



**Central Administrative Tribunal
Jammu Bench, Jammu**

T.A. No. 3429/2021
(SWP No.1833/2017)

Order reserved on 9th September, 2021

Order pronounced on 30th September, 2021

Through Video Conferencing

**Hon'ble Ms. Manjula Das, Chairman
Hon'ble Mr. Anand Mathur, Member (A)**

Mushtaq Ahmad Mir
s/o Abdul Ahad Mir
r/o Drugmulla Kupwara, aged 34 years

.. Applicant

(Mr. S.A. Makroo, Advocate)

Versus

1. Commissioner-cum-Secretary to Govt.
Health Department, Civil Secretariat,
Srinagar/Jammu
2. Chairman, J & K Service Selection Board
Srinagar, J & K
3. J & K Service Selection Board Srinagar
Through its Secretary

.. Respondents

(Mr. Amit Gupta, Additional Advocate General)

ORDER

Hon'ble Ms. Manjula Das, Chairman:

Brief facts of the case are that the respondent No.3
issued an advertisement notice No.08 of 2010 dated



24.12.2010, inviting applications for filling up number of posts for State and Division cadre of different Departments, including the post of Senior ECG Technician in the Health Department of Jammu & Kashmir. The last date for submission of application was 29.01.2011. The qualification prescribed for the said post was 10+2 with Diploma in Medical Assistant/Pharmacist Training and three months' specialized course in ECG from any recognized institute. The applicant, who possessed the qualification of 10+2 with Diploma in Medical Assistant Pharmacist and six months' specialized course in ECG, applied for the said post before the cut-off date. The interviews were conducted and according to him, he fared well in the interview. On 14.04.2016, the respondents published the select list of the candidates for the post of Senior ECG Technician where one post in the open merit list and one slot in the waiting list were kept withheld for want of certain clarification inasmuch as the remarks column. In the select list, two posts of Senior ECG Technician were under RBA category and one post each under ST and ALC remained unfilled due to non-availability of eligible candidates in Kashmir Divisional cadre. However, the respondents raised an objection regarding the date of declaration of the result in respect of applicant's diploma course and accordingly,



sought clarification by issuing notification dated 20.11.2016. It is submitted that one candidate, by name Tariq Ahmad Wagay has not joined and to that extent, he has submitted an affidavit. The candidature in respect of another candidate, by name Munir Ahmad Sheikh was cancelled on the ground that his certificates were not found genuine. The applicant submitted his documents and requested the respondents to operate the waiting list in open merit since two posts were lying vacant. His case was not considered on the ground that the diploma and statement of marks was issued on 16.02.2011, whereas the date of the declaration of result was 11.01.2011. The applicant preferred representation to the respondents on 24.01.2017 seeking sympathetic consideration of his case. When the representation was not decided by the respondents, the applicant filed SWP No.438/2017 before the Hon'ble High Court of Jammu & Kashmir. However, on the submission of applicant that he would be satisfied, if his representation dated 24.01.2017 is decided, the SWP was disposed of vide order dated 13.03.2017, directing the respondents to decide the said representation. It is submitted by the applicant that the respondents, in a slipshod manner, rejected his representation vide impugned order dated 14.07.2017. Feeling aggrieved by the said order, the applicant filed SWP



No.1833/2017 before the Hon'ble High Court, seeking the following reliefs:-

- “a) Command and direct the respondent Board to recommend the name of the petitioner for appointment as Sr. ECG Technician under OM category in Divisional cadre Kashmir, pursuant to his selection made by the board;
- b) Command and direct the respondent no.1 to appoint the petitioner as Sr. ECG Technician under OM category in Divisional cadre Kashmir, pursuant to Notification no.08/2010 dated 24-12-2010 (item no.318) w.e.f. April 2016.
- c) Command and direct the respondent Board to treat the petitioner date of declaration of result of Diploma as 11-01-2011 instead of 16-02-2011 and thereafter recommend the name of the petitioner for the post of the Sr. ECG Technician under OM category in divisional cadre Kashmir.
- d) By issuance of the writ of Certiorari, the impugned order dated 14.07.2017 may be quashed as same shall be in the interest of justice and equity.
- e) Or in alternative by issuance of writ of certiorari entire selection process along with the selection list dated 14-04-2016 for the post of Sr. ECG Technician be quashed.
- f) Any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case may also be passed in favour of the petitioner and against the respondents in the interest of justice and equity.”

2. Learned counsel for applicant submitted that the applicant passed the Diploma from the Institute of Public Health & Hygiene and the date of declaration of result was 11.01.2011, i.e., much before the closing date of submission



of application form and was thus fully eligible to apply for the post of Senior ECG Technician. It is also stated that since the applicant was kept at Sl. No.2 in the waiting list in open category, the respondents ought to have considered his case.

3. *Per contra*, the respondents filed a detailed counter affidavit. It is submitted that the case of the applicant has already been considered vide order dated 14.07.2017. It is also submitted that the applicant, who was figuring at Sl. No.2 in the waiting list under open category, was not considered, as he had failed to bubble the appropriate column in the OMR form. It is further submitted that the applicant, at the relevant point of time, had not provided conclusive proof regarding the date of declaration of result to show that his result was declared before the cut off date, i.e., 29.01.2011. The plea of *res judicata* has also been raised by the respondents. Accordingly, the respondents pray for dismissal of the matter.

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.3429/2021.



5. On 09.09.2021, we heard Mr. S. A. Makroo, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General, at length, and the case was reserved for orders. However, the applicant was directed to furnish the original Certificate of Appearance in the Final Examination from Institute of Public Health & Hygiene (page 16 of the paper book), within fifteen days. We also directed learned counsel for respondents to place on record the status / vacancy position in respect of the advertised post, i.e., Senior ECG Technician, within the aforesaid time. In this regard, the applicant filed certain documents on 28.09.2021, enclosing therewith the copy of Result Gazette (Session 2008-2010) dated 11.01.2011 published by the Controller Examination Institute of Public Health & Hygiene, and copy of letter dated 24.09.2021, which was written by the Head-HR & Training, Institute of Public Health & Hygiene to the Administrative Officer, J & K Service Selection Board, Jammu & Kashmir. However, the respondents have not provided any details, as directed by this Tribunal.

6. The moot question involved in this case is whether the results of Final Examination of the diploma possessed by the applicant, were declared before or after the cut-off date for



submission of application form. For this purpose, we perused the documents submitted by the applicant in compliance with directions of the Tribunal. The relevant portion of the letter dated 24.09.2021 reads as under:-

“This is in continuation to our above referred letters in context of credential verification of Mr. Mushtaq Ahmed, S/o- Mr. Ab. Ahad Mir. In this regard, this is to submit that he was a bonafide student of Two Years Diploma in Medical Assistant/ Pharmacist during academic session 2008-2010 bearing Reg. No-019-II/DL-1139 and Roll No.J-251.

In context of your letter regarding date of declaration of result, we have already submitted the information through our above referred letters, which are self-explanatory (Copy Enclosed). As desired in your letter 30.03.2017, the copy of the Result Gazette of the course pertaining to Academic Session 2008-2010 is being enclosed herewith for your perusal and record.”

7. From the above letter, it is abundantly clear that the results were declared before the cut-off date for submission of application and the name of the applicant figures at Sl. No.125 of the list enclosed with Result Gazette.

8. Accordingly, we find that the ends of justice would be duly met, if liberty is given to the applicant to place before the respondents the original Certificate of Appearance in the Final Examination 2008-10 and they, in turn, take a final decision in the matter.



9. We, therefore, dispose of the T.A. with a direction to the applicant to procure the original Certificate of Appearance in the Final Examination from the Institute of Public Health & Hygiene, Mahipalpur, New Delhi – 110 037, within four weeks and produce the same before the respondents. On receipt of such Certificate, the respondents shall verify the same and if the same is found genuine, reconsider the case of the applicant, within three months thereafter. However, this will be subject to the availability of vacancies. There shall be no order as to costs.

(Anand Mathur)
Member (A)

(Manjula Das)
Chairman

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