
(2016) 3 JKJ 7

Jammu & Kashmir High Court

Case No: LPASW No. 458 of 2002

Parshotam Lal

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision: Nov. 16, 2015

Acts Referred:

- Police Rules, 1960 - Rule 111(2)

Citation: (2016) 3 JKJ 7

Hon'ble Judges: Mr. N. Paul Vasanthakumar, C.J. and Mr. Bansi Lal Bhat, J.

Bench: Division Bench

Advocate: Mr. Rahul Pant, Advocate, for the Petitioner; Mr. W.S. Nargal, AAG, for the Respondent No. 1 to 2; Mr. Vipin Gandotra, Advocate, for the Respondent No. 3

Final Decision: Dismissed

Judgement

N. Paul Vasanthakumar, C.J. - This appeal is preferred against the order made in SWP No.652 of 2001 dated 20.03.2002, wherein the

appellants have challenged the fixation of seniority as Prosecution Officers on the basis of alleged ground of merit obtained in Sher-e-Kashmir

Police Training College, Udampur. The said claim was rejected on the ground that respondent No.3 has secured 783 marks whereas appellant

No.1 had secured 772 marks and appellant No.3 had secured 725 marks respectively.

2. The case of the appellants in brief is that the appellants along with nine other candidates were selected as Prosecution Officers in the year 1993

and were sent to undergo the basic training course of Prosecution Officers at Police Training College, Udampur. As per appointment, the

seniority was to be fixed on the basis of aggregate marks obtained in written/viva-voce test and the merit obtained by the candidates in the final

examination of the basic training course. After undergo the basic training course only five candidates including the appellants and respondent No.3

were declared successful and five other candidates could not qualify the examination. So far as the seniority was concerned, the appellants were

placed below respondent No.3 in the seniority list on the ground that they secured lesser marks than 3rd respondent even though 3rd could pass

training in the second attempt.

3. It is contention of the appellants that in the selection process of Prosecution Officer, 1st appellant secured 50 marks in the written/viva-voce

test, 2nd appellant secured 47 marks, whereas 3rd respondent could secured only 42 marks. In the Basic Training Course, the first appellant

secured 722 marks, 2nd appellant secured 678 marks and the 3rd respondent though secured 741 marks, he was not declared pass as he failed in

the subject 'Range Classification' and he was ordered to reappear along with four others. The same is made clear in the proceedings of Director

Police Training College, Udhampur bearing order No.115 of 1994 dated 05.03.1994. The 3rd respondent reappeared in the 'Range

Classification' test and he came out successfully in the second attempt.

4. It is the case of the appellant that the 3rd respondent having not boon able to pass in the first attempt, he could not be treated as meritorious as

compared to the appellants for the purpose of seniority as the seniority was to be fixed admittedly as per merit secured by the candidates in the

written/oral and marks secured by them in the basic training course. The learned counsel for the appellants argued that a person passing the basic

training course in the first attempt should also be treated as more meritorious than the person who pass the basic training course in the second

attempt even though securing higher marks in the second attempt.

5. Learned appearing for the 3rd respondent on the other hand submitted that the 3rd respondent having passed the training course within the

probation period of three years, it makes no difference as to whether the 3rd respondent has passed the basic training course in the first attempt

are not. Learned counsel appearing for the official respondents also supported the seniority assigned to the 3rd respondent by stating that Rule is

silent about the number of attempts a person can take to pass the training course and stated that appellants are not justified in contending that they

having passed the basic training course in the first attempt, they should be made seniors.

6. We have considered the rival submissions.

7. The point that arises for consideration in this appeal as to whether the 3rd respondent who passed the basic training course in the 2nd attempt

can be treated as more meritorious candidate than the appellants, particularly when in the written and oral tests the appellants have secured more

marks than the 3rd respondent.

8. The only ground on which the 3rd respondent was made senior than the appellants is that the 3rd respondent secured more marks in the Basic

Training Course. Admittedly the 3rd respondent could not complete the course in the first attempt and he was not declared as pass when the

appellants were declared as pass. He again applied and appeared in the examination and secured 741 marks which is certified by the Director,

Police Training Academy, Udhampur in his order dated 05.03.1994. It is not the case of the 3rd respondent that he could not appear in the

examination due to illness or any other valid reason and that the second appearance in which he has secured 741 marks as his first attempt. If that

is the case than in principle the judgment of Hon'ble the Supreme Court reported in AIR 1987 SC 1362 (Abhijit v. Dean, Government

Medical College, Aurangabad and Anr.) can be applied and the 3rd respondent can be treated as more meritorious than the appellants in the

training course. The 3rd respondent having admittedly failed in the first attempt and ordered to reappear and the appellants having been declared

successful in the first attempt and their merit being more than the 3rd respondent in the initial selection, i.e. written/oral tests, giving higher seniority

to the 3rd respondent by the official respondents by ignoring the securing of marks in the second attempt.

9. Rule 111 (2) of the Jammu and Kashmir Police Rules, 1960, is the relevant rule to be followed by the official respondents while fixing the

seniority of persons appointed or promoted on the same date. The said Rule reads thus:-

(2) Officers appointed in or promoted to any rank will take seniority in the order in which they are appointed or promoted and in the case of

several being appointed or promoted on the same date, promoted officers will be placed first in order according to their previous seniority, and

officers appointed direct will follow according to age; provided that the seniority of candidates directly appointed on the same date, who are

required to pass any course or departmental examination as a necessary condition of their subsequent confirmation, shall depend on their order of

merit in such course or examination. Notwithstanding the foregoing rules, the seniority of officers appointed or promoted on probation to any rank

shall be finally determined by the date of confirmation in that rank and in the event of several officers being confirmed on the same date, their

seniority was among themselves shall remain the same as during the probationary period.

On perusal of the above Rule it is clear that merit in the training course is relevant for fixing seniority. In this case the private respondent could not

pass the training course in the first appearance whereas the appellants could pass the same. The private respondent could pass in the second

attempt. Hence he cannot be treated as more meritorious than the appellants. The learned Single Judge has not considered this aspect and upheld

the seniority given to the 3rd respondent and consequential benefits if any. The said finding is unsustainable for the reasons stated supra. The

decision cited by the learned counsel for the 3rd respondent Nirmal Singh Bali & Ors. v. Mohd. Yousif & Ors., 2011(3) JKJ 430 [HC] has

no application to the facts of this case in the light of the Rule quoted above.

10. Hence the writ appeal is allowed with a direction to the official respondents to re-draw the seniority by placing the appellants above the 3rd

respondent as they have passed the Basic Training Course in the first attempt and give consequential promotions according to the seniority to be

re-fixed, within a period of six weeks from the date of receipt of copy of this order.

However, this order shall not enable the official respondents to

recover any monetary benefits already paid to the 3rd respondent pursuant to the seniority already given which was upheld by the learned Single

Judge.

11. No costs.