



## GOVERNMENT OF KERALA

### Abstract

Home Department- Order dated 19.03.2024 of Hon'ble Kerala Administrative Tribunal in OA No.408/2024 filed by Smt. Renuka S B, Assistant Public Prosecutor (Senior Grade) -Complied with- Orders issued.

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### HOME (S) DEPARTMENT

G.O.(Rt)No.1734/2024/HOME Dated,Thiruvananthapuram, 24-06-2024

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- Read 1. GO(P) 141/86/GAD, dated 30/4/1986
2. GO(P)25/97/P&ARD, dated 25/11/1997
  3. Circular No. 8130/Adv-C3/10/P&ARD dated 24/2/2012
  4. GO(P) No. 6/2018/Home, dated 22/01/2018
  5. GO(Rt).No.1211/2019/Home, dated 03.05.2019
  6. GO(P) No. 26/2020/Home, dated 06/05/2020
  7. GO(Rt) No. 1730/2020/Home, dated 06/08/2020
  8. GO(Rt) No. 1167/2021/Home, dated 19/04/2021
  9. GO(P) No. 32/2023/Home, dated 29/03/2023
  10. GO(Rt) No. 1235/2023/Home dated 15/05/2023
  11. G.O(Rt)No.617/2024 /Home dated 29/02/2024.
  12. Order dated 19.03.2024 of Hon'ble Kerala Administrative Tribunal in OA No.408/2024 filed by Smt. Renuka, Assistant Public Prosecutor (Senior Grade)

### ORDER

Smt. Renuka, S. B., presently working as Assistant Public Prosecutor (Senior Grade) in Judicial First Class Magistrate Court-I, Nedumangad, was promoted to the cadre of Assistant Public Prosecutor Gr.I w.e.f. 29.08.2017 and subsequently to the post of Assistant Public Prosecutor (Senior Grade). Based on complaints by other incumbents regarding seniority issues in the said cadre, Government undertook a comprehensive review of the promotion including that of Smt. Renuka. On detailed scrutiny, it was found that there were procedural lapses and discrepancies in the promotion process. In the interest of maintaining fairness, the government took corrective measures by modifying the date of effect of promotion of Smt.Renuka,S,B. to the cadre of Assistant Public Prosecutor Gr.I as 19.08.2018,the date on which she completed her probation in the cadre of Assistant Public Prosecutor Gr II, instead of 29.08.2017. Besides, the subsequent promotion of Smt. Renuka S.B to the post of Assistant Public Prosecutor Sr.Gr. was also deemed irregular and was therefore cancelled. Excess pay drawn by her on account of the irregular promotions was ordered to be recovered as per Government Order read as 11<sup>th</sup> paper (Annexure A9) above.

2. Aggrieved by the Order, Smt.Renuka S.B filed the OA No.408 of 2024 before the Hon'ble Tribunal. As per judgement of the Hon'ble Tribunal read as 12<sup>th</sup> paper above, Secretary to Government,Home Department, the 1<sup>st</sup> respondent, was directed to consider the question afresh and take a decision in accordance with law, after affording an opportunity of hearing to the applicant, the additional respondents as well as any other parties who were likely to be affected, taking note of all the contentions to be raised by the respective parties. It was also directed that the Order should be passed within a period of 3 months.

3. Accordingly, as authorized, Under secretary to Government, Home (S) Department heard the petitioner in person on 08.04.2024. The Counsel for the petitioner also appeared for the hearing.

4. The main submissions made by the Counsel of the petitioner during the hearing are as follows:

*(i) She had passed the test prescribed for successful completion of probation in the cadre of APP Gr.2 on 19/08/2018 and accordingly her probation in the cadre of APP Gr.2 had been declared to have completed successfully on the FN of 19/08/2018 as per the order read as 5th paper above. She was thereafter included in the select list of APP Gr.2 fit for promotion to the post of APP Gr.1 for the year 2018 published, as per the order read as 6th paper above as SI. No. 10. Accordingly, she was promoted to the cadre of APP Gr.1 w.e.f. 29/08/2017 in the then existing vacancy as per the order read as 7th paper above. Her probation in the, cadre of APP Gr.1 was declared to have satisfactorily been completed w.e.f. the AN of 28/02/2018 as per the order read as 8th paper above. She was thereafter included in the select list of APP Gr.1 fit for promotion to the post of APP (Senior Grade) for the year 2023 approved as per the order read as 9th paper above. She was accordingly promoted to the post of APP (Senior Grade) as per the order read as 10th paper above.*

*(ii) As per Rule 9(2) of the Special Rules issued as per the order read as 4<sup>th</sup> paper above, every person appointed to APP Gr.2 shall be on probation for a total period of two years on duty within a continuous period of three years from the date on which he joins duty. Rule 9 (1) prescribes that every person appointed to categories I to 4 shall be on probation for a total period of six months on duty within a continuous*

*period of one year from the date on which he joins duty. Rule 11 prescribes that every person appointed to category 5 (APP Gr.2) shall within the period of probation, pass the Account Test for Executive Officers of the State or Account Test (Lower) of the Kerala State if he has not already passed any of those tests.*

*(c) Smt. Renuka is a member of the scheduled caste community. Rule 13(a) Part II KS&SSR states that 'No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules. However, Rule 13 A (1)(a) Part II KS&SSR provides that 'Notwithstanding anything contained in rule 13 where a pass in a special or departmental test is prescribed by the Special Rules of a service for any category, grade or post therein or in any class thereof, a member of a service belonging to any of the scheduled castes or scheduled tribes who has not passed the said test but is otherwise qualified and suitable for appointment to such class, category, grade or post may be appointed thereto temporarily. The above rule provides for temporary appointment of members of scheduled caste/tribe employees to higher post giving exemption of three years for acquiring the test qualification prescribed under Rule 13. It is also the well settled principle of law that exemption from passing special or departmental test is applicable to the test if any prescribed for declaration of probation also.*

*(d) The applicability of Rule 13A(1)(a) of KS&SSR in view of the non-existence of any such exemption in the Special Rules was often challenged in courts and it was categorically held in all such cases that the temporary exemption clause in KS&SSR will only prevail over the*

*Special Rules. In Ramamoorthy V. State of Kerala, 1991 KHC 212, it was held that the members of scheduled castes and scheduled tribes can claim promotion and also get probation cleared by the exemption granted under Rule 13A. The Division Bench of the High Court in Anсад v. State of Kerala 2005 KHC 15, held that this temporary exemption provided in Rule 13A is applicable to special tests which are essential qualifications prescribed under Special Rules.*

*(e) Therefore, it is obvious from the aforementioned facts that the Smt.Renuka is legally entitled to get exemption from test qualification prescribed for declaration of probation temporarily for a period of three years and she shall be treated as a probationer for a continuous period of six years from 09/02/2015, the date of joining duty till 09/02/2021. She is also entitled to get temporary promotion to higher grades as if she had passed the prescribed test for successful completion of probation. Hence, it can be inferred that, she was rightly included in the select list of APP Gr.2 for promotion to the post of APP Gr.1 and she was promoted temporarily to an existing vacancy w.e.f. 29/08/2017. Such temporary promotion was regularized on passing of the prescribed tests and declaration of probation w.e.f. 19/08/2018, within 3 years and 6 months since her joining duty and within one year from the date of her assignment of promotion i.e. 29/08/2017.*

5. Government have examined the matter in detail. Rule 13AA of Part-II, KS&SSRs authorizes the Government to issue order, exempting for a specified period, any member belonging to SC/ST and already in service, from passing the tests referred to in rule 13 or rule 13 A of the said rules. The purpose of the said rule was to ensure statutory protection to GO(Ms) No. 22/PD dtd 13/1/1972 granting temporary exemption to SC/ST employees for a period of two years from passing departmental

tests. Subsequently, in rule 13 AB, orders issued under rule 13 AA were made applicable to SC/ST employees who entered service after 13/1/1972 also. In the order read as 1<sup>st</sup> paper above, it was ordered that the benefit of orders issued under rule 13 AA was not permissible to SC/ST employees who entered service on or after 1/1/1986. In the order read as 2<sup>nd</sup> paper above, reiterating the above provision, it was further ordered that benefit of the orders issued under rule 13 AA was applicable to promotion tests as well as probation tests.

6. Since SC/ST employees who entered service on or after 1/1/1986 are not covered under the orders issued under rule 13 AA, in their case, the only applicable benefit is the temporary exemption granted as per rule 13A(1)(a) of Part II KS&SSRs, as given below;

" (a) Where a pass in a special or departmental test is prescribed by the Special Rules of a service for any category, grade or post therein or in any class thereof, a member of a service belonging to any of the Scheduled Castes or Scheduled Tribes who has not passed the said test but is otherwise qualified and suitable for appointment to such class, category, grade or post may be appointed thereto temporarily."

7. The rule specifically states that where a pass in a special or departmental test is prescribed by the Special Rules for appointment to a post, a member of service belonging to any of the Scheduled Castes or Scheduled Tribes who has not passed the test but is otherwise qualified and suitable for appointment to the post, may be appointed temporarily to the post. As per rule 28(a) of Part-II, KS&SSRs, a person is not eligible for promotion to a post unless he has satisfactorily completed his probation in the feeder category. Since satisfactory completion of probation in the feeder category is a necessary pre-condition to be

satisfied before promoting a person, the term 'otherwise qualified and suitable for appointment' in the above rule includes satisfactory completion of probation in the feeder category also. Therefore, from the wording of the rule itself, it is clearly evident that benefit of temporary exemption as per rule 13 A(1) is not applicable to departmental tests which are prescribed for satisfactory completion of probation in a category. In accordance with the said rule position, Government issued Circular read as 3<sup>rd</sup> paper above wherein it was clarified that temporary exemption as per rule 13 A(1)(a) is applicable to SC/ST employees who have entered service on or after 1/1/1986 and who have successfully completed probation, but has not acquired test qualification for promotion.

8. Smt. Renuka passed the test prescribed for successful completion of probation in the cadre of APP Gr.2 on 19/08/2018 and at the time of her promotion to the cadre of APP Gr.1 on 29/8/2017, she had not passed the test prescribed for declaring her probation as stipulated in the Special Rules. Since she entered service after 1/1/1986, orders issued under rule 13 AA, 13 AB and the provisions contained in the order read as 2<sup>nd</sup> paper above are not applicable in her case. The judgment in V.M. Ramamoorthy V State of Kerala (1991(1) KLT 838) is related to the orders issued under rule 13 AA and 13 AB and hence, cannot be applied in her case. Since Smt. Renuka had not successfully completed her probation in the cadre of APP Gr II at the time of her promotion (w.e.from 29/08/2017), she is not eligible for the benefit of temporary exemption as per rule 13A(1)(a) of Part II KS&SSRs and as clarified vide Circular read as 3<sup>rd</sup> paper above. Thus the plea of the petitioner cannot be considered and the same is hereby rejected.

9. In the above circumstances, the Government hereby order as follows:

(a) The date of effect of promotion granted to Smt. Renuka S.B to the post of APP Gr.I as on 29.08.2017, vide Order read as 7<sup>th</sup> paper above is modified and corrected as 19.08.2018, the date on which she completed her probation in the cadre of APP Gr.II. The Director General of Prosecution shall take necessary action for recovering the excess salary drawn by her in the promoted post. The order read as 7<sup>th</sup> paper above stands modified to the above extent.

(b) Since Smt Renuka is not eligible for promotion to the post of Assistant Public Prosecutor Senior Grade, the promotion granted to her to the post of Assistant Public Prosecutor Senior Grade vide the order read as 10<sup>th</sup> paper above is cancelled. The Director General of Prosecution shall take necessary action for recovering the excess salary drawn by her in the promoted post. The order read as 10<sup>th</sup> paper above stands modified to the above extent.

(c) The Director General of Prosecution shall submit a proposal before the Departmental Promotion Committee for excluding Smt Renuka from the select list of Assistant Public Prosecutor Grade I published in 2023 vide the order read as 9<sup>th</sup> paper above and for including her in the select list of Assistant Public Prosecutor Grade I for the year 2024, after assessing her eligibility so as to promote her to the post of APP Senior Grade.

(d) Accordingly there will be alterations in the seniority list published as per G.O(Ms)No.231/2023/Home, dated 07.11.2023. The Government will revise the seniority list in consultation with the Director General of Prosecution



10.The Order dated 19.03.2024 of the Hon'ble Kerala Administrative Tribunal in OA No.408/2024 read as 12<sup>th</sup> paper above is thus complied with.

(By order of the Governor)  
NAVIN KRISHNAN G I  
JOINT SECRETARY

To:

The Advocate General, Kerala, Ernakulam (With C/L)

The Director of Prosecution (Admn), Ernakulam

Smt. Renuka S B Assistant Public Prosecutor (Senior Grade), JFCMC-I,  
Nedumangad, Thiruvananthapuram.

The Principal Accountant General (Audit/A&E), Kerala,  
Thiruvananthapuram.

Personnel &Administrative Reforms Department (Vide Note No.Adv-  
A1/116/2024-P&ARD, dated 20/05/2024).

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Signed by

Sheena. S

Date: 24-06-2024 15:31:35

Section Officer