnings. However, with a view to getting employment in the Government, the petitioner submitted an application to the Competent Authority under SRO 43 of 1994. When this application was not considered, the petitioner filed SWP No. 345/2007, which was disposed of by the learned Single Judge of this Court vide order dated 1st March, 2008, with a direction to the respondents to consider the claim of the petitioner for appointment on compassionate grounds. The matter came up for consideration before the respondents who vide consideration order dated 19th May, 2009, rejected the same on the ground that the petitioner was overage at the time of submission of application.

3. Feeling aggrieved by the rejection order dated 19th May, 2009, the petitioner filed SWP 2283/2012 which on transfer to the Tribunal was numbered there as TA No. 3355/2020. The TA was contested by the respondents, who in their reply affidavit took the plea that at the time of submission of application, the petitioner was thirty-eight (38) years old and, therefore, his claim was rejected being overaged. It was also the stand taken by the respondents that the compassionate appointment is provided to a member of a family of a deceased who was dependent on his earnings, and in the case of the petitioner, his one brother was already

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in government employment, whereas the father was getting regular pension after the death of the deceased.

4. The Tribunal, having heard both the sides and considering the material on record, came to the conclusion that the petitioner was not entitled to compassionate appointment under SRO 43 of 1994, and vide the impugned order and judgment, dismissed the TA No. 3355/2020. In support of his decision the Tribunal relied upon a judgment of the Hon'ble Supreme Court passed in the case of **State of Karnataka Vs. Somyashree 2021 (12) SCC 20.**

5. The petitioner is aggrieved by the impugned judgment of the Tribunal and has assailed the same on the ground that the Tribunal has not appreciated the position of law in correct perspective. It is submitted that 'brother' in terms of Rule 2 of the Jammu and Kashmir (Compassionate Appointment), Rules, 1994, is a family member and, therefore, entitled to compassionate appointment. It is further submitted by the learned counsel for the petitioner that his case was accepted in principle by the Department and recommended to the General Administration Department (GAD) for age relaxation. However, the GAD arbitrarily and without disclosing any reasons rejected the recommendations made by the Home Department. He, therefore, submits that in the given facts and circumstances, the Government in GAD is required to be directed to grant relaxation in age with a view to enabling the Home Department to issue a formal order of appointment.

6. *Per contra*, Mr. Ilayas Laway, learned GA supports the judgment of the Tribunal on all fours. He submits that the petitioner, being a major brother aged 37 years, cannot be treated as a family member dependent

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upon the earning of the deceased and, therefore, the claim of the petitioner for compassionate appointment is not tenable under the provisions of SRO 43 of 1994.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Tribunal is perfectly legal and does not call for any interference by us in these proceedings under Article 226 of the Constitution of India. Admittedly, the deceased at the time of his death left behind his father and two major brothers. The father received ex-gratia payment of Rs. 11.00 lacs and also the family pension in lieu of the death of his son, who was killed by militants while performing his duties as a Constable. One of the brothers, namely Ghulam Nabi Bhat is already in the government employment. It is, therefore, difficult to assume that because of the untimely death of the deceased Constable, the family plunged into unprecedented financial crises.

8. Whether brother of deceased Government employee is entitled to compassionate appointment is a question clearly answered by Rule 2 of the Jammu and Kashmir (Compassionate Appointment), Rules, 1994 ["the Rules"], issued vide SRO 43 of 1994. Rule 2 reads thus:-

> ***"2. Application of rules: -*** *These rules shall apply to the compassionate appointment of a person who is a family member of: -*
> *(i) a Government employee who dies in harness other than due to militancy related action ;*
> *(ii) a Government employee who dies as a result of militancy related action *[or due to enemy action on the line of Actual Control/International Border within the State of Jammu and Kashmir] and is not involved in militancy related activities:*
> *iii) a civilian who dies as a result of militancy related action*[or due to enemy action on the line of Actual Control/International Border within the State of Jammu and Kashmir] not involved in militancy related activities and total income of the family from all sources does not exceed ***Rs. 5000/-per month as assessed by the*

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Revenue Officer not below the rank of an Assistant Commissioner;

*(iv) ** [A member of the Armed Forces not above the rank of Junior Commissioned Officer or a member of Paramilitary Forces of equivalent rank who is a permanent resident of State and is killed while discharging the duties in connection with law and order in the State of Jammu and Kashmir or as a result of enemy action on the Line of Actual Control/*[International Border]*

Explanation: — For purposes of these rules.

(a) 'Armed Force' means Navy, Military, Air Force;

(b) 'Para Military Force' means a force constituted under any law for the time being in force made by the Competent Legislature;

(c) 'Permanent Resident' means the permanent resident of the State of Jammu and Kashmir as defined section 6 of the Constitution of Jammu and Kashmir;

*(d) 'Family Member means spouse, son, daughter, adopted son, adopted daughter, sister or brother *[xx] dependent on the deceased."*

9. In terms of Rule 2 of the Rules, compassionate appointment is provided to a family member of a government employee who dies in harness or as a result of militancy related action, provided such employee is not involved in any militancy related activities. Indisputably, the deceased was serving as a constable in the J&K Police and was not involved in any militancy related activities. There is also no dispute that he was killed by militants while performing his duties. Going by the provisions of Rule 2, one of the family members of the deceased government employee was entitled to compassionate employment.

10. However, a family member as defined in explanation (d) appended to the Rule 2 makes a family member eligible to claim compassionate appointment provided he is found dependent upon the earnings of the deceased. Indisputably 'brother' is a member of family and, therefore, would be eligible for compassionate appointment provided he was dependent upon the deceased Government employee We have no doubt that even a minor brother or disabled brother may be dependent upon the

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earning of his brother. However, in the instant case the petitioner is an able bodied person, now of more than forty (40) years and was above thirty-seven (37) at the time he submitted an application for compassionate appointment cannot claim to be dependent on his deceased brother. It also cannot be claimed by the petitioner that because of untimely death of the deceased constable the family was pushed into financial crises. Otherwise, also in this case the brother of the petitioner died on 11.02.2003 and we are now in the year 2025, the family has survived all these years. Having regard to the object underlying the provision of compassionate appointment under the Rules of 1994, we are of the considered opinion that the view taken by the Tribunal is correct and unexceptionable.

11. For the reasons which we have given and also for the reasons indicated by the Tribunal in the judgment impugned, we find no merit in this petition and the same is, accordingly, **dismissed.**

(SANJAY PARIHAR) **(SANJEEV KUMAR)**
JUDGE **JUDGE**

SRINAGAR:
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Whether the Order is approved for reporting? Yes/No.

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