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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 2411/2002 with OA 3013/2002, OA 3014/2002, OA 3015/2002
OA 3016/2002 and OA 3017/2002

Date of Decision 25.7.2003

1. Dr. Manoj Kumar & Ors ... Applicant
2. Dr. Manika Biswas & Ors
3. OA Dr. Dhriti Banerjee & Ors
4. Smt. Supriya Nandy and Ors
5. Dr. Soumyendra Nath Ghosh & Ors.
6. Dr, Ch. Sathyanarayana

Advocate for the Applicants

Sh. Bijan Ghosh in OA 2411/2002
Sh. P. C. Das in OA 3013, OA 3014, OA 3015 and OA 3016/2002 & Sh. S. M. Garg in OA 3017/2002

VERSUS

UOI & Ors ... Respondents

Sh. Jayant Nath for UPSC ... Advocates for the Respondents
None for the other respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? ~~NO~~

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2411/2002 ✓

with

OA 3013/2002, OA 3014/2002,
OA 3015/2002, OA 3016/2002
and 3017/2002.

New Delhi this the 25th day of July, 2003

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

1. OA 2411/2002

1. Dr. Manoj Kumar,
S/O Sh.Surendra Singh,
R/O D-34, National Zoological
Park, Mathura Road, New Delhi-3

2. Mr.Devi Prasad Uniyal,
S/O Shri M.P.Uniyal,
R/O 672/II, Indira Nagar Colony,
P.O.- New Forest,
Dehradun-248006
Uttranchal.

3. Dr.Romesh Kumar Sharma,
S/O Sh.Ram Prasad Sharma,
R/O 54, A/6, Pratap Bhawan,
Arya Nagar, Jwalapur, Haridwar,
Uttaranchal-249407.

..Applicants

(By Advocate Shri Bijan Ghosh)

VERSUS

1. Union of India through its
Secretary,
Ministry of Environment and Forests,
CGO Complex, Lodi Road, New Delhi-3

2. Union Public Service Commission,
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110011

..Respondents

(By Advocate Shri Jayant Nath for UPSC, none for other respondents)

2.OA 3013/2002

1. Dr.Manika Biswas
C/O Prof.K.M.Biswas,
4/3, Gomes Lane, 1st Floor,
Kolkata-700 014.

2. Dr.Sobhana Palit
W/O Sri Prasanta Paul, 139,
Jessore Road, Kolkata-700089.

3. Dr.Sangita Mitra
D/O Deb Kumar Mitra,
32 A, Hara Mohan Ghosh Lane,
Calcutta- 700 085.

4. Dr. Paramita Chakraborty,
D/O Sri Prabir Kumar Chakraborty
B-13/7, C.A.Kalyani, P.O.Nadia,
P.O.Kalyani, Distt-Nadia,
W.B. Pin - 741 235.

5. Dr.Asit Bhattacharyya,
S/O Sr.Sishir Kumar Chakraborty,
Sitala Nibas, Basupara,
P.O. Sonarpur, Dist-24- Paraganas
(South) West Bengal, Pin 743 369.

6. Dr.Sandeep Kumar Tiwari,
S/O Dr.R.N.Tiwari, Sukhomoy,
Flat 2A, 15, Baburam Ghosh Road,
Kolkata- 700 040.

.. Applicants

(By Advocate Shri P.C.Das)

VERSUS

1. Union of India, service through
the Secretary, Govt.of India,
Ministry of Environment & Forest,
New Delhi having office at
Paryabhawan Bhawan, CGO Complex,
Lodhi Road, New Delhi-110003

2. Union Public Service Commissioner,
through the Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi-11.

3. Secretary, Union Public Service
Commission, Dholpur House, New Delhi.

..Respondents

(By Advocate Shri Jayant Nath for UPSC, none for other respondents)

3. OA 3014/2002

1. Dr. Dhriti Banerjee,
D/O Sri Kalidas Banerjee
residing at P-160,C.I.T.Road,
Calcutta-10 and working as
Senior Zoologicaln Assistant in
the office of Zoological Survey
of India, M-Block, New Alipur,
Calcutta-53

2. Sri Gurupada Mondal (SC),
S/O Sri Govinda Mondal
residing at 229, Balia Main Road,
Garia, Calcutta-84 working as
Senior Zoological Assistant in the
office of M-Block, New Alipore,
Calutta-53.

3. Sri Debabrata Sen,
S/O Sri Ranjan Kumar Sen
residing at Ramkrishnapur
Barasat, 24 Pgs (N) Pin 743201
working as Zoological Assistant
in the Office of Zoological Survey
of India, M-Block, New Alipur,
Calcutta-53.

.. Applicants

(By Advocate Shri P.C.Das)

VERSUS

1. Union of India through the
Secretary, Ministry of Environment
and Forest, Paryabhawan Bhawan,
CGO Complex, Lodi Road, New Delhi.

2. Chairman,
Union Public Service Commission,
Dholpur House, New Delhi.

3. The Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.

4. The Director,
Zoological Survey of India,
M-Block, New Alipur, Calcutta-53

..Respondents

(By Advocate Shri Jayant Nath for UPSC, none for other respondents)

4. OA 3015/2002

1. Mrs. Supriya Nandy,
W/O Sri Heerak Nandy,
residing at 18/1/11, Golf
Club Road, Calcutta-700033
and working as Senior Zoological
Assistant in the office of
Zoological Survey of India, M-Block,
New Alipur, Calcutta-53

2. Mr.Balmohan Baraik (ST),
S/O late Ganesh Baraik
working as Junior
Zoological Assistant in the Office
of Zoological Survey of India, M-Block,
New Alipur, Calcutta-53

3. Chandra Kanta Mandal (SC)
S/O late Lakshmi Kanta Mondal,
Vivekananda Nagar, Madhyamgram,
P.O.East Udayrajpur, P.S.Barasat,
North 24-Parganas- 743 275 working as
Zoological Survey of India, M-Block,
New Alipore, Calcutta-53

..Applicants

(By Advocate Shri P.C.Das)

VERSUS

1. Union of India through the
Secretary, Ministry of Environment
and Forest, Paryabhawan Bhawan,
CGO Complex, Lodhi Road, New Delhi.

2. Chairman, Union Public Service
Commission, Dholpur House, New Delhi.

3. The Secretary,
Union Public Service Commission,
Dholpur House, New Delhi-1

4. The Director,
Zoological Survey of India, M-Block,
New Alipur, Calcutta-53

..Respondents

(By Advocate Shri Jayant Nath for UPSC, none for other respondents)

5. OA 3016/2002

1. Dr.Soumyendra Nath Ghosh
S/O Mr.Khagendra Nath Ghosh
working as Laboratory Assistant.
Jr.Zoological Assistant in the
office of Zoological Survey of
India, M-Block, New Alipore,
Kolcutta-700 053
residing at No.11,Jangu Dr.Lane (Kadai)
PO Berhampore, Murshidabad, PIN 742 101.

2. Mr. Viswa Venkot Gantait,
S/o Mr.Sudhangshu Gantait working as
Laboratory Assistant. Jr.Zoological Asstt.
in the office of the Zoological Survey of
India, M- Block, New Alipore, Kolkata-53
residing at Sabang, Medinipur, W.B.

3. Mr.Subhojit Chakraborty
S/O Mr.Amal Chakraborty working as
Laboratory Asstt.Jr.Zoological Assistant
office of the Zoological Survey of India,
M-Block, New Alipore, Kolkata-53 residing at
Lalpur, Chakdaha, Nadia, W.B.

..Applicants

(By Advocate Shri P.C.Das)

VERSUS

1. Union of India, through the Secretary, Ministry of Environment and Forest, Paryabhawan Bhawan, CGO Complex, Lodi Road, New Delhi-110003

2. Chairman, Union Public Service Commission, Dholpur House, New Delhi.

3. The Secretary, Union Public Service Comission, Dholpur House, New Delhi.

4. The Director, Zoological Survey of India, M-Block, New Alipur, Kolkata- 700 053

..Respondents

(By Advocate Shri Jayant Nath for UPSC, none for other respondents)

6. OA 3017/2002

Dr. Ch.Sathyanarayana
Senior Zoological Assistant,
Marine Biological Station,
Zoological Survey of India,
Chennai- 600 028

..Applicant

(By Advocate Shri S.M.Garg)

VERSUS

Union Public Service Commission,
rep. by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110011.

..Respondents

(By Advocate Shri Jayant Nath for UPSC, none for other respondents)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

We have heard Shri Bijan Ghosh, learned counsel for the applicants in OA 2411/2002, Shri P.C. Dass, learned counsel for the applicants in O.A 3013/2002, O.A.3014/2002, O.A.3015/2002 and O.A.3016/2002 and Shri

S.M. Garg, learned counsel for the applicants in O.A.3017/2002. We have also heard Shri Jayant Nath, learned counsel for the respondents/UPSC (hereinafter referred to as 'the Commission'). None has appeared for the other respondents.

2. The main grievance of the applicants in the aforesaid O.As is that they have not been called for interview for the posts of Scientist 'B' in the Zoological Survey of India which had been advertised by the respondents in the Employment News dated 22-28.7.2002 when the interviews were held between 19.8.2002 and 27.8.2002. In some of the O.As, in pursuance of Tribunal's interim orders, the applicants have been interviewed but the results have been kept in a sealed cover till the outcome of the applications.

3. By Tribunal's order dated 30.4.2003, the respondents were directed to file an additional affidavit to bring on record the specific answer to the query raised by Shri P.C. Das, learned counsel as to how Mrs. K. Rajmohana had been called for interview by the Commission whereas Dr. Dhriti Banerjee, applicant no. 1 in OA 3014/2002 had not been called for interview; the criteria adopted by the Commission out of the four mentioned in Para 3 of the advertisement issued in July, 2002 and whether any other criteria has been adopted in these cases and if so, the details thereof; and whether the same criteria has been adopted uniformly in the cases of all the candidates called for interview. The

Commission has filed an additional affidavit in pursuance of this order, to which Shri P.C. Dass, learned counsel has also filed an additional reply affidavit.

4. Shri P.C. Das, learned counsel for the applicants in some of the aforesaid O.As has prayed that MA 69/2003 and MA 70/2003 filed in O.A.3013/2002 and O.A.3014/2002, respectively may be allowed. In these cases, in pursuance of Tribunal's interim orders, the applicants have been interviewed by the Selection Committee for appointment to the posts of Scientist 'B' and their results have not been published. He has prayed that the respondents may be directed to publish the results of the applicants who had so appeared in the interview and to produce the results before the Tribunal. He has further submitted that in case the applicants are declared successful by the Selection Committee, then further action should be taken to appoint them to the posts of Scientist 'B' on the basis of the interview results.

5. The brief relevant facts of the case are that the Commission had advertised 48 posts of Scientist 'B' in Zoological Survey of India, (7 posts reserved for SC, 3 posts reserved for ST, 12 posts reserved for OBC and 26 posts unreserved) on 22.7.2002 for filling up the same by direct recruitment, for which they had received a requisition from Respondent No.1, that is, the Ministry of Environment and Forest. The closing date for receipt of applications was 10.8.2000 (17.8.2000 for applicants posting their applications from specified remote areas/abroad. In response to the Commission's

advertisement, they have stated that a total of 4266 applications were received out of which 2408 were from general candidates and 675 from SC candidates, respectively. In the advertisement, the essential qualifications prescribed were as follows:

> "Master's Degree in Zoology/Marine Biology/Fisheries, Life Sciences, Environmental Biology, Limnology, Wildlife Sciences of a recognised University or equivalent".

In the advertisement, the duties of the posts were also indicated as follows:

> "Care, Preservation, maintenance, identification, cataloguing of such collection of the Zoological Survey of India & its Regional Stations of which the candidate will be in charge. Care and maintenance of Public galleries of the group of animals of which the candidate will be in charge. Conducting and guiding field surveys, Conducting and guiding research work in Taxonomy, Morphology and Systematics etc. of such group of animals, as are placed in charge of the candidates. Helping the Director in administrative matters to look after the administrative matters of the Regional Stations".

6. The applicants in the above O.As have contended that they are all working as Senior Zoological Assistants with the Department and in terms of the advertisement referred to above, they all fulfil the eligibility criteria prescribed for being considered for direct recruitment to the posts of Scientist 'B'. Shri P.C. Das, learned counsel has submitted that the applicants have no idea as to what criteria has been adopted by the Commission on the grounds on which the applicants were not called for interview for the above posts. He has submitted that it was only in pursuance of the interim orders passed by the Tribunal that some of the applicants have been interviewed but their results

have not been published. He has submitted that 10 of the applicants have been interviewed, leaving a balance of six of them who have not been interviewed. Learned counsel has submitted that all the applicants not only have the essential qualifications but also the desirable qualifications as advertised, that is experience in research and more so, all of them are working in the Department though admittedly in lower posts. He has, therefore, submitted that ignoring the applicants from being called for interview is arbitrary and unreasonable and is not in accordance with the published advertisement wherein the essential qualification prescribed is only Master's Degree in various subjects as quoted in Para 5 above. He has vehemently submitted that it was only after the Tribunal's order dated 30.4.2003 that the Commission has disclosed the criteria that candidates possessing essential qualification with Ph.D Degree and at least one year's experience in desirable qualification acquired after award of Ph.D as on the normal closing date i.e. 10.8.2000, were called for interview. This criteria, according to Shri P.C. Das, learned counsel is an arbitrary decision of the Commission because they could not have pitched the qualification higher than the essential qualification, which was M.Sc. i.e. Ph.D plus one year experience after Ph.D before the cut off date of 10.8.2000. He has contended that this criteria was not at all mentioned either in the advertisement or in the reply filed by the Commission and has only been revealed later on when the applicants specifically made it an issue i.e. the fact that the Commission had called one Dr. (Mrs.) K. Rajmohana for interview whereas Dr. Dhriti Banerjee, applicant No.1 in OA 3014/2002 who had

the same qualifications and experience was not called for interview. Learned counsel for the applicants has also very vehemently submitted that even if the Commission had power to short list the candidates when a large number of applications have been received by them, they should adopt a reasonable and fair criteria. He has submitted that previously the Commission had held a screening test, as provided in Paragraph 3 (d) of the advertisement which practice had not been followed in the present case. In fact, according to him, the Commission has not followed any of the criteria for calling candidates for interview by restricting the number of candidates to a reasonable limit, which has been laid down in Paragraph 3 (a) to (d) of the advertisement. Learned counsel has submitted that by raising the essential qualification to be possessed by the candidates to Ph.D with one year's experience instead of essential qualification of Master's Degree in the subjects mentioned in the Rules, the Commission has not followed the Rules and exceeded its powers of short-listing. He has very vehemently contended that the relevant Recruitment Rules have not been followed as the experience acquired by the applicants in service of the Department in particular subjects has not at all been taken into account as a criteria and merely Ph.D qualification with one year's experience has been adopted which criteria has also been revealed only by the Commission in the additional reply affidavit filed on 20.5.2003. He has, therefore, contended that the Commission cannot adopt a criteria to short list the candidates which is contrary to the Recruitment Rules which only prescribes essential qualification of M.Sc. During the hearing Shri S.M. Garg, learned counsel for

the applicants in O.A. 3017/2000 has submitted that in fact for Scientist 'D' post which is higher than Scientist 'B, Ph.D Degree has been prescribed as an essential qualification under the Rules. Shri P.C. Das, learned counsel has contended that the experience of the applicants acquired after getting the essential qualification of Master's Degree should have been considered by the Commission for being called for interview which has not been done. He has, therefore, submitted that the applicants who fulfil the criteria laid down in the Rules should have been considered for being called for interview for which he relies upon the judgement of the Hon'ble Supreme Court in **Excise Superintendent Malkapatnam Vs. P.S. Rao & Ors.** (1997 (1) SC SLJ 3). Learned counsel for the applicants has also relied upon several other judgements in his arguments, namely, **Madhya Pradesh Public Service Commission Vs. N.K.Potdar and Anr.** (1994 (6) SCC 293); **Bibhudatta Mohanty Vs. Union of India & Ors.** (2002 (4) SBR 394, **Satish Rawal Vs. Union of India** (2002 (9) SBR 237), **B. Prasad Vs. Union of India & Ors.** (1997 (2) SCC 292); **Vinjay Rampal Vs. State of Jammu** (Supreme Court Service Rules 594); **Dr. M.C. Gupta Vs. Dr. A.K. Gupta** (SC SCR Vol. II 696). **Baliram Prasad Vs. Union of India & Ors.** (1997 (2) SCC 292), **Satish Rawat Vs. Union of India** (2002 (9) SBR 237), **Dr. Vinay Rampal Vs. The State of Jammu & Kashmir and Ors.** (Supreme Court Service Rulings (Vol.I) 564), **Anup Singh and Anr. Vs. Haryanna State Agricultural Marketing Board and Ors.** (1999 SCC (L&S) 723), **Praveen Singh Vs. State of Punjab and Ors.** (2000 (8) SCC 633), **State of Rajasthan Vs. Dr. Ashok Kumar Gupta and Ors.** (Supreme Court Service

Rulings (Vol.1) 571), **Dr. M.C. Gupta etc. Vs. Dr. A.K. Gupta and Ors.** (Supreme Court Service Rulings (Vol.2) 696).

7. We have seen the reply filed by the respondents and heard Shri Jayant Nath, learned counsel for the respondents/Commission. Learned counsel has submitted that where the number of applicants having the essential/desirable qualifications are large, it is the settled practice of the Commission, to devise the short listing criterion and to call only those applicants who are more meritorious. He has submitted that the applications of the applicants were examined along with other applications of general candidates and since they did not meet the short-listing criteria approved by the Commission, which criteria they have adopted uniformly in all cases, their applications were rejected under the Better Candidate Available (BCA) category. However, as per the Tribunal's orders (Calcutta Bench) dated 4.9.2002, some of the applicants in the above O.As have been interviewed provisionally by the Commission and their results kept in a sealed cover and three posts (one for SC and two unreserved) have been kept unfilled till the final outcome of the O.A. In the additional affidavit filed by the Commission in pursuance of Tribunal's orders, they have submitted that candidates possessing essential qualification and Ph.D Degree and at least one year's experience in desirable qualification acquired after award of Ph.D as on the normal closing date i.e. 10.8.2000 were called for interview. Adopting this criteria, they have explained that Dr.Rajmohana was awarded Ph.D on 10.5.99 and applicant No.1, Dr. Dhriti

Banerjee in OA 3014/2002 got her Ph.D on 17.8.1999 which shows that Dr. Rajmohanna had more than one year's experience in desirable qualification after award of Ph.D Degree on the cut off date. That was not the position in the case of applicant, Dr. Dhriti Banerjee, as she fell short of one year experience as on 10.8.2000 and hence, she was not considered for interview under the short-listing criteria fixed. Learned counsel has relied on Clause-3 below the heading "Instructions and additional information to candidates for recruitment by selection" which was contained in the advertisement issued by them which reads as follows:

> "Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the Candidates, the Commission may restrict the number of candidates, to a reasonable limit by any or more of the following methods:
>
> (a) On the basis of either qualifications and experience higher than the minimum prescribed in the advertisement, or
>
> (b) On the basis of experience in the relevant field, or
>
> (c) By counting experience before or after the acquisition of essential qualifications, or
>
> (d) By holding a screening test.
>
> The candidate should, therefore, mention all the qualifications and experience in the relevant field over and above the minimum qualifications and should attach attested/self certified copies of the certificates in support thereof".
>
> (Emphasis added)

The Commission has clarified in the additional affidavit that they have considered the condition at (a) above while short-listing the candidates for calling them for interview and no other criterion has been adopted in the present cases. They have also submitted that the

short-listing criterion adopted was uniformly applied in the cases of all the candidates who have been called for interview. The contention of Shri P.C. Das , learned counsel that previously the respondents had adopted criteria (d) above, i.e. holding a screening test which has not been followed in the present cases and, therefore, the whole short-listing procedure is wrong has been controverted by the learned counsel for the respondents. He has submitted that, as mentioned in the advertisement itself, the Commission has a right to restrict the number of candidates to a reasonable limit by any or more of the methods mentioned in clauses (a) to (f). In the present cases criterion (a) has been adopted, that is, on the basis of higher qualifications than the minimum prescribed in the advertisement which is Master's Degree in Zoology/ Marine Biology, etc. with desirable qualification in Research/Teaching in the relevant field and knowledge of the languages mentioned therein. He has also stressed on the fact that the same short-listing criteria has been adopted uniformly in cases of all candidates who have been called for interview. He has also relied on the judgement of the Hon'ble Supreme Court in **N.K.Potdar's case** (supra) which has also been relied upon by the applicants. In the circumstances, he has prayed that the O.As may be dismissed.

8. The applicants have also filed rejoinder which we have seen and also heard Shri P.C. Das, learned counsel in reply.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

10. The main issue raised in the above O.As is whether the process of short-listing adopted by the Commission has altered or substituted the criteria of the eligibility of the candidates to be interviewed based on the fact that they possessed the minimum qualifications as notified in the advertisement and whether the Commission has adopted an arbitrary and unreasonable criteria for short-listing. The contention of Shri P.C. Das, learned counsel based on the judgement of the Hon'ble Supreme Court in **Malkapatnam's** case (supra) that all candidates must be called for interview cannot assist him in the present cases because the facts are distinguishable. As mentioned above, in the present cases, the issue raised is one of short-listing the candidates for being called for interview where admittedly thousands of candidates had applied for direct recruitment against 48 advertised posts. The other issue is whether the Commission could have adopted criteria (a) below clause (3) of the advertisement, ignoring the other criteria, for example, holding a screening test as urged by the learned counsel for the applicants. In this context, the judgement of the Hon'ble Supreme Court in **S.K. Potdar's** case (supra) is relevant wherein it has been held:

> "The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria on the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be

> mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for screening the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate".
>
> (Emphasis added)

11. In the present O.As, screening test is one of the criteria which could have been adopted by the Commission to restrict the number of candidates to a reasonable limit. However, that is not the only criteria and a number of criteria have been given below clause 3 of the advertisement. In this view of the matter, the contentions of Shri P.C. Dass, learned counsel that the short-listing could have been done only by adding a screening test and not otherwise cannot be accepted and is accordingly rejected.

12. Under criteria (a) in clause (3) of the advertisement, it has been stated that the number of candidates could be restricted on the basis of other qualifications and experience higher than the minimum prescribed in the advertisement or other criteria

mentioned in clauses (b) to (e). In these cases, the Commission has stated that they have adopted the criteria of calling the candidates possessing essential with desirable qualifications and Ph.D Degree with at least one year experience after acquiring the Ph.D Degree as on the normal closing date, i.e. 10.8.2000. This qualification is no doubt higher than the minimum qualification for the post of Scientist 'B', in which Master's Degree in the various subjects has been prescribed with desirable experience and research training in the relevant field. However, it cannot be stated that the criterion adopted by the Commission which is a higher qualification than the minimum qualification prescribed in the advertisement is either arbitrary or unreasonable as the same has been not only published but adopted uniformly for all the candidates who have been called for interview. It is not the case of the applicants that any of them possessed Ph.D Degree with one year experience which was the short-listing criteria adopted by the Commission but their main contention is that the criteria to be adopted by the Commission should only be the minimum qualifications with experience in the field. In the circumstances of the cases, we are unable to agree with the contentions of the learned counsel for the applicants that the short listing criteria adopted by the Commission is on extraneous considerations but the same has been adopted in order to fix the limit of the applicants who should be called for interview. Such a procedure has been upheld by the Hon'ble Supreme Court in **Potdar's** case (supra) where it has been held that....decision regarding short-listing the number of candidates who have applied for the post must be based

not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus.." . In the present case, the short listing criteria adopted by the Commission cannot be held to be on extraneous consideration or altering the eligibility criteria given in the statutory rules or prospectus. It is not the case of the applicants that those candidates with Ph.D Degrees with one year experience, which was the criteria adopted for short-listing do not possess the eligibility criteria prescribed in the statutory rules or prospectus and, therefore, this argument fails and is rejected. We have also seen the other judgements relied upon by the learned counsel for the applicants but they do not assist the applicants in the facts of these cases. It is settled position that the judgements have to be read in the context of the relevant facts. In this view of the matter, we find that the process of short-listing adopted by the Commission cannot be faulted. As held by the Hon'ble Supreme Court in **Potdar's** case (supra) where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up as in the present cases, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis. The criteria adopted by the Commission in the present cases uniformly in the cases of all candidates following clause

3 (a) of the advertisement, cannot be held to be either arbitrary or unreasonable justifying any interference in the matter. Another contention was raised by learned counsel for the applicants during the hearing that not only the criteria adopted by the Commission was wrong but the Commission had not even disclosed this criteria until they were ordered to do so by the Tribunal which also shows arbitrariness and unreasonableness on their part. We see no merit in this submission because the respondents have all along submitted that they have acted in a legal manner and have in the additional affidavit spelt out more clearly the criteria adopted by them.

13. In the facts and circumstances of the cases, the contention of Shri P.C. Das, learned counsel that as some of the applicants in the aforesaid cases had already appeared in the interviews on provisional basis, in terms of Tribunal's interim orders, the results may be ordered to be published and in case they were declared successful by the Selection Committee then further action should be taken to appoint them, cannot be accepted. This is so because unless and until the applicants were eligible to be interviewed, adopting the same criteria in all cases, it would result in an unreasonable classification which is not justified. It is also relevant to note that admittedly the result of those applicants who were interviewed on provisional basis was subject to the outcome of the O.A. and the issues dealt with above. Therefore, it cannot be held that the short-listing

process adopted by the Commission in which those candidates who do not fulfil the criteria had been left out, have a claim for appointment to the posts of Scientist `B' only on the basis of interview results. Accordingly, the prayers of the applicants in MA 69/2003 and MA 70/2003 are rejected.

14. In view of the above discussion, we find no force in the submissions made by Shri P.C. Das, and Shri S.M. Garg, learned counsel for the applicants that as the applicants fulfil the minimum qualifications as prescribed in the advertisement for direct recruitment to the posts of Scientist `B' and they are working in the Department in lower posts and doing their duties as prescribed for the posts, they have a better claim than outsiders. It is relevant to note that the 48 posts which have been advertised are for direct recruitment for which the selection was by interview. Their contention that they may also get over-aged for direct recruitment unless they are called for interview, cannot also be accepted unless they satisfy the criteria published in the advertisement, which includes satisfaction of the short listing criteria adopted by the Commission.

Admittedly there were a large number of candidates and it was necessary to limit the candidates who have been called for interview.

15. Therefore, in the facts and circumstances of the present O.As. and following the settled law on the subject, the action of the Commission cannot be held to be arbitrary or illegal so as to justify any interference in the matter in exercise of the powers of judicial review. In the result, for the reasons given above, the aforesaid O.As fail and are dismissed. No order as to costs.

16. Let a copy of this order be placed in OA 3013/2002, OA 3014/2002, OA 3015/2002, OA 3016/2002 and 3017/2002.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

SRD