

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 61/767/2020

Order reserved on 24.02.2021

Order pronounced on 08.03.2021



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

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

Gourav Gupta, aged 30 years, S/o Shri Tarsem Gupta, R/o H. No. 94, Purani Mandi, Jammu.

.....Applicant

(Advocate: Mr. Pranav Kohli)

Versus

1. State of Jammu and Kashmir, through Commissioner/Secretary to Government, General Administration Department, Civil Secretariat, Jammu.
2. Commissioner/Secretary to Government, Finance Department, Jammu and Kashmir, Civil Secretariat, Jammu.
3. Commissioner-cum-Secretary to Government, Technical Education Department, Civil Secretariat, Jammu.
4. Director, Technical Education, Jammu.
5. Commissioner, Excise and Taxation Department, Jammu.
6. Chairman, J&K SSB, Sehkar Bhawan, Panama Chowk, Jammu

.....Respondents

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

(ORDER)

Delivered by Hon'ble Mr. Anand Mathur, Member-A

1. Case of the applicant Gourav Gupta is that under the direct quota for outstanding sport persons, applicant was appointed to the post of Demonstrator in the Technical Education Department vide order dated 24.10.2014. However, he was not allowed to join the post of Demonstrator since he did not possess the requisite qualification. During this period, the General Administration Department obtained an undertaking from the applicant that he would not claim the pay scale having Grade Pay of Rs. 4200/-. Thereafter, applicant was appointed as Sub-Inspector in



the Grade Pay of Rs. 2400/- in Divisional Cadre Jammu in J&K Excise and Commercial Taxes (Subordinate) Service and he joined the post on 02.02.2015. It is the case of the applicant that other persons appointed under the category of outstanding sports person have been appointed on posts having Grade Pay of Rs. 4200/-. In this regard, applicant has placed on record a list dated 16.11.2016 of the appointees of outstanding sports person which contains the names of the appointees who have been appointed to the posts having Grade Pay of Rs. 4200/- .

2. It is a case of applicant that on the strength of SRO-349/1998 dated 22.12.98, applicant was entitled to be appointed to a higher post in the Non-Gazetted post having a Grade Pay of Rs. 4200/-. It is the further case of the applicant that other outstanding sports persons have been given jobs having Grade Pay of Rs. 4200/- but he has been discriminated against in as much as he has been appointed to a post having Grade Pay of Rs. 2400/-.
3. In the objections filed by the respondents, while admitting the appointment of applicant to the post of Demonstrator and thereafter Sub-Inspector have taken the plea that the appointments are subject to availability of posts and that 25 posts in the non-gazetted cadre are identified every year, as per, rules for consideration of eligible candidates for appointment and that in any case, the present TA is barred by delay and laches. It is case of the respondents that applicant had given a representation regarding his willingness to be appointed against the post of Sub-Inspector in Excise and Taxation in the Grade Pay of Rs. 2400/- and that he will not make claim on the higher or equivalent grade of Demonstrator against which he was appointed. Therefore, there being no merit in the TA, it deserves to be dismissed.
4. We have heard and considered the arguments of learned counsel for the parties and gone through the records.



5. Learned counsel for the applicant submitted that in terms of Rule 3 of Jammu and Kashmir (Appointment of Outstanding Sports Persons) Rules, 1998 promulgated by SRO 349 dated 22.12.1998, applicant is entitled to be appointed against a higher post in the Non-Gazetted service having a Grade Pay of Rs. 4200/- and that other persons under outstanding sportsman quota have been given posts having Grade Pay of Rs. 4200/-. Therefore, applicant being similarly situated to the said persons given Grade Pay of Rs. 4200/- is also entitled to the post having the same Grade Pay.

6. On the other hand, learned D.A.G. submitted that the impugned order has been passed in accordance with the Rules and that the respondents are under no obligation to appoint the applicant to the post having Grade Pay of Rs. 4200/-. It has been further submitted by learned D.A.G. that the list placed on record by the applicant reflecting the names of persons being given jobs having Grade Pay of Rs. 4200/- cannot in any manner confer a right upon the applicant to be considered for the post having Grade Pay of Rs. 4200/- and that the post to be given to the applicant is to be commensurate with his education qualification. In the present case, the outstanding sportsman have been appointed to the post as per their educational qualification and these posts have a Grade Pay of Rs. 4200/- and therefore, no question of discriminating against the applicant arises. The applicant has been given the post, as per, his qualifications and which post carries Grade Pay of Rs. 2400/- and therefore, the applicant has no grouse to file the present case seeking a post which carry Grade Pay of Rs. 4200/-, as such, the petition be dismissed.

7. Rule 3 of Jammu and Kashmir (Appointment of Outstanding Sports Persons) Rules, 1998 reads as below:-

“3. Appointment by the Government:-

- 1) Notwithstanding anything contained in the rules or orders for the time being in force, regulating the procedure for appointment to any non-gazetted service under the



Government; General Administration Department shall, on the recommendation of a Committee constituted under sub-rule (2) consider the appointment of an outstanding sports person, at its sole discretion, in any Department, against any vacancy in the non-gazetted cadre as under:-

- i) Persons possessing qualification as 10+2 may be considered for appointment against a vacancy in the non-gazetted service;
- ii) Persons possessing qualifications less than as shown in clause (i) above, may be considered for appointment against any Class-IV posts;

Provided that a person possessing qualification of graduation or above may be considered for appointment against a higher post in the non-gazetted service.

Provided further that the candidates are otherwise eligible for the posts under the relevant recruitment rules/regulations governing the said services besides having obtained the said services besides having obtained the certificate of being outstanding sports person from Secretary of the Sports Council.”

8. Learned counsel for the applicant during the course of the arguments had submitted that as per the proviso to Rule 3 of Jammu and Kashmir (Appointment of Outstanding Sports Persons) Rules, 1998, applicant is entitled to be considered for appointment against a higher post in the Non-Gazetted service having a Grade Pay of Rs.4200/- and therefore, the applicant is entitled to be appointed to a post having a Grade Pay of Rs. 4200/-. It has been further submitted by learned counsel that no doubt the applicant did file an application that in case he is appointed against the post of Sub-Inspector he will not make a claim on a higher or equivalent grade of Demonstrator, however, there can be no estoppel against law and therefore, the application cannot be read against him so as to disentitle him to a post having a Grade Pay of Rs. 4200/-.
9. Rule 3 prescribes that possession of educational qualification which would entitle a person under the sportsman category to be appointed to a Government post. The Rule lays down that person possessing 10+2 qualification may be considered

against a vacancy in the Non-Gazetted service, person possessing less than 10+2 qualification may be considered for a class-IV post and that a person possessing graduation qualification or above may be considered for appointment against a higher post in the Non-Gazetted Service.



10. So, Rule 3 while prescribing that a Graduate or above may be considered for appointment to a higher post in the Non-Gazetted service does not mandate that the appointment is necessarily to be confined to a post having a Grade Pay of Rs. 4200/-. It only prescribes that a person may be considered for appointment against a higher post other than the posts mentioned for a person possessing 10+2 or less educational qualifications.

11. We note that the applicant has placed on record a list showing the persons appointed in the sportsman category having Grade Pay of Rs. 4200/- as well as Rs. 2400/-. However, the Grade Pay is attached to the post to which the said persons have been appointed keeping in view their educational qualification which is required for holding such like posts. The Grade Pay goes with the post to which a person is appointed keeping in view his educational testimonials which qualify him to be appointed to the said post. Rule 3 enable a sportsperson to be considered for appointment against a higher post in the non-gazetted service and does not necessarily postulate that the appointment it to be made to a post carrying a Grade Pay of Rs.4200/-.

12. In view of the facts and circumstances of the case, we are of the opinion that there being no merit in the T.A., the same is dismissed. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-