

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 16.05.2024
Pronounced on: 04.06.2024

WP(C) NO. 1342/2023
CM No. 3164/2023

Iram Lone & Ors.

...Petitioner/ Appellant(s)

Through: Mr. Jehangir Iqbal Ganai, Sr. Adv. With
Ms. Mehnaz, Mr. Kamil Nazir & Mr. Syed Faheem,

V/s

UT of JK & Ors.

...Respondent(s)

Through: Mr. Illyas Laway, GA for R-1 to 3
Mr. Shah Aamir, Adv. For R-4.
Mr. M. Y. Bhat, Sr. Adv. With
Mr. Hamza Prince, Adv. For R-5 to 13

CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE.
HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE.

JUDGMENT

(Per Tashi Rabstan-J)

1. The present writ petition has been filed against the judgment and order dated 11.01.2023 passed by the Central Administrative Tribunal, Srinagar Bench in TA no. 1028/2021 titled Yasir Faiz Jan & Ors. V. State of J&K & Ors.
2. The case, in brief, is that the petitioners and the applicants/private respondents herein were appointed as Assistant Engineers (Civil) vide Government Order No. 419 PW(R&B) of 2007 dated 31.12.2007. Subsequently, vide Government Order No. 50-PW(Hyd) of 2008 dated 01.02.2008 sanction was accorded for allotment of R&B and Hydraulic Wings as per procedure in vogue of 1:1 ratio. Accordingly, 55 Assistant Engineers were allotted R&B and rest were allotted Hydraulic Wing. Subsequently, 22 Assistant Engineers changed the wing from Hydraulic to R&B vide Government Order No. 181-

PW(HYD) of 2008 dated 07.04.2008. A writ petition bearing SWP no. 886 of 2010 was filed by 22 candidates who were allotted R&B wing in terms of Government Order dated 07.04.2008. The said writ petition has been disposed of vide Order dated 17.09.2015 with a direction to the respondents to frame the seniority list of the class of Officers, to which the petitioners belong, in accordance with the applicable rules and notify the same after hearing all concerned. The said exercise was directed to be done within a period of two months from the date copy of the order was served upon the respondents. The Official respondents, in the meantime, had published the tentative seniority list on 08.04.2011 of Assistant Engineers, R&B (Civil) appointed in the year 2007. In the said tentative seniority list, 22 Assistant Engineers who had filed SWP no. 886/2010 were placed after the first lot of 55 Assistant Engineers allotted to R&B Wing in pursuance to Rule 11 of the Jammu and Kashmir Engineering (Gazetted) Recruitment Rules, 1979. It is submitted that as per Rule 11, in the event of transfer from one wing to another, seniority shall be protected only if the member has been transferred in the public interest, otherwise the member shall be placed at the bottom of the seniority list of the class to which he is transferred to.

3. Thereafter, the Government, in the interest of administration, relying upon the tentative seniority list, notified on 08.03.2011, made placement of Assistant Engineers as Incharge Assistant Executive Engineers. According to the action of the official respondents, the private respondent nos. 5 to 13 herein filed a writ petition bearing SWP no. 50 of 2019 seeking a direction to regularise them as Assistant Executive Engineers and also sought a direction to issue a final seniority list by showing them at an appropriate place in the seniority list in order of merit obtained in the selection process issued vide Government Order dated 31.12.2007. Subsequently, the said writ petition has been transferred to the Central Administrative Tribunal Srinagar Bench and registered as TA no. 1028/2021.

4. The learned Tribunal vide judgment and order dated 11.01.2023 has allowed the TA with the directions that (i) final seniority of the applicants be fixed in the department on the basis of merit obtained by them in the select list dated 31.12.2007 in terms of the first proviso of Rule 24 read with Rule 24(b) of the J&K Civil Services (Classification, Control and Appeal) Rules and (ii)

after finalising the seniority, the respondents shall proceed with the case of the applicants for the regularisation against the post of Assistant Executive Engineer which they are holding on in-charge basis in accordance with law and rules and (iii) the exercise be completed within a period of eight weeks from the date of judgment.

5. The petitioners herein are aggrieved of the judgment and order passed by the Central Administrative Tribunal, Srinagar Bench dated 11.01.2023 in TA no. 1028/2021 titled Yasir Faiz Jan & Ors. V. State of Jammu & Kashmir & Ors., on the ground that the judgment and order passed by the Tribunal is erroneous because the Tribunal has failed to take into consideration that the affected parties were not before the Tribunal, resultantly, causing grave injuries to the petitioners on the ground that the petitioners herein are the affected parties to the order and judgment passed by the learned Central Administrative Tribunal whereby the writ petitioners herein have not been arrayed as party respondents being affected persons. Therefore, the impugned order has resulted in causing grave injustice to the petitioners and the same is against the basic tenants of justice to grant such relief without hearing the affected persons.

6. It is averred by the writ petitioners that the services of the petitioners and that of respondents 5 to 13 herein are governed by the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978. Section 2 sub-section (g) of the Rules of 1978 define "Service" as "Jammu and Kashmir Engineering Gazetted Service" consisting of "Roads and Building", "Hydraulics" and "Road Research" wings. Rule 11 of the Rules of 1978 pertains to "seniority". As per Rule 11, seniority of the members of the service is to be regulated under the provisions of Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. Sub-Rule (3) of Rule 11 provides that "in the event of transfer from one Wing to another, the seniority shall be protected only if the member has been transferred in public interest and if the transfer is made at the request of the member, he shall be placed at the bottom of the seniority list of the class to which he has been transferred." Since the private respondents herein have been allowed to change their wing at their request, therefore, the seniority of the members of service has to be determined by conjointly reading Rule 24 of the Jammu and Kashmir Civil

Services (Classification, Control and Service) Rules and sub-Rule (3) of Rule 11 of the Rules of 1978. Therefore, the judgment passed by the Tribunal is erroneous, contrary to the Rules of 1978.

7. Objections have been filed by the Official respondents contending therein that the tentative seniority list of Assistant Engineers (R&B) appointed in the year 2007 has been published. In the said list, 22 Engineers (respondents in the writ petition in hand) were placed after the writ petitioners in pursuance of Rule 11 of the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978.

8. The private respondents have also filed their objections contending therein that the writ petitioners and the private respondents were appointed in a combined cadre and, thereafter, wing allotments were made in the odd (R&B) and even (Hydraulic) basis. It is further averred that on the consideration of the representations filed by some of the appointees, the Government subsequently, after a period of two months, partially modified the Government Order dated 01.02.2008 by virtue of Government Order dated 07.04.2008 whereby the private respondents were directed to be allotted R&B Wing, i.e., the wing they were continuously working. Learned counsel for the private respondents submitted that the language of the said order itself reflects that the Government has issued order in partial modification of Government Order No. 50-PW(Hyd) of 2008 dated 01.02.2008, which reads "it is hereby ordered that the wing of the following Assistant Engineers is changed from Hydraulic to R&B". Therefore, the said order has been passed in the interest of administration. As such, Rule 11 of the J&K Engineering (Gazetted) Service Recruitment Rules of 1978 is not applicable and the seniority has to be fixed strictly on the basis of the merit in the selection list issued by the Public Service Commission and as per Rule 24 and 24(B) of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules. As such, the learned Tribunal has rightly allowed the TA filed by the private respondents herein.

9. Heard learned counsel for the parties and perused the record.

10. In the objections filed by the Official respondents, at para 9 it is specifically mentioned that a final seniority list of Assistant Engineers (Civil) has been issued vide Government Order No. 480-PW(R&B) of 2022 dated

30.12.2022. Copy of the same has already been placed by the petitioners in the writ petition at page no. 117.

11. Learned counsel for the parties jointly stated during the arguments that the final seniority list of Assistant Engineers (Civil) issued vide Government Order no. 480-PW(R&B) of 2022 dated 30.12.2022 has been challenged before the Central Administrative Tribunal, Srinagar Bench by the private respondents herein in OA no. 275/2023 titled Yasir Faiz Jan v. Public Works Department, wherein the petitioners herein have also been arrayed as party respondents. It is further stated that objections to the said OA have also been filed before the Central Administrative Tribunal.

12. The core issue which is required to be adjudicated in the present writ petition is whether the seniority of the private respondents herein has to be fixed as per Rule 11 of the Jammu and Kashmir Engineering (Gazetted) Service Rules, 1979 or Rule 24 and 24(B) of the Jammu and Kashmir (Classification, Control and Appeal) Rules.

13. Admittedly, the writ petitioners herein have not been arrayed as a party respondents in TA no. 1028/2021 before the Central Administrative Tribunal, Srinagar Bench and the direction passed by the Central Administrative Tribunal in terms of judgment dated 11.01.2023, without taking into consideration that the writ petitioners herein are the affected parties and on account of non-joinder of the necessary parties before the Central Administrative Tribunal, the impugned order has resulted in causing grave injustice to the petitioners which is apparently unfair and against the basic tenants of justice. To grant such a relief, without hearing the other side, is violation of the Fundamental Rights of the petitioners herein.

14. However, since the final seniority list of Assistant Engineers (Civil), PW(R&B) Department vide Government Order No. 480-PW (R&B) of 2022 dated 30.12.2022 has been challenged before the Central Administrative Tribunal, and the petitioners herein have also been arrayed as party respondents in the said OA, therefore, in the facts and circumstances of the present case, as discussed above, the impugned order dated 11.01.2023 passed by the Central Administrative Tribunal, Srinagar Bench, in TA no. 1028/2021 is set aside and the petitioners herein are ordered to be impleaded as party respondents in the

said TA no. 1028/2021 by restoring the same to its original number. Further, we direct the Registrar, Central Administrative Tribunal, Srinagar Bench to list the TA no. 1028/2021 alongwith OA no. 275/2023 and the Tribunal is requested to decide the same expeditiously after giving opportunity of hearing to all the contesting parties. It is made clear that we have not expressed any opinion on the merits of this case.

15. The parties through their counsel are directed to appear before the Central Administrative Tribunal.

16. The Registrar Judicial is directed to supply a copy of this order to the Registrar, Central Administrative Tribunal, Srinagar Bench.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
JUDGE

SRINAGAR
04.06.2024
Yasmeen, Secy

Whether the order is reportable ?

Whether the order is speaking ?

Yes/No

Yes/No

