



**(Reserved)**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAMMU BENCH, JAMMU**

Hearing through video conferencing

**T.A. 62/5610/2020**

**Pronounced on: This the 12th day of July 2021**

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

1. Afshan Anjum Baba aged 29 years, D/o Mubarak Ahmad Baba, R/o Manzgam, Kulgam.
2. Miss Khuban aged 26 yrs, D/o Shakeel Ahmad Buch, R/o Buchpora Srinagar.
3. Shiba Zahoor aged 27 years, D/o Zahoor Ahmad Rather, R/o Buchpora Srinagar.
4. Bibi Nagar aged 26 years, D/o Qazi Abdul Qadoos, R/o Tangdar Kupwara.
5. Saima Qamar aged 26 yrs, D/o Mohammad Aslam, R/o Poonch Jammu.,
6. Basira Mehraj aged 26 years, D/o Mehraj-ud-din Bhat R/o Tarigam Kulgam

.....Applicants

By Advocate: Mr. Shah Faisal

Versus

1. Union Territory of Jammu & Kashmir through its Chief Secretary, Government of Jammu and Kashmir, Civil Sectt. Jammu/Srinagar.
2. Commissioner/Secretary to Government, Forest Department, Civil Sect, Jammu/Srinagar.
3. J&K Public Service Commission through its Secretary Solina Srinagar/ReshamGhar Colony, Jammu

.....Respondents

By Advocate: M/s Amit Gupta AAG/Azhar ul Amin

## 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. The present T.A. has been filed by applicant Afshan Anjum Baba and 5 other applicants seeking the reliefs to declare the SRO 359 of 24<sup>th</sup> July 1970 as Ultra Vires to the Constitution of India in so far as the impugned rule prescribe a common height for men and women and thereby discriminates against the women and violates their right to public employment under Article 14, 15 and 19 of the Constitution of India and to direct J&K Public Service Commission (PSC) to forward the names of the applicants for their appointment to the post of Range Officers Grade-I Forest in J&K Forest Department (Territorial), since the names of petitioners have been withheld on the basis of the discriminatory rule.

3. Case of applicant is that they applied for the post of Range Officer Grade-I in pursuance of advertisement No. PSC/Exam/2018/19 dated 15.03.2018 issued by PSC. As per notification dated 20.09.2019 (Annexure -



II), 29 candidates qualified the written test and interview and called for Walk test and medical examination. Applicants have challenged the rejection of their candidature on the ground that they are below the minimum height of 5'-6" prescribed in the J&K Forest Service (Gazetted) Recruitment Rules, 1970 as notified by Forest Department Notification SRO 359 dated 24.07.1970 in pursuance of the proviso to Section 124 of the Constitution of J&K and the advertisement notice.

4. The stand of respondent no.3 (P.S.C.) is that acting upon the representations, the Commission has sought clarification from the Administrative Department (Forest) with regard to separate physical standards for male and female candidates vide letter dated 18.10.2019.

5. Whereas, the stand of the Government 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 and that the Government being indenting Department has referred the posts for selection to the PSC which is to conclude the selections as per the rules.

6. It has been argued by learned counsel for applicants that a 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. The rule is unnatural since male and female naturally have different physical standards, thus, are



unequal in physical consultation and it would be pertinent to note that the physical standard of height prescribed for male and female for the posts in the Forest Department, Forest Service Rules and other departments differs from each other.

7. Learned counsel for applicants further argued that despite falling short of the prescribed height criteria, the applicants are found to be fit to discharge the functions of the Range officer by meeting all other standards including the physical and health standards. He argued that what is important is whether the shortfall in the required height is likely to interfere with the efficient performance of the duties and continuous effective service. He further submitted that even the candidates with lesser height requirements from the North Eastern parts of the country with a lower height requirement of 152.5 cms for men and women for whom the height prescribed is 145 cms do not incapacitate, debilitate and disable such men and women from rendering efficient and continuous performance of duties as Range Officers and submitted that such discrimination in present case is violative of Article 14 of the Constitution of India and hence calls for interference by this Tribunal.

8. Learned AAG appearing for State argued that prescribing of the criteria lies within the exclusive domain of the Administration and there is no discrimination against women and even so, an unsuccessful candidate, after participating in a process of selection and failing therein, cannot turn around and challenge the process of selection. It was also argued by learned AAG that even if the height clause is held to be ultra vires the Constitution,

the applicants by way of equity and delay as well as laches have disentitled themselves to the relief sought by them.



9. It was further argued by learned AAG that the Executive having the technical knowledge of the criteria required to hold the post is the best judge to prescribe the requisite qualification of a post. It is not function of judicial review to expand upon the ambit of the prescribed qualifications. The very fact that the Executive has prescribed that the person holding the post of Range Officer Grade – 1 should have a minimum height whereas there is no necessity of having a minimum height in case of other officers is indicative of the fact that looking to the nature of the functions of a Range Officer, the need was felt by the Administration that the Range Officer should not be below a particular height and therefore by no stretch of imagination, can the physical standard set by the Executive be declared ultra vires the Constitution.

10. We have carefully considered the argument of both sides. It is the policy of the Government to fix physical and other parameters as qualifying standards for a highly competitive selection process for post like the J&K Forest Service where the selected persons will have to work in arduous and inhospitable environs of the forests. Prescribing a height requirement for is a matter within the governmental policy. The contention that having a lesser standard than what is prescribed in rules and the advertisement Notification will not affect the efficiency to discharge the duties of a Range Officer does not have any force since it is for the government to see what qualifications must be held by a person manning the post of Range Officer.



11. It is a settled position that under our Constitution, the executive has been accorded with primary responsibility for formulation of government policy and the Court does not interfere unless the policy is unconstitutional, arbitrary or irrational or contrary to the statutory provisions. The law is well settled that orders for creation of Cadres, criteria for appointment on posts etc are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. It is not for the Statutory Tribunals to direct the Government as to how to run the administration.

12. Since, the applications were invited as per terms and conditions prescribed in the advertisement, it cannot be gainsaid that candidates though who were otherwise eligible except for meeting with the height requirement may be considered by relaxing the minimum height standards. If, Court does so, it may result into great injustice to those candidates, who have not applied for the post in question because they do not possess minimum height as prescribed. Even, if we do set aside the height criteria, the Government lays down fresh height criteria, issues a fresh advertisement and permits the applicants to participate in the fresh selection, it would result in great injustice to those candidates who have not applied for the posts in question because they did not possess minimum height as prescribed and cannot apply now because they may be overage now. It would be putting an underserved premium on the applicants who despite being unqualified choose to apply for the post besides making way for backdoor entry for the applicants.(Read Dr. Krushna Chandra Sahu v. State of Orissa, 1995 (6) SCC and Zonal Manager v/s Aarya, (2019) 8 SCC 587).



13. We may refer to the arguments of the applicants contending that the RRs prescribed height of 5' 6" for selection to the post of Range Officer, Grade-I (Forest) which is discriminatory since the RRs do not prescribe the height for the said officials in the Forest Department. Regarding this contention of the applicants, we are unable to find any discrimination visiting the persons applying for the post of Range Officer, Grade-I (Forest). The candidate has to satisfy the selection norms prescribed in the said rules for the post of Range Officer, Grade-I (Forest) and cannot claim discrimination on the basis of norms prescribed for the different posts in the department. Each post has its own function and would require different norms. As rightly argued by learned AAG that considering the arduous nature of the job of Range Officer in the forest department, the prescribed physical standards are quite demanding and that the extant rules do not permit any relaxation or re-fixing of the physical standard. There is a world of difference between the responsibilities of Range Officer and other officers in the other departments and therefore the Government in its wisdom thought it fit to have one minimum height and, in any case, it is within the exclusive domain of the State to lay down the qualifications required for the post in question and not within the powers of this Tribunal.

14. Apart from the fact that a candidate cannot approbate and reprobate at the same time, the basic presumption, however, remains that it is the state who is in the best position to define and measure merit in whatever ways they consider it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit. In

the facts of the instant case, height is not the sole criteria for selection, the impugned rule mandates that the candidates must have the minimum height prescribed.



15. It is interesting to note the argument of respondent- State 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". So, the executive in its wisdom has prescribed a minimum height for the post of Range Officers.

16. 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. It requires to be noted that the State can prescribe different height in departure to the height prescribed in other States. In other words, what could be the proper minimum height of candidate for the post in question is in general domain of the State.



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 as observed by the Hon'ble Supreme Court in P.U.Joshi vs. Accountant General, (2003)2 SCC 632as under:

“. . . .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.”

18. It was also argued by learned AAG and rightly so, that the applicants applied for the post of Range Officer knowing fully well the minimum height required to be eligible for appointment, therefore, they cannot not resile later on or take a somersault saying that the procedure as adopted by the department was vitiated.

19. It is a settled principle of law that a candidate who takes 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 advertisement notice is issued the criteria for making selection is to be disclosed so as to ensure that the candidates are not taken by a surprise and the rules of the game are not changed once the game is played. Once the mode of selection is disclosed, the candidates cannot after participation in the selection turnaround and challenge the selection process. 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.



20. 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.

21. 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.”

22. Reiterating the earlier view that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome, the Hon'ble Apex Court in Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493, observed that:



“Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. 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.”

23. In the present case, the applicants were very much aware while applying for the post of Range Officer that the height criteria is laid down in the Rules and the Advertisement issued in March 2018. The applicants had no grievance about the criteria when they applied nor they had any grievance when they appeared in the written test and the viva voce test. It is only after the recommendation of 15 candidates by the PSC vide letter dated 13.11.2019 and temporarily appointment of said 15 candidates that the applicants filed the present petition on 19.12.2019. They approached the Court at the conclusion of the selection process and after appointment of 15 candidates. In our view, the same cannot be undone or upturned at the instance of the applicants who approached the Court only after they remained unsuccessful in the selection process.

24. In the present case, this Tribunal cannot direct the Government to take the decision of prescribing the physical standard in a certain manner since it is the sole prerogative of the Government which has taken a conscious



decision to prescribe a minimum height for the post of Range Officer and so, it cannot be said that the physical criteria is violative of the Constitution of India. And as argued by learned AAG, it is not that all women are below the height of 5'-6" and therefore no women would ever be inducted as Range Officer. There is no bar to holding of post of Range Officer if she has a minimum height of 5'-6". Looking to the facts of the case, we are of the opinion that prescribing the height criteria in the instant case by the Executive cannot be said to be so manifestly arbitrary in nature and violative of law.

25. The principle of law as enunciated by the Hon'ble Apex Court in aforesaid citations apply on all fours to the facts of the present case. The advertisement was dated 15.03.2018 and the present petition was filed on 19.12.2019 nearly more than 1½ years after the issuance of the advertisement. The applicants cannot be termed as illiterate persons, they were well aware of the rules and the physical criteria before applying for the post but choose not to challenge the rules and advertisement. Is it because they thought they had a method to beat the system and rules? In any case, if the applicants have any grievance/objection with regard to the stipulation of minimum height requirement, they should have approached the Court at the relevant point of time. As the petitioners failed to approach the Court well in time and being unsuccessful after participation in the process of recruitment for the post in question, they cannot turn around and subsequently be permitted to contend that the prescription of minimum height is irrational, illegal or unjust. Learned counsel for applicants has been unable to give any articulate reason for the applicant applying for the post when they knew that

they did not meet the physical criteria and being unsuccessful, turning around to question the RRs and terms of the advertisement. In these facts of the case, we are of the view no relief can be granted to the applicants.



26. We may also refer to the arguments of learned AAG that even if case is made out by the applicants that prescribing same height for male and female candidate is arbitrary and violative of the fundamental right of the applicants as guaranteed by the Constitution of India but if the facts of the case show that it is inequitable to enforce a fundamental right by including reason of long and/or unexplained delay or by intervention of third party rights, which will be affected if such enforcement is done and estoppel ignored, the Tribunal may choose not to enforce the fundamental right of the applicants [see *Amrit Lal Berry v. Collector of Central Excise, New Delhi*, (1975) 4 SCC 714].

27. Looking to the facts and circumstances of the case, we are of the opinion that even if a case is made out by the applicants that the height criteria discriminate against them and violates their fundamental right under the Constitution of India, it would not be equitable to allow the petition due to delay and laches and intervention of rights of third party.

28. The question of delay and laches to deny relief to the applicants arises in the present. On the question of delay and laches or limitation in filing a petition, we refer to the law laid down in *Tilokchand and Motichand v/s H.B*

Munshi, AIR 1970 SC 898 wherein the Hon'ble Apex Court while dismissing the petition on the ground of delay observed that:



“It is clear that every case does not merit interference. That must always depend upon the facts of the case. In dealing with cases which have come before it, this Court has already settled many principles on which it acts.”

7. It follows, therefore, that this Court puts itself in restraint in the matter of petitions under Article 32 and this practice has now become inveterate. The question is whether this Court will inquire into belated and stale claims or take note of evidence of neglect of one's own rights for a long time? I am of opinion that not only it would but also that it should. The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court. This principle is well recognised and has been applied by Courts in England and America.”

9. In India we have the Limitation Act which prescribes different periods of limitation for suits, petitions or applications. There are also residuary articles which prescribe limitation in those cases where no express period is provided. If it were a matter of a suit or application, either an appropriate article or the residuary article would have applied. But a petition under Article 32 is not a suit and it is also not a petition or an application to which the Limitation Act applies. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(3). The reason is also quite clear. If a short period of limitation were prescribed the Fundamental Right might well be frustrated. Prescribing too long a period might enable stale claims to be made to the detriment of other rights which might emerge.



10. If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

(11) Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some article but this Court need not necessarily give the total time to the litigant to move this Court under Article 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed are when and how the delay arose.”

29. In the present case, the date of advertisement is 15.03.2018. The Government vide order dated 25.11.2019 temporarily appointed 15 Range Officer. The applicants, however, choose to file the present petition on 19.12.2019 nearly 1½ years after the advertisement containing the height criteria was issued. No reason is forthcoming from the applicant as to delay in filing the present T.A. Surely, the applicants knew they do not fulfil the



height criteria but choose to keep silent till their candidature was rejected. It is apparent that the applicants set on the fence hopping they might be selected despite being ineligible and chose to file the present T.A. after long and unexplained delay. Equity does not lie in favour of the applicants and they are disentitled to the relief.

30. It was also argued by learned AAG that the present petition is barred by non-joinder of necessary parties since the applicant did not implead the candidates appointed before the filing of the present T.A.

31. Sight cannot be lost of the facts that the Government vide order dated 25.11.2019 temporarily appointed 15 Range Officer and present petition was filed on 19.12.2019. The T.A. is to fail on the ground of non-impleadment of necessary parties. Though the applicants' case is that they are only challenging the process to a limited extend but the acceptance of the petition would result in the displacement of the appointed Range Officers since the selection process would have to be initiated de novo. Therefore, all the appointed persons should have been impleaded as parties to the petition, as otherwise they would be affected without being heard. We may refer to Arun

Tewari v/s Zila MansaviShikshak Sangh, AIR 1998 SC 331, wherein the Hon'ble Apex Court dismissed the petition on the ground of non-joinder of selected candidates also by observing that:



“Surprisingly, the applications filed by all these persons and/or groups before the Tribunal did not make the Selected/appointed candidates who were directly affected by the outcome of their applications, as party respondents. The Tribunal has passed the impugned order without making them parties or issuing notice to any of them. The entire exercise is seriously distorted because of this omission. They have now filed the present appeals after they have been granted leave to file the appeals. In the case of Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, this Court observed that in the case before them there was a serious defect of non-joinder of necessary parties and the only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. The employees who were directly concerned were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. This Court observed that High court ought not have decided a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity. These observations apply with equal force here. The same view has been reiterated by this Court in Ishwar Singh v. Kuldip Singh where the Court said that a writ petition challenging selection and appointments without impleading the selected candidates was not maintainable, (vide also J. Jose Dhanapaul Vs. S. Thomas and Others). On this ground alone the decision of the Tribunal is vitiated.”



32. Therefore, petition has to fail for non-joinder of necessary party also. Looking to the facts of the case, it cannot be said the physical standard (height) prescribed by the rules and advertisement is illegal, arbitrary, discriminatory or violative of Articles 14, 15 16 and 21 of the Constitution of India, warranting any interference by this Tribunal.

33. 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. 3 ) shall in the first instance conduct the exercise of height measurement, if not conducted as on date;
- 2) Conduct the tests 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 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)**