

**Government of Jammu and Kashmir
J&K Services Selection Board
Hema Complex, Sector-03, Channi Himmat, Jammu
(www,jkssb.nic.in)**

**Order No. 261- SSB of 2021
Dated: 02. 07.2021**

**Subject:-OA 902/2021 titled Rajesh Sharma & Ors V/s
Department of Rural Development & Panchayati
Raj, disposal of representation of applicant
thereof.**

Whereas, the Jammu and Kashmir Services Selection Board (JKSSB), on receipt of indent/requisition from the Department of Rural Development & Panchayati Raj for making recruitment to 1889 posts of Accounts Assistant (Panchayat) in accordance with the latest Reservation Rules issued vide S.O. 127 of 2020 dated 20.04.2020, issued Advertisement Notification No. 02 of 2020 dated 06.07.2020, by virtue of which the aforesaid 1889 posts for all 20 districts were advertised; and

2. Whereas, the JKSSB conducted a single written test on 10.11.2020 for the aforesaid 1889 posts of Accounts Assistant (Panchayat), in the backdrop of amendments carried out in the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act, 2010 by the Ministry of Home Affairs vide Notification No. SO-1229(E) dated 31.03.2020 read with Notification No. 1245 (E) dated 03.04.2020 the outcome of which is that any domicile of Jammu and Kashmir Union territory, subject to fulfilment of other conditions, is eligible to apply for posts advertised for selection, including in case of District Cadre posts. The preferences for the districts were sought from the

candidates online at the time of filling up of online application forms; and

3. Whereas, the JKSSB notified the result on 25.12.2020 and vide order No. 06 SSB of 2021 dated 06.01.2021 called the candidates for document verification, in the ratio of twice the number of posts, from 08-01-2021 to 09.02.2021 for preparation of the selection list; and
4. Whereas, while compiling the selection list on the universally accepted principle of 'merit cum preference', the reference of which has also been made in para 9 of the Advertisement Notification, in view of the fact that a single examination has been conducted for the aforesaid posts belonging to 20 different District Cadres, the JKSSB was confronted with the issue that 281 meritorious reserved categories candidates (MRC) figured in the Open Merit Category, out of which 212 candidates were getting districts against Open Merit Category vacancies, as per their first preference. However, 69 meritorious reserved category candidates (MRC) figuring in the Open Merit category at the tail end were not able to get their preferred districts due to non availability of post in the Open Merit Category in the said district. If these 69 candidates were not allocated their preferred districts, then the candidates with lower merit in the reserved category would have been allocated to their preferred/ chosen districts. Therefore, higher merit in the case of these 69 MRC candidates in a way was becoming demerit for them; and
5. Whereas, there is no provision in the rules and regulations governing the selection process of the JKSSB to cater to the situation as explained hereinabove and in the absence of express provision in the rules and regulations, it was deemed expedient to

seek consultation of the Department of Law, Justice & Parliamentary Affairs through the General Administration Department. Accordingly, the matter was taken up with the General Administration Department, who vide communication No. GAD/MTG/RBIV/15/2021/02/GAD dated 08.05.2021 conveyed the opinion rendered by the Department of Law, Justice & Parliamentary Affairs. It was also advised to proceed as per the judgments of the Apex Court in Yoganand Vishwasrao Patil v. State of Maharashtra 2005 (12) SCC 31 II, Ritesh R. Sah v. Dr. Y.L Yamul and Ors. (1996 (3)S.C.C.253) and Anurag Patel v UP Public Service Commission 2005 (9) SCC 742 AIR 2005 SC 1262. The opinion rendered in the matter vide above referred to communication is reproduced as under:-

"Returned. SSB is confronted with a difficulty in a selection process based on merit cum preference basis in deciding as to whether a candidate belonging to a reserved category who secures a position in OM category owing to his superior merit is required to be allocated a district(preferred) as per his position in OM. or as per the preference given by him by treating him to be a reserved category candidate. It has been stated by SSB that higher merit in their case has in a way become demerit for such reserved category candidates who figure in Open Merit by virtue of superior merit and not been able to seek their preference in OM. Had they been selected in reserve category; they would have got their

preference and in this way their selection in OM Category is causing prejudice to them.

Hon'ble Apex Court in case titled Yoganand Vishwasrao Patil v. State of Maharashtra, 2005 (12) SCC 311I has held as under:

In substance, the question for decision is whether a candidate belonging to reserved category but entitled to be admitted in Post-Graduate course on his own merit in the open category, can such admission be counted as an admission in reserved category: if not, whether additional seat will have to be provided to give effect to the reservation since the reserved candidate was entitled to be admitted in the category open category on his own merit and not as a result of reservation. It is a different matter that he may have opted for a seat otherwise specified for reserved category. The aforesaid question is no longer res integra and stands concluded by a decision of this Court in Ritesh R. Sah s. Dr. Y.L Yamul and Ors. (1996 (3)S.C.C.253). In this decision, it has been held that: in view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the

disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

Likewise, Hon'ble Apex Court in case titled Ritesh R.Sah v. Dr. Y.L. Yamul (1996) 3 SCC 253 has held as under:

In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging

to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

In Sheikh Mohammad Aftal Vs State of Rajasthan, AIR 2008 Raj 21, Hon'ble Division Bench of Rajasthan High Court has held as under:

We state the legal position thus: where a candidate belonging to reserved category gets selected competing with open category candidates on the basis of merit, the selection of such candidate needs to be considered in the general category and cannot be counted against the reserved category since such selection is purely based of merit. However, the constitutional right of such candidate belonging to reserved category is not taken away and such selection of a reserved category candidate on merit in open competition does not put him or her in disadvantageous position than the other less meritorious reserved category candidates who are selected against the quota reserved for that category, be it a preference of subject or institution or place or to such other right to which he/she may be entitled as if he/she were selected in the reserved category, In the case of Ritesh R. Sah and Anurag Patel, the Supreme Court has emphasized this position. Obviously, in the matter of admission, the competent authority has to adhere to and abide by the legal position expounded by the Supreme Court in the case of Ritesh R. Sah and Anurag Patel and noticed by us above.

Furthermore, in the case of Anurag Patel Supreme v UP. Court Public Service Commission-2005 (9) SCC: 742: AIR 2005 SC 1262, the Supreme Court had an occasion to consider its previous decisions

in Ritesh R. Sah (AIR 1996 SC 1738)(supra) and State of Bihar V.M. Neethi Chandra 1996 (6) SCC 36 and held thus:

In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993,&39; two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer-II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as list will be per the select list and preference of a person higher in the select seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later. We do not think any error or illegality in the direction issued by the Division Bench of the High Court.

The above quoted judgments should make it convenient for JKSSB to resolve the issue they are confronted with. The reserved category candidates securing merit in OM category cannot be put at a disadvantageous position in

comparison to other reserved category candidates who have merit lower than them. JKSSB needs to prepare the selection list considering the ratio laid down in the above stated cases. The Social Welfare Department has also endorsed the above-mentioned opinion of the Law Department. Accordingly, in view of above, I am therefore, directed to request you to take further necessary action in the matter expeditiously”.

6. Whereas, in pursuance of the aforesaid opinion of the General Administration Department based on the Apex Court Judgments quoted above, the JKSSB vide Notification No. SSB/Secy/Sel/2021/3765-75 date 10.05.2021 notified the provisional allocation of districts/cadres, for the said posts of Accounts Assistant (Panchayat) and also called upon the candidates to file their representations/objections in consonance with the principles of natural justice; and
7. Whereas, pursuant to the aforesaid Notification, the JKSSB received numerous representations which after due examination have been disposed of in accordance with the relevant rules and the opinion furnished by the Department of Law, Justice & Parliamentary Affairs. Besides, the present applicant namely Rajesh Sharma also filed representation before the JKSSB and subsequently approached the Hon'ble Central Tribunal Administrative (CAT) through OA No. 902/2021 titled Rajesh Sharma & Ors V/s Department of Rural Development & Panchayati Raj; and

8. Whereas, the Hon'ble Tribunal while considering the matter on 09.06.2021 passed the following directions:-

"...In the meanwhile, the respondents are directed to consider and take a decision on the representation preferred by the applicant within two weeks and till then, the respondents will not make any recommendations"; and

9. Whereas, in the meanwhile, the matter was again taken up with the General Administration Department vide communication No. SSB/Secy/Sel/4217-21 dated: 08.06.2021 for seeking additional clarifications in regard to the allocation of preferred districts to MRC candidates against reserved category posts and consequent availability and filling of unoccupied/ leftover open merit posts in respect of some other districts; and
10. Whereas, the General Administration Department again consulted the Department of Law, Justice & Parliamentary Affairs and after receiving the advice/opinion of the latter, communicated the same to the JKSSB vide its communication No: GAD-MTGORBIV/15/2021-02-GAD dated: 01.07.2021. The opinion rendered by the Department of Law, Justice & Parliamentary Affairs based on the ratio laid down in Tripurari Sharan v. Ranjit Yadav case by the Hon'ble Supreme Court is reproduced as under:-

"14. In light of the cases discussed hereinabove, both questions are answered as follows:

i) A MRC can opt for a seat earmarked for the reserved category, so as to not disadvantage him against less

meritorious reserved category candidates. Such MRC shall be treated as part of the general category only.

ii) Due to the MRC's choice, one reserved category seat is occupied, and one seat among the choices available to general category candidates remains unoccupied. Consequently, one lesser-ranked reserved category candidate who had choices among the reserved category is affected as he does not get any choice anymore.

To remedy the situation i.e. to provide the affected candidate a remedy, the 50th seat which would have been allotted to X – MRC, had he not opted for a seat meant for the reserved category to which he belongs, shall now be filled up by that candidate in the reserved category list who stands to lose out by the choice of the MRC.

This leaves the percentage of reservation at 50% undisturbed.

15. We reiterate that, 50% reservation rule should not be breached under any circumstance.”; and

11. Whereas, in pursuance of the direction of the Hon'ble CAT as cited hereinabove, representation of the applicant has been examined by the JKSSB and it has been found that the applicant has primarily preferred the following claims/objections against the provisional selection list notified by the JKSSB:

- i) The principle of allocating left over resultant posts in some districts after considering MRC candidates for district allocation against reserved category posts, in

favour of those reserved category candidates who were pushed out of the selection zone by the choice of MRC candidate, should not have been applied.

- ii) Reservation for PWD candidates should have been restricted to 3% instead of 4%, considering that 4th sub-category as notified vide SO 127 dated: 20.04.2020 has not been identified for the post in question.
- iii) Horizontal Reservation in respect of Ex-Servicemen and PWD candidates ought to have been considered in a compartmentalized manner in light of the judgment of Hon'ble Supreme Court in the case titled Sourav Yadav V/s State of UP.
- iv) The applicant has claimed that the JKSSB while considering allocation of districts in favour of MRC candidates ought to have invoked SRO 49 of 2018 dated 31.01.2018.

12. Whereas, the aforementioned issues were examined by the JKSSB and following conclusions drawn accordingly:-

- i) As far as issue (i) mentioned at para 11 supra is concerned, reliance was placed on the Jammu and Kashmir Reservation Rules 2005 notified vide SRO 294 dated 21.10.2005 together with the opinion rendered by the Department of Law, Justice & Parliamentary Affairs cited hereinabove and it was found that the claim of the applicant is bereft of any merit insofar as allocation of districts to MRC candidates and consequent allocation of unoccupied/ leftover posts of open merit category in some other districts is concerned. It would be trite to mention that the Jammu and Kashmir Civil Services

(Decentralization & Recruitment) Rules or the Jammu & Kashmir Services Selection Board (Conduct of Examinations Regulations), 2013 do not contain any express provision to address the novel situation confronted by the JKSSB in the wake of liberalisation of Divisional and District Cadre posts for any domicile of the Union Territory of Jammu and Kashmir due to amendments carried out in the Jammu and Kashmir Civil Services (Decentralisation & Recruitment) Act 2010 by the Ministry of Home Affairs as referred to hereinabove. In this scenario, the JKSSB had no option but to fall back upon general reservation rules applicable in the Union territory of Jammu and Kashmir, viz., the Jammu and Kashmir Reservation Rules notified vide SRO 294 dated 21.10.2005 by the Social Welfare Department as well as the opinion/advice given by the Department of Law, Justice & Parliamentary Affairs in the matter. Pertinently, the Reserve category posts have been utilised only for the purpose of allocation of districts in favour of the MRC candidates without affecting his/her status of being selected under Open Merit category. Not doing so, would have amounted to denying MRC candidate duly acquired rank on account of sheer hard work. It will also dis-incentivize efforts for achieving excellence, by reserved category candidates and consequent fall in general quest of the society to attain higher levels of excellence. The constitutional obligation of treating an MRC candidate in the open merit category would also have got circumvented and number of posts allocable to the reserved category

candidates also got reduced. The resultant effect would have been deprivation of employment to the reserved category candidates, though otherwise meritorious and entitled for inclusion in the select list of the reserved category in the respective districts. Further, it is important to add that the candidates in the instant case, are getting equal benefit of occupying the post of Accounts Assistant (Panchayat), irrespective of which district they are being allocated to.

- ii) The Right of Persons With Disabilities Act (PWD) 2016 envisages 4% horizontal reservation for the PWD candidates. Prior to the constitutional changes of August 2019, the horizontal reservation to the extent of 3% only was provided in the Jammu and Kashmir Rights of Persons with Disabilities Act 2018. Subsequently, the new reservation rules were notified by the Social Welfare Department vide SO 127 dated: 20.04.2020 wherein the extent of horizontal reservation for PWD candidates was increased from 3% to 4% with the addition of one additional sub-category, viz., intellectual disability, mental retardation, etc. This condition has been expressly incorporated in the Advertisement Notification relating to these posts. Subsequently, to give effect to the aforesaid increase in the horizontal reservation, the Social Welfare Department vide Government Order No. 59/JK9SWD) of 2021 dated 15.04.2021 identified posts for the respective disabilities. Though the post in question has not been identified for the 4th sub-category mentioned in the aforesaid rules, yet in adherence to the spirit of

the legislation to ensure full participation, provide equal opportunities and protect rights of PWD, it was consciously decided to equitably distribute the available 1% available posts under horizontal reservation amongst the eligible/identified sub-categories for the post of Accounts Assistant Panchayat. This is a standard practice followed by the recruiting agencies and gives resonance to the mandate enshrined in the aforementioned legislation.

- iii) As far as amendment in Rule 15 of the Jammu and Kashmir Reservation Rules, 2005 notified vide SRO 294 is concerned, the same pertains to allocation of disciplines in MD/MS/M.Tech, Engineering and Agriculture Sciences and similar other Post Graduate Courses for which examination is conducted by the J&K Board of Professional Entrance Examinations (BOPEE) and that separate set of rules governs the working of the said institution. The applicability of aforesaid SRO 49 to the facts and circumstances of the present case is not relevant.
- iv) Regarding application of horizontal reservation to the ESM and PWD candidates, the same has been applied strictly as per SO 127 of 2020. The judgment referred by the applicant in the representation is distinguishable from the facts and circumstances governing the instant selection process as the JKSSB has strictly followed SO 127 of 2020 holding the field.
- v) Regarding allocation of rank Kupwara OM-57 to candidate at rank 694-OM, the said candidate has only given partial preferences and to him the preference was

allotted after considering the cases of candidates who have shown all the preferences. The rank 818-OM has been wrongly quoted by the applicant and same belongs to Kupwara OM/HCV-1 and not to a RBA candidate.

Now therefore, in deference to the directions of the Hon'ble Tribunal dated 09.06.2021, the representation of the applicant has been considered by the Board in the light of rule position and the judgments of the Hon'ble Apex Court referred to above, coupled with the opinions/advices of the General Administration Department and has been found devoid of any merit and hence is rejected.

By order

**Sd/-
Secretary
J&K, Services Selection Board
Jammu.**

No: - SSB/Secy/Sel/2021/**4752-60**

Dated: - **02.07.2021**

Copy to the: -

1. Principal Secretary to Government, Department of Rural Development & Panchayat Raj, Civil Secretariat, Jammu/Srinagar.
2. Commissioner/Secretary to Govt. General Administration Department, Civil Secretariat, Jammu/Srinagar.
3. Special Secretary Law, J&K, Services Selection Board, Jammu for information.
4. Controller of Examination, Services Selection Board, Jammu.
5. Mr. Amit Gupta, Addl. Advocate General, J&K High Court Jammu.
6. Private Secy. to the Chairman, JKSSB for the information of Chairman, JKSSB.
7. Rajesh Sharma S/O Jagdish Raj Sharma R/O House No. 103, Chinore, Jammu.
8. I/C Website for necessary action.
9. Office record file.