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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 7TH DAY OF OCTOBER 2024 / 15TH ASWINA, 1946

OP(KAT) NO. 147 OF 2024

AGAINST THE ORDER DATED 02.02.2024 IN OA (EKM) NO.516 OF 2021 OF KERALA ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM (ADDITIONAL BENCH, ERNAKULAM)

PETITIONER/RESPONDENT NO.1:

KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM P.O.,
THIRUVANANTHAPURAM , KERALA, PIN - 695004

BY ADV P.C.SASIDHARAN

RESPONDENTS/APPLICANTS & RESPONDENT NOS.2 TO 14:

1 JOHNRAJ P, AGED 34 YEARS
S/O. PAULRAJ P, SANGEERTHANAM, NELLIVILA.,
KUNNATHUKAL P.O.THIRUVANANTHAPURAM ,
KERALA, PIN - 695504

2 RAJIN K R, AGED 35 YEARS
S/O. RAVINDRAN K K., KIZHIYEDATHU HOUSE,
MADATHUMKUDI P.O., THRISSUR KERALA, PIN - 680733

3 SHIBU C A, AGED 40 YEARS

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S/O. AYYAPPAN, CHAKKINIYAN HOUSE,
NALUKETTU P.O., THRISSUR KERALA, PIN – 680308

4 SIJU V V, AGED 40 YEARS
S/O. VELAYUDHAN, VENNAKKAR HOUSE,
MELOOR P.O., PULANI, THRISSUR KERALA, PIN - 680311

5 SANOOP P K, AGED 34 YEARS
S/O. SREENIVASAN, PUTHUKUNNUMMAL HOUSE,
MOOLAD P.O., NADUVANNUR (VIA),
KOZHIKODE KERALA, PIN - 673614

6 PRINCIPAL CHIEF CONSERVATOR OF FORESTS ,
(HEAD OF FOREST FORCE), FOREST HEADQUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM ,
KERALA, PIN - 695014

7 ABDUL ALI M, MANIKKAPARAMBATH HOUSE,
PUTHIYEDATH PARAMBA, OLAVATTOOR P.O,
MALAPPURAM-,KERALA., PIN - 673638

8 PRAJEESH P,
PUTHIYATH, KUZHISSERI, KUZHIMANA,
MALAPPURAM, KERALA., PIN - 673641

9 BINU T,
KALLARIKKUNNATHIL, VALLICODU,
PATHANAMTHITTA, KERALA, PIN - 689648

10 SHINEKUMAR N.K,
NEELIMMATHARA HOUSE, VAVAKKAD, MOOTHAKUNNAM
P.O, ERNAKULAM, KERALA., PIN - 683516

11 ABHILASH T.K,
THACHORA, OLLUR, KUNNATHARA,
KOZHIKODE , KERALA, PIN - 673620

12 MIDHUN T.M,
THATTAPARAMBIL, HOUSE/210, CHETTAKULAM,
CHAZHOOR, THRISSUR , KERALA., PIN - 680571

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13 ANEESH P,
POOVATHINGAL HOUSE, CHERUMKULAM,
THENKARA, PALAKKAD, KERALA, PIN - 678582

14 ANAS I,
KADUVINA VILAYIL, PALACKAL, THEVALAKKARA,
KOLLAM, KERALA., PIN - 690524

15 MANOJ P,
PARAMBADAN HOUSE, THEYYATHUMKUNNU/KATTU MUNDA,
VADAPURAM, MALAPPURAM, KERALA., PIN - 676542

16 MOHAMMED ASHARAF V.H,
KATTUVILA FATHIMA MANZIL, PAZHAKULAM,
PATHANAMTHITTA, KERALA., PIN - 691523

17 ABHILASH P.S,
ABHILASH BHAVAN, PALAMOODU, VEMBAYAM,
THIRUVANANTHAPURAM, KERALA., PIN - 695615

18 SARATH T.MOHAN,
THCHUPARAMBIL HOUSE, MADAVAKKARA,
CHITTISSERY, THRISSUR ., PIN - 680301

BY ADVS.
P.NANDAKUMAR
VIVEK VIJAYAKUMAR
SILPA SREEKUMAR
MERIN K JIMMY

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 01.10.2024, THE COURT ON 07.10.2024 DELIVERED THE FOLLOWING:

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JUDGMENT

Murali Purushothaman,J.

The Kerala Public Service Commission (KPSC), the 1st respondent in O.A(EKM) No.516/2021 on the files of the Kerala Administrative Tribunal, Thiruvananthapuram, has filed this Original Petition (KAT) challenging the order dated 02.02.2024 passed by the Tribunal directing the KPSC to subject the 1st applicant to driving test afresh in a suitable vehicle and to consider him in the selection process for the post of Forest Driver pursuant to Annexure A1 notification.

2. The KPSC invited applications for the post of Forest Driver in the Forest Department vide Annexure A1 notification. The qualifications prescribed for the post were as follows:

> (a) SSLC or its equivalent examination recognized by Government of India or

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Government of Kerala.

Note: Rule 10(a)ii of Part II KS & SSR is applicable.

(b) All candidates must have a valid Motor Driving Licence endorsed for all types of transport vehicles (LMV, HGMV & HPMV) and experience of not less than 3 years in driving motor vehicles.

Note:

(i) The Driving Licence, must remain valid through all the stages of selection process as on the last date for receipt of application, OMR Test, Practical Test, Physical Efficiency Test etc.

(ii) Experience Certificate to prove 3 years experience as Driver should be submitted in the prescribed form.

(iii) Proficiency in driving will be tested by a Practical Test conducted by PSC.

3. The applicants in the Original Application (O.A), five in number, applied for the said post in Malappuram and Thrissur districts. Following the OMR test and the Physical Efficiency Test, they were included in Annexures A4 and A5 shortlists respectively published for

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Malappuram and Thrissur districts. They were then called for attending the practical test (T-Test and Road Test) on 16.02.2021 at SAP Parade Ground, Peroorkada. According to the applicants, the vehicle provided to them was an old KSRTC bus and its steering wheel was so tight making it difficult to maneuver the vehicle. It is further stated that the applicants 1 and 2 are about 6 feet tall and their knees were touching the steering wheel as the mechanism to pull back the seat was not working. Consequently, the officers of the KPSC who were present at the test site declared that the applicants have not cleared the T-Test and therefore, they were not permitted to participate in the Road Test. According to the applicants, when it was noticed that the bus used for T-Test was having various defects, it was replaced and another KSRTC bus was used for the Road Test. The applicants contended that the vehicle provided for T-Test was not roadworthy, and the practical test with a

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defective vehicle by the KPSC is highly illegal. The applicants submitted Annexures A6 to A10 complaints to the KPSC. Since the complaints were not responded to, the applicants preferred the O.A before the Tribunal to declare that the practical test conducted by the KPSC for the post of Forest Driver on 16.02.2021 with a defective vehicle is illegal and for direction to permit the applicants to participate in another practical test on a later date and for inclusion in the rank list.

4. The KPSC filed a reply statement in the O.A along with a report with respect to the conduct of the driving test. It is stated that the practical test was conducted in accordance with well-defined rules, after constituting a Board which includes a Motor Vehicle Inspector from the Motor Vehicles Department as a Member and an Under Secretary of the KPSC as its Chairman. The measurement and ground marking were done in the presence of the candidates before the

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commencement of the T-Test. The candidates were given instructions as to how the test is conducted and the conditions to be followed to pass the T-Test, and a demonstration was also given before the commencement of the Test. The practical test was conducted under the direct supervision of the Board, in a fair and transparent manner. The vehicle (KSRTC bus bearing Reg.No.KL 15 8074) was used for the practical test after obtaining fitness certificate from the Motor Vehicle Inspector. The vehicle was in good condition and fit for the test. Those who passed the T-Test alone were permitted to appear for the Road Test. The T-Test was completed at 11.30 am. Since the horn of that vehicle failed, it had to be taken for repair and the KSRTC arranged another vehicle for Road test which was conducted at 12.45 pm on the Peroorkada – Nedumangad road. The applicants had got into the vehicle and drove it into the T-Track without making any complaints. They failed in the test by hitting the iron rods.

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They raised complaints that they could not adjust the driving seat since their knees touched the steering wheel and the steering wheel got jammed and hence on reverse drive, the side marker line was erased. It is stated that, out of the 152 candidates who had participated in the practical test, the applicants alone have complained of the condition of the vehicle and the same is made intentionally to procure another chance for participation. It is further stated that the applicants' allegations are not justifiable, as they drove the vehicle smoothly from track 'A' to track 'B' and only raised the complaint about the vehicle's seat many minutes later, after signing the record sheet and failing the test. It is also stated that large number of candidates easily qualified in the practical test using the same vehicle without any discomfort and the allegations are made by the failed candidates in order to get a further chance to participate. It is stated that out of 43 candidates admitted under Board II, 42 were present

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and 36 got qualified by using the same vehicle and only 6 candidates disqualified. It is further stated that practical test is also a stage of selection process like OMR test, Written test and Interview and repetition of a stage of selection process for some candidates, who failed at a particular stage, is against the existing rules and procedure and in case it is allowed, the entire selection process would be vitiated. It is stated that, the KPSC being a recruitment body, cannot go beyond the existing rules and procedures and is not competent to relax the rules or procedures.

5. Though it was contended that all the applicants submitted complaints about the conduct of the T-Test, the KPSC has, in their reply statement, stated that they have received complaint only from the 1st applicant. Accordingly, the Tribunal considered the case of the 1st applicant alone.

6. The 1st respondent/1st applicant contended that

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he is 186 cm tall and his thighs got jammed between the seat and the steering wheel and he could not maneuver the vehicle. It was contended that, it could have been possible for him to qualify in the T-Test if a vehicle having facility for seat adjustment was made available to him, which he had pointed out in the complaint submitted on the same day.

7. According to the KPSC, a standard vehicle, a KSRTC bus, certified to be mechanically fit by the Motor Vehicle Inspector, was used for T-Test. It is stated that large number of candidates passed the T-Test in the same centre, using the same vehicle. It is contended that the 1st applicant drove the vehicle smoothly from track 'A' to track 'B.' However, when reversing the vehicle, it hit the side marker pole. It is stated that from 'A' to 'B' Track, one needs only to drive straight, which does not require the turning of the steering. Regarding the applicants' contention that the vehicle used for the T-Test was found

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to be defective and changed for the Road Test, the KPSC contended that the vehicle was changed only due to a defect in the horn while taking the vehicle for Road Test. It was further contended that no interference is warranted in the process of the test which is conducted by an expert committee constituted by the KPSC, which includes a Motor Vehicle Inspector and a member of the KPSC as the Chairman and that whether any candidate became qualified in the practical test or not, is a matter left to the decision of the selection committee.

8. The Tribunal, by the order impugned, found that, since the grievance of the 1st applicant is that because of his excessive height he was unable to maneuver the vehicle, the opportunity for employment of the candidate, who was successful in all the remaining tests, cannot be permitted to be deprived of, by denying him an opportunity to undertake the test in a vehicle having facility for adjustment of the seat, particularly

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when there is no upper limit with respect to the requirement of height of the candidates. The Tribunal also noted that even though the rank list got exhausted, since there was an interim order in the O.A to the effect that the selection to the post would be subject to the result of the O.A, the exhaustion of the rank list cannot have any effect against the consideration of the 1st applicant in the selection process and for inclusion in the rank list and further proceedings. Accordingly, the Tribunal directed the KPSC to subject the 1st applicant to driving test afresh in a suitable vehicle and to consider him in the selection process and in case he gets qualified in it, he shall be included in the rank list in accordance with merit.

9. The order of the Tribunal is impugned by the KPSC in the Original Petition contending that the direction issued by the Tribunal will lead to a bad precedent of entertaining unmerited complaints causing delay in selection process. It is contended that candidates with

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same height as that of the 1st applicant had participated in the test and came out successful. The same vehicle was used for the T-Test by all the candidates in the district. Certificate of fitness was issued by the Motor Vehicle Inspector of the Regional Transport Office certifying that the vehicle is mechanically fit to conduct the driving test. When the 1st applicant took the vehicle reverse, it hit the side marker pole. Only after signing the T-Test record sheet and after he was adjudged as failed, he had raised the complaint. He failed in the T-Test since he is not proficient in operating the bus. It is further contended that a Forest Driver is supposed to drive vehicle on treacherous roads in the rough terrain of the forest and therefore, driving expertise is highly essential for the candidates. The Government have formulated special rules in consultation with the KPSC taking into consideration various factors and the KPSC in terms of Rule 3 of Part I of the Kerala Public Service Commission

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(Rules of Procedure) conduct various examinations including practical test for recruitment to a service or post. Since the 1st applicant was not even skilled to control the bus, he was not selected for the Road Test. It is further contended that the KPSC cannot furnish vehicle according to the convenience of each candidate in a driving test. It is contended that there is no specific finding by the Tribunal that there are procedural irregularities or flaws in the conduct of the test. It is further contended that the practical test was conducted on 16.02.2021, and conducting a re-test at this distance of time will not reflect a true and correct performance of the candidate as it would have been in 2021.

10. Heard Sri. P.C Sasidharan, the learned standing counsel for the KPSC and Sri.P. Nandakumar, the learned senior counsel for respondents.

11. In Annexure A1 notification, the qualification regarding physical fitness states that candidates should

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have a minimum height of 168 cm and no upper limit is specified. The height of the 1st applicant is 185cm (6.1 feet). The Tribunal has observed that because of his excessive height; the peculiar nature of his physique, the 1st applicant could not undertake the test. It was held that he was denied an opportunity to undertake the test in a vehicle having facility for adjustment of the seat.

12. Chapter VII of the Motor Vehicles Act, 1988 ('Act' for short) deals with construction, equipment and maintenance of motor vehicles. Chapter VII of the Kerala Motor Vehicles Rules, 1989 deals with construction, equipment and maintenance of motor vehicles. Part III of the said Chapter deals with Special Rules applicable to every Public Service Vehicle other than an Autorickshaw. Rule 273 of the Kerala Motor Vehicles Rules, 1989 deals with 'driver's seat'. Clause (a) of Sub-Rule (2) of Rule 273 provides that, on every vehicle, space shall be reserved for the driver's seat in such a way as to allow him to have

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complete control of the vehicle and in particular the part of the seat against which the driver's back rests shall not be less than 28 cm from the nearest point on the steering wheel. This minimum ensures that the driver can have complete control of the vehicle. According to the KPSC, a standard KSRTC bus was used for the T-Test. A large number of candidates passed the T-Test at the same centre, using the same vehicle. This is not denied by the applicants. The physical stature of the 1st applicant, with a height of 185 cm, cannot typically be regarded as peculiar or excessive. No doubt, he is a tall man. It is stated by the KPSC that candidates with the same height as the 1st applicant participated in the selection and passed the test. The 1st applicant therefore cannot contend that because of his excessive height, he could not maneuver the vehicle. There is no denial of opportunity to undertake the test or denial of opportunity for employment. The conduct of T-Test is not vitiated by any procedural flaws, irregularities

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or mala fides. 13. The long and the short of the discussion is that the direction of the Tribunal to conduct driving test afresh for the 1st applicant in a suitable vehicle and to consider him in the selection process cannot be sustained. We set aside the impugned order of the Tribunal.

Accordingly, the Original Petition is allowed.

Sd/-

A. MUHAMED MUSTAQUE
JUDGE

Sd/-
MURALI PURUSHOTHAMAN
JUDGE

SB

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APPENDIX

PETITIONER ANNEXURES

Exhibit P1	A TRUE COPY OF THE APPLICATION IN O.A (EKM) NO.516/2021
Annexure A1	TRUE COPY OF NOTIFICATION DATED 05.07.2017 FOR CATEGORY NO. 120/2017 FOR THE POST OF FOREST DRIVER ISSUED BY THE 1ST RESPONDENT
Annexure A2	TRUE COPY OF SHORT LIST NO. 17/29/DOM DATED 31/10.2019 FOR MALAPPURAM DISTRICT
Annexure A3	TRUE COPY OF SHORT LIST NO. 10/2019/DOR DATED 03/05.2019 FOR THRISSUR DISTRICT
Annexure A4	TRUE COPY OF SHORT LIST NO. 01/2021/DOM DATED 06/01/2021 FOR MALAPPURAM DISTRICT
Annexure A5	TRUE COPY OF SHORT LIST NO. 01/2021/DOR DATED 11.01.2021 FOR THRISSUR DISTRICT
Annexure A6	TRUE COPY OF COPLAINT DATED 16.02.2021 SUBMITTED BY THE 1ST APPLICANT BEFORE THE 1ST RESPONDENT
Annexure A7	TRUE COPY OF COMPLAINT DATED 16.02.2021 SUBMITTED BY THE 2ND APPLICANT BEFORE THE 1ST RESPONDENT
Annexure A8	TRUE COPY OF COMPLAINT DATED 16.02.2021 SUBMITTED BY THE 4TH APPLICANT BEFORE THE 1ST RESPONDENT
Annexure A9	TRUE COPY OF COMPLAINT DATED 16.02.2021 SUBMITTED BY THE 5TH APPLICANT BEFORE THE 1ST RESPONDENT

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Annexure A10	**TRUE COPY OF COMPLAINT DATED 18.02.2021 SUBMITTED BY THE 3RD APPLICANT BEFORE THE 1ST RESPONDENT**
Annexure A11	**TRUE COPY OF RANKED LIST NO. 232/2021/DOM DATED 08.06.2021 FOR MALAPPURAM DISTRICT**
Annexure A12	**TRUE COPY OF RANKED LIST NO. 230/2021/DOR DATED 08.06.2021 FOR THRISSUR DISTRICT**
Exhibit P2	**THE TRUE COPY OF THE REPLY STATEMENT DATED 13/07/2021 IN O.A (EKM) NO.516/2021**
Exhibit P3	**THE TRUE COPY OF THE ORDER DATED 2/2/2024 IN O.A (EKM) NO. 516/2021**
Exhibit P4	**TRUE COPY OF THE MEMO DATED 11/08/2013 FILED BY THE COMMISSION BEFORE THE TRIBUNAL PRODUCING THE REPORT ON THE CONDUCT OF DRIVING TEST AND FITNESS CERTIFICATE**