

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Dated: This 5th day of January 2021HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – JHON'BLE MR. ANAND MATHUR, MEMBER – A

O.A. No. 061/383/2020

Atteq UI Rehman s/o Abdul Rehman r/o Shahadra Sharief, Tehsil Thannamandi, district Rajouri Applicant

By Advocate: Ms. Shivani Jalali, advocate

Versus

1. Jammu and Kashmir Service Selection Recruitment Board, Sehkari Bhawan, Rail Head Complex, Panama Chowk, Jammu through its Chairman.
2. Secretary Service Selection Recruitment Board, Sehkari Bhawan, Rail Head Complex, Panama Chowk, Jammu.
3. Anuradha Manhas d/o Karan Singh Manhas r/o Pallanwala, Khour, Jammu. (deleted from array of respondents) Respondents

By Advocate: Shri Amit Gupta AAG for respondents.

O R D E R

Per Rakesh Sagar Jain, Member (J)

- 1) The present O.A. has been filed by applicant Ateeq UI Rehman under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:
 - a. An appropriate order in the nature of a direction directing the respondent Board to allow the petitioner to appear for document verification for the post of Artist Modeller, GMC, Rajouri advertised vide

Advertisement Notification No. 03/2019/023 dated 1-3-2019 being next in the order of merit.

- b. To direct the respondent Board to submit the report to the appointing authority informing that the selection pursuant to Notification No. 03/2019/023 dated 1-3-2019 could not be completed on account of the failure of the selected candidate, the private respondent to prove her eligibility there by giving a bona fide chance to the petitioner to occupy the vacant slot.
- c. To strike down clause 7 of the Advertisement notification No. 03/2019/001 to 03/2019/041 dated, 1-2-2019 to the extent that it lays an embargo on giving a second chance for document verification and specifically says that any claim what so ever pertaining to the absence of the candidate at the day of document verification would not be entertained at all.
- d. Any other which the Hon'ble Tribunal may deem fit and proper may also be passed in favour of the applicant and against the respondents."

2) The present O.A. has been filed by Ateeq Ul Rehman averring therein that in pursuance of Advertisement Notification dated 01.02.2019, he applied for the post of Artist Modeller and after the written test, applicant and respondent No. 3 were provisionally short listed for Document verification cum Biometric verification. Both applicant and respondent No. 3 were to get their documents verified on 29.10.2019. It is the case of applicant that due to abolition of Article 370, the internet service in J&K was switched off from 05.08.2019, due to which applicant could not attend the Document verification cum Biometric verification scheduled for 29.10.2019. Applicant made efforts to obtain knowledge about the shortlisting notification but due to stoppage of internet could not obtain the information. However, respondent No. 3 appeared for document verification but her recommendation was withheld for production of a certificate in proper format within one month from date of notification (Annexure D).

- 3) It is the further case of applicant that on resumption of internet service in March 2020, applicant got knowledge that he was provisionally shortlisted and to appear for Document verification cum Biometric verification on 29.10.2019. Respondent No. 3 till date has not submitted her certificate. Applicant represented to the respondents to consider his candidature for the post since the selection list has not been acted upon and so his documents be verified by the Document Verification Committee but received no response from the official respondents and even condition No. 7 of notification dated 01.02.2019 that no claim of being unaware of the dates/schedule for the written test/counselling cum document verification shall be entertained is arbitrary and unfair. Hence the present O.A. for directing the respondents to allow the applicant for his document verification and for striking down of clause 7 of the advertisement notification. Applicant seeks interim relief for a direction to the respondents to permit the applicant to appear for document verification and thereafter be eligible for appointment to advertised post.
- 4) In their written statement, respondent No. 1 and 2 have taken the plea that being absent on the date of document verification, applicant and another candidate were declared 'Dis-qualified'. Respondents after completion of the Selection process issued the selection list and forwarded the same to the Indenting department. The Selection process being concluded, there arises no cause of action to the applicant for grant of relief in his favour. The O.A. deserves dismissal.
- 5) On submission of learned counsel for applicants, vide order dated 16.12.2020, respondent No. 3 was deleted from array of respondents. We have heard and considered the arguments and the pleas/point of dispute raised by the learned counsel for applicant and learned AAG for respondents and gone through the material on record.
- 6) In the first instance, applicant says that due to snapping of the internet service, he could not get knowledge of the date of Document verification and Bio-metric verification in terms of Annexure -C conveying the details of the process of Document verification and Bio-metric verification. We are unable to

accept this reasoning of the applicant for his ignorance about the details of the schedule of Document verification and Bio-metric verification since, as per, Notice (Annexure C) informing the candidates about the holding of the process, the notice was to be published in two leading local newspaper on two consecutive dates. The reason advanced by the applicant that the applicant could not acquire knowledge of the schedule of document verification as the internet was his only source of information is improbable and unacceptable.

- 7) Apart from the aforementioned reasons, clause No. 7 of the Advertisement Notification (Annexure-A) lays down that no claim of being unaware of the dates/schedule for the written test/counselling cum document verification shall be entertained but which clause, applicant submits is arbitrary and unfair and needs to be struck down. The record would show that all the candidates including the applicant were aware of the conditions of the selection process. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome, as held by the Hon'ble Supreme Court in catena of judgments, especially in the case of Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521, Hon'ble Apex Court held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non selection. In Madan Lal v. The State of Jammu & Kashmir, [(1995) 3 SCC 486], the Hon'ble Apex Court held as under:

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral

interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

- 8) The aforesaid judgments of the Hon'ble Supreme Court clearly lay down the principle that an unsuccessful candidate, who had gone through the selection process knowing fully well the selection process, is estopped and precluded from questioning the above selection process, the only exception being when the applicant is able to demonstrate lucidly that the action taken by the Selection Committee was not done in good faith and was a result of bias or ulterior motive. It is imperative that the person who alleges malice/malafide/arbitrariness should furnish particulars that would prove the same. Ambiguous reasons unsupported by hard facts cannot lead to a conclusion of malafide or arbitrariness.
- 9) From the perusal of the records, we are convinced that the candidate/applicant was well aware that the conditions of the selection process and final merit list will be prepared on the basis of the criteria/conditions laid down by the Selection Committee in the Advertisement Notification and the criteria was laid down well at the initial stage of selection process and applicant would be estopped from challenging the said conditions of the Advertisement Notice.

10)It be also noted that the question of laying down the eligibility conditions in matter of appointment lies entirely with the sphere of the Advertising Authority and with which eligibility conditions/criteria, the courts/tribunal have no power to interfere with and alter the said advertisement terms and conditions unless shown to be violative of law or arbitrary.

11)In the instant case, having regard to the fact that the advertisement responded by the applicant is clear in its term, we cannot add or subtract any words thereto and, in accordance therewith, at this stage of consideration of interim relief cannot pronounce the validity or otherwise of violation of Clause 7 of the Advertisement Notification. In the event, we read something in the advertisement, that will amount to altering by us the advertisement which we cannot do.

12)It is a settled law that framing of Service Rules/eligibility conditions, qualifications and criteria in advertisement for appointments is a policy matter which falls within the realm of the Executive/Department/Expert Bodies and no one can challenge it by saying that the same is not beneficial. Further, there is no right in any candidate to seek terms and conditions which suit him. The Recruitment Rules of respondents and scope of the advertisement cannot be whittled by the tribunal. (Read with advantage P.U. Joshi & Others Vs. Accountant General, 2003 (2) SCC 632).

13)Apart from the aforementioned reasons, it is a settled law that a process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the employment notice issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. The terms and conditions of the employment notice being binding on all candidates, the acceptance of the applicant's plea, besides being violative of the terms and conditions of the Employment notice would be

tantamount to denial of equal opportunity to those candidates who did not appear for the Document verification and Bio-metric verification.

14)In any case, the official respondents have taken the stand that the selection process stands finalised and completed, as per, the Indent received from the Indenting department and the selection list has been forwarded to the Indenting department and nothing more remains to be done by the respondents-Board.

15)In the written arguments filed by the applicant, he has taken the following grounds:

“a. That it's a settled law once for all that when ever and where ever a selected candidate does not join the post in question, the candidate next in the order of merit has a right of consideration. Here is a case where the selected candidate Miss Anuradha did not join the post of Artist Modeller thereby giving a chance to the person who is next in the order of merit that is the applicant here in.

b. That In fact in one of the recent cases which is similar to the instant application, the Govt. of India, Ministry of Railways, Railway recruitment Board, Allahabad had decided to give a second chance for document verification to all medical aspirants who could not attend it due to the reasons beyond their control.

c. That the present selection list issued for the post of artist modeller is bad to the extend that it, has still been kept in a limbo. Rather than keeping one post infilled the best possible resort would be to allow the petitioner / applicant to appear for document verification and subsequently consider him for the vacant post of Artist Modeller.”

16)In so far as, the contention taken in the written arguments is concerned that whenever and where ever a selected candidate does not join the post in question, the candidate next in the order of merit has a right of consideration. In the present case, the selected candidates were called for getting their

document verification and on account of non-appearance of the applicant, he was disqualified for further appointment/selection process. The applicant did not merit further consideration since he did not appear for his document verification and so, it is immaterial that the selected candidate Miss Anuradha did not join the post of Artist Modeller and so, the contention of the applicant that he be given the appointment has no merit.

The contention that applicant be given similar treatment as was given by the Railway recruitment Board, Allahabad accordinga second chance for document verification to all medical aspirants who could not attend it due to the reasons beyond their control cannot be taken as a precedence to give the same benefit to the applicant herein.The situation in the present case is governed by the conditions of the Advertisement dated 01.02.2019 as discussed above.

The contention of applicant that present selection list issued for the post of artist modeller is bad to the extent that it has still been kept in a limbo and rather than keeping one post unfilled the best possible resort would be to allow the applicant to appear for document verification and subsequently consider him for the vacant post of Artist Modeller has no force and to be rejected. The respondents are bound to follow the selection procedure.

It is settled law that the currency of a panel declared after selection process is for a particular time and it is not perpetual in nature. The panel was prepared and subject to document verification and applicant failed to appear for the document verification. The life of the panel cannot indefinitely operate after it is prepared based on claim of the applicant after its closure. The selection process has been carried out in the manner ordained by the terms and condition of the advertisement and the respondents cannot go beyond the scope of the advertisement. To accept the contention of the applicant would result in a 'never-ending process, as the entire process would have to be carried out again so, as not to prejudice other candidates. In any case, the selection process being closed, the Tribunal cannot reopen the process.

17) Looking to the facts of the facts and circumstances of the case, we are of the view that there is no merit in the case of the applicant. Accordingly, the O.A. is dismissed. No costs.

(Anand Mathur)

Member – A

(Rakesh Sagar Jain)

Member - J