

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

WP (C) No. 2208/2025
CAV No. 1598/2025

Muzzamil Ahmed

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

Through :- Mr. Nitin Verma, Advocate

v/s

UT of J & K and Ors.

.....Respondent(s)

Through :- Mr. Raman Sharma, AAG
Mr. Irfaan Khan, Advocate

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

**ORDER
13.08.2025**

1. This petition by one Muzzamil Ahmed filed under Article 226 of the Constitution of India challenges an order dated 16.07.2025 passed by the Central Administrative Tribunal, Jammu (“**the Tribunal**”) in TA No. 1072/2020 titled “*Shabir Ahmed Naik vs. State of J & K and Ors.*”, whereby the Tribunal has allowed the TA filed by respondent no. 6 and quashed the selection of the petitioner as Driver (OM) in the Department of Health district cadre, Ramban.
2. Before we advert to the grounds of challenge urged by the learned counsel for the petitioner, we deem it appropriate to notice few facts which are relevant to the disposal of this petition.

3. Vide advertisement notification no. 06 of 2015 dated 01.09.2015 issued by the Jammu and Kashmir Service Selection Board (SSB), five posts of Driver in the Health and Medical Education Department, district cadre Ramban, were notified for selection with the following breakup:-
 - a. Open-3.
 - b. RBA-1.
 - c. SC-1.
4. The petitioner as well as respondent no. 6, besides others, responded to the aforesaid notification. The petitioner applied under RBA category whereas respondent no. 6 applied under open merit category. Upon conclusion of selection process, select list of the candidates selected under each of the aforesaid categories along with wait list was published. The petitioner being an RBA candidate came to be placed in the select list of open merit at serial no. 3 with merit of 79.00 points. Respondent no. 6 a candidate belonging to the open merit with the same merit, i.e., 79.00 points was placed at serial no. 1 of the wait list (OM).
5. Feeling aggrieved, respondent no. 6 approached this Court by way of SWP No. 1190/2016 which on transfer to the Tribunal, came to be registered as TA No. 1072/2020. In the writ petition which was later transferred to the Tribunal, respondent no. 6 challenged the placement of the petitioner herein in the select list of open merit on the ground that respondent no. 6, too, had the

same merit, i.e., 79.00 points and he being older in age was required to be preferred. He also found fault with the manner in which a candidate belonging to RBA was upgraded and put in the select list. The writ petition was contested by the Service Selection Board as well as the petitioner herein before the Tribunal.

6. Having heard rival contentions and gone through the record, the Tribunal came to the conclusion that in case of a tie of merit between two candidates, the only logical way to break it was to give preference to the person older in age. Accordingly, vide judgment dated 16.07.2025, the writ petition/TA of respondent no. 6 was allowed and the selection of the petitioner herein was set aside. It is this judgment of the Tribunal which is called in question before us.

7. Learned counsel for the petitioner would find fault with the judgment of the Tribunal on the ground that the same has been passed in ignorance of Regulation 47 of the J & K Services Selection Board (Business and Procedure) Regulations of 2013. It was submitted that in the face of availability of the relevant regulation, making a provision for breaking the tie, the Tribunal could not have applied its so called logic formulae.

8. *Per contra* Mr. Irfan Khan, learned counsel appearing for respondent no. 6 would argue that in case of a tie between the two candidates, the person older in age must be preferred for the reason that the younger person still has chances to apply and

compete in future, whereas such chances of the older person are comparatively less. He, however, could not persuade us as to why the Regulation 47 could not have been followed in the matter.

9. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the view taken by the Tribunal is wholly fallacious and cannot be accepted. The Regulation 47 clearly makes a provision to meet the contingency which had arisen in the instant case before the Tribunal.

10. For the facility of reference, Regulation 47 is reproduced hereunder: -

- i. Each member of the selection committee shall award the marks/points to the candidates in the viva-voce out of the maximum marks/points allotted to the viva-voce and the merit obtained by a candidate in the viva-voce shall be arrived at by adding up the marks awarded by each member divided by the number of members in the selection committee. This exercise shall be undertaken by the Secretary of the Board: -**

Provided that wherever an expert Member is nominated in addition to the specified Members for purpose of any

**selection, he shall be treated as a
member of selection committee.**

- ii. Each Member of the Selection Committee shall place the individual award duly signed in respect of the candidates appearing in the interview for the day in a sealed cover. The Convener shall place all the envelopes in a large sealed cover and deposit these sealed envelopes with the Secretary of the Board on the conclusion of the interview;**
- iii. The sealed covers containing award sheets, attendance and OMR/ICR forms along with enclosures shall remain in the custody of the Secretary of the Board who will place the same before the Board and with its authorization compile the data, prepare the select list and issue the select list as expeditiously as possible preferably within 15 days of the last day of the interview. The reasons of delay beyond 15 days will be explained by him to the Chairman.**

Provided that in case of tie, the order of preference shall be determined in the following: -

- a. Marks obtained in the written examination; or**
- b. Points obtained in viva-voce;**

c. Elder in age;

iv. The Convener and the Members of a Selection Committee shall ensure that the portion on the award sheet where viva-voce points are recorded is covered with transparent tape along with their names and signatures, the tapes shall be fixed by Members themselves.

v. The Board shall conduct written examination and the final merit of the candidate shall be the points that he/she secures in written examination plus the points obtained for higher/preferential qualification in line and at the points obtained in viva-voce as per the criteria notified/adopted/approved.

vi. The original records shall be sealed and deposited by the Chairman SSB after selection is notified.

11. From the plain reading of Regulation 47, it is abundantly clear that the Board has prescribed the manner in which a tie between two or more candidates obtaining equal merit in the selection is required to be dealt with, which is as under:-

- a. Marks obtained in written examination; or**
- b. Points obtained in viva-voce;**
- c. Elder in age;**

12. It is thus evident that in a selection process where there is written examination followed by viva-voce, the candidate having higher marks in the written examination is to be preferred for selection. Similarly, in a case where apart from other things a viva-voce is also conducted, the preference shall be given on the basis of points obtained in the viva-voce and if points obtained by two candidates both in the written examination and viva-voce are same, the person older in age is to be preferred.
13. Indisputably, in the instant case the selection was *inter alia* on the basis of viva-voce and, therefore, the candidate with higher points in the viva-voce was required to be preferred. The merit sheet of the candidates in the instant case clearly reveals that the petitioner has been awarded 17.6667 points in the viva-voce whereas respondent no. 6 has obtained 16.6667 points. Even in the driving test which is very essential for the post of Driver, points obtained by the petitioner are 56.3333, whereas points obtained by respondent no. 6 in such Driving test are 52.3333. Viewed from any angle, respondent no. 6 was no match to the petitioner.
14. For the foregoing reasons, we find merit in this petition, and the same is, accordingly, allowed and order dated 16.07.2025 passed by the Tribunal is set aside and a direction is issued to the Department of Health and Medical Education to immediately and forthwith issue order of appointment in favour of the petitioner. He shall get appointment with effect from the date,

other two candidates, namely, Nirmal Singh and Firdos Ahmed have been so appointed. Though the effect of such retrospective appointment would only be notional and inure only for the purpose of seniority and fixation of salary.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
13.08.2025
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