(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. 62/920/2021

Pronounced on: This the 12th day of July 2021

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

Azeem Raja D/o Ghulam Rasool R/o Shah Mohalla Nawa-Bazaar, aged 27 years.

.....Applicant

By Advocate: Mr. Aijaz Ahmd (Molvi)

Versus

1. Union Territory of J&K through Commissioner/Secretary to Government Forest Department Civil Secretariat, Jammu.
2. Principal Chief Conservator of Forests (PCCF), J&K, Jammu.
3. Chairman, Public Service Commission J&K Jammu/Srinagar.
4. Public Service Commission J&K through its Secretary Jammu/Srinagar.

……Respondents

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

O R D E R

Per Rakesh Sagar Jain, Member (J)

The present Transfer Application has been filed by applicant Azeem Raja seeking the following reliefs:

> "(i) Mandamus:- The honourable court be pleased to grant writ of mandamus in favour of the petitioner and against the respondents commanding respondent's to finalize the process of laying down different physical standards as eligibility criteria for the writ petition and other woman aspirants for the post of RO Grade-I, being considered and having been already selected on the basis of merit, as initiated, promise & assured by the respondents as is clear from the perusal of the Annexures appended to the writ petition, in order to observe the mandate of article 14, 15 & 16 of the Constitution of India and not fall prey to the gender discrimination in the distribution of/appointment of, female aspirants against the public larges, public post, and till that time keep the further process on hold or in the alternative adopt the criteria for the same is in vogue and being implemented by the Union Public Service in I F S matters, Annexure ix, to the writ petition. Any other order or direction this honorable court deems fit proper and convenient in the peculiar circumstances of the case, though not specifically prayed for, in the interests of justice, for which act the petitioners shall ever remain grateful."

2. Case of the applicant is that the Public Service Commission issued advertisement notice dated 15.03.2018 for selection to the post of Range Officer Grade – I. Unlike, other Government services, PSC, UPSC or SSRB, the recruitment rules and advertisement in present case, prescribe one physical qualification of minimum height of 5'6" for both women and men. Apparently this rule was promulgated at a time when the concept of female candidates serving the Forest Department was not contemplated by the legislature. Applicant filed representations for issuing clarification with regard to the physical fitness requirement for the posts of Range Office Grade – I so that women are appointed as Range Officer Grade – I but the same has not been done by the said respondents and the process of selection though complete is awaiting setting the criteria afresh by the official respondents. Minimum height of 5'-6" is 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.

3. Applicant seeks a direction to the Government to finalise the process of laying down different physical standards eligibility criteria for the female-applicant for appointment to the post of Range Officer Grade -I on the grounds that (1) UPSC and other State Public Service Commission are having different standards of physical eligibility for woman IFS aspirants. Therefore, no selection list can be communicated to the government for appointment unless the government clarifies the physical standard for female aspirants; (2) Prescribing the same physical standards for female and male subjects the female to discrimination and despite the PSC advising the

Government to revise the criteria, although the Government has initiated the process, the same has been delayed.

4. Respondent Nos. 3 and 4 (PSC), as per, their counter affidavits seek dismissal of the petition on the grounds that the representation of the female candidates regarding discrimination in physical standards prescribed was forwarded to the Government as the rule ex-facie appeared suffering from gender discrimination.

5. The stand of the Government is that while prescribing qualifications for the 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. As such the petition is liable to be dismissed outrightly.

6. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.

7. Applicant's prayer is to grant writ of mandamus commanding the respondents to finalise the process of laying down different physical standards as eligibility criteria for the applicant and other women aspirants for the post of Range Officer Grade – 1. So, the applicant seeks a direction from this Tribunal to the respondents to finalise the process of laying different physical standard i.e. height criteria based on gender in the selection process for appointing Range Officer Grade – 1 in the Forest Department and apply the same to the present selection.

8. In the first instance, we would like to clarify that this Tribunal cannot direct the Executive to finalise any administrative exercise. It is not the job of the Tribunal to enter into the realm of administrative activity which is the sole prerogative of the Government. It is for the Executive to see how best to run the activities of the Government. It is a settled principle of law that exercise of power as to in which conditions, and when to make rules, policies etc are matters in the domain of the rule making authority and not for Courts or Tribunals to prescribe. It is settled law that a writ of Mandamus cannot be issued to the Legislature/Executive to enact a particular law or to the Rule making authority to make rules in a particular manner.

9. Their Lordships of the Hon'ble Supreme Court have held in the following cases that the Court and Tribunal, cannot direct the Government to frame statutory rules or amend Existing statutory rules under the Constitution of India or take decision which fall within exclusive sphere of the Executive:

A. Mallikarjuna Rao v/s State of Andhra Pradesh, AIR 1990 SC 1251:

> "When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua

any matter which under the Constitution lies within the sphere of legislature or executive."

"Special Rules have been framed under Article 309 of the Constitution of India, The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

B. State of Jammu and Kashmir Vs. A.R. Zakki and others, AIR 1992 SC 1546 that:

"In our opinion there is considerable merit in this submission. A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J and K Constitution, which is on the same lines as Article 234 of the Constitution of India vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J and K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court."

C. Union of India v/s Syed Mohd. Raza, AIR 1994 SC 805 that:

> "It is not for the Administrative Tribunal or for the Courts to interfere with and to dictate the avenues of promotion which the department should provide for its various employees. The Courts cannot, we think, direct that TAs should be made a direct feeder post to HCs superior to UDcs."

D. Asif Hameed and others Vs. State of Jammu and Kashmir and Others, AIR 1989 SC 1899:

> "While exercising power of judicial review of administrative action, the court is not an Appellate Authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers....

10. In the aforementioned Judgments, Learned Judges of the Supreme Court held that the Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunal's view should be made. It is settled legal position that matters relating to prescribing mode of recruitment and qualifications, criteria or selection, fall within the exclusive jurisdiction of the employer/Executive. It is not open to the Courts to direct the Government to have a particular method of recruitment or eligibility criteria. The observation of the Hon'ble Supreme Court in P.U. Joshi vs. Accountant General, Ahmedabad, (2003) 2 SCC 632 is relevant for our purpose which reads thus:

> ". . . .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."

11. Regards is also to be had to **BALCO Employees' Union (Regd.) v. 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."

12. So, it is the Government which has a right to frame a policy to ensure efficiency and proper administration, and that it is not for the Tribunal to direct the Government to change its policy though the Tribunal may point any lacuna in the policy, scheme promulgated by the Executive. The Constitution of India does not permit the Courts and Tribunals to direct or advise the Executive in matters of policy, or to sermonize qua any matter which, under the Constitution, lies within the sphere of Legislature or Executive. The nature of the policy, its implementation and conditions under which it is to be implemented are all matter to be considered by the Executive in the ultimate analysis.

13. In the present case, what policy is to be prepared, its nature and implementation, whether the physical criteria (height) is to be laid down based on gender in appointment of Range Officer Grade – 1 or not and if at all it is be changed, when it is to be implemented, are all matters which fall

within the competence of the Executive. We cannot hold otherwise, as it would amount to this Tribunal laying down a different policy and its implementation, which decisions are entirely within the domain of the Legislature and the Executive. It is not for the Statutory Tribunals to direct the Government as to how to run the administration.

14. Apart from the prohibition on the power of the Tribunal to issue directions to the State to make the rules in a particular fashion, 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 the 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.

15. In the instant case, the recruitment process commenced on the basis of unaltered Rules. Applicants 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 applicants 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. Applicants 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.

16. 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.

17. 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."

18. 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."

19. Learned AAG for the respondent- State argued 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.

20. 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 the Tribunal 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).

21. 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.

22. 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. They approached the Court on 04.11.2019 when the selection process was near completion, probably becoming enlightened about the height criteria as mentioned in the order dated 02.11.2019 passed by Hon'ble High Court in petition titled Majid Hussain v/s State whereby selection was stayed on the question of non-fulfilment of height criteria. 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.

23. 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.

24. 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 chose 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 applicants 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.

25. We take note of the arguments of the applicant contending that the RRs prescribe 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.

26. 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.

27. 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].

28. However, learned counsel for applicants pointed and rightly so, that there can be no question of waiver of or estoppel against the enforcement of a fundamental right or even the Constitution of India.

29. 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 violate 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.

30. 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."

31. 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 sat 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.

32. 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.

33. 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 extent 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 Mansavi Shikshak 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 field 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."

34. Therefore, petition has to fail for non-joinder of necessary party also.

35. 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. We are also of the opinion that it does not lie in the power of the Tribunal to issue directions to the Government to frame rules. This Tribunal is unable to give direction to legislate.

36. 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 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/-