

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. 61/1693/2020



Pronounced on: This the 12th day of July 2021

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

Parvaiz Ahmad Shagoo s/o Abdul Khaliq Shagoo R/o Divisional
Forest Officer, Resource Survey Division, Forest Complex, Dogra
Hall, Jammu

.....Applicant

By Advocate: Mr. Abhinav Sharma, Sr. Advocate with Mr.
Abhimanyu Sharma

Versus

1. State of J&K through Commissioner Secretary to Govt. of J&K, Forest Department, Civil Secretariat Jammu/Srinagar
2. J&K Public Service Commission, Solina, Srinagar, through its Secretary.
3. Chairman, J&K Public Service Commission, Solina, Srinagar.
4. Principal, Chief Conservator of Forests J&K, Jammu/Srinagar.
5. Gh. Ahmad Najar, s/o Gh. Rasool Najar r/o Karalpura, Kupwara (Kashmir)-193224.

6. Azeem Raja d/o Gh. Rasool r/o Shah Mohalla, Nawab Bazar, Srinagar-190002./
7. Bibi Nagaar d/o Qazi Abdul Qadoos r/o Tangdhar, Karnah Kupwara-193005.



.....Respondents

By Advocate: M/s Amit Gupta AAG/Molvi Aijaz/Shah

Faisal/F.A.Natnoo/Sheikh Najeeb for respondents.

O R D E R

Per Rakesh Sagar Jain, Member (J)

T.A. No. 61/1693/2020 titled Parvaiz Ahmad Shagoo v/s State, T.A. No. 62/5540/2020 titled Kaffel Ahmad Mir v/s State, T.A. No. 62/5610/2020 titled Afshan Anjum Baba, State and T.A. No. 62/5677/2020 titled Majid Hussain v/s State and TA No. 62/920/2021 titled Azeem Raja v/s State involving the same controversy of appointment of Range Officer Grade – 1 were taken up and heard together. Since the parties are almost common and the issues involved in the cases are identical, learned counsels for the parties referred inter changeably to their pleadings filed in the five cases.

2. Applicant Parvaiz Ahmad Shagoo has filed the present petition seeking the reliefs to quash Select List for the post of Range Officer, Grade-I (territorial) issued vide Notification No. PSC/Exam/67/2019 dated 20.09.2019 to the extent of private respondent No. 5, 6 & 7 who are below the prescribed height of 5'-6" laid down in the advertisement notification and select the petitioner, who is in possession of 5'-6"



3. It is averred by the applicant that the aforesaid condition of eligibility is based on statutory instructions as contained J&K Forest Service (Gazetted) Recruitment Rules, 1970 but the same has not been adhered to, by the official respondents. It is also the case of applicant that candidate (Saqib Mortaza) figuring at S. No. 1 of the select list in OM list had already been selected for KAS in the common competitive examination held in 2018-19 and a vacancy had been caused under OM category because of the said candidate's selection in KAS. In case the candidate securing merit points just below selected candidate under OM category shall get selected against the vacancy cause due to non joining of aforesaid Saqib Murtaza and the applicant will be next in merit to the candidate who figures at the end of the OM merit list and in case the private respondents are proven to have secured their height measurement by fraud and their height is incorrectly recorded and endorsed by the CMO concerned, the petitioner will automatically get selected as R.O. Grade – 1 Forest. It is also the case of applicant that since 9 RBA candidates are available but 7 posts were kept as back log vacancies which is impermissible.

4. Respondent Nos. 2 and 3 (PSC), as per, their counter affidavits seek the dismissal of the petition on the grounds that in case private respondents are found unfit being less in prescribed height, there arises no case for their recommendation for appointment. It is submitted that the private respondents also figure as respondents in SWP No. 3182/2019 titled Majid Hussain v/s State &Ors as well in which the Hon'ble High Court has already stayed their selection vide order dated 02-11-2019. Hence their selection has been withheld by the answering respondents-Commission vide supra



recommendation letter No. PSC/Exam/RO/Forest/2019/1 dated 13-11-2019 and only 15 candidates were recommended for appointment. The claim of the petitioner would be decided in accordance with rules after the disposal of the said writ petition. Respondent-PSC further aver that private respondents were never recommended being unfit (less height) and that only 15 candidates were recommended.

5. Respondent no. 6 in her counter that official respondents at the time of issuance of advertisement notification had promised that eligibility physical measurement criteria for the women candidates shall be promulgated by way of SRO and communicated to the P.S.C. during the selection process and it was on this promise that the female candidates appeared in the selection process and that it was on the basis of this promise that till date the woman aspirants on the basis of the physical standards where not declared ineligible and have finally found their place in the selection process. Therefore, the petition be dismissed.

6. In the counter affidavits filed by respondents No. 5 and 7 in TA No. 5610/2020, it has been averred that fixing the same physical standard i.e., the height for male and female is violative of gender justice and discriminatory against the woman by violating their rights under Article 14, 15 and 16 of the Constitution of India. The number of surveys show that the average height of female is less than average height of male in Jammu & Kashmir and therefore, treating unequals as equals violates Article 14 and 16 of the Constitution of India and it would be pertinent to note that the physical standard prescribed for male and female for the post of Assistant



Conservator of Forests differs from each other. It is further averred in the counter affidavit that the Forest Service Officer Rules (Annexure-VI) has prescribed different minimum standard for height for male and female candidates and therefore, P.S.C. be directed to apply the same physical standards and recommend the names of answering respondents to the administrative department for appointment. The similar is a position in SRO-421 of 2017 wherein different physical standard for the post of Assistant Director-I has been notified. Hence, the petition be dismissed.

7. Whereas, in the counter affidavit filed by respondent No. 1 (State), the stand is that while prescribing the qualifications for 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 and the functionality of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of Administration decisions making. As such the petition is liable to be dismissed outrightly. And that “. . . the answering respondents being indenting Department have referred the posts for selection to the PSC and it is the domain of PSC to conclude the selections as per the rules in vogue during selection.”

8. It has been submitted by learned counsel for applicant that the Recruitment Rules (RRs) for the post of Range Officer Grade – I (Forest) were promulgated in exercise of powers conferred by the proviso to Section 124 of the Constitution of Jammu and Kashmir and notified by J&K Forest Service (Gazetted) Recruitment Rules, 1970 vide SRO – 359 dated



24.07.1970 which prescribes the physical standards in the advertisement and therefore scaling down this standard unauthorisedly by the PSC amounts to changing the rules of the game after the game has started, and is illegal, arbitrary and impermissible under law. Whereas, per the respondents the one standard of height for women and men is discriminatory towards and violates the rights of the women candidates under the Constitution of India and deserves to be declared ultra vires the Constitution.

9. In the catena of judgments, the Hon'ble Apex Court has laid down two broad principles: Firstly, criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced so, as to alter the rules of the game midway or after the process is completed; Secondly, once a person has appeared in the examination as per the terms and conditions laid down in the advertisement notice without any protest and was not found successful, question of entertaining a petition challenging the such examination would not arise. Support for this can be found in K. Manjusree Vs. State of A.P., AIR 2008 SC 1470, Bedanga v/s Saifudullag, AIR 2012 SC 1803, Firdousa Akhtar v/s State of J&K, (2010) 4 JKJ 996 and LPASW No. 68 of 2008 titled Sudesh Kumar v/s State of J&K, vide order dated 6.03.2019.

10. Learned standing counsel for the PSC has stated that the Commission is strictly guided by the recruitment rules for the posts. It is stated that it is only when the recruitment rules are modified by the Government that the question of relaxation will arise and that too by following the settled principles of law, less it works out against the persons who did not apply

since no such relaxation of rules/criteria was laid down at the time of issuance of the advertisement notice.



11. In the instant case, the recruitment process commenced on the basis of unaltered Rules. Private-respondents knew well, inasmuch, as they were informed by the advertisement, what the Rules were and how the Rules direct selection of the candidates. The Rules made it explicit that in order to be selected, the minimum height is 5'-6". Knowing fully well the Rules, as stood, the respondents offered themselves for being selected. The respondents having had taken chance and having had failed in their attempt, cannot turn around and contend that the Rules, under which they took chance, are required to be altered. Respondents taking a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. Once the mode of selection is disclosed, the candidates cannot after participation in the selection turnaround and state that such a mode was not proper and was contrary to the rules. This principle is well settled in Chandigarh Admn. v/s. Jasmine Kaur, (2014) 10 SCC 521, Chandra Prakash Tiwari v/s Shakuntala Shukla, (2002) 6 SCC 127, Air Commodore Naveen v/s Union of India, (2019) 10 SCC 34, Madan Lal v/s The State of Jammu & Kashmir, (1995) 3 SCC 486, Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309.

12. We also note the citation District Collector v. M. Tripura Sundari Devi (1990) 3 SCC 655, relied upon by Learned AAG wherein it was held that it amounts to a fraud on public to appoint persons with inferior

qualifications especially when there are people who had not applied for posts because they did not possess the qualifications mentioned in the advertisement.



13. We may also refer to *Manish Kumar Shahi v. State of Bihar*, 2010 (12) SCC 576, wherein after nine months of non-inclusion in the selection list, applicant challenged the constitutionality of selection rules, which was rejected by the Hon'ble Apex Court holding that:

“Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under [Article 226 of the Constitution of India](#) only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

14. It is settled law that the posts which are required to be filled have to be filled strictly in accordance with the provisions of the RRs existing at the relevant point of time and a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome, as held by the Hon'ble Supreme Court in *Pradeep Kumar Rai v. Dinesh Kumar Pandey*, (2015) 11 SCC 493 that: “Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure

or they should have challenged immediately after the interviews were conducted.”



15. It be noted also that even in case of Range Officer in the Soil Conservation Department, the prescribed height is 5’6” and there is no different physical standard of female candidates as is apparent from Advertisement notice dated 23,04.2018 issued for selection of Range Officers Soil Conservation in J&K Forest Department and even the recent requisition form dated 28.10.2020 sent to PSC for selection of Range Officer Grade – I mentions the height for general category to be 5’6”.

16. The selection of the posts in question is entrusted to the PSC, a body constituted under the Constitution. Once the selection process is entrusted to it, the PSC is strictly guided by the recruitment rules unless the rules are amended. In any case the prescription of physical norms for a particular post is within the domain of the executive. It is not for the Tribunal, sitting in judicial review of the prescriptions made by an employer in its wisdom, to strike it down as unreasonable. Such prescriptions, looking at the nature of work and duties assigned to the employee, is one coming within the wisdom of the employer. The Tribunal, by judicial over reach, cannot substitute such wisdom.

17. In the present case, we find that the qualifications have been prescribed in furtherance of proviso to Section 124 of Constitution of J&K, which gives the power exclusively to the State to prescribe qualifications for posts to the exclusion of the Tribunal as held by the Hon’ble Supreme Court

in the case of P.U.Joshi vs. Accountant General, (2003)2 SCC 632, the relevant portion of the same reads as under:



“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”



18. Credence is also to be given to BALCO Employees' Union (Regd.) v/s Union of India, 2002 2 SCC 333 relied upon by learned AAG wherein it is observed that: "46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical."

19. Therefore, the arguments raised by the learned counsel for respondents have no legs to stand upon. The Select List, which is at Annexure – B to Communication No. PSC/Exam/RO/Grade-I/Territorial/2018 dated 20.09.2019 (Annexure – I) is vitiated to the extent of the candidates being included who do not fulfil the height criteria.

20. In view of the discussions herein above, the TA is disposed of with the following directions:

- 1) The Select List i.e. Annexure–B to Communication No. PSC/Exam/RO/Grade-I/Territorial/2018 dated 20.09.2019 (Annexure – I) includes the names of the persons inclusive of respondents No. 6 to 14 who are to figure in the Walk Test and Medical Examination. So, PSC (Respondent No. 2 and 3) shall in the first instance conduct the exercise of height measurement, if not conducted as on date;
- 2) Conduct the tests as mentioned in the advertisement notice;

- 3) Thereafter prepare the final select list of candidates who fulfil all the eligibility criteria mentioned in the advertisement notice;
- 4) Follow the procedure for bringing the selection procedure to its conclusion.



Let this exercise be completed within three months from the date of receipt of a certified copy of this order. Respondents would do well to ensure that the final list does not contain the name of candidates who do not fulfil the eligibility criteria, as per rules and conditions of advertisement notice. T.A. is accordingly disposed of. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-