

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

SWP No. 3085/2010  
IA(C) Nos. 1952/2011 & 4329/2010

**Date of decision: 14 .09.2012**

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Afaq Mirza & ors.                      Vs.                      State of J&K and ors.

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**Coram:**

**Mr. Justice J.P.Singh, Judge.**

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**Appearing counsel:**

For the Petitioner (s)	:	Mr. Abhinav Sharma, Advocate.
For the Respondent(s)	:	Mr. S.K.Shukla, Advocate.

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i)	Whether approved for reporting in Press/Media	:	<b>Yes</b>
ii)	Whether to be reported in Digest/Journal	:	<b>Yes</b>

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**JUDGMENT**

The petitioners, who had applied for Selection against the posts of **Foresters** and **Forest Protection Force Inspectors**, advertised vide Jammu and Kashmir Services Selection Board, Jammu's Notice No. 08 of 2010 dated 24.12.2010, seek quashing of the Selection Criteria fixed by the Board, besides directions to the Board for holding Selection following the Criteria adopted by it in earlier Selections for similar posts.

Their case, in a nut-shell, is that the Criteria

fixed by the Board without the approval of the General Administration Department of the State Government, was in violation of the Jammu and Kashmir (Subordinate) Services Recruitment Rules, 1992, besides being arbitrary and irrational for ignoring the Superior Merit of the candidates possessing higher and Specialized Qualification in Forestry and instead giving higher weightage of the Qualification Prescribed by Rules governing the Service.

The Jammu and Kashmir Services Selection Board, hereinafter, “the Board”, for short, justifies the Selection Criteria urging that in giving higher weightage to the candidates possessing Minimum Qualification prescribed under Rules governing the Service, due care was taken by the Board in allocating requisite points for Qualifications higher than those prescribed in the Recruitment Rules, as also to the Specialized Qualification and Training in Forestry.

Heard learned counsel for the parties and

considered their submissions.

The Minimum Qualification prescribed in the Jammu and Kashmir Forest (Subordinate) Service Recruitment Rules, 1991, for the Advertised posts is as follows:-

“10 + 2 or equivalent qualification with science subjects.

- i) Physical Standard height 165 Cms.
- ii) Physical Fitness 25 Kms walk to be completed in 4 hours.
- iii) Physical Fitness Certificate from Chief Medical Officer.”

The Rules are, however, silent on the Criteria to be adopted for Selection.

The Recruitment Rules governing the advertised posts containing no provision prescribing mode and manner of fixation of the Selection Criteria, the Board was required to adopt its own Criteria for Selection, in view of the provisions of the Jammu and Kashmir (Subordinate) Services Recruitment Rules, 1992, which govern the Recruitment and Selection, to all Non-Gazetted posts under the Government, except those saved from the operation thereof,

which were applicable to the advertised posts.

The Board, accordingly, fixed the following  
Criteria for Selection:-

(i)	10+2 (Science)	=55 points
(ii)	Graduation	=02 points
(iii)	B. Sc. Forestry	=10 points
(iv)	DDR	=05 points
(v)	PG	=03 points
(vi)	SFS/M. Sc. Forestry	=05 points
(vii)	Viva Voce	=20 points
	<b>Total</b>	<b>=100 points</b>

To appreciate the submissions made by learned counsel for the parties, regard needs to be had to the provisions of *Rules 10, 13 and 15* of the Jammu and Kashmir (Subordinate) Services Recruitment Rules, 1992, which are reproduced hereunder for reference:-

**“10. Recruitment and Selection**

- (i) The Board shall finalize the selections after holding such tests or examinations, as may be prescribed under rules, or if there are no such rules, as the Board may consider necessary.
- (ii) The Board while making selections and allocating candidates to various Cadres shall take into account the reservations made from time to time for various categories.
- (iii) The Board shall finalize the select list which shall be equal to the number of vacancies for which requisition was made and recommend it to the appointing authority.
- (iv) The select list shall remain in force for a period of [one year] from the date it is accepted by the appointing authority.
- (v) The appointing authority, for reasons to be recorded, may not accept the select list received from the Board; and return the

same to the Board for making fresh selection:

Provided that no such action shall be taken by the appointing authority without prior approval in writing of the Administrative Department.

- (vi) The Board shall also finalized waiting list of 20% of the total number of selected candidates and forward the same to the concerned department. The waiting list shall remain in force for a period of one year from the date of its receipt or till a fresh list is drawn up by the Recruitment Board, whichever is earlier.]

### **13. Procedure of Selection by the Recruitment Board**

The Board shall make selection to the various posts in the following manner:

- (i) The Board shall on receipt of the reference of vacancies advertise the posts communicating copies of the advertisements to the respective Employment Exchange, Government Gazette, Press and other Publicity media so as to achieve wide publicity: Provided that it shall be mandatory for the Board to:

- (a) club the vacancies of District cadre of similar nature referred to it by any department in a calendar year;
- (b) club the vacancies of Divisional cadre of similar nature referred to it by any department in a calendar year;

and advertise the same is one go as per laid down procedure and invite applications from the permanent residents of Jammu and Kashmir without prescribing the conditions of domiciliary requirements.

- (ii) A candidate can apply only in one district for District cadre posts and in one division in respect of Divisional cadre posts:

Provided that if any candidate applies for more than one district or one division, his candidature shall be considered only for the district or the division in which he is ordinary residing.

- (iii) The Board shall, ordinary, restrict the number of applicants for oral and/or written test, as the case may be, to at least five times the number of vacancies on the basis of academic

merit in the qualifying examination converted into points on pro rata basis out of the total points allocated for the basic eligibility qualification and grant of weightage for the higher qualification in the discipline concerned to be allowed in the manner and to the extent as the Board may deem appropriate for according due consideration to the merit and proficiency in higher qualification:

Provided that the Board may, for the reasons to be recorded in writing, conduct a written test for short listing the candidates for admission to the oral test and for purpose of selection of candidates.

- (iv) The Board shall allot the requisite number of candidates in order of merit and reservation as referred by appointing authority. The Board shall not maintain any select list for any casual or future vacancies.
- (v) The General Administration Department may prescribe such proforma, as are required for reference of vacancies to the Board and for communicating the select list from time to time.

#### **15. Supervision and control of the recruitment Board**

(1) The General Administration Department in the Civil Secretariat shall be the Administrative Department of the Service Selection Board for transaction of the business in terms of the Jammu and Kashmir Government Business Rules.

(2) Copies of all proceedings of the Board shall be sent to the General Administration Department which will arrange for such scrutiny thereof as may be necessary, from time to time and submit periodical reports to the Government. Among other things, such scrutiny shall particularly be made with a view to checking that order regarding recruitment of the Scheduled Castes, Backward Classes, Ex-servicemen etc. have been only complied with."

The petitioners' first plea that in terms of the provisions of *Rule 15* of the Subordinate Services

Recruitment Rules, the Board was required to consult the General Administration Department, before fixing the Criteria for Selection, other than the one, it had adopted for such posts in earlier Selections, is found without merit, for, the requirement of sending copies of all proceedings of the Board to the Administrative Department, in terms of *Rule 15(2)*, referred to by the petitioners' learned counsel to support his submissions, does not, in my view, restrict, in any manner whatsoever, the exclusive power and authority that *Rule 10* vests in the Board *to prescribe such tests or examinations* as it may consider necessary so to hold, to finalize Selections, in case of those posts, Recruitment Rules wherefor, do not prescribe mode and manner of Selection.

This apart, the power of superintendence and control that *Rule 15* vests in the General Administration Department of the State Government, over the Board, is no different from the power that every Administrative Department

exercises on the functionaries and authorities under its control. The power of superintendence and control cannot be construed as creating additional obligations on the Board to seek Confirmation of its every action from the Administrative Department, which, in terms of the Rules, it is, otherwise empowered and authorized, so to do, independently.

The Board was, therefore, competent to devise such Criteria as it considered necessary to finalize Selection and there is no requirement of seeking confirmation thereof from the Administrative Department.

The petitioners' plea that the Criteria fixed by the Board for Selection, without concurrence of the General Administration Department, was unwarranted, therefore, fails.

Before dealing with the main contention of the petitioners' learned counsel that the Selection Criteria was arbitrary and irrational, in that, it provides undue weightage to the prescribed

Minimum Qualification of 10 + 2 in Science, and ignores the Special Qualification in Forestry for higher weightage than the one allowed therefor, the information supplied by learned counsel for the Board regarding earlier Selections needs notice.

The Board had earmarked 30 points for 10+2 in the year 2004 and 40 points in subsequent Selections of 2006 and 2008. For higher Qualification of simple graduation, additional weightage of 10 points was provided, which was, however, reduced in later Selections to 05 points. 20 to 25 points were provided for B.Sc. Forestry and 10 additional points were provided for those possessing Post Graduation/ SFS/ M.Sc. Forestry Degrees / Certificates.

The question that arises for consideration is as to whether the Board was obliged to follow the Criteria that it had adopted in earlier Selections for similar posts or could it devise fresh Selection Criteria and whether the Criteria so fixed is

arbitrary, irrational or otherwise invalid?

Fixation of the Selection Criteria, being the prerogative of the Selection Authority, it could devise any such Criteria that, in its wisdom, it considered it proper so to do, to select the best talent for the advertised posts.

To exercise its prerogative of fixing the Selection Criteria taking into consideration the changing trends, the requirements of service and other factors necessary so to do, the Selection Authority has to be conceded the power and jurisdiction to deviate from the earlier Criteria that it might have fixed for similar Selections so that a rational view could be taken in fixing the revised Criteria keeping in view the changing scenario, the requirements of the employer, and host of other factors that may influence its wisdom in prescribing the Criteria that may facilitate it to select those who were needed by the employer. This is additionally so, for, any authority still less, a Selection Authority, cannot

be expected to remain static following the same old Criteria it once adopted, for all times to come, ignoring the improved wisdom, warranting need for change in the earlier Criteria.

While devising criteria for Selection taking into consideration the above and many other factors into consideration, the Selection Authority, cannot, however, loose sight of the Minimum Qualification that the employer, in its wisdom, based on numerous factors, including those of the intellectual levels of the mind of the personnel that it needs, may prescribe for selection against the posts, for, it is primarily the employer, who has the absolute authority to decide on the Minimum Qualifications that it expected from the aspirants for Selection. It is no doubt true that higher Qualification than the Minimum Qualification and particularly the Specialized Qualification in the field of Service may require additional weightage at the time of Selection, but such additional weightage, cannot be construed of

such a higher percentage, that may render the weightage provided for Minimum Qualification prescribed for the post, meaningless, thereby not only depriving altogether the candidates possessing only Minimum Qualification but adversely affecting the wisdom of the employer in prescribing Minimum Qualifications for the candidates it wants to occupy the posts.

Exceedingly higher points for Higher Qualification as against those provided for Minimum prescribed Qualification, may not, therefore be justified, for, such a course would be in violation of the Service Rules fixing Minimum Qualifications for the posts. In other words, it would amount to prescribing new Qualifications than those prescribed in the Recruitment Rules, which is impermissible.

A balance is, therefore, required to be struck by the Selection Authority to give due weightage to the Minimum Qualification lest it becomes meaningless of course taking care of the higher

Qualification and special Qualification in the field of Service providing appropriate additional weightage therefor.

In view of the above, 55 points allocated to those possessing 10+2 (Science) Qualification, cannot be said to be arbitrary or irrational when the Board is found to have taken due care of Higher and Specialized Qualifications in the field of the Service.

Those possessing the higher Qualification of Graduation and Post-Graduation are allocated additional 2 points and 3 points respectively in addition to 55 points for 10+2 whereas persons possessing Specialized qualification of B.Sc. Forestry, DDR and SFS/M.Sc.Forestry are allocated additional 10, 5 and 5 points respectively in addition to 10+2 weightage.

The Board is, therefore, found to have adopted reasonable and rational Criteria for Selection in giving required weightage to the Minimum prescribed Qualification as also to

Higher and Specialized Qualifications.

The plea of the petitioners seeking Higher Weightage for B.Sc.Forestry and M.Sc.Forestry than the one allowed by the Board cannot be entertained, for, a candidate possesses no right to demand particular percentage of higher weightage for his Higher Qualification than the one allowed by the employer.

For all what has been said above, the Selection Criteria fixed by the Board for Selection of **Foresters and Forest Force Protection Inspectors** cannot be faulted.

The Writ Petition is, accordingly, found without merit, hence dismissed, lifting interim order dated 31.12.2010 whereby the Selection process was stayed.

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

**Jammu :**  
14.09.2012  
Tilak, Secy.