

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

Reserved on: 02.12.2022  
Pronounced on:06.12.2022

WP(C) No.876/2022

KHALID ZAHOR KHAN ... PETITIONER(S)

Through: - Mr. Mir Mansoor, Advocate.

Vs.

UT OF J&K & ORS. ...RESPONDENT(S)

Through: - Mr. Sajjad Ashraf, GA.

CORAM:HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.DG-YSS/Lit/3014-18 dated 04.10.2021, issued by respondent No.2, whereby claim of the petitioner for engagement for the position of Rehbar-e-Khel has been rejected.

2) The facts which emerge from the pleadings of the parties are that by virtue of an advertisement notice No.01 of 2018 dated 13.01.2018, the official respondents had invited applications from eligible candidates for engagement as Rehbar-e-Khel for District Kupwara. The petitioner responded to the said advertisement notice and after undergoing the selection process he was placed at serial No.21 of the merit list. The respondents are stated to have issued a final selection list, according to which first 17 candidates were selected whereas a wait list of three candidates was also published. It seems that three candidates from the select list and one candidate from the wait list did

not opt to take up the engagement, as such, two candidates from the wait list figuring at serial No.2 and 3 were engaged as Rehbar-e-Khel. It appears that respondent No.3, who is Chairman of the Selection Committee, addressed a communication dated 06.0.2019 to the Director General, Youth Services and Sports, seeking permission to enlarge the waiting list to four number of candidates in view of the provisions contained in SRO 375 dated 21.10.2010. In case such permission would have been granted, the petitioner would have been selected.

3) However, when the permission was not granted, the petitioner invoked the jurisdiction of this Court by filing a writ petition bearing WP(C) No.829/2021, seeking a direction upon the respondents to consider him for engagement as Rehbar-e-Khel. This Court vide its order dated 23.04.2021 directed the respondents to consider the case of the petitioner for engagement against the post which had become vacant because of non-joining of the candidate figuring at serial No.18 in the merit list. The respondents have, after considering the case of the petitioner, passed the impugned order rejecting his claim.

4) The petitioner has thrown challenge to the impugned order on the ground that in terms of Rule 14(7) of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010 (hereinafter referred to as the Rules of 2010), the respondents were obliged to maintain a wait list to the extent of 25% of the vacancies, meaning thereby that they had to maintain a wait list of four candidates, but instead of doing so, they have maintained the wait list of only three

candidates. According to the petitioner, if the respondents would have maintained the wait list of four candidates, with the non-joining of three candidates from the main list and one candidate from the wait list, he could have been engaged on the vacancy created due to non-joining of the selected candidates. It has been contended that the reason assigned by the respondents, that as per the scheme of the Rehbar-e-Khel, no waiting list is to be prepared, is without any merit in view of the order dated 23.12.2021 passed by this Court in LPA No.4 of 2021 titled Raki Sharma and others vs. UT of J&K. It has been further contended that the impugned order issued by the respondents is against rules and the precedents, as such, the same deserves to be quashed.

5) I have heard learned counsel for the parties and perused the material on record, including the pleadings of the parties.

6) The short issue, which is involved in this writ petitioner, is as to whether the respondents were obliged to maintain a wait list to the extent of 25% of the vacancies and if so, whether the impugned order of rejection of petitioner's claim is not in accordance with law.

7) It has been contended by learned counsel for the petitioner that in terms of Rules of 2010, particularly Rule 14(7) thereof, the respondents were obliged to maintain a wait list of 25% of the vacancies advertised. It is contended that in the instant case, 17 vacancies were advertised, therefore, the respondents were obliged to maintain a wait list of four candidates and if that had been done, the petitioner would have figured at serial No.4 of the wait list, which would have entitled him to

engagement as Rehbar-e-Khel once four candidates did not take up the engagement.

8) Learned counsel for the respondents has, on the other hand, contended that the provisions of Rules of 2010 do not apply to the engagement of Rehbar-e-Khel, which has to be made under a scheme. In fact, the learned counsel has submitted that as per Clause (XIII) of the scheme, there is no scope for maintaining a wait list.

9) If we have a look at the Rules of 2010, Rule 2 of the said Rules provides that these Rules apply to all posts under the Government excepting the posts for which special treatment is expressly or may be provided under any law, rule, order or notification. The Rules also do not apply to the posts borne on work charged establishments and paid out of contingencies in all the departments. Rule 14(7) of the Rules of 2010, which is relevant to the context, reads as under:

*“14. Procedure for preparation of select lists by the Board.-*

<i>(1) xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>(2) xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>(3) xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>(4) xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>(5) xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>(6) xxx</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>

*(7) The concerned Selection Committees of the Board shall also draw up a waiting list of 25% of the total number of selected candidates and forward the same, through the Board, to the requisitioning authority for consideration against drop-out vacancies. The waiting list shall remain in force for a period of one year from the date the original select list is sent to the requisitioning authority. The Selection Committees shall not maintain or recommend any select or waiting list for any future vacancy or any vacancy caused on account of resignation by any selectee after appointment.”*

10) From a perusal of the provisions, contained in Rules of 2010, particularly Rule 2 and Rule 14(7), it is clear that the said Rules apply to selections made by the Board, constituted in terms of Rule 6 of the said Rules. These Rules do not apply to any post for which special treatment is expressly provided under any rule, order or notification and these Rules also do not apply to the posts borne on work charged establishment.

11) So far as positions of Rehbar-e-Khel are concerned, the same have been created under the policy for engagement of Rehbar-e-Khel issued vide Government Order No.141-Edu(YSS) of 2017 dated 27.10.2017. This is a special policy framed by the Government for engagement of Physical Education Staff at Middle/High School level. The criteria and selection process for the positions of Rehbar-e-Khel is laid down in the policy itself. The service conditions, mode of selection, eligibility etc. are all provided in the scheme. So, the selection relating to the positions of Rehbar-e-Khel has been given special treatment by express provisions contained in the policy dated 27.10.2017. Therefore, the Rules of 2010 would not apply in the matters relating to selection of Rehbar-e-Khel. Obviously, Rule 14(7) of the Rules of 2010 would also not be applicable to the selection of Rehbar-e-Khel. Thus, the respondents are not obliged to prepare a waiting list while making selection to the positions of Rehbar-e-Khel.

12) It has been correctly observed by a Division Bench of this Court in **Raki Sharma's** case (supra), that the scheme relating to engagement

of Rehbar-e-Khel does not specifically provide for preparation of a waiting list but it also does not prohibit preparation of the same. In the instant case, the respondents have prepared the wait list of three candidates though they were not obliged to do so as per the policy. They cannot be compelled to prepare wait list of a particular number of candidates or of a particular percentage of the vacancies advertised because Rule 14(7) of the Rules of 2010, as already stated, does not apply to the engagements of Rehbar-e-Khel made under the policy of 2017. Therefore, decision of the respondents to restrict the number of wait listed candidates to three cannot be interfered with by this Court.

13) It has been contended by learned counsel for the petitioner that the Chairman of the Selection Committee i.e., respondent No.3, had sought permission for extending the waiting list by making it 25% of the vacancies. In this regard it is submitted that the said recommendation of respondent No.3 cannot give any right to the petitioner to seek a Mandamus against the respondents to enlarge the number of wait listed candidates because it is only a recommendation from respondent No.3 and not a decision of the respondents. A recommendation of an official is not binding unless it matures into a decision of the Government.

14) The Supreme Court in the case of **Bachhittar Singh vs. State of Punjab**, AIR 1963 SC 395, while dealing with a case where a Minister had passed an order on file but the said order was not communicated to the person concerned, observed that the business of State is a

complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. It was further observed that before an action is taken by the authorities concerned in the name of Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. The Court further went on to observe that it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be opposed to the earlier opinion. It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

15) Relying upon the aforesaid decision in **Bachhittar Singh's** case, the Supreme Court in the case of **Sethi Auto Service Station and another vs. Delhi Development Authority and others**, (2009) 1 SCC 180, observed as under:

*"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned. "*

16) From the foregoing enunciation of law on the subject, it is clear that mere recommendation of respondent No.3 for enlarging the wait

list without there being a decision of the Government accepting the said recommendation does not give any right to the petitioner to seek a direction to the respondents to enlarge the wait list so as to include him therein and thereafter issue an engagement order in his favour.

17) In view of the foregoing discussion, the petitioner has been unable to convince this Court that there is a right existing in his favour so as to seek a direction upon the respondents to enlarge the limit of wait listed candidates with a corresponding duty upon the respondents to do so. Therefore, no Mandamus can be issued against the respondents to include the petitioner in the waiting list and thereafter issue an engagement order in his favour. In view of this, no fault can be found with the impugned order whereby the claim of the petitioner has been rejected.

18) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)  
Judge

Srinagar  
06.12.2022  
"Bhat Altaf, PS"

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*