

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

WP (C) No. 2114/2025

**Mohd. Rafeeq, Aged 48 years,
S/o Sh. Faqeer Mohd,
R/o Village Dharana, Tehsil Mendhar,
District Poonch**

.....Applicant(s)/Petitioner(s)

Through :- Mr. Harsh Dubey, Advocate

v/s

1. **UT of J & K through
Commissioner/Secretary, Law Department,
Civil Secretariat, Jammu.**
2. **The J & K Service Selection Board,
through its Chairman,
Zum-Zum Building Rambagh, Srinagar.**
3. **The Administrative Officer,
J & K Service Selection Board,
Opposite BSF, Paloura, Jammu.**
4. **The Chairman/Convener of the Committee
constituted for the purpose of intervening the
candidates for the posts of Legal Assistant/
Junior Legal Assistant pursuant to
advertisement of Notice No. 01 of 2014 and
02 of 2014.**

.....Respondent(s)

Through :- Mrs. Monika Kohli, Sr. AAG

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER
06.08.2025**

1. This petition, under Article 226 of the Constitution of India, filed by the petitioner, is directed against an order dated 16.04.2025 passed by Central Administrative Tribunal, Jammu Bench, Jammu ['the Tribunal'] in TA No. 27/2022 titled "Mohd. Rafeeq Vs. UT of J & K & Ors.", whereby the Tribunal has dismissed T.A. of the petitioner on the ground that none of the candidates shortlisted by

viva-voce, in terms of the impugned short list, has obtained marks lesser than the petitioner.

2. The impugned judgment is challenged by the petitioner primarily on the ground that the Tribunal has failed to appreciate that the candidates belonging to ALC & RBA categories could not have been considered in the General Category and, therefore, the short list impugned before the Tribunal was not sustainable.
3. **Having heard learned counsel for the parties and perused the material available on record,** we are of the considered opinion that the order passed by the Tribunal is legally perfect and does not call for any interference.
4. Indisputably, the total point secured by the petitioner is 36.4335 marks, whereas the first candidate in the Open Merit in the waiting list has secured 71.5045 marks. In that view of the matter, the Tribunal was right in dismissing the application of the petitioner by holding that the petitioner did not fall in the merit list and, therefore, was rightly not short listed.
5. The argument of learned counsel for the petitioner that the candidates belonging to ALC & RBA categories have no right to compete in the Open Merit, is without any substance and deserves to be noticed only for rejection.
6. It is trite law that a candidate belonging to a reserved category is entitled to be considered in the open category, if his merit so permits. Reservation is a beneficial measure aimed at uplifting the marginalized sections of society known as “Reserved Categories” and therefore, cannot work to their prejudice. If a member of

Reserved Category by dint of his merit comes in the select list of General Category, he/she shall be treated as Open Merit candidate. The argument that a Reserved Category candidate can compete only in its category is preposterous. Section 4 of the Jammu and Kashmir Reservation Act, 2004 makes this position of law abundantly clear. For facility of reference, Section 4 of the Act is reproduced as under:

“4..... Reservation not to bar appointment in open merit:

Nothing contained in Section 3 shall prevent the appointment of any person belonging to any reserved category against unreserved vacancy on the basis of his merit and such appointment shall not result in reduction in the number of posts reserved for that category.”

7. In view of the settled legal position, we do not find any merit in the submissions made by learned counsel for the petitioner. **For the foregoing reasons, we find no merit in this petition and the same is, accordingly, dismissed.**

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
06.08.2025
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Whether the order is speaking : Yes
Whether the order is reportable : Yes