

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

SWP No. 927/2011  
CMA Nos. 2072/2011, 2073/2011 & 1343/2011  
SWP No.1780/2011  
CMA No.2612/2011

**Date of decision: 30.05.2012**

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Harnam Singh and anr.	V.	State of J&K & ors.
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**CORAM:**

**Mr. JUSTICE J.P. SINGH.**

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**Appearing Counsel:**

For Petitioner(s)	:	Mr. M.P.Sharma, Advocate.
For Respondent(s)	:	Mr. Gagan Basotra, AAG. Mr. O.P.Thakur, Advocate.

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**JUDGMENT**

Rejected for selection as Constable in the Jammu and Kashmir (Executive) Police held pursuant to Police Headquarters Jammu and Kashmir, Jammu's Advertisement Notice No.Pers-A-21/2010/4804-903 dated 07.04.2010, the petitioners initially filed Writ Petition SWP No.927/2011, claiming selection and appointment as Constables. During the pendency of the Writ Petition, they filed yet another Writ Petition SWP No.1780/2011 seeking quashing of the selection of respondent Nos. 5 to 11 and for their appointment with retrospective effect.

In both the Writ Petitions they claim selection against the posts reserved for RBA Category additionally claiming benefit of their engagement as SPO. According to the petitioners, respondent Nos. 5 to 11 being younger in age were erroneously selected ignoring their better Claim.

The grievance projected in Writ Petition SWP No.927/2011 is that the State-respondents had denied the petitioners' right to consideration against 16 posts of RBA-SPO Category by selecting only 01 person from the reserved Category.

In their Response to the Writ Petition, the State-respondents have referred in detail to the selection process, the manner in which horizontal reservation was provided and the criteria adopted for selection.

Reference, at this stage, needs to be made to what is stated by the respondents in Response to the petitioners claims, the selection process followed by them, the manner in which the horizontal reservation was provided and the criteria adopted for selection and as to how the petitioners were found disentitled thereto:-

.....

“ II. That there were 104 vacancies of Constables in Executive Police in District Ramban and these vacancies were distributed amongst the various Categories as per the preceding para I (3) (vertical reservation) and para I(7) (vi) (horizontal reservation for SPOs/VHGs). The resulting vacancy matrix that emerged is as under:-

Table-I

Category	General	ST	SC	SUPC	RBA
Open	51	09	07	02	17
SPO	09	02	01	00	03
VHG	02	00	00	00	01
Total	62	11	08	02	21

III- That for those candidates, who are SPOs/VHGs and serving for 03 or more years and 05 or more years, respectively, their selection has been made in the following manner which is as per the instructions issued on the subject by PHQ vide No.Pres-A-21-2010-II/5742 dated 01-02-2011:-

- i) The SPOs/VHGs, who figure in the list of selected candidates without getting any benefit of being an SPO/VHG, have been

- placed in the open quota of a particular Category without affecting the horizontal reservation quota.
- ii) SPOs/VHGs, figuring in the merit list by getting benefit of additional marks as per preceding para I(7) (iv) and I (7) (v) of being an SPO/VHG, have been placed in the horizontal reservation quota of a particular Category.
- iii) In the horizontal reservation quota, the General Category candidate has been placed in the General Category, SC in SC, ST in ST Category and likewise.
- IV) That a total number of 2948 candidates from District Ramban applied for the posts. Out of these candidates, 2268 appeared in the test, and only 868 qualified the prescribed tests. It is pertinent to submit here that out of the total number of candidates, who applied for the posts, 680 absented themselves from the tests and 1400 candidates were disqualified as they could not qualify the different prescribed tests. Out of 868 qualified candidates, 103 candidates have been finally selected. It is submitted that 104 candidates were to be selected for the post from District Ramban, of which 08 posts were reserved for Scheduled Caste (SC) Category. However, since only 07 SC candidates qualified in the outdoor/physical tests, so only they got selected. Thus in all, instead of 104, only 103 candidates got finally selected from District Ramban. The entire recruitment proceedings were conducted in a fair and transparent manner and as per the rules/law on the subject and in accordance with the guidelines provided on the subject by the Police Headquarters (for short, PHQ), J&K. Finally, the select list was prepared strictly as per merit under rules and due representation was given to all the candidates belonging to different Categories.
- V) That the cut off marks and the date of births of the last selected candidates under various Categories of District Ramban are given in the following table-2:-

Table-2

CATEGORY															
Cut off Merit  Date of Birth	GENERAL			ST			SC			SUPC			RBA		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Open	SPO	VHG	Open	SPO	VHG	Open	SPO	VHG	Open	SPO	VHG	Open	SPO	VHG
	25	25	NA	23	NA	NA	20	NA	NA	23	NA	NA	25	26	NA
	03.02.87	19.5.83	-do-	05.02.89	-do-	-do-	12.05.91	-do-	-do-	01.03.89	-do-	-do-	15.12.90	28.06.80	-do-

It is submitted that the length of service of an SPO/VHG candidate has been calculated with effect from the date of his engagement as SPO/VHG to the date of PHQ advertisement notice (i.e. 07-04-2010).

For the convenience of the Hon’ble Court, the date of birth and the Category of the petitioners as well as the breakup of their marks are given in table-3 below:-

Table-3

	1	2	3	4	5	6	7	8	9	10
Name of the candidate	D.O.B.	Category	Height	Height marks	Edu- Qua.	Edu- Qua. Marks	Service as SPO	Service marks (as SPO)	Total marks (4+6+8)	Marks without being an SPO(9-8)
Petitioner No.1	06.04.1981	RBA	5'-6 ½"	10	Matric	10	09 years	06	26	20
Petitioner No.2	15.01.1980	RBA	5"-6 ¾"	10	Matric	10	07 years	05	25	20

The above table clearly depicts that petitioner No.1, who admittedly is an SPO and belongs to RBA Category, has as per the criteria, laid down in the advertisement notice, secured 26 marks (table-3, row-1,col-9, supra), which are equivalent to the marks secured by the last selected candidate in RBA-SPO Category (table-2, row-1, col-14, supra). But being younger to the last selected candidate under RBA-SPO Category, petitioner No.1 could not be selected (for comparison of age, table-2, row-2, col-14, and table-3-row-1, col-1, supra, may kindly be perused). This is so because in case of tie-up in merit, selection is to be made in the decreasing order of age. When 06 marks, awarded to the petitioner for his SPO service of 09 years, are deducted from his aggregate marks of 26, he is left with only 20 marks (table-3, row-1, col-10, supra), which are less than the cut-off merit of 25 marks under the RBA-Open Category (table-2, row-1,col-13, supra) and as such petitioner No.1 could not be selected in RBA-Open Category also. Similarly, petitioner No.1 was not successful in finding place in the select list under the General-Open Category as well because as a simple RBA candidate (i.e. without getting any benefit of being an in-service SPO), he has got only 20 marks which are much below the cut-off marks of 25 secured by the last selected candidate of General-Open Category (table-2, row-1,col-1, supra). Thus petitioner No.1 could neither be selected in RBA-SPO Category nor under RBA-Open Category and not even in General-Open Category. It is thus on these counts that he could not figure in the select list.

Like petitioner No.1, petitioner No.2 too is admittedly an SPO and belongs to RBA Category. He is a matriculate, possessing a height of 5’-6 ¾” and was having a service of 07 years as SPO at the relevant point of time and as such he got 25 marks, (table-3, row-2, col-9, supra), which are less than the cut-off 26 marks secured by the last selected candidate of the RBA-SPO Category (table-2, row-1, col-14, supra). Hence petitioner No.2 could not find his name in the select list of the candidates under the RBA-SPO Category. When 05 marks, given to petitioner No.2 for his being an SPO for 07 years, are deducted from his total marks of 25, he

has only 20 marks (table-3, row-2, col-10, supra), which are less than the cut-off marks of 25 obtained by the last selected candidate of the RBA-Open Category (table-2 row-1, col-13, supra). Resultantly, petitioner No.2 could not be selected in RBA-Open Category also. Similarly, for his securing only 20 marks as a simple RBA candidate (i.e. without getting any benefit of being an in-service SPO), petitioner No.2 could not figure in the select list even under General-Open Category because the last selected candidate of the General-Open Category has secured 25 marks (table-2, row-1, col-1, supra). Therefore, for these reasons petitioner No.2, like petitioner No.1, could neither be selected in RBA-SPO Category nor RBA-Open Category and not even in General –Open Category and as such could not figure in the select list.” .....

Respondent Nos. 5 to 11 *too* have filed their Response to the Writ Petition (SWP) No.1780/2011.

Considered the submissions made by the learned counsel for the parties at the Bar.

There being no dispute on facts as to the merit of the petitioners as determined during the selection process, all that needs to be considered is as to whether the respondents had committed any error in rejecting the petitioners claim for selection and engagement as Constables.

To deal with the issue that fall for determination, reference needs to be made to the criteria adopted by the respondents to evaluate the merit of the candidates.

In terms of the laid down criteria due representation to the Reserved Categories as specified in Reservation Rules had to be given as per Government SRO i.e. 15% horizontal reservation in each Category of SPOs having three years or more of engagement as on the date of application and 4% horizontal reservation in each category for VHGs with five years or more engagement as per Government directions issued vide No.Home/PB/iii/62/ G/2008 dated 25.09.2009. In

case of tie-up in merit, the preference was to be given to the candidate(s) being older in age.

The merit of petitioners in RBA Category, without including the marks available to them for falling in the Category of SPOs, is 20 marks each. Adding the marks allowable to them because of their status as SPOs, the merit of petitioner No.1 in RBA-SPO Category comes to 26 and that of petitioner No.2 to 25. Petitioner No.2 being lower in merit to the selected candidates i.e. respondent No.5 to 7 in SWP No.927/2011 whose merit is shown as 27, 27 and 26, respectively, his Claim to selection is, therefore, without merit. Insofar as petitioner No.1's Claim to the selection was concerned, it is indicated by the respondents that although his merit was equal to that of respondent No.7 but being younger in age to him, it was the respondent who was entitled to be preferred over the petitioner.

In view of the above position of the petitioners and those selected under RBA-SPO Category, the selection of respondents cannot be faulted.

The petitioners claim to selection is, therefore *found without merit*.

The petitioners plea that only one post was filled up from RBA category *too* is found without substance in view of the State-respondents' Response that keeping in view the horizontal reservation for SPOs/VHGs, 3 posts for SPOs and 01 post for VHGs was reserved out of 21 posts under the RBA Category, but as there was no VHG-RBA Category from District Ramban, so the said 01 post of VHG was shifted to RBA-Open Category and, therefore, 18 candidates were selected under the RBA-Open Category and 03 in RBA-SPO Category.

So far as the petitioners' challenge to the selection of respondent Nos. 5 to 11 in SWP No.1780/2011 is concerned it comes out from the State's Reply that after having secured 20 marks as simple RBA Category candidates and considering their merit for selection against the posts reserved for RBA-Open Category and even in General Open Category, the petitioners' merit was found below the cut off marks of 25 in both the categories.

In view of what has been said above, the petitioners' Claim to selection is found to have been correctly rejected by the respondents.

There is, therefore, no merit in both these Writ Petitions, which are, accordingly dismissed.

**( J. P. Singh )**  
**Judge**

Jammu:  
30.05.2012  
*Vinod.*