

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Date of Pronouncement: 10.02.2026

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WP(C) No.2721/2024 CM No.4912/2025 CM No.7437/2024

RIYAZ AHMAD MALIK

...Petitioner/Appellant(s)

Through: Mr. R. A. Jan, Sr. Advocate with
Mr. Abdul Wahid Lone, Advocate
Ms. Nasreen Rashid, Advocate.

Vs.

UNION TERRITORY OF J&K AND ORS

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Mr. Faheem Shah, GA.
Mr. Waseem Gul, GA.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

10.02.2026

(ORAL)

1. Upon coming of the instant petition for consideration on 05.02.2026, the counsel for the respondents, Mr. Mohsin Qadri, Sr. AAG, raised a preliminary objection that the issues involved in the instant petition are amenable to the jurisdiction of the Central Administrative Tribunal (for short 'the Tribunal), as such, prayed for transfer of the case to the Tribunal for adjudication whereupon after hearing the counsel partly, matter was directed to be listed for continuation of arguments on 07.02.2026, on the said date as well arguments on preliminary objection were again partly heard and finally concluded today.

Heard counsel for the parties.

2. According to Mr. R.A. Jan, Senior Advocate, appearing counsel for the petitioner the preliminary objection raised by Mr. Qadri, is untenable, in that, the Tribunal has no jurisdiction to deal with the issues invoked in the matter as only the cases in relation to recruitment and matters concerning recruitment to any All India Service or to any Civil Service of the Union or to a civil post under the Union or to a post connected with defence or in the defence services is amenable to the jurisdiction of the Tribunal in terms of the provisions of Section 14 of the Administrative Tribunal Act, 1985, (for short the Act of 1985).

According to Mr. Jan, since the process of recruitment in the instant case stands completed and concluded by the recruiting agency being the Jammu and Kashmir Service Selection Board (for short 'the Board') which in terms of order No.185-SSB of 2024 dated 11.05.2024 made recommendations by drawing and framing the select list including the petitioner herein therein recommended for appointment as Telephone Supervisor, the matter thus, does not fall within the ambit and jurisdiction of the Tribunal, more so, in view of the reliefs sought in the instant petition.

3. Before proceeding to advert to the aforesaid rival submissions of the appearing counsel for the parties qua the aforesaid preliminary objection raised by counsel for the respondents and response thereto submitted by counsel for the petitioner, it would be appropriate in the first instance to refer here under the provisions of section 14 of the Act of 1985 being germane to the controversy herein: -

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.- (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation ⁶¹[or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation. For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory.]

As is manifest from the above, indisputably the Tribunal has been vested with the jurisdiction, power and authority in relation to the recruitment and matters concerning recruitment provided in clauses (a), (b) and (c) *supra*, including such recruitment and matters concerning recruitment to the Civil Service of the Union or a civil post under the Union bringing within the ambit of the Union a Union Territory as well as per the aforesaid explanation.

4. Perusal of the record available on the file would reveal that a process of recruitment have had been set into motion by the Board for making selections against the various posts including the post of Telephone Supervisor in Health and Medical Education Department of Union Territory of Jammu and Kashmir and consequently, in terms of Order No.185-SSB of 2024 dated 11.05.2024, recommended besides other candidates, the petitioner herein as well for appointment against the post of Telephone Supervisor in Health and Medical Education Department, (GMC Anantnag/Rajouri).

5. Further perusal of the record available on the file would reveal that Government order No. 957-JK(GAD) of 2021 dated 16.09.2021 placed on record by the petitioner as an annexure-IV provide for the verification of character and antecedents of a government employee while making a reference therein the said order to Jammu and Kashmir Civil Services (Character & Antecedents) Instructions, 1997, notified vide Government Order No.1918-GAD of 1997 dated 09.12.1997. Besides the said Government Order the counsel for the respondents also produced a circular No.05-JK(GAD) of 2024 dated 18.01.2024 being the Standard Operating Procedure to be adhere viz order to streamline the verification of character and antecedents in respect of candidates selected by a recruiting agency, providing therein that before formally appointing a candidate selected by the recruiting agency, CID verification of character and antecedents of such selectee is mandatorily required to be obtained and forwarded to the appointing authority.

6. It is significant to mention here that, Apex Court in case titled as “**K. Narayanan vs. State of Karnataka**” reported in **1994 Supp (1) SCC 44**,

has held that recruitment is a comprehensive term and includes any method provided for inducting a person in public service providing further that appointment, selection, promotion, deputation are all well-known methods of recruitment.

It is also settled position of law that recruitment and appointment may be regulated either by statutory rules or by executive instructions, meaning thereby that existence of statutory rules is not a condition precedent to recruit or appoint an eligible and fit person to a post.

Further, the Apex Court in cases titled as “**Union of India vs. M.L. Capoor**”, reported in **AIR 1974 SC 87**, and in case titled as “**Nileema Misra vs (Dr). Harinder Kaur Paintal**”, reported in **1990 (2) SCC 746**, has held that recruitment is an executive activity whereby the executive has to be very free to decide upon the mode and methods to be applied for recruitment and that the object of recruitment to any service is to secure the most suitable person who answers the demands of the job and that the “appointment” in contradistinction means an actual act of posting a person to a particular office as against the recruitment which is just an initial process that may lead eventually to appointment in the service, but cannot be said to be tantamounting to an appointment.

7. The Apex Court in case titled as “**Jagdish, Ch. Patnaik vs State of Orissa**”, reported in **1998 (4) SCC 456**, has held that though the process of recruitment starts when the applications are invited, but until and unless a final selection is made and appointment orders are issued it cannot be said that the person has been recruited to the service thus, suggesting in law that recruitment precedes appointment and in fact is a process which culminates in an appointment starting from notifying the vacancy, inviting applications,

scrutiny of such applications, finalization of list of eligible candidates, as would be put test, subjecting to such candidates any test, be it a written or oral test/ interview, selection and approval for appointment as these would be all different steps in the process of recruitment. The aforesaid position of law has also had been earlier laid down by the Apex Court in the case titled as **“Prafulla Kumar Swain vs. Prakash Chandra Misra”**, reported in **1993 Supp (3) SCC 181**. Thus, in view of the aforesaid position of law, it is manifest that the recruitment signifies only enlistment, acceptance, selection or approval for appointment and not actual appointment or posting in service, while appointment means an actual act of posting a person to a particular post.

7. It is not in dispute that the Government has issued various guidelines/instructions/orders for ensuring that the appointment of a selected candidate to any service of the Union Territory is possessed of such character and antecedents which are free from blame and unquestionable.

This Court also in case titled as **“Nazir Ahmad Dar and Ors. Vs. State and Ors”**., reported in **2008 SLJ (1) SLJ 101** has *inter alia* held that recruitment under the State is subject to verification of one’s antecedents wherein verification it is found that petitioner does not deserve employment under the State either on account of moral turpitude or involvement in any anti national or subversive activities and the like in the past, it is open to the competent authority to deny the appointment to such a candidate.

8. Having regard to the aforesaid rival submission of the appearing counsel for the parties, qua the preliminary objection raised by counsel for the respondents and the response thereto submitted by counsel for the petitioner inasmuch as the provisions of Section 14 of the Act *supra* as well

as the position of law referred hereinabove as also the meaning of the expression “recruitment and appointment” noticed in the preceding paras, this Court is of the considered opinion that the expression “recruitment” and “matters concerning recruitment” appearing in clauses (a) of Section 14(1) of the Act would not constitute an “appointment” and would fall within the ambit and scope of the said clause (a) of Section 14(1), thus, rendering the instant case amenable to the jurisdiction to the Tribunal for adjudication.

9. Viewed thus, for the aforesaid reasons the preliminary objection raised by counsel for the respondents succeeds, as a consequence whereof the matter is directed to be transferred to the Central Administrative Tribunal Srinagar Bench for adjudication.

10. Registry to take necessary steps in this regard and parties shall appear before the Tribunal, Srinagar Bench on 27.02.2026.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

10.02.2026

Ishaq

Whether the order is speaking ?
Whether approved for reporting ?

Yes/No
Yes/No