
(2025) 09 J&K CK 0489
In the Jammu And Kashmir High Court
Case No : WP(C) No. 2176 Of 2022

Jammu and Kashmir Public Service Commission	APPELLANT
Vs	
Samir Sharma	RESPONDENT

Date of Decision : 17-09-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 09 J&K CK 0489

Hon'ble Judges : Sanjeev Kumar, J; Sanjay Parihar, J

Bench : Division Bench

Advocate : F. A. Natnoo, Raman Sharma, Atul Verma

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. The J&K Public Service Commission [“the PSC”] as also the Union Territory of Jammu and Kashmir through Commissioner/Secretary to Government, Power Development Department have filed two separate petitions under Article 226 of the Constitution of India to throw challenge to an order and judgment dated 09.03.2022, passed in TA No. 235 of 2025 (SWP No. 1145 of 2004) whereby the Central Administrative Tribunal, Jammu [“the Tribunal”], while allowing the OA filed by the respondent-Sumir Sharma, has directed the petitioners in these petitions to consider the respondent for appointment to the post of Assistant Engineer (Electrical) on notional basis from the date the other appointees of 1995 selection were appointed with all consequential benefits as per rules.

2. Briefly stated the facts leading to the filing of this petition by the petitioners are that in the year 1995, the PSC notified 22 vacancies of Assistant Engineer (Electrical) for selection by issuing notification No. 29-PSC of 1995 dated 07.12.1995. The Respondent-Sumir Sharma, who was possessing the qualification of BE (Electronics and Communication) submitted his candidature for consideration.

3. With a view to shortlisting the eligible candidates on the basis of screening test, the PSC decided to adopt the ratio of 1:3 i.e., to call the candidates three times the number of vacancies notified for each category. As per the result of the screening test, the respondent was not amongst the candidates who were called for interview as per the notified criterion of 1:3. However, later on, the short-listing criterion, which was initially 1:3, was modified/amplified by the PSC to 1:10. This brought the respondent also in the zone of consideration and eligible to participate in the interview. Before the PSC could proceed with the process of interview and complete the selection process, the change of short-listing criterion from 1:3 to 1:10 came to be challenged by the aggrieved candidates in several writ petitions, which were dismissed by a Single Bench of this Court vide common order dated 16.10.2001.

4. Feeling aggrieved, the respondent herein along with others similarly situated persons filed LPA (SWP) No. 530/2001, 535/2001, 516/2001, 517/2001 and 99/2002. All these appeals were clubbed together and disposed of by a common judgment dated 27.05.2003 passed by a Division Bench of this Court whereby the judgment passed by the learned Single Judge, dismissing the petitions, was upheld and the PSC was directed to complete the process of selection in terms of the decision it had taken earlier i.e. to interview the candidates in the ratio of 1:3.

5. In compliance with the Division Bench judgment dated 27.05.2003(supra), the PSC permitted the candidates, falling in the ratio of 1:3, to participate in the process of interview. The process of selection was completed, which ultimately culminated into issuance of select list. The select list was implemented and formal orders of appointment in favour of the selected candidates were issued on 17.12.2003.

6. The respondent, who was not amongst the candidates shortlisted, was, however, interviewed pursuant to the interim order passed by the Division Bench during the pendency of the appeals. Since the appeals were dismissed and the respondent was not a candidate falling in the list of candidates shortlisted in the ratio of 1:3, as such, he could not be considered in the selection process.

7. The chapter, which had opened with the issuance of the advertisement notification for 22 posts, in the year 1995, thus closed with the appointment of 21 candidates selected by the PSC.

8. Having lost before the Division Bench, the respondent filed SWP No. 1145 of 2004 before this Court. The provocation to file SWP No. 1145 of 2004 appears to be the issuance of a communication by the Administrative Department of Power Development to the PSC referring 47 posts of Assistant Engineer (Electrical) with a request to make selection. Claiming that the 47 posts of Assistant Engineer (Electrical), which had been referred by the Administrative Department of Power Development to PSC, were the posts available even in the earlier selection initiated by advertisement notification dated 07.12.1995, the respondent sought intervention of this Court to restrain the PSC to advertise the 47 posts of

Assistant Engineer (Electrical) and instead consider the respondent against the aforesaid post on the ground that he had participated in the selection process and would come in the selection zone.

9. This petition filed by the respondent met with resistance both by the PSC and the Administrative Department of Power Development. The writ petition, which was pending consideration before this Court came to be transferred to the Tribunal in the wake of promulgation of J&K Reorganisation Act, 2019 and was registered as TA No. 235/2022. The Tribunal, having considered the rival contentions of the parties and perused the material on record, came to the conclusion that the 47 vacancies, which were notified by the PSC by issuing notification No. 07-PSC of 2005 dated 01.06.2005 were backlog vacancies available in the year 1995. The Tribunal, having found that the PSC had failed to produce the relevant selection record of the selection of 1995, allowed the transfer application with a direction of the petitioners to declare the respondent as successful in the selection process of the year 1995 and give him the appointment to the post of AE (Electrical) on notional basis from the date the other appointees of 1995 selection had been appointed with all consequential benefits as per rules. It is this judgment of the Tribunal, which is called in question before us.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment impugned passed by the Tribunal is totally flawed and erroneous and therefore, cannot be sustained.

11. Indisputably, the respondent was a candidate in the selection process initiated by the PSC for filling up of 22 posts of Assistant Engineer (Electrical), notified for selection vide advertisement notification dated 07.12.1995. A screening test was conducted by the PSC to shortlist the candidates in the prescribed ratio of 1:3, however, on the request of some eligible candidates or for some other reasons, best known to PSC, the short-listing criterion of 1:3 was amplified to 1:10. This led to litigation before this Court. Several aspiring candidates approached this Court by way of different writ petitions challenging the change of short-listing criterion from 1:3 to 1:10. The writ petitioners succeeded before the Single bench.

12. The respondent, who was not falling in the short-listing criterion of 1:3, but had fallen in the amplified shortlisting criterion of 1:10, also felt aggrieved and challenged the judgment of learned Single Judge dated 16.10.2001 before a Division Bench of this Court. There were other appeals on the same subject matter filed by similarly situated aspiring candidates. All the appeals were clubbed together under the lead case of LPA (SWP) No. 530 of 2001 and were disposed of by the Division Bench vide judgment dated 27.05.2003. The judgment passed by the learned Single Judge was upheld and the PSC was directed to conclude the selection process by adopting the short-listing criterion of 1:3. This is how the PSC concluded the selection process, which, ultimately, terminated in issuance of the select list.

13. The respondent did not challenge the aforesaid selection process nor did he feel aggrieved by the number of vacancies notified for making selection in terms of advertisement notification dated 07.12.1995. It is only when a fresh indent was issued by the Administrative Department of Power Development to the PSC, requesting the latter to make selection against 47 posts of Assistant Engineer (Electrical) in the year 2005, the respondent again approached this Court to seek his consideration against the 47 notified posts on the basis of his participation in the earlier selection.

14. What the Tribunal has not appreciated is that the respondent had not only participated in the earlier selection process conducted in the year 1995, but had never raised any issue with regard to the number of posts notified for selection. It has also been reported to us that the respondent even participated in the subsequent selection process, initiated by the PSC vide notification dated 01.06.2005, in which he came to be selected and appointed as Assistant Engineer (Electrical). Probably, it is because of this reason, the respondent did not amend his petition to throw challenge to the advertisement notification issued on 01.06.2005, which was issued by the PSC during the pendency of the petition. Otherwise also, the respondent had not placed on record any material to sufficiently demonstrate that on the date, the advertisement notification was issued in the year 1995, apart from the 22 notified vacancies, there were 47 more vacancies of Assistant Engineer (Electrical) available, but were not notified by the PSC for ulterior considerations.

15. In the absence of any such case set up, there was no occasion for the Tribunal to come to the conclusion, that too, to a definite one, that these 47 vacancies, which were notified in the year 2005, were available in the year 1995, but were withheld for ulterior considerations. Otherwise also, no candidate can claim, as a matter of right, the notification of all the existing vacancies for selection for it is a prerogative of the employee to supply all or some of the available vacancies of a particular post. The selection process initiated in the year 2005, it may be noted, was finalised by the PSC in compliance with the directions passed by the Divisional Bench and therefore, was not liable to be opened on any grounds whatsoever, particularly, at the instance of the respondent, who himself was the appellant before the Division Bench.

16. Viewed from any angle, the judgment passed by the Tribunal cannot be sustained and therefore, this petition deserves to be allowed.

17. For the foregoing reasons, we find merit in these petitions and the same are allowed. The judgment impugned passed by the Tribunal is set aside.