

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. 61/517/2020



Pronounced on: This the 28th day of July 2021

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

1. N.K. Tripathi (aged 25 years), S/o Shri Bishan Das, R/o Kathua-Jammu.
2. Pawan Kumar (aged 33 years), S/o Shambu Nath, R/o Jammu.
3. Santosh Kumar (aged 28 years), S/o Shri Krishen Lal, R/o Ramban.
4. Sudesh Kumar (aged 31 years), S/o Lafu Ram, R/o Udhampur.
5. Pawan Singh (aged 22 years), S/o Man Singh, R/o Reasi.
6. Balvinder Kumar (aged 32 years), S/o Baldev Singh, R/o Jammu.
7. Ayaz Ahmad (aged 29 years), S/o Bashir Ahmad, R/o Shopian.
8. Rayees Ahmad (aged 31 years), S/o Ghulam Ahmad, R/o Kupwara.
9. Feroz Ahmad Mir (aged 30 years), S/o Wali Mohd Mir, R/o Pulwama.
10. Imtiyaz Ahmad Maliar (aged 34 years), S/o Ghulam Nabi Maliar, S/o Ghulam Nabi Maliar R/o Anantnag.
11. Irfan Hussain Malik (aged 24 years), S/o Gh. Mohd Malik, R/o Baramulla.
12. Aman Nain Singh (aged 24 years), S/o S. Kanwal Nain Singh, R/o Pulwama.
13. Aijaz Hussain Latoo (aged 26 years), S/o Mohd Maqbool Latoo, R/o Srinagar.
14. Feedan Javaeed (age 29 years), S/o Javaeed Ahmad Shah, R/o Pulwama.
15. Imtiyaz Ahmad Lone (aged 26 years), S/o Nazir Ahmad Lone, R/o Kupwara
16. Mudasir Ramzan (aged 29 years), S/o Mohd Ramzan Lone, R/o Kulgam.
17. Syed Nasir Abas (aged 24 years), S/o Syed Abas, R/o Budgam.



18. Irshad Ahmad Mir (aged 27 years), S/o Sunaullah Mir, R/o Kupwara.a
19. Junaid Mushtaq Bhat (aged 28 years), S/o Mushtaq Ahmad Bhat, R/o Kupwara.
20. Muzaffar Iqbal Malik (aged 29 years), S/o Abdul Summed Malik, R/o Ramban.

.....Applicants

(Advocate: Mr. Altaf Haqani, Sr. Advocate assisted by Mr. Shakir Haqani)

Versus

1. Union Territory of J&K through its Commissioner/Secretary to Government, General Administration Department, Civil Secretariat, Srinagar/Jammu.
2. J&K Services Selection Board, Govt. of J&K, Srinagar/Jammu through its Secretary.

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G.)

(ORDER)

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

1. Applicant N.K. Tripathi and 19 other applicants have filed the present O.A. seeking the following reliefs:

“8.1) Allow this original application and quash and set aside the impugned condition being condition No. 6 (iii) of the advertisement notice Annexure – A-I and also the impugned rejection of the application forms of the applicants.

8.2) commanding upon the Non-applicants not to give effect to the impugned condition being condition No. 6 (iii) of the advertisement notice and to entertain the online application form of the applicants and include them in the process of consideration for appointment to the class – iv posts as advertised qua the advertisement notice –

Annexure-A-I and appoint them to the post on the basis of merit.

- 8.4) Pass any other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of case may be passed in favour of the applicants and against the respondents.”



2. Applicants seek quashing of condition No. 6 (iii) of the Advertisement notice No. 01 of 2020 dated 22.06.2020. Advertisement prescribes the criteria for direct recruitment to said post as “Minimum Matric and Maximum 10 + 2”. As per Condition 6 (iii), any candidate having qualification other than prescribed shall not be eligible for Class IV posts. It is the case of applicants that their applications have been rejected ostensibly on the ground that they have educational qualification which is higher than 10 + 2. So, the applicants seek quashing of aforementioned condition and to direct the respondents to accept and consider their candidature for the Class IV posts.
3. In the objections, respondents have averred that prescribing the qualification, criteria etc for post lies within the exclusive domain of the State, since the criteria is fixed taking into consideration various inputs and judicial review must tread warily. On indent from GAD, the SSRB advertised recruitment for Class IV posts in terms of Jammu and Kashmir Appointment to Class-IV (Special Recruitment) Rules, 2020, notified vide S.O. 184 of 2020 dated 04.06.2020 (hereinafter referred to as ‘Special Recruitment Rules’).



4. It has been further averred in the objections that the posts have been advertised in the Advertisement Notification No. 01 of 2020 dated 26.06.2020 strictly, as per, the eligibility conditions contained in the Special Recruitment Rules as well as SRO 99 of 2008 dated 07.04.2008 and keeping in view the man-power/job requirement of the Government and any candidate including the applicants who possess higher educational qualifications are rendered ineligible for competing against these posts. Therefore, the O.A. being meritless deserves to be dismissed.
5. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record.
6. In the present case, applicants are not considered as eligible, on the ground that they do not fall within the educational criteria of minimum and maximum of 10 + 2. Therefore, they filed this OA with a prayer to direct the respondents to declare them as qualified, and to direct the respondents to accept their online applications and consider them for appointment to the Class IV posts.
7. The applicants contend that their post graduate degrees are at a higher level and includes 10 + 2 qualification, and it cannot be said that they do not hold the requisite qualification. They submit that when a 10 +2 qualification is treated as essential qualification, there is absolutely no reason to deny such a facility for the post graduate qualification held by the applicants. Therefore the condition 6 (iii) of the advertisement notice and consequent rejection of their forms is violative of law since



the condition prescribed is contrary to the eligibility clause prescribed by SRO 99 of 2008 which does not debar a candidate possessing qualification higher than 10 + 2 from the zone of consideration and even so, as per the law laid down in State of Uttarakhand v/s Deep Chandra Tewari, 2013 (15) SCC 557 and Mohd. Riazul Usman Gani v/s District & Sessions Judge, AIR 2000 SC 919, the qualification of Post-Graduation/Graduation includes the prescribed maximum qualification of 10 + 2. The said legal position has been followed by the State in appointment of Class IV employees is apparent from the fact that in past employment has been given to persons holding Graduation/Post Graduation qualification to the post of class IV buttressed by the opinion of the Law Department which is substantiated by the documents placed on record.

8. The respondents, opposing the O.A. say that once the recruitment rules stipulate a particular set of qualifications for the post, the question of inserting another qualification does not arise and prescribing the qualification criteria lies within the exclusive jurisdiction of the Administration and the Tribunal has very limited power to review the criteria laid down in the advertisement notice.
9. The edifice of the case of applicants lies upon the legal validity of Clause 6 (iii). The Advertisement notice lays down the criteria for direct recruitment to said post as "Minimum Matric and Maximum 10 + 2". As per Condition 6 (iii), any candidate having qualification other than prescribed shall not be eligible for Class IV posts. This condition is referable to:



Rule 3 of the Special Recruitment Rules provides as under:

“These rules shall apply to all Class-IV posts borne on the establishment of any department or service of the Government or any Government Company, Organization or Body specifically owned or controlled by the Government and for which the Accelerated Recruitment process is to be adopted as may be notified by the Government from time to time.”

Rule 5(2) of the Special Recruitment Rules provides as under:

“5. Procedure for Selection.- (2) The Board shall invite applications for the said posts from the persons who are Domiciles of the Union territory of Jammu and Kashmir, and are within the prescribed age and possess minimum and Maximum educational qualification as prescribed in Notification SRO 99 of 2008.”

SRO 99 of 2008 dated 07.04.2008 provides as under:

“In exercise of the powers conferred by the proviso to section 124 of the Constitution of Jammu and Kashmir and in supersession of all rules/orders pertaining to the recruitment of Class-IV posts, the Governor hereby directs that the minimum and maximum qualification for appointment to Class IV posts under direct recruitment shall be Matric and 10+2 respectively.”

10. The question, thus, which falls for determination is whether a candidate, possessing a Graduate/ Post Graduate degree, which includes within itself 10 + 2 qualification, can be said to have been

wrongly excluded by the respondents from the zone of eligibility for the Class IV posts.



11. Before dealing with the submission advanced by the learned counsels for the parties, it would be apt to note the settled law that it is not in the province of this Tribunal in exercise of its jurisdiction to go into and prescribe the essential qualification for selection/appointment on a post. In the case of University of Mysore and Another vs. C.D. Govinda Rao. AIR 1965 SC 491, it has been observed by Hon'ble Supreme Court that normally it is wise and safe for the courts to leave the decision of academic matters to experts, who are more familiar with the problems they face than the courts generally can be. It is equally well settled principle of law that it is the policy of the Government or the employer to create a post or to prescribe the qualification for the post. The Court or any Tribunal is devoid of any power to give any such direction.
12. The following judgments of Hon'ble Supreme Court can be referred to in this regard. In the case of J. Ranga Swamy vs. Government of Andhra Pradesh and others, reported in [(1990) 1 SCC 288, it has been held by the Supreme Court that it is not for the Court to consider the relevance of qualifications prescribed for various posts. In Official Liquidator vs. Dayanand and others, reported in [(2008) 10 SCC 1], it has been laid down by Hon'ble Supreme Court that though the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the

qualification, etc. is not immune from judicial review. However, the Court will always be extremely cautious and circumspect in interfering in such matters. (Read with advantage P.U.Joshi vs. Accountant General, (2003)2 SCC 632).



13. We may also refer to Zahoor Ahmad Rather vs Sheikh Imtiyaz Ahmad, (2019) 2 SCC 404 wherein Hon'ble Apex Court laid down that:

“The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications.”

“23. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily.



14. Thus, in view of the aforesaid pronouncements of Hon'ble Supreme Court it can safely be summed up that the grounds of judicial review by this Tribunal in exercise of its jurisdiction in a case where challenge is made to the prescription of essential educational qualification for appointment to a government post, is very limited.
15. Learned counsel for applicants relying on Mohd. Riazul Usman Gani v/s District and Sessions Judge, Nagpur, AIR 2000 SC 919 and State of Uttrakhand Vs. Deep Chandra Tewari, (2013) 15 SCC 557 submitted that a criteria which denies a candidate his right to be considered for appointment against a post on the ground that he is having higher qualification than the qualification prescribed cannot be reasonable and higher qualification cannot be a disadvantage for the applicant so as to deprive him to be considered for the Class IV posts.
16. On the other hand, learned AAG argued that the qualification criteria is based on SRO 99 of 2008 dated 07.04.2008 and Special Recruitment Rules and prescribing of the criteria lies within the sole domain of the Government which is best qualified to prescribe the criteria keeping in view the needs of the society and social perspectives that require the creation of job opportunities across the societal structure and is aimed towards the strata which can ill afford higher education and is unemployed and placed reliance upon Hon'ble Full Bench judgment of Hon'ble Apex Court titled Chief Manager, Punjab National Bank v/s Anit Kumar Das, (2020) 12 SCALE 392. He further submitted that the criteria has been laid down

by the Government and unless found to be arbitrary cannot be subject matter of judicial review by the Tribunal. He also submitted in absence of challenge to SRO 99 of 2008, no relief can be given to the applicants.



17. In Chief Manager, Punjab National Bank v/s Anit Kumar Das, (2020) 12 SCALE 392, the prescribed criteria was 12th class or its equivalent and that the candidate should not be a graduate. While upholding the termination of the services of respondent on the ground that he was a graduate, it was observed by Hon'ble Apex Court that:

“7. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious decision taken by the Bank and the same was as per the Circular letter No. 25 of 2008 dated 06.11.2008. In the case of J. Rangaswamy (supra), it is observed and held by this Court that it is not for the court to consider the relevance of qualifications prescribed for various posts.

7.1 In the case of Yogesh Kumar (supra), it is observed and held by this Court that recruitment to public service should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.



7.2 In a recent decision of this Court in the case of Zahoor Ahmad Rather (supra), this Court has distinguished another decision of this Court in the case of Jyoti K.K. v. Kerala Public Service Commission (2010) 15 SCC 596 taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in the case of State of Punjab v. Anita (2015) 2 SCC 170, in which case, this Court on facts distinguished the decision in the case of Jyoti K.K. (supra). While distinguishing the decision in the case of Jyoti K.K. (supra), it is observed in paras 25 and 26 as under:

“25. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] has been considered in a judgment of two learned Judges in State of Punjab v. Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”.

Adverting to the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596: (2013) 3 SCC (L&S) 664] , this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced: (Anita case [State of Punjab v. Anita, (2015) 2 SCC 170: (2015) 1 SCC (L&S) 329] , SCC p. 177, para 15)”

“7.3 Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy



and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.”

(Emphasis by us)

18. The Government by way of Special Recruitment Rules and SRO 99 of 2008 which is Statutory law has prescribed a standard of minimum and maximum educational criteria which finds mention in the instant Advertisement notice and it further provides that no candidate having qualification other than prescribed shall be eligible for Class IV posts. In view of the settled law, looking to the nature of the post and administrative exigencies, it is for the Government (employer) to settle the qualifications for a post and not for the Tribunal to consider and dislodge the criteria prescribed by the employer (Government) unless it is violative of law.



19. In the present case, the contention of the applicants that a candidate, possessing a Graduate/ Post Graduate degree, which includes within itself 10 + 2 qualification, cannot be excluded by the respondents from the zone of eligibility for the Class IV posts, has no force of law and to be rejected in view of the law down by the Hon'ble Full Bench in the case of Chief Manager, Punjab National Bank (supra) and the Statutory rules.
20. It is the clear intention of the Government to ensure that only candidates having maximum educational of 10 + 2 are eligible to apply. Had the intention of the Government to lay the class IV posts, free and open to all persons having educational qualification more than 10 + 2, there would be no need to mention a maximum qualification. It is the prerogative of the user department to stipulate the qualifications for the posts, in their establishment. The concerned authority has its own purpose or objective in prescribing qualifications of a particular description, for the concerned post. Once the qualifications prescribed in the advertisement are treated as essential, there is no way to ignore them and the Tribunal cannot in judicial review interfere with it unless it is made out to be violative of the Constitution.
21. It is categorically held by the Hon'ble Apex Court that it is the prerogative of the concerned department to prescribe the qualifications and the Courts cannot enter the arena of judging the efficacy of the eligibility criteria. Therefore, in exercise of its

jurisdiction, the prescription of maximum 10 + 2 criteria made by the Government for appointment to the post in question cannot be expanded by this Tribunal to include candidates having higher qualification than 12 + 2. Such matters, as observed above, are in the exclusive domain of the employer or the Government being a policy matter, the scope of which cannot be enlarged by this Tribunal.



22. Learned counsel for applicants in his written arguments taken the plea that:

“As a matter of fact, the aforesaid legal position, has all along been understood and followed by the Non-applicants by appointing the candidates with higher qualifications of Graduation/Post graduation against the class -IV posts on the basis of the same rule contained in SRO 99 of 2008. This fact is demonstrated by the uncontroverted opinion of the Law Deptt reproduced at page 14 of the OA and response of the GAD online on 24-6-2021 as also series of seniority lists of various departments in the Union Territory reflecting the particulars of the employees possessing higher qualification of Graduation/Postgraduation appointed against Class – IV posts even after 7-4-2008 when SRO 99 of 2008 was notified. The seniority lists highlighting the employees with higher qualifications appointed after 7-4-2008 are enclosed herewith.”



23. Regarding the plea of applicants that employees possessing higher qualification of Graduation/Postgraduation were appointed against Class – IV posts even after 7-4-2008 when SRO 99 of 2008 was notified. This argument has no force. Even, if the appointments were made in the manner suggested by the applicants, they were obviously made in violation of law. The observations of the Hon’ble Apex Court in Yogesh KumarVs. Government of NTC, Delhi, (2003) 3 SCC 548 is a complete answer to reject this argument. It was held that:

“8. This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue.”

24. Learned counsel for applicant referred to opinion of Law Department and GAD which finds mention in Annexure A4 to the O.A. as:

‘Department is advised that higher qualification can not be a bar for applying for the post. Barring higher qualification is illegal and violation of constitutional rights.’



25. As far as the aforementioned opinion of law department and GAD is concerned, we find it difficult to accept the same in the instant case as it is incongruent with the judgement of the Hon'ble Apex Court discussed above.

26. For the reasons given and discussions made above in the preceding paragraphs, we do not find any reason to quash condition No. 6 (iii) of the Advertisement notice No. 01 of 2020 dated 26.06.2020 issued by JKSSB.

27. Accordingly, the O.A. is dismissed. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-