

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.2733/2002

Date of decision: 18.7.2003

Dr. Yukulita Vijayawargiva ... Applicant

(By Advocates: Sh. R.K.Gupta)

versus

Union of India & Others

... Respondents

(By Advocates: Sh. A.K.Bhardwaj, Sh. Aman Lekhi with  
Sh. R.K. Chaurasia and Sh. D.K. Singh)

CORAM:

Hon'ble Sh. V.K. Majotra, Member(A)

Hon'ble Sh. Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes ✓

*S. Raju*  
(Shanker Raju)  
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

OA No.2733/2002

New Delhi this the 18<sup>th</sup> day of July. 2003.

HON'BLE MR. V.K. MAJOTRA. MEMBER (ADMN)  
HON'BLE MR. SHANKER RAJU. MEMBER (JUDICIAL)

Dr. Mukulita Vijavawardiva.  
Deputy Law Officer.  
Law Commission of India.  
New Delhi.

-Applicant

(By Advocate Shri R.K. Gupta)

-Versus-

1. Union of India. through  
Member Secretary.  
Law Commission of India.  
Ministry of Law & Justice.  
Shastri Bhawan. 7th Floor.  
A-Wing. New Delhi-1.
  2. Union Public Service Commission.  
through its Secretary Shahjahan Road.  
Dholpur House. New Delhi-11.
  3. Union of India. Ministry of Law.  
Justice & Company Affairs.  
Department of Legal Affairs.  
through its Secretary.  
Shastri Bhawan. 4th Floor.  
A-Wing. New Delhi-1.
  4. Smt. Pawan Sharma.  
Additional Law Officer.  
Law Commission of India.  
Shastri Bhawan. 7th Floor.  
A-Wing. New Delhi-1.
- Respondents

(By Advocates Shri A.K. Bhardwaj. Sh. Aman Lekhi with  
Sh. R.K. Chaurasia and Sh. D.K. Singh)

O R D E R

By Mr. Shanker Raju. Member (J):

Applicant has sought for the following reliefs:

- (i) Set aside the selection and appointment dated 20.12.2000 of the respondent No.4 to the post of Additional Law Officer. Law Commission of India.
- (ii) Direct UPSC to declare applicant as successful in the selection of Additional Law Officer. Law Commission of India and thereafter.

12

- (iii) Direct Respondent No.1 to issue appointment order to the applicant to the post of Additional Law Officer. Law Commission of India.
- (iv) Set aside order dated 9.10.2001 and 20.9.2002 passed by Respondent No.1/Law Commission of India.
- (v) to direct the Respondent No.1 and 2 to produce all the relevant records regarding the selection and appointment of the Respondent No.4 to the post of Additional Law Officer along with comments of Respondent No.4 dated 3.8.2001 made against the representation dated 12.3.2001 and also her comments against representation dated 5.12.2001 of the applicant and the comments/observation made by U.P.S.C. against Applicant's representation dated 12.3.2001 and 5.12.2001."

2. Applicant. who has been working as

Deputy Law Officer (DLO) in the Law Commission of India had also practised as an Advocate from 18.10.1979 to 1.12.1985 and was also an Assistant Professor in the Department of Law at the Government Arts and Commerce College. Indore for the period from 1.9.86 to 17.2.99.

3. Applicant joined as DLO in Law Commission on 18.2.99.

4. In pursuance of advertisement No.16. item No.5. 1999 issued by UPSC in the year 1999 published on 28.8.99 applicant applied for the post of Additional Law Officer (ALO).

5. As per the advertisement the following essential qualifications were prescribed:

"4.7 That as per the said Advertisement. the following were the essential qualifications:-

13

Master's degree in Law of a recognised University or equivalent and possessing ten years teaching and/or research experience in Law

OR

Bachelor's Degree in law or a recognised University or equivalent and possessing 12 years teaching and/or research experience in Law

OR

Should have been a Member of State Judicial Service for 12 years

OR

should be a qualified legal practitioner i.e. Advocate (within the meaning of Advocates Act, 1961) who has practised as such for 12 years.

Note:I: In computing the period during which a person has held an office in the State Judicial Service, there shall be included any period during which he has held any other legal posts or any period during which he has been a qualified legal practitioner.

Note:II: In computing the period during which a person has been a legal practitioner there shall be included any period during which he has held any office in the State Judicial Service or had held a legal post in the Department of State or Central Govt./Union Territory Government Research Institutes or other Research Institute of repute. Universities etc.

Note:III: Preference shall be given to a person having experience in legal research.

6. In pursuance of advertisement for one unreserved post 145 effective applications were received for consideration. Since a large number of candidates possessed essential qualifications. UPSC decided to adopt a rational short listing criteria. as follows:

Category -I Master's Degree in Law plus having at least 18 years' teaching experience

14

Category-II Master's Degree in Law plus having at least 14 years' experience out of which must be 3 years' research experience in Law.

Category-III Bachelor's Degree in Law plus having at least 16 years' experience out of which must be 3 years' research experience in Law.

Category-IV Bachelor's Degree in Law plus having at least 22 years experience as a member of State Judicial Service or holding a legal post in the Department of State or Central Govt./Union Territory Government/ Research Institutes or teaching experience or as legal practitioner.

7. After short listing the eligible candidates Commission <sup>had</sup> sent by its letter dated 25.9.2000 names of 16 candidates. including 10 government servant to Law Commission alongwith 129 candidates. Name of applicant was conspicuously absent from the short list. However. suggestions from Law Commission/Ministries were open.

8. Whereas respondent No.4 who was placed in category-II of the short listing criteria was called for interview having possessed with an experience of 14 years and nine months. as reflected in the application form. This includes experience of one year and three months as Legal Adviser in the private firm as also experience as a Lecturer in an honorary capacity of five months in the Law Centre in Delhi University.

9. In pursuance of receipt of letter dated 25.9.2000 of Commission the Law Commission sent a list of 10 suitable candidates recommending them for being called for interview. Accordingly. interview letters had been issued to all the short listed candidates. No letter was

issued to applicant. Applicant represented to the Law Commission for an opportunity of interview. As nothing has been heard on her representation another representation sent remained unresponded.

10. Applicant being aggrieved filed OA-2368/2000 praying consideration for the post of ALO and to withhold the result till her candidature is considered.

11. By an order dated 14.11.2000 taking note of the fact that applicant is an aspirant for ALO and those juniors and less qualified have been called for interview notices have been issued and the selections and consequent appointments have been pending.

12. Applicant received an interview call on 14.11.2000 to appear on 15.11.2000 for selection to the post of ALO.

13. Applicant reported to UPSC and was asked by the concerned officer to submit attestation form.

14. In absence of attestation form not attached with the first letter delivered at her residence applicant showed her inability. However, an undertaking was given to submission of duly filled up attestation form after the interview. Later on applicant appeared for interview and thereafter submitted duly filled attestation form.

(16)

15. In December, 2000 UPSC has sent recommendations to the Law Commission selecting respondent No.4 to the post of ALO and by a letter dated 18.12.2000 on appointment R-4 joined the post of ALO. A notification in this regard was published on 20.12.2000.

16. Applicant preferred a representation on 12.3.2001 alleging furnishing of false information and suppression of facts in the application as well as attestation form by R-4. As despite lapse of sufficient time representation was not disposed of, an application was moved in OA for its amendment.

17. By an order dated 11.7.2000 the OA was allowed to be withdrawn with liberty to challenge selection of R-4 and in the interregnum directions have been issued to R-1 to consider and dispose of the representation of applicant by a detailed and speaking order.

18. By an order dated 9.10.2001 representation of applicant was rejected.

19. Applicant being aggrieved preferred another representation on 5.12.2001, which was considered and rejected on 20.9.2002, giving rise to the present OA.

20. Learned counsel for applicant Sh. R.K. Gupta filed his written submissions. According to him, R-4 was not eligible for being considered as a candidate for selection to the post of ALO. As per short listing

17

criteria adopted by USPC R-4 has been placed in category-II which requires Master's Degree in Law with 14 years' and nine months in her application form, out of which one year and three months was as a Legal Adviser in a private firm called National Publicity Service owned by her father and five months' experience as Lecturer on an honorary basis in Law Centre-II, Delhi University, which cannot be counted towards experience. Accordingly an ineligible candidate has been selected and appointed. Learned counsel for applicant placed reliance on the following decisions to contend that an unqualified person appointed by mistake, the appointment is a nullity. It is also stated that whenever there is a requirement of experience or government service the service rendered in a private concern shall not be inclusive. Sh. Gupta further contends that a quasi-judicial authority empowered to make selection and appointment also is free to adopt the procedural aspect but it is not allowed to act contrary to fair play, good conscience and equity. It is also stated that in a selection by Public Service Commission judicial review is permissible if decision of the Government on examination is found to be arbitrary, mala fide or capricious.

- i) District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Anr. v. M. Tripura Sundari Devi. (1990) 3 SCC 655.
- ii) Thote Bhaskara Rao v. A.P. Public Service Commission and Others. 1987 (supp) SCC 587.
- iii) K.G. Ashok & Ors. v. Kerala Public Service Commission & Ors.. 2001 (3) SCALE 747.
- iv) Jammu & Kashmir Public Service Commission v. Farhat Rasool and Others. 1995 Supp (4) SCC 621.



18

- v) Praveen Singh v. State of Punjab & Others. (2000) 8 SCC 633.
- vi) Dr. H. Mukherjee v. Union of India & Others. 1994 Supp (1) SCC 250.
- vii) Waman Rao & Others v. Union of India & Others. (1981) 2 SCC 362.
- viii) Dr. J.P. Kulshrestha and Others v. Chancellor. Allahabad University and Others. (1980) 3 SCC 418.
- ix) K. Shekhar v. V. Indiramma and Others. (2002) 3 SCC 586.
- x) Union of India v. A. Nandamalleswar Rao. AIR 1998 SC 111.

21. Learned counsel for applicant contends that ineligibility of R-4 and the fraud played by her while giving details of her experience in her application as well as attestation form wherein the experience taken as Legal Adviser in Private Firm or Research Institution. i.e. National Publicity Service from 1.11.1990 to 8.3.1992 cannot be reckoned for the purpose of counting experience as per category-II short listing criteria. As the documents submitted. i.e. certificate from National Publicity Service. a private firm is apparently forged on the basis that it carries E. Mail address though issued on 8.3.92 in 1992 because E. Mail in Delhi had only taken place in 1995. By referring to the word 'Mumbai' in the certificate dated 8.3.1992 on the basis of notification of gazette of State of Maharashtra dated 28.7.1995 where the 'Mumbai' has been replaced in place of Bombay it is contended that this clearly shows that the certificate issued by antedating the date of the certificate. On the strength of the above it is stated that R-4 was selected using fraud. as such her appointment is unsustainable in law.

19

22. Another contention put-forth is that applicant in her attestation form given false information in so far as her experience from 1992 to 5.12.1999 working as DLO in Commission whereas she had worked only as ALO and also falsely mentioned the salary as Rs.23,000/- per month.

23. It is further stated that although applicant had worked as Research Assistant in Indian Law Institute from 1.8.1985 to 9.1.1986 she had falsely stated to have worked as Assistant Research Professor. In furtherance it is stated that applicant had also mentioned falsely her salary as Lecturer in Delhi University whereas she worked on an honorary basis. Placing reliance on the decision of Apex Court in Kendriya Vidyalaya Sangathan & Ors. v. Ram Ratan Yadav, 2003 (2) SCALE 444, it is stated that keeping in view the warning on the attestation form as to cancellation of appointment and selection and furnishing false and incorrect information applicant was not fit to be retained in government service on account of false information.

24. Another argument put-forth by Sh. Gupta is that R-4 has also supplied false information in her application form.

25. Sh. Gupta states that attestation form has a bearing on selection process. On not furnishing the filled up attestation form applicant was taken to task by the Chairman of the Selection Committee, which clearly proves that the attestation form is relevant for selection process whereas attestation as well as application form of

20

applicant was given a total go-bye. The very purpose of attestation form is to verify and clear the candidature of the candidate.

26. Lastly, learned counsel alleges partisan and favouritism of Law Commission towards R-4 by citing copy of the comments on representation of applicant dated 12.3.2001 was not furnished to applicant as well as copy of the letter of the Commission dated 7.8.2001. No personal hearing was accorded to applicant. It is further stated that despite recommendation of UPSC to the Law Commission to take appropriate action against R-4 the same is yet to be followed. The learned counsel states that an invalid appointee who is ineligible as per the laid down criteria has no right to the post. He relies upon the following decisions to substantiate his contention:

- i) A.K. Doshi v. Union of India. (2001) 4 SCC 43.
- ii) P.M. Das v. State of Orissa. (2001) 2 SCC 480.

27. It is stated that there has been a tendency in the application as well attestation form and that the UPSC had found applicant eligible and selected on the basis of near 14 years teaching/research experience which was not as a matter of fact possessed by R-4.

28. By giving comparative merits it is stated that whereas applicant is Doctorate in Law with 19 years experience. R-4 is only a Post Graduate in law having 14 years experience is inferior in merit but by way of favouritism was appointed. which cannot be sustained in law.

21

29. Shri A.K. Bhardwaj, learned counsel appearing for R-1 contested the OA and as a preliminary objection contended that once the candidate for a direct recruitment appeared in selection and declared failed cannot question the selection. The Tribunal cannot assume the role of a Selection Committee <sup>to go</sup> into the rival merits of candidates.

30. Sh. Bhardwaj states that not even an iota of material was placed to indicate favouritism and mala fide on the part of the Law Commission.

31. According to him, on a short listing criteria adopted, which does not suffer from any mala fide or discrimination R-4 was found to have been covered under short listing criteria-II and being a selection in absence of any mala fides the criteria evolved and the selection on the basis of individual performance cannot be questioned in a judicial review.

32. In so far as recommendation of UPSC in case of suppression of material fact by R-4 a show cause notice was issued to R-4 and on receipt of the reply and after consultation of UPSC no action has been taken.

33. In the aforesaid backdrop it is contended that post of ALO belongs to direct recruitment quota and was to be filled up through open direct recruitment. Merely because applicant is holding feeder post of DLO is of no relevance. UPSC being the final authority for interview, recommending and selecting the suitable

22

candidates summoned R-4 as well as applicant in interview and the Law Commission has very limited role in selection which they had discharged fairly and impartially. The reasoned orders passed by respondents dealing with meticulously each contention of applicant shows their bona fide. However, on second representation of applicant UPSC was consulted and after the expert body had gone into the contentions put-forth by applicant as to alleged false entries in the application as well as attestation form on verification with particular reference to the experts allegations raised by applicant have not at all been substantiated. No misleading and false information has been given by R-4 and the discrepancies in application as well as attestation form as to the factual scenario were at best an outcome of inadvertence. The final selection was carried out on the basis of interview and service record and experience in research.

34. Sh. Bhardwai stated that under Article 323 of the Constitution of India UPSC is to be consulted in all matters pertaining to recruitment to civil services and posts. Their decision cannot be questioned except when actuated with mala fides or is against the rules. As none of the aforesaid conditions exist, finding no infirmity in the eligibility and appointment of R-4 OA is liable to be dismissed.

35. UPSC. respondent No.2. in their reply through Sh. D.K. Singh contended that UPSC a Constitutional Body established under Article 315 of the Constitution enjoys the duty of recruitment to all services and posts. In discharge of the above Commission has been

23

vested with the powers to devise their own procedures objectively and in a just manner with regard to the reasonable classification of various applicants on the basis of their qualifications. experience as an integral part. This power of classification has been upheld by several pronouncements of the Apex Court.

36. Though <sup>h</sup>~~Respondent~~<sup>h</sup> was qualified in so far as <sup>h</sup>her eligibility in the notification is concerned. having practised for 12 years as an Advocate within the meaning of Advocate Act of 1961. She fulfilled the eligibility criteria but as the provisions of application for lone unreserved post was quite high valid reasonable short listing criteria was devised by the Commission and applying the same the experience of applicant as an Advocate was also counted and she was short listed in category-III. whereas R-4 was short listed in category-II. Her experience as a Lecturer in honorary capacity was not counted while short listing the candidates.

37. In so far as attestation form is concerned. the same was sent to applicant with the letter delivered at official address but she did not open the letter. However. without prejudice to her rights she was allowed to be interviewed without even photograph and attestation form. As the attestation form has no bearing on the performance of the candidate the allegations levelled by applicant have been examined and Law Commission was advised to take appropriate action. In so far as experience of R-4 in National Publicity Service is concerned. after verification the same was found to be in order. As applicant was having 14 years of experience in short listing criteria she was

2A

called for interview and on comparative merits and performance of applicant and R-4 in the interview and taking overall merits, including the service record neither any favouritism nor partisan was done.

38. Lastly, it is stated that as applicant has failed she has challenged the appointment without any mala fide or illegality in the process.

39. Sh. Aman Lekhi, learned counsel, appearing for R-4 contested the OA and vehemently opposed the contentions. As a preliminary objection it is contended that UPSC with requisite expertise to assess the suitability of a candidate for the post, its decision cannot be reviewed on merits nor assessment questioned to reach the conclusion. As the procedure for selection has not been vitiated by mala fides, in absence of any procedural illegality or arbitrariness in the selection same cannot be questioned or set aside. It is also stated that under no statutory obligation the UPSC has to record reasons for selection. However, in the instant case UPSC had given reasons for selecting R-4 over applicant. Reasons being proximate and appropriate on application of mind and reasonableness of assessment, jurisdiction of the Tribunal cannot be invoked to challenge the sufficiency of reasons as long as the decision is ex facie reasonable having made on application of consideration relevant to the solution of the controversy. Hostile discrimination has been denied on the ground that applicant was interviewed and being only right of consideration a right to claim appointment to a particular post cannot be exercised. Referring to the following cases of Apex Court it is stated

25

that scope of judicial review in selection committee decision is very limited and Tribunal exceeds its jurisdiction by entering into the field reserved for selection committee:

- i) A.M. Vadi v. India Trade Promotion Organisation and Another. 1994 Supp (2) SCC 667.
- ii) Kuldip Chand v. State of H.P. and Others. (1997) 5 SCC 60.

40. According to Sh. Lekhi in so far as eligibility criteria of 12 years legal practice as an Advocate makes R-4 eligible for selection.

41. Coming to the bone of contention as to experience of 14 years as a short listing criteria is concerned. it is stated that in the short listing criteria the post is not specified and nature of experience has not been described. An experience in law includes both in government as well as private sector. Unless the experience in private firm as a Legal Adviser is expressly excluded by a Note appended in the short listing criteria. In this backdrop it is stated that *Resp. 4* had three years' experience in research while working in Law Commission and in so far as experience in all for 14 years *Respondent* qualified the same.

42. It is stated that no mala fides have been alleged against UPSC and there is no evidence as to fraud or forgery. In so far as certificate of National Publicity Service is concerned. it is contended that applicant has questioned the authenticity of the certificate but has not denied service of applicant as Legal Adviser in National Publicity Service.



(26)

43. In this backdrop it is stated that it may be due to inadvertence certificate of experience was issued by antedating it but the fact remains that the certificate has been issued in the old format to R-4. In so far as his appointment as a Legal Adviser in National Publicity Service is concerned the aforesaid was thoroughly verified by the Commission who are the competent authority and as the same was found genuine the working was counted towards experience. It is stated that as regards Indian Law Institute experience is concerned. Research Assistant and Assistant Professor have already been decided to be treated at par.

44. While referring to the mode of recruitment it is stated that the post was under direct recruitment quota and not a promotional post for feeder category. The certificate issued by Faculty of Law has not been counted and the pay unrevised was mentioned and moreover the UPSC was not concerned with the pay but the experience gained in making selection.

45. As far as mala fides are concerned, it is stated that in accordance with the settled principles of law mala fide should be specific with a proper foundation and against whom it is alleged the person is to be identified. Mere personal enmity in the matter of selection cannot be a ground or foundation of mala fide and mere bald averment of mala fide would not be a valid compliance.

46. As applicant was considered it is not open for him to challenge the selection process being valid. As applicant was given a fair deal and it was without any protest he is estopped by the doctrine of waiver and estoppel to challenge the selection process. It is contended that order<sup>u</sup> passed by the respondents on second representation of applicant has dealt with all her contentions and under the guise of challenge to appointment applicant is not allowed to compel the respondents to reach a contrary decision. Relving upon the decision of Apex Court in Indian Express Newspaper (Bombay) Pvt. Ltd. & Others v. Union of India. (1985) 1 SCC 641 it is contended that Respondent<sup>u</sup> 4 being more meritorious and having performed better than applicant in absence of any mala fide or fault in the selection process or the decision making, her appointment is valid in law and cannot be interfered by this court in a judicial review.

47. We have carefully considered the rival contentions of the parties and perused the material on record.

48. Even a failed candidate who even without putting objections before the selection process and participated in it is not precluded from challenging the same if the selection is vitiated with mala fides in violation of the rules and made at the cost of fair play. good conscience and equity. as held by the Apex Court in Praveen Singh's case (supra).

28

49. UPSC in short is a constitutional body established under Article 315 of the Constitution of India and enjoys upon it duty of making recruitment to civil services and posts under the Union of India. While discharging its constitutional obligation it has been vested with the powers to devise their own procedure objectively in a just manner. Reasonable classification adopted is an integral part based on the qualification and experience of candidates. The task of the Commission to set in motion the process of recruitment on requisition from the indenting department which is to be strictly in conformity with the notified recruitment rules. Thereafter the posts are advertised and applications are invited. In a situation when the number of applications received are substantially more than the number of posts and it is not possible to interview all the candidates the Commission can restrict the number of candidates to a reasonable limit based on their qualification and experience.

50. In so far as eligibility of R-4 notified as per the recruitment rules is concerned, having completed 12 years as an Advocate she fulfills the eligibility criteria. As the candidates for an unreserved post were 144 the Commission within its ambit devised a conscious and rational short listing criteria which was followed uniformly on all the applications received. In the aforesaid criteria Master's Degree in Law with 14 years experience with three years experience in Law, out of which three years experience in law was criteria devised in category-II.

29

51. In so far as short listing criteria is concerned, the Apex Court in Jagat Bandhu Chakravorty v. G.C. Roy, (2000) 9 SCC 739 held that it was for the Expert Committee to evaluate the relevant experience of the appellant to ascertain if he possesses the requisite experience. The answer given by the Expert Committee cannot be set aside by the Tribunal in a judicial review.

52. In Mohd. Riazul Usman Gani and Others v. District and Sessions Judge, Nagpur, (2000) 2 SCC 606 the Apex Court has held that laying down short listing criteria when there are a large number of candidates is permissible and the criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made.

53. In so far as experience is concerned, Apex Court in S.J. Bafde v. State of Maharashtra, 1991 (16) ATC 838 held that the experience prescribed would depend upon the relevant provisions and also the particular time for experience required.

54. If one has regard to the aforesaid in absence of any mala fides or arbitrariness in devising short listing criteria the same is beyond our judicial review. We have no hesitation to hold that the short listing criteria adopted by the UPSC was in accordance with law.

55. In so far as mala fides alleged by applicant against the Law Commission are concerned, the paramount requirement in view of the decision in Indian Express Newspaper's case (supra) is concerned, a vague assertion

30

to the mala fide shall not be a valid compliance. One who alleges mala fides has to establish it. A specific mala fide with foundation is to be *laid* and to be demonstrated and proved in a judicial proceeding. We find that none of the authorities in person who has appointed applicant or were instrumental in any manner during the selection have been arraved in person to allege mala fides.

56. In so far as general mala fides are concerned the same have been raised on the ground that the Commission has shown favouritism and took partisan stand to support the case of R-4 and the documents have not been supplied and a personal hearing was not accorded to her. In our considered view these are vague assertions <sup>w</sup> do not even prima facie establish the mala fides. The aforesaid allegations do not constitute valid foundation of mala fides which is a condition precedent for its application.

57. In so far as the action of the Commission not to have verified the information in the attestation form and the act<sup>l</sup> not taking appropriate action against R-4 despite awareness about the fraud played on them by R-4 and in derogation of the condition of the warning in the attestation form the same shows partisan does not hold water. We find from the reply of the Commission that in so far as selection of *Resp. 4* is concerned, the same is not vitiated by any mala fides or is an invalid selection de hors the rules. However, on appointment on false information which has already been verified by the competent authority and found to be only by way of inadvertence not amounting to any wilful suppression or

31

fraud played upon them, a show cause notice was issued to R-4 and on reply after consultation with UPSC further action is awaited. We cannot assume mala fides on that count. Respondents have already taken an action and it should be in accordance with law being appropriate disciplinary authority. We cannot travel in their domain to assume the role of an appellate authority to suggest them further course of action. It is sufficient that the UPSC recommendations have been complied with, with utmost sincerity and within the parameters of established procedure. Having regard to the above the contentions put-forth as to mala fides having failed to be established are rejected.

58. In so far as eligibility of R-4 is concerned, though short listing criteria adopted by a constitutional body having expertise on the subject cannot be found fault with in a judicial review, except when it is arbitrary against fair play and equity. In view of the decision of the Apex Court in Praveen Singh's case (supra) we proceed to examine the above in the conspectus of the short listing criteria devised by the UPSC and followed thereupon.

59. R-4 was short listed admittedly in category-II of the short listing criteria, according to which one should have Master's Degree in Law with at least 14 years experience out of which three years should be research experience in law is a must. There is no dispute as to research experience, as *Resp. No. 4*<sup>h</sup> had worked for more than three years in Law Commission.

32

60. As regards her 14 years experience in Law is concerned. having fulfilled the eligibility criteria of having practised as an Advocate within the meaning of Advocate Act of 1961 as a qualifying legal practitioner R-4 was eligible. Out of 14 years and 9 months the dispute is five months experience in an honorary capacity as a Lecturer. The same has not been counted while short listing applicant as to criteria of 14 years experience.

61. There is no dispute as to the remaining experience except R-4 working as a Legal Adviser in a family private concern for the period 1.11.90 to 8.3.92 is concerned. according to applicant if this period of one year and <sup>4</sup>three months is taken off from experience which is in a private firm without any research experience R-4 does not fulfil even the short listing criteria making her selection as well as appointment invalid in law. In our considered view in the eligibility criteria laid down in the advertisement the experience with Master's Degree of 10 years pertained to teaching or research experience in law. However, the criteria devised by the UPSC in case of more candidates than the post was 14 years experience, out of which three years research experience in law. In absence of any mala fides alleged against the UPSC or any unfairness and criteria being without any context to the post in question the same cannot be questioned in law in a judicial review being a competent authority to devise its own method, on rational basis on a comparative reasonable classification the short listing criteria, being a constitutional body the presumption to act fairly is to be drawn unless established to the contrary. -

33

62. If one has regard to the aforesaid ~~any~~ stipulation in the short-listing criteria as to the experience of 14 years should be in research or teaching field in law and also in absence of any ~~expresse~~ provisions as to 14 years experience to be counted in government service an experience incurred in law in a private agency as a Legal Adviser is to be treated in the context of post in question an experience in law.

63. The rule of literal and grammatical construction would apply clearly shows that the meaning of experience includes experience in a government service and otherwise unless specifically excluded. In absence of any Note appended or a clarification that such an experience of 14 years would count only, experience in law in government service and will not be inclusive of experience gained in law in a private agency the fair meaning which is to be given to category-II is that one should have 14 years experience in law, which R-4, undisputedly fulfills. We cannot import a new meaning to the criteria which is the jurisdiction of the UPSC being a constitutional body empowered to devise their own methods. We see no arbitrariness in the criteria adopted. Moreover, we are of the considered view that the experience depends on the situation the post and qualification attached to the post and other liabilities and duties attached to the post.

64. Direct recruitment to the post of ALO in Law Commission requires experience in Law. No distinction can be made between the experience gained in government or otherwise. The relevant consideration would be that it is an experience in the field of law. It is not the case of



34

applicant that R-4 gained experience in some other field but not in law making distinction between the experience in government and private concern without any embargo or any provision to the contrary would be to frustrate and make otiose/redundant the short listing criteria devised under category-II for the post by the UPSC. Our jurisdiction is limited on judicial review. We find that the aforesaid criteria and the experience prescribed is neither vitiated with mala fides nor unfairness.

65. In so far as working of R-4 in National Publicity Service and the certificate produced, which according to applicant is fraud played by R-4 are concerned, we find that earlier to the certificate issued on 8.3.92 National Publicity Service issued a certificate to R-4 which relates to her appointment as a Legal Adviser since November, 1990. This was issued on 27.12.90. Applicant had in no manner questioned the working of R-4 in the private concern as Legal Adviser. The thrust is on the falsity of the certificate issued on 8.3.92 on a format which could not have been issued prior to 1995. We find that as the fact that R-4 was working as a Legal Adviser in the aforesaid firm has not been disputed. The fact that the certificate was issued antedating its issuance in 1995 in subsequent years as the word 'Mumbai' could not have been figured before 1995 the same may have an iota of procurement of such a certificate at a later stages in the format in vogue but would not cast any doubt about its authenticity. The aforesaid certificate on allegations of applicant and with regard to the fraud played was thoroughly examined by the UPSC, the Constitutional Body and on due verification it was found that the certificate

35

was genuine and whatever has been alleged as false statement by applicant does not fall within the ambit of fraud. It is established position of law that one who alleges fraud has to establish the same. Having brought no evidence conclusive to establish fraud or forgery in the certificate produced by R-4 and the fact that on recommendation of UPSC the Law Commission has issued a show cause notice and with consultation with UPSC no action has been taken as the element of fraud was not found substantiated and in absence of any intention to fraud by R-4. we, in a judicial review, cannot assume the role of a selection committee to go into the correctness or otherwise of the documents produced before the UPSC, verified, evaluated and relied upon within its jurisdiction to appoint a candidate. A selection which has been duly conducted in accordance with rules and does not have an element of unfairness or arbitrariness cannot be interfered with and in such a case this Court would have no jurisdiction. This platform cannot be allowed to be used as a public interest litigation. In our considered view as the UPSC and the Law Commission on meticulous examination of the allegations levelled by applicant to the experience certificate produced by R-4 have found the same as neither vitiated by fraud and also no false information has been found to be communicated to them. Having failed on the basis of performance to be appointed, in absence of any mala fides or violation of rules, challenge to the appointment of R-4 cannot be sustained in law.

66. In so far as attestation form is concerned, the same has no bearing on the selection process which has been adopted on the basis of comparative merits including

36

qualification. experience. confidential record of service and on comparative analysis of the same R-4 was found more meritorious than applicant. As the post is in direct recruitment selection by the UPSC cannot be questioned. Merely because applicant had rendered more service and more qualified would not be a ground to interfere as it is a general tendency on the part of failure candidates to assail the selection and appointment of another candidate. If this is to be interfered as a thumb rule the sanctity of Commission like UPSC would not be maintained and the recruitment to a civil service or post would be prone to interference even at the wink of an eye and that shall lead to administrative chaos. The case law cited by applicant to establish that if the candidate is not qualified it amounts to a fraud and his appointment vests him with no right is concerned. no doubt in a judicial review even the recommendations of UPSC are challengeable but it has to be established that the information furnished was wrong and the appointee had played a fraud. We do not find any such infirmity in the appointment. The appointment is neither arbitrary nor mala fide or capricious. This has been done as per the rules and short listing criteria devised by the UPSC on comparative analysis and consideration of the rival merits of the parties keeping in view the overall record and experience and as R-4 was found to be more meritorious and have performed better in comparison to applicant the selection as well as appointment has not been vitiated by any fraud and R-4 being eligible the claim of applicant from all angles is liable to be rejected.

37

67. In the result, for the foregoing reasons, we find this OA as bereft of merit and as no legal infirmity has been found in the appointment of R-4, OA is dismissed, but, without any order as to costs.

S. Raju

(Shanker Raju)  
Member (J)

V.K. Maiotra

(V.K. Maiotra)  
Member (A)

"San."