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Subject : Re-framing of selection list for the post of Constable (Operator) on State Level Merit on court directions.
Ref'nce : PHQ order No.967 of 2015 dated 07.04.2015 read with another order No.2008/2016 dated 04.07.2016.

ORDER NO : 211 OF 2017
D A T E D : 19 -01 - 2017

Whereas, in the year 2007, J&K Police issued an advertisement notice under endorsement no. Estt/W-5/2001/9122-9220 dated 09.03.2007 inviting applications for the post of Constable (Operator) in J&K Police Telecommunication;

Whereas, the candidates were subject to the following tests in the said recruitment:-

1. Physical Measurement Test -qualifying in nature.
2. Outdoor Test-qualifying in nature.
3. Written examination.
4. Viva voce-cum-Personality Assessment Test.

Whereas, the prescribed tests, as referred to above, were got conducted through different Recruitment Boards constituted by the PHQ from time to time. The candidates who were found physically fit and possessing other prescribed standards were called to appear in Outdoor test as prescribed in advertisement notice. Thereafter the candidates who qualified the Outdoor test were called for written test comprising of subjective/objective type of questions;

Whereas, in all 2788 candidates against 1126 available vacancies appeared in written test from across the state which was conducted simultaneously at Jammu/Srinagar. As per the advertisement notice the candidates qualifying the written test were required to be called for viva voce but given the number of vacancies available (1126) for recruitment, candidates in the ratio of 1:3 from amongst those who appeared in the written test were called for viva voce test by the Board. Finally, a list of 925 candidates (selected by the board) came to be issued by the PHQ vide order No.2844 of 2009 dated 01.08.2009 and No.2168 of 2010 dated 26.06.2010 on the basis of District Level Merit, while-as 201 vacancies remained unfilled for want of eligible candidates;

Whereas, aggrieved with their non-selection for the post of Constable (Operator), a bunch of writ petitions were filed by a number of drop out

candidates challenging the selection list issued by the PHQ, inter-alia on the grounds that the selection was required to be made on State level merit instead of district wise merit;

Whereas, the Hon'ble High Court vide its order (interim) dated 17.08.2009 and 08.09.2009 passed in SWP No. 1478/2009 CMP No. 2166/2009 and SWP No. 2167/2009 titled Sheikh Muzaffer Ahmad and others V/s state and others stayed the operation of the selection list as a result of which no further process vis-à-vis issuance of formal appointment orders could be taken up by the State respondents. These interim directions were subsequently modified by the writ court (in SWP No. 1177/2009, 1267/2009, 1478/2009 and 1527/2009 read with CMP Nos. 2166/2009, 2569/2009, 2261/2009 and 2350/2009), vide its order dated 30.04.2010 whereby the Hon'ble High Court directed that Selection of private respondents as Constable (Operator) is kept subject to the outcome of writ petitions and interim directions were, accordingly, modified which paved way for issuance of formal appointment orders for selectees. However, the formal appointment orders could not be issued as the order dated 30.04.2010 came to be assailed by means of an LPA vide LPA no. 67/2010, IA No. 115/2010 titled Sheikh Muzaffer Ahmad and others v/s State and others by the writ petitioners. Only after disposal of the said LPA by Hon'ble High Court on 17.05.2010, the appointment orders were issued in respect of selected candidates. In place to mention that the Hon'ble Division Bench in its order dated 17.05.2010 referred the writ petition back to the writ court for disposal of the main matter on merits within a period of three months;

Whereas, pursuant to the directions of the Ld. Division Bench of the HHC passed on 17.05.2010, formal appointment orders were got issued in respect of the selected candidates through SSP Telecom Kashmir/ SSP Telecom Jammu, subject to fulfilment of the prescribed formalities and obtaining of an undertaking from the selected candidates that their appointment shall be subject to outcome of the writ petitions;

Whereas, aggrieved with the orders passed in the LPA and appointments made on the basis of district-level selection, fresh writ petitions were filed before the Hon'ble High Court both at Srinagar as well as Jammu (1352/2010 clubbed with SWP No. 1802/2009, 1270/2009, 1529/2009, 1478/2009, 1177/2009, 1267/2009, 1527/2009, SWP No. 1638/2009, SWP No. 1315/2009, c/w SWP No. 1527/2009) reiterating therein the prayer for quashing the selection list prepared on district-level merit and for re-drawing the selection list on State level merit (combined single merit);

Whereas, SWP No. 1352/2010 clubbed with SWP No. 1802/2009, 1270/2009, 1529/2009, 1478/2009, 1177/2009, 1267/2009, 1527/2009, 998/2013, 777/2013.

778/2013 with lead titled Sheikh Muzaffer Ahmad and others v/s State and others came to be disposed off through a common judgement passed by the Writ Court on 09.05.2014 whereby the Hon'ble High Court allowed the writ petitions and quashed the selection list issued by the PHQ on district level merit, with further directions to the State respondents to re-frame the selection list on State level merit vis-à-vis J&K Reservation Rules 2005. However, the Hon'ble Court declined to give any relief to those of the private respondents who may get ousted as a result of re-framing the selection list on the State level merit on the grounds that once the Court is satisfied that spirit and mandate of Articles 14 & 16 of Constitution of India, have been violated and benefit conferred arbitrarily, it should not allow beneficiaries to enjoy usufruct of manipulations in the name of equity and fair play;

Whereas, the operative portion of the court order dated 09.05.2014 is reproduced as under:-

"Writ petitions are allowed and select list notified vide PHQ order No.2844 of 2009 dated 01.08.2009 and appointments made vide PHQ order No.2168 of 2010 dated 26.06.2010 vide notification No.3475 of 2010 dated 23.10.2010 and 824 of 2011 dated 10.03.2011, on the basis of impugned select list, quashed. Respondents are commanded to reframe select list at State level on the basis of merit secured by candidates, who participated in selection process having due regard to J&K Reservations Act 2004 and J&K Reservation Rules 2005 and thereafter consider candidates for appointment in order of merit against 1126 posts, though not mentioned in advertisement notice, but admittedly proposed to be filled up on finalization of selection process initiated vide advertisement notice 9th March 2007. However, selection and appointment of such of the private respondents, who find place in the reframed select list and having regard to their place in the merit list and the number of vacancies to be filled up, make grade for their appointment, shall remain intact and undisturbed. The exercise be completed as far as possible within four weeks from the date of receipt of copy of this judgment. Writ petitions to the extent of petitioners, who have lost interest in prosecuting writ petition as per statement of learned counsel for petitioners as mentioned in paragraph 02 herein above, are dismissed".

Whereas, the aforesaid orders were reiterated by the Hon'ble High Court in SWP No. 1638/2009 titled Umar Ali Haf v/s State and others (clubbed matters), IA No. 1855/2014 SWP No. 1315/2009, IA No. 415/2013, IA No. 2654/2009 c/w SWP No. 1527/2009 vide order dated 10.06.2014 and 17.11.2014 respectively;

Whereas, after examination of the judgement dated 09.05.2014 and 10.06.2014 at PHQ, the matter was referred to the Home Department vide PHQ letter no. Legal/SWP/80/2010/2997 dated 05.06.2014 and letter No: Legal/SWP/107/

J/2009/ 2744-47 dated 20.06.2014 for assailing the writ court order in the next higher forum and accord of sanction to the filing of LPA against the said Court orders;

Whereas, the Home Department vide letter no. Home/PB-IV/27/2013/4842 dated 30.09.2014 intimated that the Department of Law, Justice & Parliamentary Affairs have turned down the proposal for filing of the LPA and asked the department to implement the writ court order dated 09.05.2014 in letter and spirit;

Whereas, while the matter was under examination at PHQ pursuant to the directions of the State Govt as referred to above for implementation of the Court order dated 09.05.2014, a review petition was filed by the petitioners in SWP No. 1352/2010 vide Review (SWP) No. 33/2014 titled Sheikh Muzaffer Ahmad and others v/s State and others praying there-under for restricting the benefit of judgement dated 09.05.2014 to the petitioners only;

Whereas, the Review Petition came up for final disposal on 25.02.2015 and the Hon'ble High Court issued following directions vis-à-vis implementation of Court order dated 09.05.2014:-

“the Hon'ble High Court declined to give any relief on the prayer made by the petitioners (in the review petition) for restricting the benefit of judgement dated 09.05.2014 to only those aspirants for the advertised posts who have come up with the writ petitions on the grounds that this would amount to rewriting the judgement dated 09.05.2014 and not to review it. It has further been held by the HHC that the Court cannot in the name of review direct appointment of the petitioners against the available vacancies irrespective of their merit, which has to stand.

Regarding retaining the selected candidates/ appointees who may be otherwise left out after reframing the selection list on the State level merit, the HHC has observed that it is for the respondents to consider the matter on the anvil of law governing the field. In case respondents are convinced that selectees/ appointees have been serving the department for last about half a decade with dedication and their ouster would work harshly against them and that proposed course would be available to them in light of the law relied upon, it is for them to take a decision in the matter in accordance with the law. However, in such an event, the respondents shall respect the merit and not push the same to the back seat. The respondents are to redraw merit list, retain the selectees against 907 of the advertised vacancies if they so decide and fill up the rest of the advertised vacancies as proposed from amongst the candidates who participated in the selection list strictly in accordance with merit and the Reservation Rules”.

Whereas, the court order dated 25.02.2015 passed by Hon'ble High Court in Review (SWP) No.33/2014 titled Sheikh Muzaffar Ahmad and others VS State and others was forwarded to Home Department (being administrative department) by PHQ vide letter no. Estt/W-4/2011(II)/23984-85 dated 06.05.2015 for orders/instructions on certain points. The Home Department vide letter no. Home/PB-IV/27/2013/2805 dated 16.06.2016 conveyed for the implementation of the judgment;

Whereas, a Committee of officers under the chairmanship of Director SSG, J&K was constituted, by the PHQ vide order No. 967/2015 dated 07.04.2015 read with another order No.2008/2016 dated 04.07.2016, to chalk-out the modalities for implementation of the court order in terms of records relevant to the selection process of the Constable(Operator) particularly the selection proceedings forwarded by the earlier constituted Board and come up with recommendations for re-framing the selection list on State level merit with due weightage to the eligible candidates belonging to various reserved categories in terms of SRO-294/2005 dated 21.10.2005;

Whereas, the said Committee has forwarded its report alongwith re-framed select list of 1052 candidates prepared for the post of Constable (Operator) on the basis of State Level Merit vis-à-vis Reservation Rules 2005 against 1126 vacancies. The Committee has also forwarded waiting list of 181 candidates. The category-wise break-up of selections recommended is as under:-

Category	Vacancies	Selections recommended
General	642	642
RBA	225	225
Schedule Caste	90	47
Schedule Tribe	113	82
Social Caste(SUPC)	22	22
ALC	34	34
Total	1126	1052

Whereas, the re-framed selection list has been prepared by the Committee on State Level Merit on the aggregate of marks obtained by the eligible candidates in the written/ viva-voce and in case of tie-up of merit, preference has been given to the candidates older in age. Due representation has been given to the candidates belonging to various reserved categories in terms of SRO- 294/2005 dated 21.10.2005 read with SRO-144/2008 dated 28.05.2008. 74 vacancies (Schedule Caste=43 & Schedule Tribe=31) remained unfilled for want of eligible candidates;

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Therefore, in light of the recommendations of the Committee, approval is hereby accorded to the selection of candidates (1052) as Constable Operator in J&K Police named in the list forming Annexure "A" to this order. Approval is also accorded to the waiting list forming Annexure "B" to this order.

As held by the Hon'ble High Court vide its order dated 09.05.2014, selection and appointment of candidates already serving as Constable Operators in terms of their earlier selection (at district level merit), who find place in the reframed select list (State Level merit) shall remain intact and undisturbed having regard to their place in the merit list. Moreover, the selection of fresh candidates (who have now made to the state level merit) shall be notionally with effect from the year 2010 and monetary w.e.f. the date they physically join the department.

The inter-se-seniority in respect of those found fit for appointment shall be determined on the basis of aggregate merit obtained by them in selection and the merit they have/may obtain in the Basic Recruit Training in accordance with Rule 111 of J&K Police Manual.

Consequent upon the above, candidates who were earlier selected/appointed (on district level merit) as Constable (Operators) and have now failed to secure minimum qualifying merit in the re-framed select list on the basis of State Level Merit, are hereby ousted from the department with immediate effect. The list of such candidates is indicated in Annexure "C" to this order.

The fresh appointees belonging to Kashmir province shall report to SSP Telecom Kashmir while-as candidates from Jammu province shall report to SSP Telecom Jammu within a period of 21 days alongwith their original testimonials for issuance of formal appointment orders, subject to the following conditions/formalities:-

- a) verification/authentication of the genuineness of the minimum academic qualification certificates including date of birth certificate of the selected candidates;
- b) verification of category certificates in respect of those candidates selected under reserved categories in pursuance of SRO-294/ 2005 dated 21.10.2005 read with SRO-144 /2008 dated 28.05.2008;
- c) verification of character/ antecedents from CID;
- d) Medical examination/check from respective Police Medical Boards at Kashmir/ Jammu

The fresh appointees shall be deputed to Basic Recruit Training for which the matter shall be processed separately at PHQ.

IGP Telecom J&K will forward nominal roll in respect of the candidates who were earlier selected/ appointed but later left the department for different reasons like resignation, discharge from service, struck off, written unwillingness, failing to report within the stipulated time, died etc so that the waiting list could be operated upon accordingly.

The select list is issued without prejudice to writ petitions, if any, pending before any court of law.

Self=
(S.P.Vaid)IPS
Director General of Police
J&K-Jammu

No: Estt/W-6/2015/ *4454-59*

Dated: *19*.01.2017

Copy to the: -

1. IGP Telecom, J&K Jammu.
2. DOP, PHQ for information and necessary action.
3. SSP Telecom Kashmir/Jammu.
4. PS to DGP, J&K.
5. Order book/File for record.

Handwritten signature
AIG (Personnel),
for Director General of Police,
J&K-Jammu