

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 1065/2021
CM No. 4340/2021
CM No. 4341/2021

Rohini Sharma; age: 31 years
D/o Sh. Sansar Chand Sharma
R/o Ward No. 5, Chanara near Shiv Mandir,
Tehsil Mahanpur, District Kathua.

....Petitioner(s)/Appellant(s)

Through :- Mr. Rahul Pant, Sr. Advocate with
Mr. Aniruddh Sharma, Advocate

V/s

1. Union Territory of Jammu and Kashmir
Through Financial Commissioner,
Finance Department, J&K,
Civil Secretariat, Jammu/Srinagar
2. Secretary
Planning Development and Monitoring Department,
Government of Jammu and Kashmir,
Civil Secretariat, Jammu/Srinagar.
3. Jammu and Kashmir Public Service Commission
Through its Secretary,
Resham Ghar Colony, Bakshi Nagar, Jammu/Solima,
Srinagar, Kashmir.
4. Director General,
Economic and Statistics,
Janipur, Jammu/Bemina (Srinagar), Kashmir
5. Pankaj Sharma
S/o Sh. Ganga Dutt Sharma
R/o Ward No. 15, Patel Nagar, Kathua.
6. Shakti Singh Manhas
S/o Sh. Hushiar Singh
R/o 9, Jungalwar, Tehsil & P/O Thathri,
District Doda.
- Respondent(s)

Through :- Mr. D.C. Raina, Advocate General with
Mr. Ajay Bakshi, Assisting Counsel for R-1, 2 & 4
Mr. F.A. Natnoo, Advocate for R-3
Mr. Hamzah Hussaini, Advocate for R-6
None for R-5

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER
19.02.2024

Tashi Rabstan, J

1. As per note of the Registry dated 14.02.2024, notices issued to respondent Nos. 5 and 6 through respondent No. 4 have been received back duly served, however, despite service none has put in appearance on their behalf.

2. The case, as projected by the petitioner in this writ petition, is that respondent No. 3-JKPSC vide Advertisement Notice dated 10.09.2013, advertised the posts of Assistant Director (Statistics), in which 15 posts under Open Merit category, 6 posts under RBA category, 2 posts under SC category, 3 posts under ST category, 1 post under LAC category and 1 post under OSC category were advertised. The petitioner participated in the selection process and the select list/merit list came to be issued on 04.03.2017, wherein the petitioner figures at serial No. 8 in the RBA category with merit of 373.28.

3. It is contended that after the conclusion of selection process, the select list was operated and 15 candidates were appointed under Open Merit category and 6 candidates in the order of merit were appointed under the RBA category. It is further contended that respondent No. 6 with merit of 406.61 marks figured at serial No. 1 in the RBA category, whereas one candidate in the RBA category, figuring in the first 6 candidates, did not offer himself for medical examination, as such, was excluded from the selection process. Resultantly, the post was offered to the candidate next in the order of merit, i.e., the candidate figuring in the order of merit at serial No. 7. The further case of writ petitioner is that against 2 candidates who did not join in the Open Merit category, a proposal was mooted to appoint next two candidates in the order of merit from Open Merit category including respondent No. 5 herein. It is contended that respondent No. 5, namely, Pankaj Sharma, having merit of 404.78 and the second candidate, namely, Anjum Agha, having merit of 406.56, were offered the appointment

against the vacant posts in the Open Merit category. The further case of writ petitioner is that respondent No.6, namely, Shakti Singh Manhas, who has been selected and appointed under the RBA Category, was having merit of 406.61. Thus, the grievance of writ petitioner is that since both Anjum Agha with merit of 406.56 and Pankaj Sharma with merit of 404.78 were having lesser merit as compared to respondent No. 6, as such respondent No.6, Shakti Singh Manhas, was ought to have been considered and selected under the Open Merit Category, and the post under the RBA Category ought to have been offered to the writ petitioner herein as per her merit.

4. It is contended that the petitioner approached the High Court through the medium of writ petition, which came to be transferred to the Central Administrative Tribunal, Jammu Bench Jammu, registered as T.A. No. 7354/2020, in which the petitioner prayed that keeping in view the merit of respondent No. 6, he was required to be treated in the Open Merit category and the resultant post in the RBA Category ought to have been offered to the petitioner herein. The further contention of writ petitioner is that the TA was dismissed by the Central Administrative Tribunal vide its judgment dated 12.05.2021.

Feeling aggrieved, the petitioner has filed the present writ petition on the grounds that the recommendation in favour of respondent No. 5, namely, Pankaj Sharma in the Open Merit Category is in contravention of Section 4 of the Jammu and Kashmir Reservation Act, 2004; Section 4 of the Act clearly envisages that where a candidate belonging to the reserved category secures more merit than the candidate belonging to the open merit category, in such eventuality, if the reserved category candidate is able to make it the selection list on the strength of his merit, then he is to be selected in the open merit category

and next candidate in order of merit in such reserved category is to be considered for appointment in the reserved category. Therefore, the appointment of a reserved category candidate in open merit on the strength of his merit does not result in reduction in the number of posts reserved for that category.

5. It is further contended that applying the aforesaid position of law in the present case, since respondent No. 6 was having more merit than respondent No. 5, as such respondent No. 6 was required to be treated as selected in the open merit category instead of RBA category, thus making way for the next in the order of merit in the RBA category, however, without appreciating the correct position of law, respondent No. 3 recommended respondent No. 5 with lesser merit than respondent No. 6 for appointment in the open merit category.

6. Admittedly, respondent No. 6 herein had secured 406.61 marks, thus, he was eligible for short listing and consideration in the open merit category by treating him to have been appointed in the open merit category and the resultant vacancy was to be filled up by recommending a candidate belonging to the RBA category in the order of merit. Admittedly, respondent No.5-Pankaj Sharma, having a merit of 404.78 marks, and the second candidate, namely, Anjum Agha, having a merit of 406.56 marks, were offered appointment against the vacant posts in the Open Merit category. Both Anjum Agha and Pankaj Sharma were lesser in merit as compared to respondent No. 6, who has been selected and appointed in the RBA category with a merit of 406.61 marks, however, the petitioner who is next in the order of merit in the RBA category has not been recommended for appointment under RBA category and has been deprived for selection and appointment under the said category.

7. The law is well settled by the Supreme Court in various pronouncements, whereby it is reiterated that the reserved category candidates

securing higher marks than the last of the general category candidates are entitled to get seat/post in unreserved categories. The Supreme Court also observed in many judgments and held that even while applying horizontal reservation, merit must be given precedence and if the candidates who belong to reserved categories have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates.

8. Learned counsel for the appellant has produced the judgment dated 28.04.2022, passed by the Supreme Court in Civil Appeal No. 8717 of 2015 titled ***“Bharat Sanchar Nigam Limited & Anr. Vs. Sandeep Choudhary & Ors.”***. Relevant para-9 is reproduced as under:-

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is noted that the aforesaid two candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar, belonging to OBC category, were required to be adjusted against the general category as admittedly they were more meritorious than the last of the general category candidates appointed and that their appointments could not have been considered against the seats meant for reserved category. XXXXX

9. In view of the settled position of law, we deem it proper to allow the writ petition. Accordingly, the writ petition is allowed and the judgment dated 12.05.2021, passed by the Central Administrative Tribunal Jammu, Bench Jammu in T.A. No. 7354/2020 is set aside. Consequently, respondent No. 3 is directed to recommend the appointment of petitioner for the post of Assistant Director (Statistics) under RBA category. It is further directed that the writ petitioner shall be entitled to all consequential benefits including seniority etc. minus the monetary benefits. Let this exercise be completed within a period of three months from today. However, the selection and appointment of respondent

No.5 under the Open Merit Category is left to be decided by the official respondents. While, deciding his case, official respondents are expected to take a sympathetic view in respect of respondent No. 5 as he has already been appointed in the year 2017. Connected CMs, accordingly, stand disposed of.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Jammu:
19.02.2024
Pawan Angotra

Whether the order is speaking? : Yes/No

Whether the order is reportable? : Yes/No

