

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 61/46/2020

Order reserved on 04.02.2021

Order pronounced on 22.02.2021



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

HON'BLE MR. ANAND MATHUR, MEMBER (A)

Nirmal Singh Age 34 years, S/o Sh. Darshan Singh, R/o H. No. 126, Rampura,
Gandhi Nagar, Jammu.

.....Applicant

(Advocate: Mr. Abhinav Sharma)

Versus

1. State of J&K through Commissioner/Secretary to J&K Govt. School Education Department, Civil Secretariat, Jammu.
2. Director School Education, Jammu.
3. Chief Education Officer, Jammu.
4. Jammu and Kashmir Services Selection Board Through its Secretary, Sehkari Bhawan, Rail Head Complex Jammu.
5. Monika Kesar D/o Sh. Lok Nath Kesar R/o 42-B, Subash Nagar, Digiana, Jammu.
6. Sakshi Gupta, D/o Sh. Yash Pal Gupta, R/o H. No. 410, Sector-1, Nanak Nagar, Jammu.
7. Gourav Sharma, S/o Sh. Kesho Ram Sharma R/o H. No. 10, Lane No. 1, Near Church, Amit Nagar, Muthi, Jammu.
8. Gurmeet Kour D/o S. Mohinder Singh, R/o Makhanpur Gujran, P.O. Rattian, Tehsil R.S. Pura, District Jammu.
9. Meenakshi Abrol D/o Sh. Vijay Kumar Abrol, R/o Plot No. 82, Greater Carmel Convent School Kunjwani, Bye-Pass, Jammu.
10. Meenakshi Kachroo C/o Sh. Atul Gupta, R/o F-468 Roalki, Bakshi Nagar, Jammu Tawi.
11. Nutan Dullu, D/o Sh. Tej Krishan Dullu, R/o H. No. 121, Amar Colony Camp Road, Phase-2, Talab Tillo, Jammu.
12. Sadhana Sharma D/o Sh. Onkar Nath Sharma, R/o H. No. 35, Sector-3, JDA Housing Colony, Upper Roop Nagar, Jammu.
13. Sandeep Sharma, S/o Sh. Girdhari Lal Sharma, R/o Laxmupuram Sector-B, H. No. 43, Lane No. 2 Chinore Bantalab, Jammu.
14. Sheetal Gupta, C/o Sh. Amit Malgotra, R/o H. No. 37, Sector-1, Trikuta Nagar, Jammu.
15. Sheetal Gupta, D/o W/o Sh. Surinder Pal Gupta, R/o House No. 86, Sector No. 5, Nanak Nagar, Jammu.

16. Simranpal Kour, D/o Retd. Prof. Harbhan Singh, R/o Akali Kour Singh Nagar, Digiana, P.O. Gangyal, Jammu.
17. Supinder Kour, D/o W/s S. Birender Singh, R/o H. No. 63, New Adarsh Enclave, Opp. CRPF HQ Preet Nagar, P.O. Gangyal, Jammu.
18. Vaneet Kour, D/o W/o S. Anmol Singh, R/o Simbal-3, Miran Sahib, Jammu.
.....Respondents



(Advocate: Mr. Sudesh Magotra, Id. Deputy Advocate General)

(ORDER)

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member-J

1. Case of Applicant Nirmal Singh, in short, in the present T.A. is that he seeks the quashment of the selection list whereby the private respondents have been selected for the post of Teacher, District cadre Jammu pursuant to Notification No. 05 of 2013 dated 02.03.2013. Applicant seeks the following reliefs:

- i. Sub-rule (1) of Rule 14 of J&K Civil Services Decentralization and Recruitment Rules, 2010 recast by SRO 342 of 2013 dated 22.07.2013 be declared ultra vires.
- ii. Quash the criteria adopted by SSB for the purpose of selection to the post of teachers.
- iii. Quash the selection list of the private respondents for the post of teachers, district cadre Jammu.
- iv. Declare J&K Services Selection Board (Business and Procedure) Regulations, 2013 to be ultra vires the Constitution.
- v. Direct the respondent Board to re-evaluate the OMR sheets of applicants and selected candidates of OM category by an impartial agency.
- vi. Restrain Respondent 1, 4 and 5 from issuing appointment orders of the private respondents.
- vii. Direct the respondents to select the teachers in accordance with procedure and mechanism provided in original rule 14 (1) of SRO 375 dated 21.10.2010 and also select the applicant as teacher.
- viii. Direct respondents Board to conduct interview of the applicant for second time.
- ix. Direct the respondents to appoint the applicant as a teacher as and when the name of the applicant is recommended by the SSB on the basis of second interview.

2. The prayer in the T.A. is that the Sub-rule (1) of Rule 14 of J&K Civil Services Decentralization and Recruitment Rules, 2010 recast by SRO 342 of 2013 dated 22.07.2013 be set aside. The recast Rule reads as under:

“Sub-rule (1) of Rule 14 shall be recast as under:-

The Services Selection Board shall hold a written test for all the eligible candidates who apply for the advertised post(s). The viva-voce of the eligible candidates shall be conducted by the designated Selection Committee of the Board. The number of candidates to be called for viva-voce shall not be less than three times and more than five times the number of vacancies to be filled up. The final selection shall be made by the Board on the basis of marks/points obtained in viva-voce added to the marks/points obtained in the written test plus the weightage that may be provided for any higher/additional/special qualification (on pro-rata basis).

Provided that where the number of candidates applying for the advertised post(s) is equal to or less than the number of vacancies to be filled up, the written test need not be conducted.”

3. This contention of applicant is to be rejected since the same advertisements and the recast rule as are subject matter of present TA were under challenge and were negatived in SWP No. 3444/2014 titled Shivally Sharma v/s State of J&K by the Hon’ble High Court vide judgment dated 28.04.2015 as below:

“Petitioners and respondents No. 8 to 288, amongst other candidates, have competed for the posts of Teachers District Cadre Ramban as were advertised vide advertisement notice Nos. 03 of 2012 dated 28.12.2012, 05 of 2013 dated 02.03.2013 and 06 of 2013 dated 10.05.2013. When final selection list was made public, petitioners finding themselves excluded have filed the instant petition praying for setting aside the whole selection process and to command the respondents to initiate rational and justified process of selection based on reasonable, logical and realistic criteria giving proper weightage and preference to the higher qualification, further to command the respondents to apply same criteria for selection of teachers as was in vogue on the dates the vacancies had occurred. The selection list of General Line Teachers being illegal and in violation of statutory rules of J&K Civil Services (Decentralization and Recruitment) Rules, 2010, therefore, the respondents No. 6 and 7 shall be restrained from issuing any formal appointment order in favour of selected candidates of District Ramban.”





“10. Learned counsel for the petitioners would submit that the position as existed at the time of advertisement should prevail i.e. Selection Committee should have adhered to earlier Rule 14(1) which provided for restricting the number of applicants for oral and/or written test, as the case may be, to at least five times the number of vacancies on the basis of academic merit in the qualifying examination converted into points on pro rata basis out of the total points allocated for the basic eligibility/qualification and grant of weightage for the higher qualification in the discipline concerned.

11. The argument of learned counsel for the petitioners pales into insignificance on the count that the Proviso to earlier Rule 14(1) would also provide for conduct of written test for short listing the candidates to oral test in the ratio of 1:5. The re-casted Rule 14 mandates conduct of written test and further provides that the number of candidates to be called for interview can be restricted to three times or five times the number of vacancies. Written test in both the cases is permissible and by conducting written test no prejudice is caused to the petitioners. That apart, the petitioners with all calculations, without any demur have participated in the written test and have qualified the same, thereafter have participated in the viva and on failing to make the grade for selection have started to find fault with the selection, which is not permissible. In addition thereto, the candidates have been called for viva in the ratio of 1:5 which was also permissible under earlier Rule 14 as well as re-casted Rule 14, therefore, contention raised is without any merit.

12. Next contention of the learned counsel is that the Regulations have been framed in the year 2013 and notified on 15.10.2013 whereas written test was conducted on 17.09.2013.

13. The said Regulations supplement the mode and method for selection process. Whether Regulations have been notified earlier or later in point of time, the litmus test is as to whether those Regulations have caused any prejudice to the petitioner. Answer has to be "no". Though in the Regulation No. 17 it has been provided that the marks/points allotted to the written test and the viva will be determined by the Board, however, points allotted to the written test shall not be less than 60 points and more than 80 points and the points for viva shall not exceed 20 points whereas Regulation No. 28 provides that the candidates securing minimum 40% and 35% marks in the written test in open and reserved categories respectively or the cut off merit in the ratio of not less than three times

and more than five times the number of vacancies to be filled up, whichever is higher, shall be eligible to be called for viva voce.

14. The Regulations, in effect, provides for determining the criteria. Regulation 28 provides that in the written test candidate must secure 40% in Open Merit category and 35% in the Reserved Category, in a way percentage has been slashed down but that, in any manner, has not affected the rights of the petitioners and even the petitioners have not been able to show that any candidate inferior in merit to them has been selected.”



4. Applicant was short-listed for viva voce for Item No. 470 in 6 of 2013 and item No. 478 in 5 of 2013, as per Notice dated 30.01.2014 (Annexure-D). Private respondents No. 5 to 18 despite not figuring in the notification dated 30.01.2014 appeared twice in the viva voce and were selected as teachers pursuant to notification No. 5 of 2013 as per Select List (Annexure-H). Applicant challenged the select list on the ground that there is no provision of law/rules that a second time interview could be conducted by the Board.
5. With regard to the second interview, the stand taken by the respondents in their counter affidavit is that due to the revised short list of the notification no. 05 of 2013 and 03 of 2012 some of the candidates who were eligible but not interviewed were called for interviews on 9th and 10th September 2015. This stand of the respondents has not been rebutted by the applicant by filing rejoinder affidavit. Hence, the stand of the applicant that the selection list is to be quashed on the ground that private respondents were called for a second interview cannot be accepted.
6. It is the case of the applicant that OMR answer sheets have not been correctly assessed and mistakes, most of them not inadvertent have been committed by the respondent Board in order to give undue benefit to some candidates at the same time, for throwing out of the selection list genuine candidates like the applicant. Applicant's case being that in the written test at least two questions were found to be wrong, and the applicant, who has correctly done 101 questions (each question

carried 1.0112359505 marks) deserved 102.1348310005 marks out of 180 marks earmarked for written test, was awarded only 96.0000554 points. It is stated that 102.1348310005 marks out of 178 would mean securing of 37.2964271 points out of 65, taking the total of the applicant to 56.2964 in the selection process.



7. Regarding the contention of the applicant that he was given incorrect marks, it has been averred by the respondents that vide notice No. SSB/Secy/Sel/0204/743/54 dated 30.1.2014 the Services Selection Board clarified that after conclusion of the written test for the post of teacher which was held on 17.9.2013, discrepancies in two questions were notified and the same were referred to the subject expert. On receipt of expert opinion, the discrepancies were disposed off in accordance with rule XV (17) of J&K SSB Conduct of Examination Rules, 2013 and as a result 180 marks were allotted to 178 questions. Therefore, 1.0112359505 marks have been calculated for one right answer. It is also the stand of the respondents that the applicant has secured 97.0787 (35.0562) marks out of 180 in the written test and not out of 178. Further the applicant were awarded 14 points out of 20 in viva voce hence the allegation of giving undue benefit to some of the candidates is totally false and baseless.
8. It is to be noted that no rejoinder affidavit has been filed by the applicant to rebut the allegation of the applicant that the respondents have committed error in evaluating the OMR sheet and he has been awarded less number of marks. Therefore, the stand of the applicant that his OMR answer sheet was incorrectly evaluated is unacceptable and to be rejected.
9. In view of the facts and circumstances of the case as discussed above, we are of the view that there is no merit in the O.A.. Accordingly the O.A is dismissed. No order as to cost.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-