

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. 61/1037/2020



Pronounced on: This the 27th day of August 2021

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

Harpinder Singh, Age 33 years, S/o S. Avtar Singh, R/o Village Chak Ram Chand (Chhajwal), Vijaypur, District Samba.

.....Applicant

(Advocate: Mr. Bhat Fayaz Ahmad)

Versus

1. State of J&K, through Commissioner/Secretary to Govt. Public Works (R&B) Department, Government of Jammu and Kashmir, Civil Secretariat, Jammu/Srinagar.
2. J&K Service Selection Board, Sehkar Bhawan, Railhead, Panama Chowk, through its Secretary.
3. Chief Engineer, Mechanical Engineering Department, Jammu.

.....Respondents

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

(ORDER)

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



1. Applicant Harpinder Singh has filed the present T.A. seeking the following reliefs:-

- “(a) Mandamus, commanding and directing the respondent No. 1 to appoint the petitioner as Junior Engineer (Mechanical) in PW (R&B) Department in the light of the fact that the respondent No. 1 has cancelled the selection as well as appointment ab-initio of the candidate figuring at Sr. No. 1 in the select list and the petitioner is the next candidate in the order of merit under OSC Category;
- (b) Mandamus, commanding and directing the respondent No.1 to grant on notional basis including seniority and consequential benefits to the petitioner, which have accrued to the petitioner, had the petitioner been appointed from the date the other selected candidates were appointed;
- (c) Prohibition, restraining the respondents from re-advertising the post of Junior Engineer Mechanical, which fell vacant due to cancellation of the candidature of the candidate namely Rakesh Kumar, who was figuring at Sr. No. 1 in the select list under OSC Category;
- (d) 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 in pursuance to Advertisement notice No. 02 of 2014 dated 30.12.2014, he applied under the OSC category which were two in number for the post of Junior Engineer (Mech) PW (R&B) department. In the selection list issued vide Notification dated 31.03.2016, one Rakesh Kumar and Sahid Nazir both OSC candidates securing 73.75 and 73 points figured at S. No. 1 and 2 respectively whereas applicant securing 73 points was placed in the wait list of OSC category. As per practice in J&K SSB, in case of tie, the candidate older in age is preferred



for appointment. Therefore, applicant filed SWP No. 728/2016 which was disposed of vide order dated 06.12.2016 with direction to the Board to consider the appointment in light of Decentralisation Rules of 2010 and to bear in mind the past practice followed by the Board. The LPA filed against order of Hon'ble Single Bench was allowed and writ petition was dismissed. The Review Application filed against the order of the Hon'ble Division Bench is pending disposal.

3. It is the case of the applicant that during the aforementioned litigation, the recommendation of Rakesh Kumar was withheld subject to production of Permanent Resident Certificate. The said Rakesh Kumar during this period was appointed as Junior Engineer vide Government Order dated 12.05.2016. But vide order dated 15.04.2019, on the ground that said Rakesh Kumar has failed to produce his PRC and failed to present himself before the appointing authority, the appointment order of Rakesh Kumar as Junior Engineer was terminated ab-initio.

4. It has been further averred in the T.A. that Respondent No. 1 by way of letter dated 25.03.2019 (Annexure -XII) sought clarification from Respondent No. 2 as to whether the applicant who is figuring in the waiting list and is next in order of merit under OSC category can be considered for appointment in place of said Rakesh Kumar. Respondent No. 2 by way of reply dated 10.04.2019 informed the Respondent No. 1 that so far as the issue of operating the waiting list is concerned, the same has to be decided by the appointing authority under Rules and norms governing the subject.



5. However, no action has been initiated by the Respondents in regard to the subject matter of the present application. Therefore, amongst other reliefs, applicant seeks a direction to Respondent No. 1 to appoint the applicant to the post of Junior Engineer (Mech) PW (R&B) department since the said Rakesh Kumar does not hold a valid PRC and has absconded.

6. Applicant has sought the relief on the ground that:

- (i) That Rakesh Kumar who was figuring at Sl. No. 1 in the Select List under OSC category was not in position of a valid PRC, as such, he could not have been appointed to the post under OSC category and therefore, applicant who was figuring at Sl. No. 1 in the Waiting List was entitled to be considered for appointment to the post of Junior Engineer (Mech) PW (R&B) department;
- (ii) The appointment of said Rakesh Kumar was made despite not holding a valid PRC and appointment was cancelled by the appointing authority and therefore, it was incumbent upon the appointing authority to appoint the applicant since, the post had fallen vacant in the circumstances mentioned above;
- (iii) The respondents cannot take the plea that the period of waiting list has expired since it was due to the fault of the respondents in not rejecting the candidature/selection of said Rakesh Kumar at the earliest when the waiting list was alive and even so, appointing an ineligible candidate.



7. In the counter affidavit filed by official respondents, it has been averred that applicant was appointed as Junior Engineer (Mechanical) under OSC category by the Government vide order No. 441-PW (R&B) of 2019 dated 17.10.2019 but that the relief of national seniority etc is barred by principle of res-judicata since he should have sought the said relief in the earlier litigation.

8. The limited dispute in the present case is whether applicant is entitled to notional seniority and service benefit from 31.03.2016, the date of appointment of ousted Rakesh Kumar or not.

9. The undisputed facts of the case are:

- (i) The original selection list is dated 31.03.2016;
- (ii) Applicant challenged his non-selection in the year 2016;
- (iii) The selection of Rakesh Kumar was subject to production of his Permanent State Certificate (PRC) which he failed to do so;
- (iv) Respondents from 31.03.2016 till 15.04.2019 sat over the case of Rakesh Kumar regarding non-production of PRC by him;
- (v) Respondents are definitely at fault in appointing Rakesh Kumar who did not have a PRC;
- (vi) The fault of respondents resulted in denial of appointment to the applicant in the year 2016 when the selection issued vide Notification dated 31.03.2016 and which fault has now been rectified by the respondents in the year 2019 by appointing the applicant and previous litigation is still pending between the

parties, as such, the question of applicability of principle of res-judicata does not arise.



10. Indubitably, the facts coming out in the present T.A are that it was the due to the fault and mistake of the respondent that the applicant could not secure appointment in the year 2016 to the post of Junior Engineer (Mech) PW (R&B) department and that appointment was given to the applicant in the year 2019. Looking to the facts and circumstances of the case, we are of view that the denial of appointment to the applicant to the post of Junior Engineer (Mech) PW (R&B) department in the year 2016 has violated his right under Articles 14 and 16 of the Constitution of India. Direction is issued to the respondent-department to fix the notional seniority of the applicant and fix his pay scale and all the benefits attached thereto, as per, Rules on the basis that the applicant was entitled to being appointed from 31.03.2016 when the selection list was issued vide Notification dated 31.03.2016, and whereby his candidature for appointment was rejected due to fault of the respondents. But the applicant will not be entitled to back wages or any other financial benefit, save and except the notional seniority. The directions be complied with within two month from date of receipt of certified copy of order. O.A. is accordingly disposed of. No costs.

(ANAND MATHUR)
MEMBER (A)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)