

(Reserved)



**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. No. 61/521/2020

Pronounced on: This the 27th day of August 2021

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

Gourav Sharma, Age 37 years, S/o Late Sh. Roshan Lal Sharma, R/o H. No. 1420A, Shivalik Puram, Janipur Colony, Jammu.

.....Applicant

(Advocate: Mr. Abhinav Sharma, Sr. Advocate assisted by Ms. Saba Atiq)
Versus

1. State of J&K through Financial Commissioner Home, J&K Govt. Civil Secretariat, Srinagar.
2. Director General of Police, J&K, Jammu.

.....Respondents

(Advocate: Mr. Sudesh Magotra, learned D.A.G.)

(ORDER)

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

1. Applicant Gaurav Sharma has filed the present T.A. seeking the following reliefs:-

“(a) Certiorari seeking to quash Order No. 197 of 2014 dated 23.01.2014 passed by respondent No. 2, whereby and whereunder the case of the petitioner for declaration of his result in the selection process for the post of Sub-Inspector



(Executive) has been rejected and consequently the appointment denied to the petitioner;

(b) Mandamus, commanding and directing the respondent No. 2 to declare the result of the petitioner and in case the petitioner makes the grade, the petitioner be appointed against the post of SI, pursuant to the selection process conducted by respondent No. 2 in the year 2009 w.e.f., the date, other candidates in the same selection process were appointed i.e., w.e.f., March, 2010;

(c) Any other writ, order or direction which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case.”

2. Case of applicant is that he was selected and appointed as Constable in J&K Police in the year 1996. While the applicant was serving as such, an advertisement notice No. Esstt./Computer-03/2003/25736-76 dated 19.05.2003 came to be issued by Police Headquarter Jammu and Kashmir, whereby and whereunder applications were invited for the post of Sub Inspectors in J&K Police. The applicant did not respond to the aforesaid advertisement. Another advertisement notice bearing No. Pers/A-40/2007/5991-6090 dated 17.02.2007 came to be issued, whereby again the applications were invited for the post of Sub Inspectors in J&K Police and in the aforesaid advertisement, it was provided that that applicant should not be less than 18 years and more than 28 years of age as on 01.01.2007. Since the advertisement issued in the year 2003 did not culminate into

selection, therefore, in the advertisement issued in the year 2007 it was provided as under:-



The candidates who had applied earlier for the post of Sub-Inspector in J&K Police in response to PHQ advertisement notice issued No. Estt/Computer-03/2003-25736-76 dated 19.05.2003 need not apply again. In case any of these candidate has crossed upper age limit, his age will be reckoned from the date he has applied earlier as per the said advertisement notice”.

3. It is relevant to state herein that though under Regulation 37 of J&K Civil Service Regulation (hereinafter referred to as ‘CSR’), an in-service candidate was entitled to 3 years relaxation of age, yet no such provision was contained in the advertisement issued in the year 2007 and as per regulation 37 of CSR, a candidate below 31 years of age was eligible to respond for the post of Sub Inspectors pursuant to Advertisement issued in the year 2007. Despite the fact that no such provisions were contained in the advertisement for grant of 3 years relaxation in favour of in-service candidates, the applicant responded and submitted his application form pursuant to 2007 advertisement. Without completing the selection process pursuant to advertisement issued in the year 2003 and also pursuant to Advertisement issued in the year 2007, the respondents issued two notices on 01.07.2008 and 10.07.2008, whereby and whereunder both the

advertisement notices i.e. one issued in the year 2003 and the other issued in the year 2007 were withdrawn without assigning any reason much less a cogent reason.



4. It is also averred in the T.A. that after the withdrawal of both the advertisement notices issued in the year 2003 and in the year 2007, the Police Headquarter issued another advertisement notice dated 31.01.2009, again inviting applications for the post of Sub Inspectors and it was provided that the candidates should not be below 18 years of age and more than 28 years of age as on 01.01.2009, however, it was provided in the aforesaid advertisement issued in the year 2009 that an in-service police personnel upto the upper age limit of 30 years can also apply through proper channel.

5. It is the case of applicant that since no reasons were assigned while withdrawing the advertisement Notice issued in the year 2007 pursuant to which the applicant had responded and since the required relaxation of 3 years was not granted to in-service candidates as required under Rule 37 of J&K CSR and since the applicant was below 31 years of age as on 01.01.2007 and apart from that no provision was contained in the



advertisement issued in the year 2009 that those who had responded to 2007 advertisement need not apply again and their age shall be reckoned as on 01.01.2007, as was provided in the advertisement notice issued in the year 2007 that those who had applied pursuant to 2003 advertisement need not apply and in case of those candidates who had crossed the age limit, their age would be reckoned from date they had applied as per the earlier advertisement notification, therefore, aggrieved of 2009 advertisement notice, which rendered the applicant ineligible, the applicant filed SWP no. 382/2009 before the High Court of J&K at Jammu on the ground that had 2009 notification contained a provision that those who had applied pursuant to 2007 notification need not apply to pursuant 2009 notification and on the ground that regulation 37 of CSR provides 3 years age relaxation to in-service candidate therefore, the applicant was below 31 years of age as on 01.01.2007 and since the advertisement issued in the year 2007 was withdrawn without assigning any reason, the applicant could not be rendered ineligible on account of being over-age, because of the illegalities committed by the respondents. The aforesaid writ petition was considered by the Hon'ble high court on 03.03.2009 and on the aforesaid date the following order was passed:



Notice, notice in the CMP also. Although petitioners are admittedly ineligible age-wise yet they again claim consideration essentially on the basis of a precedent traceable to advertisement notice of 2007 permitting the applicants of 2003 to appear in the interview, whether such precedent can bind down the respondents to adhere to it, no expression of opinion is possible unless other side is heard. However, regard being had to the fact that tomorrow is the last date for receipt of application forms coupled with the fact that ad-interim directions have been passed by coordinate benches of this court, the respondents are directed to receive the application forms of the petitioners also subject to outcome of CMP with further direction to the petitioners to take steps for service through speed post latest by day after. Be listed in the week commencing from 16th of March, 2009. It is submitted by learned counsel for the petitioners that identical petitions are scheduled to come up on 17th of March, 2009 be listed along. Order to be communicated in its entirety.

Pursuant to aforesaid interim order dated 03.09.2009 the applicant appeared in the selection process, however, the result of the applicant was kept in sealed cover.

6. The writ petition bearing SWP no. 382/2009 filed by the applicant alongwith few other writ petitions filed by in-service candidates, seeking relaxation of 3 year of age as provided under Regulation 37 of CSR, was considered by the High Court and vide judgment dated 06.04.2011 it was held that an in-service candidate was entitled to 3 years of relaxation and a direction was issued to the respondent that while making selection they should treat the maximum age limit of in-service candidates as 31 years.



Since the judgment dated 06.04.2011 passed by High Court in writ petition filed by the applicants was silent about the advertisement issued in the year 2007, with respect to which the applicant was seeking a relaxation of 3 years, therefore, the applicant filed LPA(OW) No. 150/2011 before the Hon'ble Division Bench which permitted the applicant to withdraw the aforesaid appeal with a liberty to avail any other remedy, inasmuch as according to the Division Bench the applicant was entitled to 3 years relaxation pursuant to 2007 advertisement and was entitled to be considered under 2009 advertisement as well, in view of the fact that 2009 advertisement did not contain a clause that those who has responded pursuant to 2007 advertisement need not apply again, despite the fact that 2007 advertisement notice was withdrawn without assigning any reason.

7. Further case of applicant is that after the withdrawal of the LPA, the applicant preferred a representation with the respondents, seeking relaxation of 3 years of age pursuant to 2007 advertisement on account of the fact that the applicant was eligible, being below 31 years of age on 01.01.2007 and on the ground that a clause was required to be incorporated in 2009 advertisement to the effect that those who has responded pursuant



to 2007 advertisement need not apply again and their age was required to be reckoned as on 01.01.2007 instead of 01.01.2009, however, the respondents rejected the representation of the applicant merely on the ground that even after relaxation of 3 years of age, the applicant was beyond 31 years of age as on 01.01.2009 and aggrieved of the aforesaid rejection order No. 197 of 2014 dated 23.01.2014 by Director General of Police, J&K, the applicant filed SWP no. 3185/2014 before the Hon'ble High Court of Jammu and Kashmir at Jammu which stands transferred before this Hon'ble Tribunal.

8. Respondents filed their objections wherein they have taken a categoric stand that in the year 1999-2000, the selection of Sub Inspectors was made by preparing separate merit for Jammu Division & separate merit for Kashmir Division, which selection was challenged before the High Court of Jammu and Kashmir and the Division Bench vide judgment dated 19.08.2002 rendered in LPA(SW) No. 336/2001, 342/2001 & 257/2001 directed the State Govt. to redraw the merit of Sub Inspectors of 1999-2000 at State level and accordingly the select list was redrawn. It is further stated in the objections that on account of redrawn merit some candidates numbering 47 were ousted from the merit and their services were terminated and they approached the Hon'ble Supreme Court of India and



on the direction of the Hon'ble Supreme Court of India those 47 candidates including 23 who had challenged the initial selection were required to be accommodated, on account of which both the Advertisement notices issued in the year 2003 and 2007 were withdrawn. It is further stated that the vacancies which were advertised in the year 2009 were newly created vacancies on account of creation of 8 new districts as such in the advertisement issued in the year 2009, no clause was incorporated that those who had applied pursuant to 2007 notification need not apply again. Therefore, it is stated in the objection that the applicant having crossed 31 years of age as on 01.01.2009 was not eligible, therefore, his request for declaration of his result, which was kept in sealed cover was rejected through the medium of order impugned.

9. We have heard and considered the arguments of learned Senior Advocate for applicant and learned Deputy Advocate General for respondents and gone through the material on record.

10. It has been submitted by the learned counsel for applicant that the plea taken in the objections by the respondents is against the fact and is against the record as well, inasmuch as there was no direction from the Hon'ble Supreme Court of India to accommodate 47 candidates who were ousted



from the redrawn select list at State level and 23 candidates who challenged their selection, inasmuch as in the year 1999-2000, the select list of Sub Inspectors was illegally framed by preparing two separate merit list i.e. One for Jammu Division and the other for Kashmir Division and the candidates from Jammu Division who had secured more marks than the last candidate selected in the Kashmir Division challenged the aforesaid selection on the ground that the post of Sub Inspectors was a State Cadre post, as such preparing two merit lists at Division level was legally not permissible and the Learned Single Bench initially directed that all those candidates who had secured more marks than the last candidate selected in Kashmir Division be appointed, however, the State Govt. preferred Letters Patents Appeal bearing No. 336/2001 alongwith connected matters against the aforesaid judgment and the Division Bench modified the judgment of the Learned Single Judge vide judgment dated 19.08.2002 by directing the State Government to redraw the select list at State level.

11. It is further argued by learned counsel for applicant that the judgment of the Hon'ble Division Bench was challenged before the Hon'ble Supreme Court also and the same was dismissed vide SLP No. 10.02.2004. Those 47 candidates who were ousted on account of redrawn select list filed a writ petition bearing SWP No. 708/04 before the Srinagar Wing of J&K High



Court and by virtue of an interim order dated 24.05.2004, they were permitted to continue in the service. It is also submitted that 22 candidates who had challenged the initial selection made in the year 1999-2000 on the basis of two separate merit list, filed contempt petition being No. COA(LPASW) No. 22 of 2004 for violation of the Judgment dated 19.08.2002 passed by the Hon'ble Division Bench and the Hon'ble Division Bench vide order dated 31.12.2004 directed the ouster of those 47 candidates, notwithstanding the interim order passed in their favour in SWP no. 708/04. It is stated that against the order of the Division Bench directing ouster of 47 candidates, those 47 candidates filed Civil Appeal no. 4758 of 2007 and when the aforesaid Civil appeal was taken up for consideration by the Hon'ble Supreme Court of India, the Advocate General appearing for the State Government submitted that those 47 outsees who are bound to lose their job and the 22 respondents who had challenged their selection and had filed the contempt petition would be accommodated for the post of Sub Inspectors. It is stated that on the basis of the aforesaid statement of the Advocate General, the Hon'ble Supreme Court disposed of the aforesaid Civil appeal vide Order dated 10.05.2007 by clearly observing and by holding that in view of the statement of the

Advocate General, the Court did not think it proper to determine any legal question in the matter.



12. During the course of arguments, learned counsel for applicant further submitted that the Advocate General did not inform the Hon'ble Supreme Court of India that in order to accommodate those 69-70 candidates, there were no vacancies and whatever vacancies were there, those stood already advertised in the year 2003 and 2007 and had this position been brought to the notice of the Hon'ble Supreme Court of India, perhaps the statement of Advocate General would not have been accepted. It is stated that keeping in view the aforesaid order of the Hon'ble Supreme Court of India, there is no direction to appoint 47+22 candidates as has been stated by the respondents in their objections and as a result of withdrawal of the advertisement notice issued in the year 2007 to accommodate 47 +22 candidates who were not entitled to be retained in service, inasmuch as their selection was quashed by the Hon'ble Division Bench and upheld by the Hon'ble Supreme Court of India but to accommodate those illegal appointees, the fundamental right of the applicant alongwith others who had responded to 2007 advertisement was taken away, which cannot be permitted under law.



13. Learned counsel vehemently argued that the advertisement issued in the year 2009 was challenged by many other candidates who were seeking consideration for direct recruitment and who were not in-service candidates and the challenge was thrown on the ground that on account of withdrawal of Advertisement notice issued in the year 2007 they were rendered ineligible under the advertisement notice of 2009, inasmuch as they had crossed the overage limit of 28 years and despite the fact that they have applied pursuant to 2007 advertisement, the same was withdrawn without assigning any reason and they could not have been rendered ineligible under 2009 advertisement by not incorporating a clause in the aforesaid advertisement that those who had applied pursuant to 2007 advertisement need not apply. It is stated that the aforesaid writ petition bearing SWP no. 373/2009 and few other writ petitions were clubbed together and in the aforesaid writ petitions as well, the same stand was taken by the respondents that the advertisement issued in the year 2003 and 2007 were withdrawn pursuant to the directions of the Supreme Court of India to accommodate 69 candidates, however, the High Court while deciding the aforesaid writ petition vide judgment dated 07.03.2014, clearly held that despite accommodating 69 candidates on the basis of the statement of the Advocate General accepted by the Supreme Court of India, yet there was



certain vacancies which were lying vacant in the year 2007, as such the Advertisement issued in the year 2007 should not have been withdrawn and further held that even if the advertisement issued in the year 2007 was withdrawn, in the Advertisement Notice in the year 2009, a clause should have been incorporated to protect the interest of the aforesaid petitioners, inasmuch as the right of the consideration against the post which were available in the year 2007 could not have been taken away, therefore, the Hon'ble High Court held that those writ petitioners were entitled to be the considered within age as on 01.01.2007, inasmuch they were below 28 years of age as on 01.01.2007 and in case their age is to be reckoned on 01.01.2009, in that eventuality they were entitled to age relaxation and since out of all the Writ petitioners in the aforesaid writ petition who were permitted to take part in the selection process pursuant to interim orders, 7 writ petitioners had secured more marks than the last candidate selected pursuant to 2009 advertisement, therefore, the Hon'ble High Court directed the State Govt. to appoint those candidates and accordingly they were appointed vide Govt. Order No. 386-Home of 2016 dated 08.07.2016.

14. Looking to the arguments of learned counsel, the following indisputable, the following facts have been substantiated as below:



- a. That in the advertisement issued in the year 2007, there was a clause that those who had applied pursuant to 2003 advertisement need not apply and their age was to be reckon as on 01.01.2003.
- b. That no such clause/provision was incorporated in the advertisement issued in the year 2009, to the effect that those who had applied pursuant to 2007 Advertisement, need not apply and their age shall be reckoned as on 01.01.2007.
- c. That instead of 3 years relaxation to in-service candidates, only two years relaxation upto 30 years of age was granted to the in-service candidates under 2007 advertisement.
- d. That the Hon'ble High Court Judgment dated 06.04.2011 rendered in SWP no. 382/2009, filed by the applicant, clearly held that in-service candidates were entitled to relaxation of 3 years as provided under Regulation 37 CSR i.e. upto 31 years of age.
- e. That the applicant was below 31 years of age as on 01.01.2007 when the advertisement was issued in the year 2007, therefore, the applicant was eligible as an in-service candidate pursuant to 2007 advertisement.
- f. That no reason whatsoever were assigned while withdrawing the advertisement issued in the year 2003 and 2007 and on account of which the applicant alongwith many others became ineligible pursuant to 2009 advertisement.
- g. That there was no direction by the Hon'ble Supreme Court of India for appointing 47 candidates who were ousted on account



of redrawn merit list of Sub Inspectors pursuant to the judgment of the Division Bench of the J&K High Court and upheld by the Hon'ble Supreme Court of India and it was only on the statement of the Advocate General that the State was ready and willing to accommodate 47 oustees and 22 more applicants who had challenged the selection of Sub Inspectors made pursuant to 1999 advertisement and the Advocate General did not bring into the notice of the Hon'ble Supreme Court of India, that the vacancies against which those 69 candidates were offered to be adjusted, stood already advertised pursuant to 2003 and 2007 advertisement and it is only in order to accommodate those illegal selectees, advertisement issued in the year 2007 was also withdrawn on account of which the applicant became overage.

- h. That had the respondent in the advertisement issued in the year 2007 provided 3 years relaxation in favour of in-service candidates and contained a clause in the 2009 advertisement that those who had already applied need not apply under 2007 advertisement again and their age was to be reckoned as on 01.01.2007 instead of 2009, the applicant would have been eligible pursuant to 2009 advertisement also.
- i. That by virtue of an interim order passed by Hon'ble High Court in SWP no. 382/2009 filed by the applicant, the applicant was permitted to take part in the selection process and his result was kept in sealed cover.
- j. That similarly circumstanced candidates who had applied pursuant to 2007 advertisement not as in-service candidates but



from the open market, seeking direct recruitment, they were eligible at the time of issuance of 2007 advertisement, inasmuch as they were below 28 years of age as on 01.01.2007 but were rendered overage pursuant to 2009 advertisement and in the writ petitions filed by them bearing SWP No. 904/2009 and SWP no. 373/2009 alongwith others connected matters, Hon'ble High Court vide judgment dated 07.04.2014 clearly held that withdrawal of 2007 advertisement cannot operate to their prejudice and they were required to be accommodated by providing a clause in 2009 advertisement, that those who had already applied pursuant to 2007 advertisement, need not apply or in the alternative by granting 3 years relaxation in their favour pursuant to 2009 advertisement as well and since they were also permitted to take part in the selection process pursuant to interim orders and 7 out of all the writ petitioners who had challenged 2009 advertisement, on account of having been rendered overage had made the grade therefore, a direction was issued to the State Govt. to appoint them and accordingly they stood appointed.

- k. That the case of the applicant is squarely covered by the facts and circumstances of the case of those 7 candidates with only one distinction that they were not in-service candidate but the applicant is an in-service candidate.
- l. That the applicant had a right of consideration pursuant to 2007 advertisement which was taken away by the illegal action of the respondents by not providing 3 years relaxation for in-service



candidates in the advertisement issued in the year 2007 and by not providing a clause in 2009 advertisement that those who had already applied pursuant to 2007 advertisement, need not apply and their minimum and maximum age shall be reckoned as on 01.01.2007 and by accommodating 47 illegally selected candidates who were ousted and 22 candidates who had challenged the selection of those 47 candidates by withdrawing the advertisement of 2007 thereby violated the right of the applicant under Article 14 and 16 of the constitution of India.

15. In view of the facts and circumstances of the case, the T.A. is allowed. The impugned order No. 197 of 2014 dated 23.01.2014 by Director General of Police, J&K is quashed and respondents are directed to declare the result of the applicant and in case the applicant has made the grade, he be considered for appointment on the same lines as seven writ petitioners were appointed pursuant to the judgment of the Hon'ble High Court with effect from March 2010 i.e. the date of appointment of seven petitioners. However, in eventuality of appointment of applicant, he would not be entitled to any arrears of salary/any other payment, but would be entitled to only notional fixation of seniority from March 2010. T.A. is accordingly disposed. No costs.

**(ANAND MATHUR)
MEMBER (A)**

Arun/-

**(RAKESH SAGAR JAIN)
MEMBER (J)**