

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

(RESERVED)

Hearing through video conferencing

Transfer Application No. 4170/2021

Reserved on: - 21.04.2025

Pronounced on: - 09.07.2025



HON'BLE MR. RAJINDER SINGH DOGRA, MEMBER (J)
HON'BLE MR. RAM MOHAN JOHRI, MEMBER (A)

Mohd Mukhtyar, Aged 37 years
S/o Badar Din Bakrwal,
R/o Parnote, Tehsil Ramban
District Doda, at present Distt. Ramban.

...Petitioner

(By Advocate: - Ms. Aruna Thakur)

VERSUS

1. State of Jammu & Kashmir
Through Chief Secretary,
Government of Jammu & Kashmir,
Civil Sectt., Jammu
2. The Jammu & Kashmir Service Selection Board,
J&K Government, Jammu,

Through its Secretary.

3. Director,
Health Services, Jammu.

4. Chief Medical Officer,
Doda.

5. Sh. Farooq Ahmed Peer,
Member Section Committee for the posts of Drivers,
J&K Service Selection Board, Jammu.

6. Sh. Zakir Hussain,
Member Section Committee for the posts of Drivers,
J&K Service Selection Board, Jammu.

...Respondents

(By Advocate: - **Mr. Sudesh Magotra, AAG, Mr. Dewakar Sharma, DAG**)



ORDER

Per: - Rajinder Singh Dogra, Judicial Member



1. The SWP/WP(C) No. 2359/2013 was transferred from the Hon'ble High Court of Jammu and Kashmir at Jammu and was registered as T.A. No. 61/4170/2021 by the Registry of this Tribunal.
2. The present matter was filed before the Hon'ble High Court with following prayer:
 - a) “Mandamus directing the respondents to consider the merit and experience of the petitioner for selection against any of the available posts of Drivers under the ST category in the Health Department in District Cadre, Doda.
 - b) Certiorari quashing the decision of the respondents for not filling up the two posts of Drivers under the ST category in the Health Department in District Cadre, Doda.
 - c) Mandamus directing the respondents to produce the entire record of the selection process pertaining to the posts of Drivers under the ST category in the Health Department in District Cadre, Doda.
 - d) Prohibition prohibiting the respondents from re-advertising the posts of Drivers under ST category without considering the merits and claims of the petitioner for the said posts.”

3. The facts of the case as averred by the petitioner in his pleadings are as follows:



- a) The petitioner is a permanent resident of the erstwhile State of Jammu and Kashmir and a citizen of India. He claims entitlement to constitutional protections under Article 226 of the Constitution of India.
- b) The petitioner belongs to the Scheduled Tribe (ST) category and hails from a remote area in Tehsil Ramban. Respondent No. 2, J&K Services Selection Board (JKSSB), issued Advertisement Notification No. 04 of 2006 dated 29.12.2006 inviting applications for the post of Driver in the Department of Health for District Cadre Doda. The total number of posts advertised was 17, with category-wise break-up including 2 posts reserved for the ST category. The minimum educational qualification prescribed for the said post was ***"Middle pass with hill driving license."***



- c) The petitioner, fulfilling the eligibility conditions, applied under the ST category and was shortlisted as per Notification No. SSB/Sel/Secy/1418-26/2012 dated 04.04.2014, figuring at Serial No. 148 in the list of shortlisted candidates. The petitioner was called for an interview and appeared on 22.04.2012, producing original documents. He performed well and also passed the driving test conducted by respondent No. 5.
- d) Subsequently, respondent No. 2 issued a notice bearing No. SSB/Sel/Secy/2012/1533 dated 12.06.2012 requiring all shortlisted candidates to produce experience certificates within 10 days from recognized establishments, in compliance with the eligibility condition of ***“Middle pass having hill driving license and at least two/three years of experience of driving in an established and recognized concern.”***
- e) The petitioner had submitted an experience certificate from Manjit Tour & Travels and AMC Projects Pvt. Ltd. along with his application form, but did not resubmit it in response to the said notice dated 12.06.2012.



f) On 24.02.2012, respondent No. 2 published a provisional select list in the State Times newspaper. To the petitioner's shock, his name did not appear in the list, even though it stated that two ST category posts remained unfilled due to ***"non-availability of eligible candidates."***

g) The petitioner filed objections to the provisional list on 28.02.2013, which were acknowledged and assigned receipt No. 778 dated 28.02.2012 (likely a clerical error in date).

h) Despite filing objections, respondent No. 2 issued the final select list on 09.10.2013 (published in the Daily Excelsior), again stating that 2 ST posts remained unfilled due to unavailability of eligible candidates.

i) The petitioner had secured 63.66 marks in the interview and was hopeful of being selected, having fulfilled all criteria. The petitioner contends that the rejection of his candidature on the grounds of non-submission of the experience certificate, despite having submitted it earlier, was arbitrary and discriminatory.



j) He alleges that the selection process was tainted with mala fides and extraneous considerations, as the selection took nearly six years to conclude, and the claim of non-availability of ST candidates was factually incorrect. The petitioner asserts that his result could not be verified online due to the inaccessibility of the website and alleges perfunctory consideration of his objections.

k) The petitioner avers that he has not filed any other writ petition in any court of law concerning the same cause of action.

l) The petitioner prays for a direction in the nature of mandamus to the respondents to consider his merit and experience for appointment against the post of Driver under the ST category in District Cadre Doda.

4. The respondents have filed their reply statement wherein they have averred as follows:

a) The respondents submit that the writ petition is not maintainable in law as no legal, fundamental, or statutory right of the petitioner has been violated. The petitioner merely had a

right of consideration which, they argue, was duly accorded as per rules.



- b) It is submitted that the writ petition raises disputed questions of fact which cannot be adjudicated by the Hon'ble Court while exercising writ jurisdiction under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K.
- c) The respondents contend that the petitioner cannot claim appointment in contravention of rules and procedures, and any such direction would amount to a backdoor entry, violating Articles 14 and 16 of the Constitution.
- d) It is further submitted that the petitioner participated in the selection process and, having failed to succeed, cannot now be permitted to challenge it. This principle of “*approbate and reprobate*” disentitles him from relief.
- e) The allegations of mala fides raised by the petitioner are vague, unsubstantiated, and baseless. The selection process was

conducted strictly in accordance with the prescribed rules and by a competent authority consisting of subject matter experts.



- f) The answering respondents emphasize that the post of Driver in District Cadre Doda is a selection post, and appointments are to be made based on merit. In the instant case, selection and marking in the interview were carried out by the competent authority, i.e., the J&K Services Selection Board (JKSSB).
- g) The petitioner had applied pursuant to Advertisement Notice No. 04 of 2006 dated 29.12.2006 under the ST category, but he failed to produce the requisite 2-3 years of experience certificate from a recognized concern as required by the said advertisement. Therefore, he was ineligible for consideration under the prescribed criteria.
- h) A specific notice dated 12.06.2012 was issued calling upon candidates to submit valid experience certificates within ten days. The petitioner did not respond to this notice with the required documentation within the stipulated period.



- i) Consequently, in the absence of the required experience certificate, the petitioner was not found eligible and did not figure in the final select list. The ST category posts remained unfilled due to non-availability of eligible candidates.
- j) The answering respondents deny any discrimination or procedural irregularity, reiterating that the selection process was conducted fairly and in accordance with law.
- k) It is submitted that the writ petition is based on conjectures and assumptions, without any concrete legal basis, and deserves to be dismissed with costs.
- l) The respondents pray for dismissal of the writ petition as it discloses no cause of action and is devoid of merit.

5. Heard learned counsel for the parties and perused the material on record.
6. The petitioner, claiming to be a permanent resident of Jammu and Kashmir and belonging to the Scheduled Tribe (ST) category, has filed the present writ petition seeking a direction to the respondents to consider his candidature for the post of Driver in District Cadre Doda

pursuant to Advertisement Notification No. 04 of 2006 dated 29.12.2006 issued by the J&K Services Selection Board (hereinafter “JKSSB”).



7. It is the case of the petitioner that he was duly eligible for the said post, having possessed the requisite qualification of “*Middle pass with hill driving license*” and sufficient interview merit. He contends that he had submitted an experience certificate along with the application form but was later denied selection on the ground of non-submission of the experience certificate, thereby causing two ST category posts to remain unfilled. He challenges this denial as arbitrary, discriminatory, and violative of Articles 14 and 16 of the Constitution.
8. The respondents have appeared and filed objections, specifically taking the stand that the petitioner’s candidature was not considered as he failed to comply with the express terms of the notice dated 12.06.2012 requiring the submission of experience certificates from recognized establishments within ten (10) days. The respondents submit that the petitioner did not furnish the required experience certificate within the stipulated time and thus was disqualified from



the process. It is further contended that the petitioner, having participated in the interview process and failed to meet eligibility conditions, cannot subsequently challenge the selection process. The plea of mala fide has been denied as vague and unsubstantiated.

9. Points for Determination

- Whether the petitioner was eligible for consideration under the ST category post of Driver?
- Whether the petitioner can challenge the selection process after participating in it despite disqualification?
- Whether there was any arbitrariness or mala fide in denying selection to the petitioner?

10. The eligibility conditions, as prescribed in the advertisement and reiterated in the subsequent notice dated 12.06.2012, clearly mandated that in addition to holding a hill driving license, the candidate must possess ***“at least 2-3 years of driving experience in an established and recognized concern.”***

11. The record indicates that the petitioner failed to furnish such experience certificate within the extended and final deadline provided



by the respondent Board. While he asserts that such a certificate was already submitted earlier, he does not dispute that the certificate was not re-submitted in response to the categorical and final notice issued by the JKSSB. The said notice clearly mentioned that failure to submit the certificate within the stipulated period would disqualify the candidate from further consideration.

12. It is a settled position of law that the eligibility of a candidate must be determined strictly in terms of the notified criteria. A candidate who fails to comply with essential eligibility requirements within the prescribed timeline cannot claim any vested right to appointment or consideration. (*Ref: Ashwani Kumar Singh v. U.P. Public Service Commission, (2003) 11 SCC 584*).
13. Furthermore, the petitioner, after having participated in the selection process, including the interview, cannot be allowed to turn around and challenge the process after having been declared unsuccessful. The principle of *approbate and reprobate* applies squarely. (*Ref: Madan Lal v. State of J&K, (1995) 3 SCC 486*).
14. As regards the allegations of mala fides and arbitrary exclusion, the same have not been substantiated by any cogent material. Mere

assertions without factual backing cannot override a procedurally valid and rule-based selection process.



15. The petitioner was disqualified due to his failure to submit the requisite experience certificate within the prescribed cutoff date. Having failed to comply with the mandatory conditions and having participated in the selection process despite such disqualification, he cannot be permitted to challenge the outcome of the selection at this belated stage.

16. The writ petition/TA lacks merit and is accordingly dismissed. No interference is called for with the selection process undertaken by the respondents. There shall be no order as to costs.

17. Interim order, if any, stands vacated.

(RAM MOHAN JOHRI)
Administrative Member

(RAJINDER SINGH DOGRA)
Judicial Member

/harshit/