

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. 61/3983/2020

Pronounced on: This the 12th day of April 2021

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

1. Mahesh Sharma, aged 24 years, S/o Sh. Parshotam Raj Sharma, R/o Village Channi kartholi, Bar/Barhmna, District Samba.
2. Aditya Verma, aged 28 years, S/o Sh. Som Dutt Verma, R/o H. No. 99, Ward No. 5, Railway Board, Vijaypur, District Samba.
3. Sarabjeet Singh, aged 24 years, S/o Sh. Tilak Raj, R/o. H. No. 59, Govindpuri, Near Saw Factory, Vijaypur, District Samba,
4. Sparsh Choudhary, aged 23 years, S/o Sh. Shamsher Singh, R/o Bhour, Village Devipur, P.O. Chakh Kirpalpur, Tehsil Akhnoor.

.....Applicants

(Advocate: Mr. Abhinav Sharma assisted by Mr. V. Magotra)

Versus

1. State of Jammu & Kashmir, Through Commissioner Secretary, Home Department, Civil Secretariat, Jammu.
2. Director General of Police, Jammu & Kashmir Government, Jammu.
3. Chairman, Police Recruitment Board, [Additional Director General of Police (Armed), J&K Government], Jammu.
4. Balwan Chand, S/o Sh. Chanchal Chand, R/o Bupp, P.O. BPP, Tehsil Chenani.
5. Idrees Ahmed Wani, S/o Sh. Gh. Nabi Wani, R/o Badasgam, Hakura, Doru.
6. Muhammad Shafi Bhat, S/o Mohd Ramzan Bhat, R/o Okey, Kulgam.
7. Mohit Sharma, S/o Sh. Vijay Kumar Sharma, R/o Village Katthar, Akhnoor, Jammu.
8. Vinod Kumar Sharma, S/o Sh. Parshotam Kumar Sharma, R/o Village 13 Shiva, P.O. Pul Doda, P.S. Bhaderwah.
9. Roof Ahmad Dar, S/o Sh. Abdul Salam Dar, R/o Cheratnzi, Dawood Pora, Vailoo, Kokernag.

10. Aasif Abdullah Sheikh, S/o Mohd Abdullah Sheikh, R/o 75 Dalwatch, Gagisgund, Qzd.
11. Gulshan Kumar, S/o Sh. Suraj Ram, R/o Malikote, P.O. Bagankote, Tehsil Chassana, Doda.
12. Kiran Singh, S/o Sh. Amar Singh, R/o Kolai, BPO Jagota Teh, Thathri, Doda.
13. Khalid Mohmood Mir, S/o Gh. Mohd. Mir, R/o 33-K, Bakiaker Handwara, Kupwara.
14. Rinkoo Singh, S/o Sh. Mangal Singh, R/o Hochak, Banihal, Doda.
15. Ayaiz Ahmed, S/o Sh. Jalal Din, R/o H. No. 76, Kathawa, Teh Phagsoo, Doda.
16. Makesh Kumar, S/o Sh. Bodh Raj (R/o Sawani (Khani), P.O. Chanderkote, Teh Ramban
17. Ajaz Ahmad Rather, S/o Mohd Farooq Rather, R/o Rajnagar, Teh Budhal.
18. Mohd. Mushtaq Hajam, S/o Abdul Rashid, R/o Village Sildhar, Teh Mahore, Distt, Reasi J&K.
19. Alumbar Nawaz, S/o Sh. Nawaz Hussain, R/o Dawarun Mohura, Uri, Baramulla.
20. Pankaj Parihar, S/o Sh. Sagar Singh, R/o Mahoute (Charota-A), BPO, Assar, Teh. Assar
21. Aaqib Yousaf , S/o Mohd yousaf Malik, R/o Ranvirpora, Mattan, Anantnag.
22. Shafat Ahmad Mir, S/o Mohd Munawar Mir, R/o Zethan Rafiabab, Tehsil Dangiawacha, Baramulla.
23. Irshad Ahmad, S/o Mohd Rashid, R/o Fatehpur, P/o Fatehpur, Village Fatehpur, Tehsil Mandi.
24. Shafat Ahmed Ahmed, S/o karam Din, R/o Dhadkaie P/o Gandoh, Teh Gandoh.
25. Padma Thinles, S/o Phunchok, Spalzang, R/o Thang, PA/Stakna, Leh Ladakh
26. Stnzen Legsmon, S/o Tashi Wangail, R/o Kagapa Khaling, ia Khaltisi.
27. Masood Ahmed, S/o Ghulam Rasool, R/o Vill. Kangar, P/o and Tehsil Bhalwal.
28. Nawang Dorjey, S/o Rigzin Dawa, R/o Solar Colony, Choglamsar P1 Leh, Ladakh.
29. Ifthkar Ul Haq, S/o Saraj Din, R/o Dharna, Tehsil Mendhar, District Poonch.
30. Ravi Kumar, S/o Puran Chand, R/o Vill Kotali (Shaleen), BPO Kastigarh, Tehsil Kastigarh.
31. Neha Kumari, D/o Madan Lal, R/o Nagrota, Near Trikuta Floor Mill, Battal Ballian Road, Udhampur.

32. Yoginder Kumar, S/o Om Raj, R/o Village Hanga, P/O Udrana, Tehsil Bhaderwah.
33. Ranjeet Singh, S/o Hukam Chand, R/o Jhatgali, Tehsil Raigarh, District Ramban.
34. Rajat Manhas, S/o Hakikat Singh, R/o Gujral at present Bhooper, Tehsil Akhnoor Jammu.
35. Abdul Waheed Khan, S/o Mohd Fazal Khan, R/o Gulutta Mendhar, Poonch.
36. Taniya Sharma, D/o Shyam Lal, R/o Village Sainth, Tehsil Akhnoor.
37. Arun Kumar, S/o Sh. Hukam Chand, R/o VPO Sundla, Tehsil Majalta, Distt. Udhampur.
38. Mastan Singh, S/o Sh Karnail Singh, R/o Village Parlah, Teh Suchetgarh, P.O. Arnia.

.....Respondents

(Advocate: Mr. Amit Gupta, Additional Advocate General)

O R D E R

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

1. Applicant Mahesh Sharma and three other applicants have filed the present T.A. Mr. Amit Gupta, AAG appears for official respondents. The order sheet of the Hon'ble High Court in SWP No. 630 of 2019 numbered as T.A. No. 61/3835/2020 titled Sumeet Sharma and ors Vs UT of J&K & Ors shows that T.A. No. 3835/2020, T.A. No. 61/3995/2020, T.A. No. 61/3983/2020 and T.A. No. 61/3924/2020 were being listed together. As per report of Registry of Hon'ble High Court in SWP No. 630 of 2019, notices were sent to the private respondents through registered A/D cover on 15.03.2019 which have not been received back served or unserved. Statutory period has also expired. However, respondents No. 5, 7,8,9,18,27,29,32 and 33 appeared in person.
2. Case of applicants is that vide advertisement dated 30.12.2016, applications were invited for posts of Sub Inspector (Executive/Armed

Wings) in J&K police. Applicants seek the quashing of selection and consequential appointment of private respondent No. 4 to 38, who have been illegally, arbitrary and unjustifiably selected and consequently appointed against the posts of Sub Inspectors (Executive/Armed) advertised vide advertisement notification No. Pers-A-400/2016/75303-403 dated 30-12-2016 issued by respondent no. 2, at the cost of petitioners by blatantly disturbing the category wise breakup of posts as notified in the advertisement notice supra; violating the notified preference cum merit criteria as also Rule 7 of the J&K Special Recruitment Rules, 2015, notified vide SRO 202 of 2015 dated 30-06-2015 made basis of the selection process under reference and thereby illegally directing the quota meant for the petitioners to private respondents. Applicants also seek a direction to the official respondents to consider and consequently treat the petitioners as selected/appointed against the post of Sub Inspectors (Executive/Armed) in J&K Police in the pay scale of Rs. 9300-34800 +(4240/=- Grade Pay) advertised by advertisement notification No. Pers-A-400/2016/75303-403 dated 30-12-2016 issued by respondent no. 2 and consequently grant the petitioners all service benefits with retrospective effect.

3. We may note the following:

- (i) Category wise break up of post notified in the advertisement (Table No. 1) and Category wise selection of candidates made by the respondents in the Selection list (Table No. 2)
- (ii) Clauses/ conditions of the advertisement,
- (iii) Clauses of Special Recruitment Rules, and
- (iv) Settled principles of law which are relevant to the dispute in the present petition as below:

Category wise break up of post notified in the advertisement (Table No. 1)

Wing	OM	RBA	ST	SC	ALC	OSC	Total
Executive	275	96	48	39	15	9	482
Armed	100	35	18	15	5	3	176

Category wise selection of candidates in the Selection list (Table No. 2)

Wing	OM	RBA	ST	SC	ALC	OSC	Total
Executive	310	77	41	35	12	7	482
Armed	65	54	25	19	8	5	176

Conditions/Clause of the advertisement:

Clause No. 5: The candidates shall clearly state their preference for Executive/Armed Wing at the time of filing their online application. This preference-cum-merit obtained in the selection process by the applicant shall form the basis of allocation of Executive/Armed wing to the applicants at the time of final selection.

Clause No. 8: The selection of the candidates for the post of Sub-Inspectors shall be made on their performance in written test and viva-voce/personality assessment test visa-a-vis number of vacancies in their respective categories. The preference given by the candidates while applying for post either in Executive or in Armed Police plus merit obtained in the written viva-voce test shall form the basis of allocation of

Executive/Armed wing to the applicant at the time of final selection. In case of tie in merit, the preference will be given to the candidate being older in age. The selected candidates shall have to serve in any part of the State as per the order in vogue or as may be issued from time to time.

J&K Special Recruitment Rules, 2015

Rule 5 (2): The Selection Committees referred to in sub-rule (1) shall make the selections as per the provisions of the Jammu and Kashmir Reservation Act, 2004 and rules framed thereunder.

Rule 7 : **Mode of Selection:-** (1) The selection agency shall invite applications for recruitment under these rules in respect of district, division or State cadre posts. After assessing the merit of the candidates in a fair and transparent manner, the selection agency shall prepare a select list which shall not exceed the number of vacancies so advertised and furnish the same to the appointing authority within a period of three months from the date of reference of the vacancies.

Principles of law

Rajesh Kumar Daria vs. Rajasthan Public Service Commission, (2007) 8 SCC 785 wherein dealing with a similar issue the Hon'ble Apex Court held as under:

"9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SCs, STs and OBCs under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women, etc. under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved

for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category.”

4. So, looking to the rules, advertisement etc as noted above, the process of selection can be said to consist of the following steps:

- A. Prepare a Master list in order of merit irrespective of preference and also marking the category to which the candidate belongs;
- B. Pick up one by one candidate from the Master list and place them as per their preference into the Executive list or the Armed list. For example:
 - i. advertised posts are 200 in Executive and 100 in Armed.
 - ii. Breakup of 200 is 150 in OM and 50 in other categories
 - iii. Breakup of 100 is 75 in OM and 25 in other categories
 - iv. Make a consolidated master list of all the 300 posts mentioning against each candidate, his preference and category;
 - v. Distribute the candidates from the master list as per their preference into the Executive and Armed list till the list of 200 Executive and 100 Armed is exhausted;
 - vi. Thereafter, from the leftover candidates in the master list, pick out the candidates of other categories and place them in their respective category to the extent of their quota.

5. The fallacy in the selection procedure adopted by the official respondents can be best demonstrated by the fact that 275 vacancies were advertised in Executive Wing in open merit whereas 310 persons have been selected. As per,

the official respondents, the extra selection of 35 candidates belong to the other categories and vacancies in which categories have been corresponding reduced. The procedure adopted by the official respondents is in violation of the settled law that 'The entire reservation quota will be intact and available in addition to those selected under open competition category'.

6. Therefore, without further ado, and indisputably, the selection has not been prepared in accordance with rules and settled law and the validity of the selection list/s prepared in pursuance to advertisement notice No. Pers-A-400/2016/75303-403 dated 30.12.2016 cannot be upheld.

7. In view of the facts and circumstances of the case, the selection list/s of the Sub Inspector (Executive and Armed) in J&K Police prepared in pursuance to advertisement notice No. Pers-A-400/2016/75303-403 dated 30.12.2016 is quashed and set aside. Official respondents are directed to prepare the selection list afresh in accordance with law and rules within the earliest period possible from the date of receipt of certified copy of the Order. No costs

(ANAND MATHUR)
MEMBER (A)
Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)