

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.2781/2021.

Date of Institution.01.09.2021.

Date of Decision.23.12.2021.

Mohammad Junaid Khan S/o Walayat Hussain Khan,
Laboratory Attendant BS-02 Department of Sociology
University of Azad Jammu and Kashmir Muzaffarabad.

...Petitioner

VERSUS

1. Azad Jammu and Kashmir University through its Vice Chancellor having his office at Chellah Muzaffarabad;
2. Registrar University of Azad Jammu and Kashmir Muzaffarabad having her office at Chellah Campus Muzaffarabad;
3. Additional Registrar University of Azad Jammu and Kashmir having his office at Chellah Muzaffarabad;
4. Deputy Registrar (Meeting) University of Azad Jammu and Kashmir having his office at Chellah Muzaffarabad;
5. Dean Faculty of Humans and Social Sciences Azad Jammu and Kashmir University, Muzaffarabad;
6. Coordinator, Department of Software Engineer University of Azad Jammu and Kashmir Chellah Muzaffarabad;
7. Selection Committee for the Promotion of Junior Clerk through Registrar University of Azad Jammu and Kashmir Muzaffarabad.

... Respondents

WRIT PETITION

Before:- **Justice Sadaqat Hussain Raja, C.J.**

PRESENT:

Mr. Sajid Hussain Abbasi, Advocate for the petitioner.

Raja Gul Majeed Khan, Legal Advisor for University of Azad Jammu and Kashmir Muzaffarabad for the respondents.

JUDGMENT:

The above titled writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby, a direction is sought against the respondents to issue promotion order of the petitioner against the vacant post of Junior

Clerk in the light of fitness/typing test held on 30.03.2021 against 25% quota which is reserved for employees of Grade-1 to Grade-4.

2. Stated facts of the case are that the petitioner is 1st Class State Subject hails from District Muzaffarabad. It is further stated that the petitioner is permanent employee of University of Azad Jammu and Kashmir and serving as Laboratory Attendant BS-02 in the Department of Sociology. It is alleged that the department conducted fitness/typing practical test of eligible employee for promotion against the posts of Senior Clerks and Junior Clerks which is mandatory requirements of rules/statues through letter dated 10.03.2021. It is further alleged that the department issued call letter to the petitioner for fitness/typing test against the 25% quota reserved for Grade 1 to Grade 4 employees. The petitioner participated in the test and qualified the same and was placed at the top of the merit position for promotion of Junior Clerks as per rules/statutes. It is contended that the Senior Clerks have been promoted by the official respondents in compliance of letter dated 10.03.2021 on similar fitness/typing test and petitioner has been discriminated in order to accommodate their favourites. It is further contended that the petitioner moved representation before respondent No.1 for redressal of his grievance for issuance of promotion order of the petitioner but no action has been taken. It is averred that the Department of Sociology and Rural Development sent proposal to the Dean Faculty

of Arts for appointment/promotion of petitioner vide proposal dated 02.07.2020 but despite vacant posts no action has been taken by the respondents.

3. The written statement has been filed by the University-respondents, wherein, it is stated that the petitioner has an alternate remedy to file an appeal before the Syndicate under University Employees Statutes, 1999. It is admitted that the petitioner is eligible, however, he could not pass the typing/fitness test, so, selection committee in its meeting held on 31.08.2021 decided to recall the typing test in future. It is further contended that the promotions of Senior Clerks have been made in accordance with law.

4. Both the parties have filed written arguments which are made part of file.

5. I have examined the written arguments and gone through the record of the case. A perusal of record shows that the petitioner has been appointed as Laboratory Attendant B-2 in the University of Azad Jammu and Kashmir, on the recommendations of respective Selection Committee, vide order dated 30th Nov. 2016. The University of Azad Jammu and Kashmir called for test of employees Grade-1 to Grade-4 for promotion of Junior Clerks against 25% quota reserved for the aforesaid employees. It is the claim of the petitioner that he appeared in fitness/typing test and got merit position but the respondents did not appoint him with mala-fide intention and he has been discriminated. So, the basic claim of the

petitioner is that the Senior Clerks have been promoted on the basis of the similar fitness/typing test. In this regard, the record of Senior Clerks has been summoned vide order dated 14.09.2021. A perusal of record submitted by the University of Azad Jammu and Kashmir shows that 09 posts of Senior Clerks were lying vacant in the University of Azad Jammu and Kashmir out of which 05 were reserved for departmental promotion quota and as per statutes, criteria for promotion of Senior Clerks is as under:

**“The University of Azad Jammu and Kashmir Muzaffarabad
AGENDA
For promotion cases (Senior Clerks and HTV Cleaner)
The meeting of the selection committee No. 02,
To be held on April 16,2021 at 10:00 A.M”**

<u>Name of Post:</u>	Senior Clerk
<u>Scale</u>	BPS-14

Method of Recruitment:

- | | | |
|-----|-----------------------|-----|
| i. | By direct appointment | 20% |
| ii. | By promotion | 80% |

Qualification/Experience/Length of Service

(i) By Direct Appointment

At least 2nd class B.A/BSc. or equivalent from HEC recognized University with Typing speed of 40 w.p.m in Urdu or English, should be well versed in Microsoft Word, Inpage and Excel.

Age 18-35 years (Age limit shall not be applicable to in service employee).

ii) By promotions

On the basis of seniority cum fitness from amongst the Junior Clerks having 05 years service as Junior Clerk with typing speed of 40 w.p.m in Urdu or English.

6. In view of abovementioned statutes, the Junior Clerks were called for fitness/typing test, wherein, Mohammad Arshad,

Nadeem Iqbal, Mohammad Rashid Rasheed, Hareem Nazir and Mazhar Ali Alvi, were promoted against five reserved posts of Senior Clerks. As per record of University-respondents results of aforesaid Junior Clerks are as under:-

1. **Typing test: Passed**
 User Mohammad Arshad
Test Results
 Duration: 10:00 min of total 10:00 min
 Gross Speed 20wpm
 Accuracy 74%
 Net Speed 15wpm
2. **Typing test: Passed**
 User Nadeem Iqbal
Test Results
 Duration: 10:00 min of total 10:00 min
 Gross Speed 16 wpm
 Accuracy 85%
 Net Speed 14 wpm
3. **Typing test: Passed**
 User Mohammad Rashid Rasheed
Test Results
 Duration: 10:00 min of total 10:00 min
 Gross Speed 08 wpm
 Accuracy 82%
 Net Speed 07wpm
4. **Typing test: Passed**
 User Hareem Nazir
Test Results
 Duration: 10:00 min of total 10:00 min
 Gross Speed 14wpm
 Accuracy 88%
 Net Speed 12wpm
5. **Typing test: Passed**
 User Muzahar Ali Alvi
Test Results
 Duration: 10:00 min of total 10:00 min
 Gross Speed 09 wpm
 Accuracy 56%
 Net Speed 05 wpm

7. A perusal of aforesaid record shows that Mohammad Arshad who declared passed in his fitness/typing test, his gross speed was 20 wpm and net speed was 15 wpm, whereas, Nadeem Iqbal in his typing test gross speed was 16 wpm and net speed was 14 wpm, who also declared pass. Furthermore, Mohammad Rashid Rasheed

whose gross speed was 8 wpm and net speed was 7 wpm also declared passed. Hareem Nazir her gross speed was 14 wpm and net speed was 12 wpm also declared passed. Similarly, Mazhar Ali Alvi, whose gross speed was 9 wpm and net speed was 5 wpm also declared passed. All the above-mentioned Junior Clerks declared passed and were promoted on the basis of fitness/typing test dated 30.03.2021.

8. The record of Junior Clerks has also been summoned vide order dated 14.09.2021, a perusal of which shows that 09 posts of Junior Clerks were vacant amongst them 02 posts were required to be filled up by promotion. The agenda/statutes for promotion of Junior Clerks are as under:

**“The University of Azad Jammu and Kashmir Muzaffarabad
AGENDA**

**Meeting of the Selection Committee No. 02,
for promotion of the post of Junior Clerks BPS-11.
To be held on August 31,2021”**

Name of Post: Junior Clerk

Scale BPS-11

Method of Recruitment:

- | | | |
|-----|-----------------------|-----|
| i. | By direct appointment | 75% |
| ii. | By promotion | 25% |

Qualification/Experience/Length of Service

(i) By direct appointment

At least 2nd class B.A/BSc, or equivalent from HEC recognized University/Institution with typing speed of 40 w.m.p in urdu and English should be well versed in Microsoft Word, Excel and Power Point.

(ii) By Promotion

Reserved for employee of Scale 1 and above who qualify and fulfill the required slandered for the post of Junior Clerk.

9. As per statutes supra, the University-respondents issued call letters to eligible employees serving in Grade-1 to Grade-4 for fitness/typing test and after conducting fitness/typing test merit list was issued as below:

CONSOLIDATED MERIT LIST OF TYPING TEST OF JUNIOR CLERKS (ENGLISH + URDU)

Sr. No.	Candidate Name	Gross Speed (WPM) English	Net Speed (WPM) Urdu	Total Words Typed Urdu	Net Speed (WPM) Urdu
1.	Muhammad Junaid Khan	42	39	257	24
2.	Ahtisham Ul Haq	26	22	312	30
3.	Amir Aziz Minhas	23	18	292	29
4.	Liaqat Hussain Shah	23	18	280	26
5	Nadaras Hussain	19	16	205	19
6	Rashid Ali Mughal	15	13	162	15
7	Sajjad Haider	16	12	270	24
8	Nasir Aziz Ch.	11	10	124	12
9	Nazia Farooq	13	09	233	21
10	Faiz Ahmed	09	08	148	15
11	Basharat Ur Rehamn	08	07	141	14
12	Abdul Ghafoor Kiani	12	06	113	10
13	Sonia Kanwal	09	06	140	13
14	Mohammad Imtiaz	08	05	117	12
15	Asif Fareed	05	03	69	05
16	Mohammad Ashfaq Abbasi	10	03	290	29
17	Munir Ahmed	09	03	200	19
18	Shahzad Ahmed	4	2	0	0
19	Abdul Qadir	07	02	79	07
20	Haroon Abbasi	03	0	145	14
21	Abdul Basit	02	00	17	0

Assistant Registrar (Meeting)

A bare reading of merit list of typing/fitness test issued by University of Azad Jammu and Kashmir Muzaffarabad it appears that Mohammad Junaid Khan, the petitioner has been placed at Sr. No.1, whose gross speed of fitness/typing test was 42 wpm and net speed was 39 wpm, however, declared failed. It is very astonishing that the Senior Clerks were promoted whose gross typing speed was under 17 wpm and were declared passed and the petitioner was not promoted whose gross speed was 42 wpm. It is pertinent to mention here that according to merit list of fitness/typing test of Senior Clerks and Junior Clerks issued by the University, that candidate who has less professional qualification is promoted in higher grade i.e Senior

Clerks and a person who is professionally sound has not promoted in the lower grade i.e Junior Clerk. So, the claim of petitioner that he has been discriminated is proved from the record filed by the University of Azad Jammu and Kashmir. The right against discrimination is a fundamental right guaranteed by the Constitution. This view finds support from case titled "*Tariq Rashid & 09 others V. University of AJ&K and 07 others,*" (2019 SCR 766), wherein, the August Supreme Court of Azad Jammu and Kashmir, at page 774 in paragraph No.7, of the judgment held as under:-

“-----In this case the policy/notification has been issued and acted upon and the rights in favour of the beneficiaries stood accrued, thus, the University-authorities have no legal justification to extend the benefit of the policy to some employees and deny the same to the other employees, who stand on same footing. Such discrimination is prohibited under the Constitution; therefore, the appellants are entitled for the same treatment as met by the other employees, thus, the act of Universities authorities to deny the benefit of policy to the appellants is declared illegal.”

An identical proposition came under consideration before the Islamabad High Court in case titled "*Muhammad Azram V. National Institute of Health and others,*" reported as (2015 PLC SC 537), wherein, at page 545 of the judgment in paragraph No.10, it was observed as under:

“..... The right against discrimination is a fundamental right guaranteed under Article 25 of

the constitution. Similarly situated persons cannot be treated differently and it renders any action or orders as void, arbitrary and illegal. It has been consistently held by the Supreme Court that though a reasonable classification of persons is permissible who may be treated differently, provided there is legitimate basis for such classification but the classification should not be arbitrary and capricious and must rest on reasonableness and there must exit a fair nexus and a just relationship with the need for such classification. Similarly, situated or place person cannot be treated differently.

Reference in this regard may also be made to the cases titled “Dr. Shahnaz Wajid Vrs Federation of Pakistan through Secretary Establishment Division Government of Pakistan, Islamabad” (2012 PLC (C.S) 1052, “Fauji Foundation and another Vs Shamimur ur Rehman” (PLD 1983 SC 457), “Javed Jabbar and 14 others Vrs Federation of Pakistan and others,” (PLD 2003 SC 955).

10. So far as the question of eligibility of petitioner is concerned, the respondents-University in their written statement admitted that the petitioner is eligible, however, did not promote him due to the reason that he could not pass fitness/typing test. The petitioner has attached a letter issued by Coordinator of the Department of the Sociology and Rural Development, who recommended that the petitioner is very hardworking, honest and dutiful person, so he may be promoted. The relevant proposal is as under:-

شعبہ ہذا میں تعینات مسٹر محمد جنید خان کی مستقل تقرری بطور لیبارٹری انڈنٹ در سکیل بی۔2 بروئے حکم نمبر / میٹنگز 78-16/5372 مورخہ 30.11.2016 شعبہ ریاضی میں عمل میں لائی گئی۔ اہلکار مذکور کا تبادلہ شعبہ ہذا میں بروئے حکم نمبر ایف/ اسٹیلٹمنٹ 22-1917/2017 مورخہ 18.04.2017 عمل میں لایا گیا۔ تب سے اہلکار مذکور شعبہ ہذا میں ڈیٹا انٹری آپریٹر کے طور پر جملہ ٹائپنگ سے متعلقہ کام و تیاری رزلٹس وغیرہ انتہائی دیانتداری اور محنت سے سرانجام دے رہا ہے۔ اہلکار کی تعلیمی قابلیت بی۔اے اور متعلقہ فیلڈ یعنی کمپیوٹر ڈپلومہ، شارٹ ہینڈ، لائبریرین ڈپلومہ ہولڈر ہے اور زبردستی کو تا حال کسی قسم کا موقع نہ دیا ہے۔ شعبہ ہذا میں جو نیئر کلرک بی۔11 اور ڈیٹا انٹری آپریٹر بی۔12 ک آسامیاں خالی چلی آرہی ہیں اور بار بار رشاف کی کمی کے بارے متعلقہ احکام ہالا سے گزارش کی جاتی رہی لیکن تا حال شعبہ ہذا کو عملہ فراہم نہیں کیا گیا۔ جس کی وجہ سے شعبہ ہذا کا کام بری طرح متاثر ہو رہا ہے۔

شعبہ ہذا میں مسٹر محمد جنید خان لیبارٹری انڈنٹ بی۔2 کو 18.04.2017 سے شعبہ ہذا میں ڈیٹا انٹری آپریٹر بی۔12 کے فرائض نہایت لگن اور محنت سے نبھا رہا ہے۔ اہلکار جو نیئر کلرک بی 11/1 ڈیٹا انٹری آپریٹر بی۔12 کی آسامیوں کے لیے موزوں اور اہل ہے۔ چونکہ حکمانہ رولز کے مطابق کوٹہ بھی موجود ہے۔ لہذا اہلکار مذکور کی ترقیاتی/ تعیناتی میں کوئی قانونی سقم نہیں ہے۔

لہذا تجویز ہے کہ مسٹر محمد جنید خان لیبارٹری انڈنٹ بی۔2، کو بطور جو نیئر کلرک بی۔11/ ڈیٹا انٹری آپریٹر B-12 ترقیاب تعینات فرمائے جانے کے لیے رجسٹرار صاحب کو تحریر فرمائی جائے تاکہ اہلکار کی حوصلہ افزائی ہو سکے اور وہ مزید لگن اور یکسوئی سے اپنے فرائض انجام دے سکے۔ (ترقیاتی رولز جو نیئر کلرک لف ہیں)۔

کوآرڈینیٹر۔

11. A bare reading of the aforesaid script shows that the petitioner is performing duty of typing on computer and also prepared results, so, his eligibility is proved through record, hence, he is entitled to the equitable relief of writ jurisdiction.

12. The University is not at par to the other departments because it is the institution which provides education to the people who construct the society and Country. So, the institutions like Universities and Courts should be aboveboard and any illegality or discrimination in such like institutions tantamount to ruin the whole system of the country. It is very astonishing that the respondents conducted test for promotions of Senior Clerks and Junior Clerks and on the basis of said test, the Senior Clerks were promoted despite the fact that they are very low in fitness/typing test. The petitioner who shows remarkable result but ignored which is glare discrimination

and the Courts are duty bound to provide justice where any discrimination is found.

13. The contention of the learned Legal Advisor for University that the petitioner has an alternate remedy to file an appeal before Syndicate, therefore, he cannot file a writ petition. A perusal of record appended with writ petition shows that the petitioner filed an application before competent authority (Vice Chancellor) for redressal of his grievance but the University-respondents did not consider the same. Even otherwise, according to “The Azad Jammu and Kashmir Interim Constitution, 1974, all the State Subjects are equal before law and are entitled to equal protection of law. The relevant Article 15 of Azad Jammu and Kashmir Interim Constitution, 1974, is reproduced as under:-

- 15. Equality of State Subjects.**(1) All State Subjects are equal before law and are entitled to equal protection of law.
- (2) There shall be no discrimination against any state Subject on the basis of sex.
- (3) Nothing in this article shall prevent the State from making any special provision for the protection of women and children.

Article 17 also provides safeguard against discrimination in service. The relevant Article 17 is reproduced as under:

17. Safeguard against discrimination in service. No state Subject otherwise qualified for appointment in the service of Azad Jammu and Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, residence, sex or place of birth:

So, the argument raised by the learned Legal Advisor is repelled because it is apparent on the face of record that the petitioner has been discriminated from his vested accrued right and where violation of fundamental right guaranteed by the Constitution is found then constitutional jurisdiction of this Court can be invoked. This view finds support from PLD 2002 Lahore 521.

14. An application has been moved by representative of University for clubbing the case titled "*Nisar Aziz Chaudhary Vs Registrar University of Azad Jammu and Kashmir*". I have perused the aforesaid file which was filed on 28.10.2020 and has no relevancy with the captioned case due to distinguishable facts, hence, need not to be clubbed together and application seems to be filed to prolong the instant case.

15. The authorities referred to and relied up on by the learned legal Advisor of University have distinguishable facts, hence, need not to be discussed.

16. The crux of above discussion is that writ petition is accepted and the respondents-University are directed to issue promotion order of the petitioner being at serial No.1, of merit against the vacant post of Junior Clerk in the light of fitness/typing test held on 30.03.2021 against 25% quota reserved for employees of Grade-1 to Grade-4, within a period of one month from the receipt of the instant judgment.

Muzaffarabad,
23.12.2021

**-Sd-
CHIEF JUSTICE**

Approved for reporting.

**-Sd-
CHIEF JUSTICE**