

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. 62/5677/2020



Pronounced on: This the 12th day of July 2021

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

Majid Hussain (aged 36 years) S/o Nazir Ahmad Gangoo R/o Lal Bazar,
Srinagar.

.....Applicant

By Advocate: Mr. Altaf Haqani Sr. Advocate with Mr. Shakir Haqani

Versus

1. State of Jammu and Kashmir through Commissioner/Secretary to Government, Forest Department, Civil Secretariat, Srinagar/Jammu.
2. State Public Service Commission, Tulsi Bagh, Srinagar through its Secretary.
3. Haroon Mushtaq, S/o Mushtaq Ahmad, R/o Kashtwar-Jammu.
4. Rakesh Singh, S/o Raghubir Singh, R/o Nanak Nagar, Jammu.
5. Aurangzaib, S/o CH MohdBoota, R/o Poonch, Jammu.
6. Deskyong Namgyal, S/o Tsultim Dorje, R/o Leh Ladakh.
7. BasiraMehraj, D/o Mehraj-ud-Din Bhat, R/o Tarigam-Kulgam.
8. Miss Khuban, D/o Shakeel Ahmad Buch, R/o Buchpora, Srinagar.
9. Azeem RajaS/o Ghulam Rasool R/o Shah Mohalla Nawab Bazar, Srinagar.
10. Saima Qamar, D/o Mohd Aslam, R/o Poonch Jammu.
11. Shiba Zahoor, S/o Zahoor Ahmad Rather, R/o Buchpora, Srinagar.

12. Afshan Anjum Baba, D/o Mubark Ahmad Baba, R/o Mazgam, Kulgam.
13. Ghulam Ahmad Najar, S/o Gh. Rasool Najar, R/o Kralpora, Kupwara.
14. Bibi Nigaar, D/o Qazi Abdul Qadoos, R/o Tengdhar, Kupwara.

.....Respondents



By Advocate: M/s Amit Gupta AAG/Azhar ul Amin/F.A.Natnoo/Molvi Aijaz/Shah Faisal/Sheikh Najeeb/M.Y. Bhat 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 selection 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 Majid Hussain has filed the present petition seeking the following relief:

“quashing the impugned notification contained in Annexure-I to the extent of selection of respondents 3 to 14 to the post of Range Officer, Grade-I (Forest) and direct the respondents to select and appoint the applicant to the post of Range Officer Grade-I (Forest).”



3. Case of applicant is that in pursuance of advertisement No. PSC/Exam/2018/19 dated 15.03.2018 issued by J&K Public Service Commission (PSC), applicant applied for the post of Range Officer Grade – 1 Forest in the J&K Forest Department (Territorial). The advertisement contained the criteria prescribed in the J&K Forest Service (Gazetted) Recruitment Rules, 1970 issued vide Forest Department Notification SRO – 359 dated 24.07.1970:

- 1) Educational Qualification: BSc Forestry or its equivalent from any University recognised by the Indian Council of Agriculture Research.
- 2) Physical Standards (Fitness) minimum height of 5’-6”.

4. It is the case of applicant that respondents No. 3 to 14 do not fulfil the educational and physical criteria. It be noted that applicant has challenged the Select List, which is Annexure – B to Communication No. PSC/Exam/RO/Grade-I/Territorial/2018 dated 20.09.2019 (Annexure – I). Vide order dated 02.11.2019, the Hon’ble High Court had directed that:

“Meanwhile, subject to objections from the other side and till next date of hearing before the Bench, the selection qua Respondents 3 to 14, shall stay.”

5. Applicant has challenged the selection of respondents No. 3 to 6 on the ground that they have obtained Degree from Hemavati Nandan Bahugana University, Uttarakhand and Dr. B.R.Ambedkar University, Agra (U.P.) which do not meet the requirement of educational criteria since their degrees are not recognised by ICAR.



6. It is a settled position that no University is required to seek recognition from ICAR and therefore all degrees established under the provisions of UGC Act are valid and covered by the parameter of Educational qualification provided in the Advertisement in the instant case since Hemavati Nandan Bahugana University, Uttarakhand and Dr. B.R. Ambedkar University, Agra (U.P.) are deemed universities, as per, the UGC Act, their recognised degrees do not require further recognition from ICAR. In any case, the recognition by ICAR as prescribed by recruitment rules is relatable to equivalent degrees obtained from universities other than those universities established by the Act of the State. Even so, as per the Public Notice (Annexure R2 to the CA of private respondents No. 3 to 6) issued by ICAR, it is evident that ICAR does not give 'recognition' to any degree offered by any university.

7. It is case of respondents that the academic qualification is B.Sc Forestry or its equivalent from any University recognised by the Indian Council of Agriculture Research, therefore, the provision relating to eligibility used the word "or" between the two qualifications prescribed; and that indicated that they were alternatives and possessing either of them would make a candidate eligible and therefore the respondents possessing BSc Forestry degrees from universities, they fulfilled one of the requirements prescribed, that is, a BSc Forestry Degree and, therefore, they are eligible to be selected.

8. In the instant case, the advertisement notice requires a B.Sc Forestry or its equivalent from any University recognised by the Indian Council of Agriculture Research. The word "or" used in the educational qualification is



disjunctive. When the language is plain, we do not look hither and thither to interpret the same and in our opinion the language of this provision is extremely clear and unambiguous (Read with advantage B.Premanand v/s Mohan Koikal, AIR 2011 SC 1925). A plain reading of the condition in the advertisement notice clearly suggests that the provision relating to eligibility is unambiguous and using the word “or” it is open for a candidate to claim eligibility on the basis of either qualification mentioned in Educational qualification criteria, so, it is clear that a BSc Forestry degree obtained from the aforementioned Universities will satisfy the eligibility requirement as given in the first part and will not fall into the description of ‘or its equivalent from any university recognised by ICAR. Even so, if the language of the advertisement is clear and plain, a court has no business to substitute its opinion for that of the employer (See The Maharashtra Public Service Commission v/s Sandeep Shriram Warade, AIR 2019 SC 2154).

9. Therefore, the degrees obtained by the respondents fall within the educational criteria laid down by the State and on this account, the candidature/selection of the respondents No. 3 to 6 cannot be disturbed and set aside.

10. Regarding the Physical Standards (Fitness) minimum height of 5’-6”. The specific challenge to the selection of respondent no. 7 to 14 is that they fall below the physical standard of minimum height given in the advertisement notice.



11. The stand of respondent no. 2 (P.S.C.) is that on representation of the female candidates, the P.S.C. took up the matter with the Government to clarify whether there is a different physical standard in respect of female candidates as per relevant recruitment rules and that the rule discriminates against the female candidates and violative of Article 14, 15, 16 and 21 of the Constitution of India. During the pendency of the T.A., respondent No. 2 (PSC) filed a revised reply that the selection list challenged by the applicant is not the final select list but contains the names of candidates who have qualified for undergoing 'Walk Test and Medical Examination' and therefore the petition deserves to be dismissed. It is further averred that the applicant figured in the shortlist of 40 candidates but of his lower merit position of 343 below the cut of merit of 379.5 under OM category, applicant could not find place in the final list of 25 candidates in OM category.

12. Why the PSC included those candidates in the 'Walk Test and Medical Examination' when they do not fulfil the criteria is unknown. It is precisely to weed out ineligible candidates, that the advertisement notice seeks a medical certificate certifying the height of the candidate which fulfilling of the criteria by the candidates should have been be looked into at the very initial stage. In fact, respondent PSC has failed to notice the paragraph No. 10 of the counter affidavit filed by respondents No. 3 to 8, 10 to 14 wherein it is stated that: "Therefore, the answering respondents who fall short of the physical standards cannot be denied selection and consequent appointment on a discriminatory rule."



13. In the counter affidavit filed by respondents 3 to 8 and 10 to 14, it has been averred that fixing the same height for men and female is discriminatory against the woman by violating their rights under Article 14, 15 and 16 of the Constitution of India. 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 for appointment. Respondent no. 9 in her counter affidavit virtually repeated the stand taken by the other respondents. Therefore, the petition be dismissed.

14. 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.”

15. 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.

16. On the other hand, the stand of the private respondents is that the one standard of height for women and men is discriminatory and violates the rights of the women candidates and deserves to be declared ultra vires the Constitution.

17. 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 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.

18. 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.



19. 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.”

20. 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.”



21. 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.

22. In the instant case, the recruitment process commenced on the basis of unaltered Rules. 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.



23. 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.

24. It be also noted that 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".

25. 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.



26. 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:

“...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.”

27. Credence is 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.”

28. 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.

29. 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) 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 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. It be noted that as held above, the degrees obtained by the respondents No. 3 to 6 fall within the educational criteria laid down by the State and on this account, the candidature/selection of the respondents No. 3 to 6 cannot be disturbed and set aside. T.A. is accordingly disposed of. Interim stay shall stand vacated. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-