

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.**

SWP 346/05

Ankush Kohli Vs. State & Ors.

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

For the petitioner(s): Mr. D.C. Raina,
Senior Advocate with
Mr. Vikas Mangotra, Adv.

For the Respondent(s): Mr. Sanjay Kakar, GA.

i) Whether to be reported in

Press/Journal/Media : Yes/ No

ii) Whether to be reported in

Digest/ Journal. : Yes/ No

Claiming to be an outstanding person for having participated in International and National Sports Events in the Roller Skating and Roller Hockey, the petitioner seeks his appointment in the category of outstanding sports person under Jammu and Kashmir (Appointment of outstanding sports person) Rule, 1998. The aforesaid rules contemplate appointment of persons in the

category of sports persons to be appointed against any vacancy in the state of Jammu and Kashmir.

Petitioner claims that having been recommended for appointment as Assistant Manager, he has been offered the post of Receptionist in the Hospitality and Protocol Department of which he is aggrieved and challenge the same in the present writ petition.

After hearing the learned counsel for the parties, it transpires that petitioner was recommended for the post of Assistant Manager in Hospitality and Protocol Department by the committee constituted under the aforesaid Rules headed by the Chief Secretary. This recommendation was made by the committee after satisfying itself that the petitioner was an outstanding sports person as defined in the definition clause of the aforesaid rules. The appointment of the petitioner against the post of

Assistant Manager could not fructify as a consequence of which Government Order No. 157-GAD of 2005 dated 4-2-2005 appointing the petitioner as Receptionist in Hospital and Protocol Department in the pay scale of Rs. 4000-6000 against the available vacancy was issued. There is no dispute as contended by the petitioner that his case was recommended by the committee for being appointed as Assistant Manager.

The respondents on the other hand, admit this position that the case of petitioner was recommended by the committee for the post of Assistant Manager in the Resident Commissioner's Office, New Delhi. After the said recommendation, the matter was taken up with the Hospitality and Protocol Department for identification of the post. The information supplied by the department vide its communication dated 9-

11-2003 indicated that there was no post of Assistant Manager available. The post of Receptionist was however available in the Hospitality and Protocol Department. This fact was placed before the committee vide decision dated 3-6-2004 that due to non-availability of post of Assistant Manager, the petitioner be considered for appointment as Receptionist in the Tourism Department. It is further averred that two more candidates namely Ankush Soni and Tejinder Pal Singh having qualification of B.Com, Post Graduation Diploma in Business Management and Diploma in Hotel Management and Degree in Hotel Management and Diploma in Computer Application respectively have been appointed as Receptionist in the Tourism Department. The petitioner can be adjusted against the post of Receptionist as he was Degree holder in Hotel

Management, whereas Tejinder Pal Singh was a Degree holder in addition to Diploma in Computer Application.

I have perused the record produced by the respondent which clearly reveals that effort was made to identify the post of Assistant Manager in the Hospitality and Protocol Department on the basis of recommendation made by the committee, but due to non-availability of the post of Assistant Manager, the said recommendation could not be carried out.

The question for consideration is whether the petitioner has a right to seek appointment against the post of Assistant Manager as a matter of right. The aforesaid Rules of 1998 are exception to the general rules of recruitment. The appointment is made by the committee amongst the persons who are outstanding person. Rule 3 of the aforesaid

rules clearly envisages that appointment can be made against any vacancy in non gazetted cadre. It does not envisage that a person can be appointed on a post which is relatable to the qualification of the person. Underlining object of granting this facility to an outstanding sports person, is to encourage sports talent. A person has no right to claim a particular post under the aforesaid rules. It is clearly revealed by the scheme of the rules. The other features of the rule are that petitioner is not subject to any test and the only qualification required for is that he should be outstanding sports person.

Applying this test to the present case, it is clearly indicated that respondents had recommended the appointment of the petitioner against the post of Assistant Manager but due to non-availability of the said post, he has been

appointed as Receptionist. The other two outstanding persons named above who have been appointed as Receptionist have the better qualification than the petitioner and they stand appointed as Receptionist. So, on the face of it, petitioner cannot claim any preference for being appointed as Assistant Manager, when admittedly persons who have better academic qualification and are also sports person have been appointed as Receptionist. Since there is no post of Assistant Manager in the Hospitality and Protocol Department was available, petitioner cannot claim any right to the said post. However, it is not disputed by the respondents that the petitioner is entitled to be appointed as Receptionist. A direction is required to be given to the respondents to appoint the petitioner against the post of Receptionist to which he was found entitled to by

the committee vide its decision dated 3-6-2004.

Writ petition is disposed of with the direction to the respondents to appoint the petitioner against the post of Receptionist. Let this exercise be completed by the respondents within a period of two months from the date copy of this order is received by them.

(Sunil Hali)

Judge

Jammu: 31-7-2009

RSB, Secy.