

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

SWP No. 1463/2016

Simranjeet Singh son of Inderjeet Singh
resident of care of Raja provisional Store
behind Garhi PO Tehsil and District
Udhampur

petitioner (s)

Through :- Mr Vikas Magotra Advocate

V/s

1 Union of India th. Secretary to
Government, Ministry of Defence,
Government of India, New Delhi
2 Director General EME Branch MGO DHQ
P.O New Delhi.
3. MG EME HQ North Comd. care of 56 AP
4 Commanding Officer 14 EME Bn Comd
care of 56 APO
5 Parveen Kumar son of Sarjeet Singh care of
respondent No.4
6 Sanjay Nath son of Bhawar Nath care of
respondent No.4.

.....Respondent(s)

Through :- Mr. Vishal Sharma DSGI with
Mr. Eishan Dadeechi CGSC
Mr. R.P.Sharma Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT(ORAL)

(01.02.2024)

1 In this petition, the petitioner is aggrieved and has assailed the selection and consequent appointments of respondents 5 and 6 as Engineer Equipment Mechanic (HS-II) ['EEM'] in general category advertised vide Notification No.DAVP-10103/11/0019/15-16 published in the Daily Excelsior newspaper on 05.09.2015. The petitioner also prays for Writ of Mandamus

commanding the respondents to select and appoint the petitioner against one of the posts of EEM in general category.

2 Briefly stated the facts projected by the petitioner in this petition are that an Advertisement Notification was issued by respondent No.4 inviting applications from Indian nationals for filling up several posts including two posts of EEM under general category. The petitioner along with few others including respondents No. 5 and 6 responded to the Advertisement Notification and submitted their candidature for the aforesaid two posts. The selection process was conducted which included written test and a practical test. On conclusion of the selection process, a select list was issued wherein respondents 5 and 6 were shown selected against the notified two posts of EEM, whereas petitioner was placed at S.No.1 in the wait list.

3 Feeling aggrieved, the petitioner has filed the instant writ petition challenging the selection of respondents No. 5 and 6 and their consequent appointments against the posts of EEM, *inter alia*, on the following grounds:

(i) that the experience of the petitioner was not considered by the respondents, nor any points awarded for the same. As a matter of fact, it is the grievance of the petitioner that no selection criteria was ever disclosed before, during and after the selection process;

(ii) that no weight-age was given to the higher qualification of the petitioner i.e Diploma in the requisite trade; and

(iii) that respondents 5 and 6 were selected and appointed as EEM despite the fact that they were not possessing the requisite qualification i.e ITI certificate in the concerned trade from recognized institute.

4 Respondents 1 to 4 have filed their objections, whereas respondents 5 and 6 have adopted the objections filed by respondents 1 to 4. In the objections, the respondents have taken a clear stand that the selection in the

instant case has been made strictly on the basis of merit obtained in the written examination conducted by the Board of Officers of the respondents and that in the written examination, the petitioner obtained only 49 marks, whereas the selected candidates i.e respondents 5 and 6 obtained 73 and 69 marks respectively. It is submitted that the practical examination was only a qualifying examination in which, apart from the petitioner, respondents 5 and 6 and one another candidate also qualified. Regarding giving benefit of higher qualification, it is submitted that since the selection was made purely on the basis of merit in the written examination, as such, there was no question of awarding any additional marks for experience or higher qualification.

5 Having heard learned counsel for the parties and perused the material on record, I am of the view that the petitioner has miserably failed to make out a case for assailing the selection of respondents 5 and 6.

6 It is true that the respondents while inviting applications for making selection to the posts of EEM and various other posts, did not specify the selection criteria which the respondents intended to adopt during the course of selection. Ordinarily, the employer should disclose/notify the selection criteria in advance, so that the candidates, participating in the selection process, are aware of the yardstick that is going to be adopted for making selection. This would bring transparency and enhance public trust in the selection process. However, non-disclosure of the selection criteria in advance before initiating the selection process would not alone be sufficient to vitiate the selection process if the criteria applied is ultimately found to be just, fair and reasonable.

7 In the instant case, the respondents have made selection strictly on the basis of merit obtained by the candidates in the written test. The

respondents have not conducted any interview as part of selection process and, therefore, have obviated any opportunity of arbitrariness in the selection process . The petitioner has not challenged the mode and manner in which the written test has been conducted and, therefore, must gracefully accept its result. Indisputably, in the written examination conducted by the respondents, the petitioner figured at S.No.3 in the merit list and, therefore, has been rightly placed in the wait list. So far as the allegation of the petitioner that the selected candidates i.e respondents 5 and 6 were not possessing the requisite qualification i.e ITI certificate in the relevant trade from the recognized institute, suffice it to say that I have gone through the selection record produced by Mr. Sharma, learned DSGI and found that both the candidates have obtained their ITI qualification from the recognized institutes.

8 In view of the aforesaid, no good ground is made out to assail the selection and appointment of respondents 5 and 6. The plea of learned counsel for the petitioner that one of the candidates i.e respondent No. 6 has not joined and, therefore, the petitioner being a candidate in the wait list at S.No.1 should be directed to be appointed, is something which is required to be ascertained by the respondents at their own level.

9 In the premises, the challenge to the selection of respondents 5 and 6 is hereby turned down and the petition to that extent is dismissed. However, having regard to the submission made by Mr. Magotra that, the petitioner being a candidate at S.No.1 in the wait list, is entitled to be issued the order of appointment in case any of the selected/appointed candidates does not join, I dispose of this petition by providing as under:

(i) The respondents shall immediately and forthwith give effect to the selection of 5 and 6 and offer them appointment within a period of six weeks from the date a copy of this order is served upon them. Since the selection pertains to the year 2016 and same has not been acted upon despite the fact that there was no interim order from this Court, as such, any subsequent order barring, making or completing the selection process shall not come in the way of the respondents.

(ii) That in case any of the selected candidates does not join after having received offer of appointment, the petitioner who is next in the order of merit and placed at S.No.1 in the wait list shall be considered and appointed against such post.

(SANJEEV KUMAR)
JUDGE

Jammu
01.02.2024
Sanjeev

