

Central Administrative Tribunal Jammu Bench, Jammu



T.A. No.7354/2020
M.A. No.326/2021
(S.W.P. No.845/2018)

Wednesday, this the 12th day of May, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Rohini Sharma, aged 28 years, d/o Sh. Sansar Chand Sharma,
r/o Ward No.5, Chanara Near Shiv Mandir
Tehsil Billawar at present Tehsil
Mahanpur District Kathua

..Applicant
(Mr. P S Pawar, Advocate)

VERSUS

1. State of J & K through its Principal Secretary to Govt.
Planning & Development Department,
Civil Secretariat, Jammu/Srinagar
2. Commissioner/Secretary
Planning Development & Monitoring Department
Govt. of Jammu & Kashmir
Civil Secretariat, Jammu/Srinagar
3. Jammu & Kashmir Public Service Commission
Through its Secretary
Resham Garh Colony, Bakshi Nagar Jammu at present
Solina, Srinagar (Kashmir)
4. Director General, Economic and Statistics
Bemina Srinagar, Kashmir
5. Pankaj Sharma s/o Ganga Dutt Sharma
R/o Ward No.15, Patel Nagar, Kathua
6. Shakti Singh Manhas s/o Hushiar Singh
r/o 9, Jangalwar
Tehsil and P/O Thathri District Doda

..Respondents
(Mr. Amit Gupta, Additional Advocate General for respondent
Nos. 1, 2 & 4 - Mr. F A Natnoo, Advocate for respondent No.3,
nemo for private respondents)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:



The Jammu & Kashmir Public Service Commission, the 3rd respondent herein issued an advertisement on 10.09.2013 for selection to 28 posts of Assistant Director (Statistics). A written test was conducted for that purpose on 23.02.2014 and the list of selected candidates was also published on 04.03.2017.

2. Reservation was provided to various categories, including the one for residents of backward area (RBA). The applicant belongs to this category. However, his name was shown at Sl. No.1 in the waiting list. After the order of appointment was issued, it so happened that 3 candidates, 2 from un-reserved (UR) category and 1 from scheduled caste (SC), did not join. The occasion arose for filling up of those posts. The respondents have chosen 2 candidates from the waiting list of UR category, who secured 406.56 and 404.78 marks. Respondent No.6 is the most meritorious candidate, who figured in the RBA category, and he secured 406.61 marks.

3. The applicant contends that one of the resultant vacancies ought to have been filled by shifting the Respondent No.6 with 406.61 marks and thereby, the resultant RBA vacancy would have been available to her. With background, she filed SWP

No.845/2018 before the Hon'ble High Court of Jammu & Kashmir, with a prayer to quash the selection of respondent No.5 to the post of Assistant Director (Statistics), to shift the respondent No.6 to the open category; and as a result, to consider her case for appointment against the resultant vacancy caused due to shifting of respondent No.6 to UR category.



4. The applicant contends that the respondent No.5 secured 404.78 marks, which are less than the marks secured by the respondent No.6 and accordingly, the latter ought to have been accommodated in the vacancy meant for UR category and thereby, she should have been adjusted in the resultant vacancy.
5. The respondent No.3 filed a detailed counter affidavit. It is stated that the selection was concluded strictly in accordance with law, duly following the reservations. They further contend that the vacancies, that arose on account of non-joining of 2 UR category candidates and 1 SC candidate, were required to be filled by the candidates, who are next in the wait list of respective categories and the applicant cannot object to that.
6. It is stated that once the selection process was completed, the question of shifting a candidate, who is already appointed in a reserved category, does not arise.



7. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.7354/2020.

8. Earlier, we heard the case extensively and adjourned it, to enable the learned counsel for applicant to address further arguments. Today, we heard Mr. P S Pawar, learned counsel for applicant, Mr. Amit Gupta, learned Additional Advocate General for respondent Nos. 1, 2 & 4, Mr. F A Natnoo, learned counsel for respondent No.3, at length. There is no representation for private respondents.

9. The basic facts are not in dispute. In all, 28 posts were filled; and out of them, 15 are meant for UR category, 6 for RBA, 2 for SC, 3 for ST, 1 for LAC and 1 for OSC. Against 15 UR vacancies, 5 RBA candidates were selected on their own merit. Such of the RBA candidates, who did not make it to the UR category, were appointed against 6 posts reserved for them. The respondent No.6 is the most meritorious among 6 candidates appointed under the RBA category, and he secured 406.61 marks.

10. On account of 2 UR candidates not joining the post, the respondents operated the waiting list of the respective categories. In this process, one candidate with 406.56 marks and another, i.e., respondent No.5 with 404.78 marks, were selected and

appointed. The plea of the applicant is that had the respondent No.5 been shifted to general category i.e., UR category, instead of picking of respondent No.6, a vacancy would have arisen in the RBA category and he would have stood a chance for that.



11. The operation of reservations is one of complex procedure. In certain States, the reservations, which are vertical, horizontal or even diagonal, in nature are provided. Another aspect is that the compartmentalization is not that strict. It is almost like osmosis for certain categories. They can permeate to other categories, but not *vice versa*. For example, an SC or RBA candidate, who is otherwise meritorious, can be selected against UR category, whereas none other than the persons belonging to that very category, can be against the posts, reserved for them. The accommodation of women candidates or candidates belonging to NCC or ex-serviceman is another aspect. Incidentally, those problems do not arise here.

12. The applicant does not complain that any irregularity has taken place in the selection and appointment of 28 candidates. His grievance is only in the context of filling up the resultant vacancies. Once the process of filling up has been completed, any resultant vacancy is required to be filled by the candidate of that very category. Sliding up or sliding down cannot take place after completion of the selection process. That will completely disturb the entire process and it would lead to several complications. It



must not be forgotten that reservations are implemented in the course of appointments and appointments are not made only to implement reservations. Another aspect is that reservation, being an exception to the mandate under Articles 14 and 16 of the Constitution and the concept of equality, can be blown beyond a point.

13. Learned counsel for applicant relied upon the judgment of Hon'ble Supreme Court in **Saurav Yadav & others v. State of Uttar Pradesh & others**, AIR 2021 (SC) 233. That was a case in which the issue was about the working out of horizontal reservations. Such a problem does not exist in this case at all.

14. The applicant wants that the respondent No.6, be slided upward from RBA category to UR category by displacing the respondent No.5, so that he can be considered against resultant vacancy in RBA category. Such a course of action is totally impermissible and undesirable. The applicant is not able to place before us, any binding precedent or provisions of law, in support of his contention.

15. We do not find any merit in the T.A. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 12, 2021
/sunil/jyoti/dsn/