

GOVERNMENT OF JAMMU & KASHMIR  
DIRECTORATE OF FOOD CIVIL, SUPPLIES AND CONSUMER AFFAIRS  
KASHMIR

Sub: Creation of separate seniority lists for the same category and class of staff of the FCS&CA Kashmir - Withdrawl thereof

Order No.: ~~322~~ DFCS&CAK of 2022  
Dated: -22-03-2022

Whereas, vide notification No. DFCS&CAK/Adm/B-X-306 dated 04.06.2020, a fresh tentative seniority list of Assistant Storekeepers-cum-Clerks carrying substantive pay scale of Rs.5200-20200 + GP Rs.1900/- (Revised 19900-63200 - L2) was issued for the information of employees and inviting of objections thereof. The officials falling under the said Class/ category were advised to file objections within a period of twenty-one (21) days from the date of issuance of the notification, whereafter no objection could be entertained;

Whereas, objections were received by this Directorate from some employees projecting therein that the seniority list in respect of ministerial and executive cadres be separated;

Whereas, subsequently counter objections were received from other employees stating that a common seniority list be maintained in respect of same category /class of employees as department has been doing in the past;

Whereas, the objections so received from the employees were forwarded to Administrative Department vide letter No. DFCS&CAK/Adm/B-X-127-II dated: 14.08.2020 for conveying necessary orders / guidance in the matter;

Whereas, the Administrative Department vide letter No.FCS&CA/Est/22/2020 dated 09.10.2020 directed to complete the process of notifying final seniority for ministerial / executive cadres (Non-Gazetted) separately on the basis of Schedule-I of the J&K Food, Civil Supplies & Consumer Affairs (Sub ordinate) Service Recruitment Rules, 1972 read with SRO 760 of 2019 dated 25.10.2019;

Whereas, subsequently in reference to above mentioned letter dated 09.10.2020 of Administrative Department, a notification vide No. DFCS&CAK/Adm/B-X-306 dated 05.12.2020 was issued for information of interested eligible employees of the department to exercise their option either for Executive or for Ministerial cadre as per option form (enclosed with the said notification) within a period of fifteen (15) days;

Whereas, said notification dated 05.12.2020 was challenged by Mr. Mudasir Mushtaq and others, through the medium of an Original Application (OA) No. 13/2021, titled Syed Muddasir Mushtaq Vs. UT of J & K before the Ld. Central Administrative Tribunal (CAT) at Jammu;

Whereas, the Ld. Tribunal vide order dated 22.02.2021 stayed the notification No. DFCS&CAK/Adm/B-X-306 dated 05.12.2020;

Whereas, the matter was referred to Assistant Legal Remembrancer of this department for opinion, who opined that the process initiated at the Directorate Level to seek option from the employees (of subordinate service) is neither warranted by the "Jammu & Kashmir Food and Supplies (Subordinate) Service Recruitment Rules 1972 and Schedule I appended to it, nor by the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules 1956 or Administrative Department's letter No. FCS&CA/ Est/ 22/2020 dated 09.10.2020;

Whereas, the sub para 4 of para 6 Jammu & Kashmir Food and Supplies (Subordinate) Service Recruitment Rules 1972 notified vide SRO 79 dated 10.02.1972 reads that:-

*"Persons appointed to the service prior to the commencement of these rules shall be deemed to have so appointed under these rules.*

*Provided that persons who have held both ministerial and executive wings before the commencement of these rules shall be given an option of selecting one of the wings and the option shall exercised within three months from the date these rules come into force. In case no option is exercised within the prescribed period, it will be presumed that they opted for the wing in which they are actually working on the date these rules come into force. These rules will have prospective application and not retrospective. The option once exercised shall be treated as final.*

*Provided further that the option may be accepted by the Administrative Department subject to availability of posts in the respective wings of the service";*

Whereas, the option could be exercised by those employees who were already working at the commencement of the rules and such an option could not be exercised by the employees recruited in terms of the Recruitment rules of 1972. And importantly such an exercise is neither acceptable under Jammu and Kashmir Civil Service classification, Control and Appeal rules nor by the Schedule I appended to Jammu and Kashmir Food Supplies (Subordinate) Service Recruitment rules and allowing the same would result into creation of two classes within the same class/ category / grade";

Now, therefore, the matter having been considered in light of the rules, it is found that the process initiated at the Directorate Level, in terms of DFCS&CAK/Adm/B-X-306 dated 05.12.2020 for seeking of option from the employees (of subordinate service) is neither warranted by the "Jammu & Kashmir Food and Supplies (Subordinate) Service Recruitment Rules 1972 and Schedule I appended to it, nor by the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules 1956 or Administrative Department's letter No. FCS&CA/ Est/ 22/2020 dated 09.10.2020 and therefore, in view of above, the notification issued vide No. DFCS&CAK/Adm/B-X-306 dated 05.12.2020 is hereby withdrawn ab-initio.

  
Director,  
Food Civil Supplies & CA Deptt.,  
Kashmir

No.: - DFCS&CAK/Adm/B-X-306

Dated:-22-03-2022

Copy to the:-

1. Commissioner / Secretary to Government - FCS&CA, J&K Civil Secretariat, Jammu/Srinagar for information.
2. Chief Accounts Officer - FCS&CA Department Kashmir for information and necessary action.
3. All Deputy Directors - FCS&CA Department Kashmir for information and necessary action.
4. All Assistant Directors - FCS&CA Department Kashmir for information and necessary action.
5. Assistant Legal Remembrancer - FCS&CA Department Kashmir for information and necessary action.
6. In-charge Departmental Website - FCS&CA Department, Kashmir with the directions to upload the order on the departmental website immediately.
7. Notice Board.