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**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No.3747/2021
(S.W.P. No.2045/2020)

Monday, this the 31st day of May, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Tarun Shridhar, Member (A)

Raja Shoaib, aged about 39 years
s/o Abdul Hamid Bhat
r/o 43 Kohsheen House Rajbagh, Extn. Srinagar

... Applicant

(Mr. Reyaz Jan, Senior Advocate assisted by Mr. Taha Khalil,
Advocate)

Versus

1. Union Territory of Jammu & Kashmir through
Commissioner/Secretary to Government,
Department of Forest, Environment & Ecology,
Civil Secretariat, Srinagar
2. J & K Public Service Commission, through its Secretary
Poloview, Srinagar
3. Chairman, J & K Public Service Commission,
Poloview, Srinagar
4. Principal Chief Conservator of Forest, J & K, Srinagar
Home Department, Govt. of Jammu & Kashmir,
Civil Secretariat, Jammu

... Respondents

(Mr. Azhar-ul-Amin, Advocate)



O R D E R (ORAL)

Mr. Justice L. Narasimha Reddy:

The Jammu & Kashmir Public Service Commission, the 2nd respondent herein issued a notification dated 15.03.2018 for selection to the post of Range Officer Grade I Forest in the Jammu & Kashmir Forest Department (Territorial). The applicant and various others responded to the notification. In the ultimate selection process, the applicant was not short listed. It is stated that out of the selected candidates, one at Sl. No.1, by name Saqib Murtaza, opted out, by stating that he was selected and appointed in the Junior Time Scale of Kashmir Administrative Service (KAS), and accordingly, he has abandoned his selection to the post of Range Officer Grade I Forest. The applicant contends that he is next in the merit in the concerned category and despite that, the respondents are not considering his case.

2. According to the applicant, Rule 57 of Jammu & Kashmir Public Service Commission (Business & Procedure) Rules, 1980 (for short “Rules, 1980”) places an obligation upon the Commission to maintain a waiting list and despite that, such a procedure was not adopted in the instant case. The applicant further submitted that when the selection has taken place with such a rigor and at so many stages, it is not at all advisable for

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the respondents to keep one post unfilled, when qualified and eligible candidates are available. He filed SWP No.2045/2020 before the Hon'ble High Court of Jammu & Kashmir, with a prayer to direct the respondents to consider his case for the post of Range Officer Grade I Forest in the open category, against the available vacancy. Ancillary reliefs are also claimed.

3. The Commission did not file any reply. However, learned counsel for respondents stated that he is fully instructed in the matter.

4. 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.3747/2021.

5. We heard Mr. Reyaz Jan, learned senior counsel for applicant assisted by Mr. Taha Khalil, learned counsel and Mr. Azhar-ul-Amin, learned counsel for respondents, in detail.

6. It is not in dispute that the applicant did not figure in the list of selected candidates, under the open category for the post of Range Officer Grade I Forest. In fact, the applicant does not have any qualms about that. What made him to file the

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SWP/TA is that a candidate, selected for the post, by name Saqib Murtaza and who figured at Sl. No.1, has given up the selection, on account of the fact that he was selected to the Junior Time Scale of KAS. He filed a duly sworn affidavit on 19.11.2019, to that effect, and a copy thereof is made part of the record.

7. The maintenance of waiting list is not a universal phenomenon. At the same time, even where the Rules do not specifically provide for it, the selecting agency maintains it, so that the efforts, that are made in the selection process, do not go waste. It is not uncommon that at least some selected candidates do not make it to appointment, for variety of reasons, such as when defects are found in the certificates during the course of verification, or their turning out to be unfit in the course of medical examination. It hardly needs any mention that huge effort is made by the selecting agency, like Public Service Commission, for selecting the candidates for the posts notified, from time to time. Thousands and in some cases, lacs of applications are received and all of them are required to be processed. Conducting of examination and evaluation of answer scripts is a stupendous task. The entire effort is only to pick up the best possible material, for the notified posts.

8. Once the select list is prepared, the expectation is that all the selected candidates would join the post. If for any reason, any selected candidate does not join or is found to be otherwise

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unfit, it is in the interest of all, that the candidate next in the merit list, is offered the post. It is not as if the candidates, who do not make it to selection, stand disqualified altogether. It is rather incidental, that the marks scored by them did not enable them to get included in the select list, because of availability of candidates with higher merit. However, with the reluctance on the part of the selected candidates or their turning out to be otherwise ineligible, the relative merit undergoes slight change and the choice has to fall upon the candidate, next in the list.

9. Learned senior counsel for applicant submits that though the word “may” is used in Rule 57 of the Rules, 1980, the same needs to be interpreted as “shall”, in view of the purpose, which is supposed to be served, and cited certain precedents, in support of his contention.

10. We have already observed that even where a provision does not exist for the maintenance of the waiting list, the operation of the list would replenish the vacancies, that remain unfilled on account of failure or reluctance of the selected candidates. That would not cause any inconvenience to the administration. On the other hand, failure to do so would defeat rights of candidates who are next in the merit. Another aspect is that the vacancies, if not filled, would result in a situation where the Government does have the benefit of the presence of a public servant.

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11. Identical issue was dealt with by the Principal Bench of the Tribunal in **Garishma Goyal v. Union Public Service Commission & another** (O.A. No.1308/2020) decided on 08.10.2020. There also, a vacancy arose on account of reluctance of one of the selected candidates to join the post and the candidate next in the merit list approached the Tribunal. The Union Public Service Commission (UPSC) was reluctant to consider her case by pleading that there is no provision for preparation or operation of waiting list. The Tribunal repelled that contention and directed the UPSC to process the case of the candidate, who was next in the merit list. The order of the Tribunal was upheld by the Hon'ble High Court of Delhi in W.P. (C) No.1231/2021 on 16.02.2021 and by the Hon'ble Supreme Court in SLP (C) No.4403/2021 on 08.04.2021. We are of the view that the same situation obtains in the present case also.

12. At this stage, learned counsel for respondents submits that the applicant is yet to be tested on certain parameters. We make it clear that we do not exempt him from any of the requirements whatever and he shall be subjected to all the steps, that are involved in the selection process.

13. We, therefore, dispose of the T.A. with a direction to the respondents to consider the case of the applicant against any resultant vacancy of Range Officer Grade-I, that is available on account of failure or reluctance on the part any selected

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candidate, provided he is next in the merit and is found to be fit and eligible to be considered.

There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 31, 2021
/sunil/jyoti/ns/sd/