

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

SWP No.1213/2012
CMP No.2003/2012

Date of Dec:**02.01.2013**

Tariq Ahmad Rather &ors. Vs State &ors

Coram:

**Hon'ble Mr. Justice Mohammad
Yaqoob Mir, Judge**

Appearing counsel:

For the Petitioner:	Mr. R. A. Jan, Sr. Adv.
For the Respondent(s):	Mr. Allau-ud-din Ganai, Dy. AG(for R-1 to R-3).
	Mr. S. N. Ratanpuri (for R-4)
	Mr. M. A. Qayoom (for R-5 to R-33)

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| i) | Whether to be reported
in Digest/Journal: | YES |
| ii) | Whether to be reported
in Press/Media: | YES/OPTIONAL |

1. Vide advertisement notice **No.01 of 2011**, issued by the Jammu & Kashmir Services Selection Board (hereinafter referred to as SSB), applications have been invited from the eligible candidates as against various posts which include posts of "Draftsman Civil" Divisional Cadre, Kashmir, with the following break-up:

OM	=25
SC	=4
ST	=4
RBA	=9
ALC	=1
OSC	=0
<u>Total</u>	<u>=43</u>

2. The requisite qualification as notified is "two years Draftsman Training course Certificate/Diploma course from any Government recognized institute" as is

prescribed for the said post in Schedule I of J&K Engineering (Subordinate Service Recruitment) Rules, 1997 (for short Rules of 1997).

3. Provisional select list of the candidates called for interview and schedule for interview has been notified vide notification dated 18.11.2011. Petitioners also figure in the said notification respectively at serial Nos.242, 127, 220, 1, 204, 20, 93, 43, 210, 178 and 203 and have been admitted to interview.

4. The respondent SSB vide its letter No.SSB/Secy/839 dated 22.3.2012 has sought clarification about the qualification of Draftsman(Civil) and vide communication No.PW/Hyd/Adm/08/2008 dated 04.06.2012, Under Secretary to Government, PHE/I&FC Department, has conveyed to the Secretary to J&K Services Selection Board, Srinagar, that two years Draftsman Training Course Certificate/Diploma from any Government recognized institute is the prescribed qualification for the post of Draftsman (Civil), two years Diploma in "Quantity Surveying", three years Diploma in "Civil Engineering" and three years Diploma in "Architectural Assistantship" is not the prescribed qualification as per Service Recruitment Rules notified vide SRO 180 of 1997 dated 26.05.1997. Acting on such

clarification, the petitioners have been excluded because all the petitioners possess two years Diploma in “Quantity Surveying”.

5.____Petitioners, confronted with the same position, took up the matter with Principal Royal Polytechnic, Srinagar who, in turn, took up the matter with the State Board of Technical Education (hereinafter referred to as SBOTE), J&K Srinagar. The Secretary, SBOTE, vide his communication No.SBOTE/Adm/AICTE/12/6479-83 dated 07.06.2012, addressed to the Commissioner/Secretary to Govt. PHE/I&FC Department, has made it clear that “Quantity Surveying” (Draftsman course in civil) was introduced in Royal Polytechnic College in the year 1995 vide Govt. order No.37-Edu(Tech) of 1995 dated 05.06.1995. The AICTE has accorded approval to the said course along with others vide their letter dated 03.06.1997. The “Quantity Surveying”/Draftsman Civil is one and the same course. The institute is offering the said course under Govt. sanction and as per the AICTE approval continuously to the entire satisfaction of the Board without any break along with other courses. It is also mentioned therein that the students have passed the Draftsmanship Course in Civil Engineering from ITI sector, which is recognized by DGE&T Govt. of India.

Finally, a request to the effect that the matter shall be taken up with the Services Selection Recruitment Board that the “Quantity Surveying” and “Draftsman course” in Civil Engineering is one and the same course.

6. Learned counsel for the petitioners would contend that on 4th June, 2012, Under Secretary to Govt. PHE/I&FC Department, issued the communication regarding clarification, however, immediately on 6th June, 2012 the matter has been taken up by the Principal Royal Polytechnic College with SBOTE who, in turn, have immediately addressed communication dated 7th June, 2012 to the Commissioner/Secretary, PHE/I&FC Department, therefore, the respondents were required to include the petitioners in the list on the basis of merit.

7. The respondents No.1 to 3, in their objections, have stated that the Rules of 1997 notified vide SRO 180 of 1997 are very much clear to the effect that two years Draftsman Training course certificate/Diploma from any Government recognized institute is the prescribed qualification for the post of Draftsman(Civil) and two years Diploma in Quantity Surveying, three years Diploma in Civil Engineering and three years Diploma in Architectural Assistantship is not the

prescribed qualification for the post of Draftsman(Civil).In their objections, nothing has been said about the position as has been projected by the Secretary SBOTE in terms of communication dated 7th June, 2012, same has been ignored.

8. Learned counsel appearing for the private respondents projected that the select list has been issued, the prescribed qualification is quite clear, the petitioners do not possess the requisite qualification, two years Diploma in Quantity Surveying, which the petitioners possess, is not the requisite qualification. Learned counsel further added that SSB has sought clarification from respondent PHE and I&FC Department which has been issued in terms of the letter issued under the signatures of Under Secretary dated 4th June, 2012, same is in-keeping with Rule 13 of the Rules of 1997.

9. Rule 13 of the Rules of 1997 reads as under:-

“13. Interpretation.

If any question arises relating to the interpretation of these rules the matter shall be referred to the Government whose decision thereon shall be final and binding”.

10. Learned counsel for the private respondents would contend that the petitioners, in effect, seek equivalence

i.e. they want their qualification i.e. Diploma in “Quantity Surveying”, be treated as equal to that of Draftsman course in Civil Engineering which is in the domain of the administrative decision because Court does not have the expertise to give decision regarding equivalence. In support of this submission, learned counsel relied on the judgment rendered by the Hon’ble Apex Court in **Basic Education Board, UPVs. Upendra Rai & others**, reported in **(2008) 3 SCC 432**.

Para 15 of the judgment is relevant to be quoted:-

“15. Grant of equivalence and/or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned, and the court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the Government, and the court does not have expertise in such matter. Hence it should exercise judicial restraint and not interfere in it”.

11. SBOTE is expert authority and it is the said Board which has, in its report submitted in the form of letter to the Commissioner/Secretary, PHE and I&FC Department, made it clear that “Quantity Surveying” and “Draftsman Course” in Civil Engineering is one and the same course, therefore, respondent No.1 before issuing clarification dated 4th June, 2012, under the signatures of Under Secretary should have sought expert opinion which has not been done. Applying the

aforesaid principle i.e. “the matter of equivalence is decided by experts appointed by the Government” would imply that the Commissioner/Secretary, PHE and I&FC Department, before taking decision, should have consulted the expert authority which he has not.

12. Learned counsel for the private respondents next relied on the judgment reported in **AIR 1990 SC 535**. It shall be quite relevant to quote following portion from para 6 of the judgment:

“....The plea of the petitioner is that, for efficient discharge of the duties of the post in question, the diploma in radiological physics (as applied in Medicine) from the Bhabha Atomic Research Centre (BARC) held by him is more relevant than a doctorate in nuclear physics. It is submitted that in all corresponding posts elsewhere, a diploma in radiological physics is insisted upon and that, even in the State of Andhra Pradesh, all other physicists working in the line, except the respondent, have the diploma of the BARC. It is not for the Court to consider the relevance of qualifications prescribed for various posts”.

13. Submission of learned counsel is correct but when the authorities have not acted in a manner they were supposed to act for determination/interpretation of the prescribed qualification, then Court has to intervene and directed the concerned authorities to act in accordance with rules and to issue clarification on a solid foundation i.e. on the basis of expert opinion.

Simply to issue a letter without having any expert opinion vis-à-vis prescribed qualification is not permissible. In case clarification which would have been issued while invoking Rule 13 for interpretation of the question based on expert opinion, then definitely there was no occasion for the Court to interfere but when the authority concerned has not acted in a manner it was expected to act, the result of such clarification, which has serious impact on the rights of the petitioners, should not have been issued in a routine manner without having consulted the experts.

14. It was rightly contended by the learned counsel for the petitioners that the position of the report submitted in the form of a communication by SBOTE providing that “Quantity Surveying” and “Draftsman Course” in Civil Engineering is one and the same course, is not controverted, as such, admitted. In support of this contention, learned counsel relied on the judgment reported in **1993 Supp. (4) SCC 46**. Following portion from para 9 of the judgment shall be relevant to be quoted:

“.....Since no dispute was raised on behalf of respondents 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40 per cent of the total number of posts had not been filled by promotion, inasmuch as the said

averments had not been controverted, the High Court should have proceeded on the basis that the said averments had been admitted by respondents”.

15. The respondents have not controverted the position of the report of SBOTE. The report of the SBOTE is a “technical opinion” which has to be accepted unless there is some other report of technical apex body to repel the same, hence an admission.

16. It is true that when SSB was faced with the position of the petitioners possessing two years Diploma in Quantity Surveying, question arose vis-à-vis interpretation of the prescribed qualification and it is in that context they had sought clarification from the respondent PHE and I&FC Department, which the respondent department has issued in an arbitrary manner which is not supported by any expert opinion.

17. It is true that the decision of the Government has to be final but such decision must be supported by expert opinion. When SOBTE, which is the expert body, had informed the Commissioner/Secretary, PHE and I&FC Department that “Quantity Surveying” and “Draftsman course” in Civil Engineering is one and the same course, then what was required to be done was that the respondent department should have

reconsidered the communication dated 4th June, 2012. In tune with Rule 13 should have interpreted the Rule vis-à-vis prescribed qualification and result of which should have been conveyed to the SSB, dependent on that SSB could proceed further in the matter.

18. Contention of the learned counsel for the private respondents that the selection list, which has been issued, has not been challenged, pales into insignificance because select list is only provisional. The note appended to the said provisional select list would provide that the list shall not be treated as final and is subject to alteration/modification as such no right accrues to any candidate to claim selection as a matter of right on the basis of inclusion of his/her name in the provisional list. The list shall be finalized on merits after receipt and disposal of representation/claims by the selected/non-selected candidates and on finalization it shall be recommended to the indenting department.

19. In the afore-stated circumstances, in order to avoid any protraction in the selection and to avoid protracted litigative process in-keeping with the canons of justice, it shall be in the larger interests of justice, at this stage, to direct respondents No.1 to 3 to

re-consider the clarification which has been issued vide letter dated 4th June, 2012 and for issuing fresh clarification, consider the report as submitted by SBOTE in terms of letter dated 7th June, 2012 and obtain further assistance from the experts on the field before interpreting the rule vis-à-vis qualification, as permissible in accordance with Rule 13 of the Rules of 1997.

20. This petition is disposed of with the direction to the respondents No.1 to 3 that they shall re-consider the clarification and in accordance with Rule 13 of the Rules of 1997, address the question of qualification and then take a decision on a firm foundation, as shall be supplied by the experts on the field. Then the clarification vis-à-vis educational qualification as prescribed, shall be issued and send to the SSB and SSB shall take into consideration that clarification and dependent on that, process of selection shall be open to be finalized. The provisional selection list shall await the results from the respondent Commissioner/ Secretary PHE and I&FC Department.

21. Disposed of as above along with connected CMP.

(Mohammad Yaqoob Mir)
Judge

Srinagar
02.01.2013
"Mohammad Altaf"