
(2006) 12 J&K CK 0003
In the Jammu And Kashmir High Court

Krishan Pal and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 1 JKJ 329

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Judgement

Nirmal Singh, J.—This judgment disposes of SWP Nos. 2355/2003, 136/2004, 229/2004, 360/2004, 362/2004, 371/2004, 434/2004,

480/2004, 726/2004 and 1285/2004, as all these petitions arise out of the selection/recruitment of Constables/Followers in the newly created 1RP

Battalions of J & K Police Force made in the year 2003 against Advertisement Notice issued vide No. Pers/A-19/2003/5260-5340 dated 25-01-

2003.

2. Relevant facts for the disposal of this batch of writ petitions may be noticed.

3. Director General of Police, Jammu and Kashmir, invited applications from the permanent residents of Jammu and Kashmir State (male

candidates only) for the posts of Constables in IRP Battalions in the pay scale of Rs. 2750-4400 with usual allowances. Education qualification,

age and physical standard for the above-mentioned posts were specified as under:

ADVERTISEMENT NOTICE

Applications as per enclosed proforma are invited from the permanent residents of J & K State (male candidates only) for the post of Constables

in IRP Bns in the pay scale of Rs. 2750-70-3800-75-4400 and Allowances as sanctioned by the State Government from time to time.

The educational qualification, age and physical standards prescribed in the above-mentioned posts are specified as under:

Educational Qualification Matric and above from any recognized institute.

Age as on Jan 1st 2003 : Not less than 18 years and above 28 years. (The candidates born before 01.01.1975 and after 31.12.1984 shall not be eligible).

Physical Standard : Height 5'-6"', Chest 32'" unexpanded 33 1/2 Expanded.

However, for the candidates belonging to Leh and Kargil Districts and Gurkha community (State Subjects), the minimum height shall be 5'-4"'.
Reservation : xxxxx
x x x x x

The application forms should be accompanied by attested copies of the following certificates:

- (A) Date of Birth certificate
- (B) Higher Academic Qualification Certificate
- (C) State Subject Certificate
- (D) Any other certificates relating to field of sport, NCC, Ex-servicemen,
- (E) SC/ST, RBA etc. if applicable.
- (F) Four copies of recently taken passport size photograph.
- (G) One self-addressed envelope duly stamped. Candidates will be subjected to the following tests:
 - (i) Physical measurement test,
 - (ii) Outdoor test
 - (i) Item Qualifying time/distance
 - (a) 100 Mtrs. Race 15 Seconds or less
 - (b) 500 Mtrs. Race 06 Minutes or less

(c) High Jump 3 feet (in three chances)

(d) Long Jump 12 feet (in three chances)

(e) Push tops (20)

The application forms should be deposited

As the District SSP of J & K Province will maintain-----

Only those candidates who will be found fit in physical measurement and possessing other prescribed standards will be allowed to compete in

outdoor tests. Those candidates, who qualify in all five items of outdoor tests as per the standard prescribed above, shall have to appear in the

literacy test.

x x x x x x

x x x x x x

x x x x x x

Sd/-

(A.K. Suri)

Director General of Police

J & K, Srinagar.

4. In response to the above referred advertisement, petitioners, being eligible, applied for the said posts. Thereafter vide Order No. 941 of 2003

dated 6-3-2003, respondent-2 constituted a Central Recruitment Board for the selection of the candidates for their appointments as

Constables/Followers in the newly created IRP Battalions. After the selection process, the petitioners were selected as Constables.

5. To begin with, brief facts from SWP No. 2355/2003, are being mentioned since facts in all the petitions all the more are same. Name of

petitioner-1 figured at Serial No. 6 in General Category candidate of tehsil Kathua, and petitioner Nos. 2 and 3 were placed at Serial Nos. 4 and

8 in General Category candidates of tehsil Hiranagar. Respondent 4, after the selection, directed all the selected candidates to report to respondent

5 along with all the original testimonials/additional qualification/professional certificates within 15 days from the date of issuance of select list.

6. The grievance of the petitioners is that to facilitate the appointments of their favourites, respondents started conducting trade test of candidates,

including the petitioners, regarding their additional qualifications. On the ground of alleged failure in the trade test, the petitioners were not given the

appointments, whereas the private respondents, who are less meritorious than the petitioners, had been offered appointments. The petitioners

challenged the appointments of private respondents on the following grounds;

(A) Because the action of the respondents in preparing the Tehsil-wise select list and facilitating the section of less meritorious candidates like the

private respondents herein who as per the information of the petitioners have got lesser marks, besides being contrary to the selection procedure as

notified vide Order No. 941 of 2003 dated 6-3-2003 and which provide for consolidation and preparation of merit list of candidates District-wise

on the basis of their performance/merit, cannot stand the test of law laid down under Articles 14 & 16 of the Constitution of India. The same thus

being illegal, and unconstitutional is liable to be struck down.

(B) Because the action of the respondents in ignoring the petitioners for their appointment against the post of Constable in I.R.P. on the basis of

alleged ground of failure in trade test conducted by the respondents regarding their additional qualification cannot be sustainable on the simple

reason that no such test has been provided under Order No. 941 of 2003 dated 6-3-2003. The respondents with a view to facilitate the

appointment of their favourites have ignored the petitioners for appointment although the petitioners being meritorious than the private respondents

and having been selected and recommended for appointment by the selection committee duly constituted for this purpose. The action of the

respondents thus being arbitrary and discriminatory is liable to be struck down on this count also.

(C) Because as per para (v) of Order No.941 of 2003 dated 6-3-2003, referred above, which gives detail procedure for selection of Constables

and followers in I.R.P. Bns, the respondents were empowered to conduct trade test of candidates who had applied for the post of followers in

order to ascertain their proficiency in the trade for which they have applied. But the respondents No. 5 in order to facilitate the appointment of their

favourites i.e. private respondents have conducted the trade test of the

candidates having additional qualification. Therefore, the action of the respondent No. 5 being illegal is thus liable to be struck down.

(D) Because the respondents have allowed the selection of private respondents who are less meritorious at the cost of higher merit of the petitioners herein. The action of the respondents thus smacks of arbitrariness, favouritism and nepotism, the same is thus liable to be struck down on this ground also. Rest of the grounds shall be urged at the time of hearing.

7. On notice, the respondents filed counter in which they have pleaded that the mode of selection was spelled out comprehensively in Order No.

941 of 2003, where it had categorically been laid down that the candidates shall be put to a trade test to ascertain their proficiency in the

respective trade, for which they have applied so that it is ensured that only professional tradesmen enter into Police Force. As per marks

dispensation criteria elaborated vide Order No. 941 of 2003, the additional qualification conferred 4 (four) extra marks. Petitioner-1 is an ITI

Diploma Holder in Welding, petitioner-2 is a driving licence holder, whereas petitioner-3 is holding a CCA certificate (Certificate Course in

Computer Applications). They were given additional four marks due to these qualifications, but when they put to trade test, all of them failed to

qualify in their respective trade test, as such marks awarded additionally on account of extra qualification shown by them, were subtracted from the

grand tally obtained by them at the time of selection simply to select more competitive and efficient candidates. It was pleaded that mode of Tehsil-

wise selection was adopted by the respondents to give fair and equitable representation to each and every nook and corner of the Districts.

8. After hearing the learned Counsel for the parties and perusing the record, three points emerged for determination in this petition:

(a) Whether the respondents can make the selection in the cadre of Constables of 1RP Battalions Tehsil-wise;

(b) Whether a candidate can be put to an additional practical test with regard to the acquired additional qualification/proficiency/trade certificate,

as shown by them at the time of selection, after the selection process is over.

(c) What is the age of SC/ST candidate for being eligible to be appointed as Constable.

Paragraphs--III and IV of Order No. 941 of 2003 dated 06-03-2003 read as

under:

III. The selection lists should be restricted to the number of posts allotted to each District under different categories to be notified by the PHQ

separately----

IV. The candidates shall be put to physical measurement test and other outdoor tests as already notified in the advertisement notice issued by

PHQ. These tests are qualifying in nature and no marks are allotted for them. Failure to qualify any of the events will disqualify the candidates from other tests.

9. Mr. Salathia, learned Additional Advocate General appearing for the respondents, failed to show me any Rules and Regulations to substantiate

that the selection to the posts of Constables can be made Tehsil-wise. So the merit list prepared by the respondents is contrary to the Jammu and

Kashmir Police Rules, 1960 (hereinafter called the Police Rules).

10. Under Rule 172 of the Jammu and Kashmir Police Rules, the Superintendent of Police is the appointing authority of Constables. Sub-Rules (2)

and (4) read thus:

(2) All appointments to non-gazetted rank above that of constables shall be made by the appointing authority on consideration of recommendations

of a selection board. Such boards shall be constituted in accordance with the orders of the Inspector-General.

(4) The seniority of Inspectors and Sub-Inspectors shall be inter-range.

Assistant Sub-Inspectors shall be borne on range rolls and shall receive range constabulary numbers.

Head constables and constables in district shall be borne on district rolls and shall receive district constabulary numbers.

A perusal of above said Sub-Rule (4) is crystal clear that the constables are to be borne on the district rolls and only district constabulary numbers

are to be allotted. In case the selection is to be made Tehsil-wise or Sub-Division-wise, then the merit will be converted to demerit and demerit will

be converted to merit. The merit in 'A' Tehsil will be higher than 'B' Tehsil, then the candidates, who are in 'B' Tehsil, are not to be selected being

lower in merit. Whereas constabulary cadre is district-wise, as it has been noticed above.

11. In *Radhey Shyam Singh and others, etc. Vs. Union of India and others*, , the Apex Court has held as under:

It is needless to emphasize that the purpose and object behind holding a recruitment examination is to select suitable and best candidates out of

the lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the

other hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are

selected from other zones would be deprived of their selection resulting into great injustice and consequent discrimination. Thus there can be said

to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates.

That being so the process of selection as envisaged in paragraph 16 of the advertisement in question and reproduced in the earlier part of this

judgment would lead to discriminatory results because by adopting the said process of zone-wise selection would result in the devaluation of merit

at the selection examination by selecting a candidate having lesser marks over the meritorious candidate who has secured more marks and

consequently the rule of equal chance for equal marks would be violated. Such a process would not only be against the principles enunciated in

Articles 14 and 16 of the Constitution but it would also result in heart burning and frustration amongst the young men of the country. The rule of

equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so a candidate who

secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for

recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in paragraph 16 of the

advertisement in question is violative of Articles 14 and 16 of the Constitution of India as it has been demonstrated from the marks list of the

appellants placed before us at the Bar during the course of arguments that they had secured more marks than those secured by some of the

selected Candidates.

12. In *Minor P. Rajendran Vs. State of Madras and Others*, , the Apex Court had struck down the district-wise distribution of seats for the

medical admission as providing for unit-wise allocation was held to be violative of Articles 14 and 16 of the Constitution on the ground that it may

result in candidates of inferior caliber being selected in one district and those of superior caliber not being selected in another district. Similar view

has been taken in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, and *Nidamarti Maheshkumar Vs. State of*

Maharashtra and Others, .

13. Applying the ratio of the above said decisions, the recruitment/selection made by the respondents as Tehsil-wise cannot sustain and is,

accordingly, struck down.

14. The second point, which is to be determined in this case, is whether the respondents can put the candidates to an additional practical test with

regard to their acquired additional qualification/proficiency/trade certificate, after the process of selection is over and those certificates have been

shown by them at the time of selection.

15. It is admitted case of the parties that when the selection was made, the petitioners were not put to trade test for their additional qualification.

Four marks were awarded to the petitioners for possessing additional qualification in their respective trade. After adding the four additional marks,

petitioner-1 was at Serial No. 6 in the General Category candidates of Kathua tehsil, whereas petitioners 2 and 3 were at Serial Nos. 4 and 8

respectively in the General Category candidates of tehsil Hiranagar, and they were in the select list above the private respondents. They were again

put to trade test, but they failed. The four marks awarded to them at the time of selection were' deducted and, therefore, they were not given

appointments. But as per the procedure laid down, respondent-5 cannot deduct these four marks awarded to them for their additional

qualification. After the selection and the declaration of the result, the respondents have no right to put the petitioners again to a practical test for

adjudging their suitability for the said posts. Respondent-5 has misread and misconstrued Order No. 941 of 2003. Paragraph V of the said order

reads as under:

V. The candidates who have applied for the post of followers in different trades shall be put to a trade test to ascertain their proficiency in the trade

for which they have applied so that it is ensured that professional tradesmen are

selected as followers.

The aforesaid Clause make it crystal clear that the trade test has been prescribed for the candidates, who had applied for the posts of Followers, and not for Constables.

16. The petitioners had applied for the posts of Constables and they were selected for the same posts and four additional marks were awarded to

each of them taking into consideration their additional qualifications in different trades, i.e., ITI Diploma in Welding, a driving licence and a CCA

certificate (Certificate Course in Computer Applications) respectively, in terms of Clause (iii), which provides that four marks shall also be given to

the candidates possessing additional qualifications specified therein. The additional qualifications acquired by the petitioners were as stipulated in

Clause (iii). That is why, they were awarded four additional marks each. Further, as per Clause (iii), four marks were to be given to a candidate,

who was possessing a 'C' Certificate in NCC. A candidate cannot be put to practical test after his selection and declaration of the result. After the

selection and declaration of result, a valuable right accrues to the candidates. Therefore, the respondents cannot deduct four marks from grand tally

obtained by the candidates, who were having an additional qualification/proficiency/trade certificate in their respective trades.

17. The last point to be considered is the age of SC/ST candidates for being eligible to be appointed as Constables.

18. As per the advertisement for the General Category candidates, the age is prescribed as not less than 18 years and above 28 years and the

candidates, who were born before 01-01-1975 and after 31-12-1984 are not eligible. Advertisement also provides that due representation will be

given to the candidates belonging to reserved categories as provided under SRO-126. But no stipulation has been prescribed in the advertisement

so far as age relaxation for reserved categories is concerned. In terms of Brochure on Reservation for Scheduled Castes in Services, issued by the

General Department, Government of Jammu and Kashmir, and under the Reservation Rules, 1994 SRO 126 of 1994) five years' relaxation in age

has been given to the candidates belong to SC/ST and other reserved categories, for the appointment in State services.

19. Petitioners in SWP Nos. 136/2004 and 229/2004, being candidates belonging

to SC/ST categories, seek relaxation of upper age limit, as they were selected but not given appointment, and have relied upon Government Order No. 1500-GAD of 2000 dated 21-12-2000. Under this Government Order, the Government can relax the age in respect of the over-aged candidates for direct recruitment to the post of constables. But under this order, the age automatically is not to be relaxed. It is for the Recruiting Agency/Authority that in case of any exceptionally qualified candidate, it can recommend to the General Administration Department for the relaxation, and the Government, on considering the exceptional qualification, can relax the upper age limit, but the recommendations itself ipso facto would not confer a right on such persons to be granted such relaxation.

20. The maximum age of the SC/ST candidates for recruitment to a civil post, as per Rule 17 of the Jammu and Kashmir Civil Services

(Classification, Control and Appeal) Rules, 1956, will be 38 years, as against General Category Candidates, whose maximum age has been

prescribed as 35 years. Whereas in Rule 176 of the Police Rules, the maximum age of a candidate to be recruited as Constable in Police Force

has been prescribed as 28 years in terms of Rule 182 of the Police Rules. Police Rules are silent on the issue of giving relaxation to the SC/ST

candidates to be recruited as Police Officers/Officials, including the Constables, in the Police Force. However, the maximum age for SC/ST

candidates, to be recruited as Constables in the Police Force, can be considered to be relaxed up to 33 years, giving relaxation of five years, in

terms of CHAPTER V-- Relaxation and Concessions for Scheduled Castes of the Brochure on Reservation for Scheduled Castes in Services,

issued by the General Department, Government of Jammu and Kashmir, and in terms of the Jammu and Kashmir Reservation Rules 1994 SRO

126 of 1994)

21. For the reasons mentioned above, these writ petitions are disposed of with the following directions:

(i) The selection made by the Selection Committee/Board on the basis of Tehsil-wise, after conducting the trade test, thereby dropping the

petitioners, is quashed;

(ii) Respondents are directed to re-determine the merit of the candidates district-

wise and they will not put any of the candidates, who have applied

for the posts of Constables, in trade test, and will not deduct four marks to be allotted to them in terms of Order No. 941 of 2003 dated 06-03-

2003 issued by respondent-3.

(iii) Selecting Authority can put only those candidates in trade test(s), who have applied for the posts of Followers.

(iv) While determining the candidature of the SC/ST candidates, the relaxation of upper age shall be considered, in terms of the Brochure on

Reservation for Scheduled Castes in Services, issued by the General Department, Government of J & K and in terms of Jammu and Kashmir

Reservations Rules, 1994 SRO 126 of 1994).