

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3116/2002

New Delhi, this the 29th day of January, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Shri V.S. Arya
s/o Late Shri Khilari Singh
aged 46 years
r/o 196, Arunodaya Apartments
Vikaspuri
New Delhi - 110 018
Presently working as:
Deputy Labour Commissioner (West District)
Govt. of NCT of Delhi
F-Block, Labour Welfare Centre
Karampura
New Delhi - 110 015. Applicant

(By Sh. G.D. Gupta, Senior Counsel with Sh. S.K. Gupta,
Advocate)

Versus

1. Union Public Service Commission (UPSC)
Dholpur House, Shahjahan Road
New Delhi - 110 011.
(Through: The Chairman).
2. Union of India
Ministry of Law & Justice
Department of Legal Affairs
Shastri Bhawan
New Delhi - 110 001.
(Through: its Secretary). Respondents

(By Advocate: Sh. Rajender Nischal for Respondent
No.1 and Sh. Madhav Panikar for Respondent No.2)

O R D E R

Justice V.S. Aggarwal:-

The recruitment rules for the post of Additional Legal Adviser along with other posts have been notified in the Indian Legal Service Rules, 1957. The said post is a Grade-II post. Rule 7 provided:

"b) to a duty post in Grade II, unless he holds a Degree in Law of a recognised University or equivalent and unless he has been a member of a State Judicial Service for a period of not less than thirteen years or has held a superior post in the legal department of a State for a period of not less than



thirteen years or is a Central Government Servant who has had experience in legal affairs for not less than thirteen years or is a qualified legal practitioner."

2. An advertisement appeared for filling up the said posts and the relevant portion of the same is:

"A. EDUCATIONAL:

Should have degree in law of a recognised University or equivalent.

B. EXPERIENCE:

Should have been a member of a State Judicial Service for a period of not less than thirteen years or have held a superior post in the legal department of a State for a period of not less than thirteen years or has been a Central Government servant who had had experience in legal affairs for not less than thirteen years or is a qualified legal practitioner."

3. The applicant also applied for the same posts and with respect to his experience, he gave the following details:

| Post Held | From | To | Total Period of experience (in Years) | Scale of Pay | Nature of duties | | | | |
|------------------------------|------------|------------|---|-----------------|--|---|---|---|---|
| | | | | | | 3 | 4 | 5 | 6 |
| Asstt. Welfare Administrator | 05-05-1979 | 31-03-1987 | Approx. 8 years | 1400-2600 | i. Inspections of various establishments with a view to enforce the Limestone & Dolomite Mines Labour Welfare Fund Act and Beedi Workers Welfare Fund Act. | | | | |
| | | | | | ii. To deal with the Court Matters and to assist the Govt. Counsel in preparation of Counter affidavits/reply in respect of Court Cases /writ petitions. | | | | |
| | | | | | iii. To supervise implementation of various Welfare Schemes Formulated Under various Labour Welfare Fund Acts. | | | | |

As Ag

| | | |
|---|---------------------|--|
| Labour Enforce- 01-04-1987 27-10-1987 Approx. 2000-3200 ment Officer (Central) | 7 months | Inspections of industrial establishment in central sphere, filing and conduct of court cases under various labour laws, like Payment of Wages Act, Mini- mum Wages Act, Equal Remu- neration Act, Contract Labour (Regulation & Abolition) Act, Inter-state Migrant Workmen Act, payment of Bonus Act, and Payment of Gratuity Act etc. as Asstt. Public Prosecutor. |
| Civilian Labour 28-10-1987 07-07-1992 Approx. 2200-4000 Officer(Gr.V of Central Labour Service) | 5 years Gazetted | To advise the Commandant on legal service matters and industrial relations. |
| Asstt. Labour 08-07-1992 27-02-1995 Approx. 2200-4000 Commissioner (Central) (Gr.V of Central Labour Service) | 3 years Gazetted | i. Quasi-judicial functions such as Authority to hear and decide claim applica- tions under payment of Gratuity Act and Equal Remuneration Act, Regis- tering and Licensing Officer under Contract Labour (Registration & Abolition) Act, Conciliation Officer under Industrial Disputes Act. ii. Examination of writ petitions filed against the Department, prepara- tion of parawise comments and liaison with the Central Government Counsel for successful conduct of court cases. |
| Asstt. Labour 28-02-1995 Continue Commissioner | 7 years | i. To perform quasi- judicial Functions such as Controlling Authority under the Payments of Gratuity Act and Authority under the Equal Remuneration Act and Conciliation Officer under the Industrial Disputes Act. ii. To supervise the enforcement of various Labour Laws in the State sphere in the National Capital Territory of Delhi. |

Ms Ag

iii. To prepare parawise
comments and assisting
the Government Standing
Counsel in respect of
the Writ Petitions

4. It is an admitted fact that the applicant
had acquired the Degree of Law in the year 1989.

5. The applicant was not called for the
interview. He filed the present Original Application,
and on 28.11.2002 the same was dismissed at the
threshold in limine. The applicant preferred Writ
Petition No.8235/2002. The Delhi High Court on
20.12.2002 allowed the same and directed to reconsider
the matter after issuing notice to the concerned
respondents.

6. By virtue of the present application which
was thereafter amended, the applicant prayed that
action of the respondents in not calling the applicant
for interview should be quashed and it should be
declared that the applicant is entitled to be
considered for the post of Additional Legal Adviser.

7. The short question that was adopted was
that ~~L~~ whether the experience in legal affairs acquired by
the applicant before he obtained the degree in law has
to be considered as the qualifying experience for the
post referred to above or not? The applicant
contended that he had the necessary experience.

8. The application has been contested. The
Union Public Service Commission in its reply pointed
that the Commission had received large number of



applications. It had been decided to shortlist the same. The claim of the applicant was rejected because he did not possess the shortlisting criteria adopted by the Commission. As per the shortlisting criteria, the experience of legal affairs was counted after acquiring the degree in law. It has further been asserted that the applicant belongs to Indian Legal Service. As per the respondents, he only possesses 12 years 7 months experience as against 22 years experience as legal practitioner as per the above stated shortlisting criteria and therefore, his claim did not fall after the shortlisting in the relevant clause.

9. Respondent No.2 filed separate reply. It is pleaded that the applicant did not fall in the eligibility zone for appointment by direct recruitment. He did not have 13 years of experience after qualifying as a law graduate. It was pointed that a person cannot enter in the judicial service without obtaining a law degree. As such, in the case of the applicant the requisite period of 13 years service should be after acquiring the essential educational qualification of a law degree. Respondents pointed that otherwise there will be no equal yardstick to measure, or a common platform to place the candidates from different fields who apply for the post.

10. It is on the strength of these pleadings and the controversy that the learned counsel for the applicant contended that the experience that the applicant had gained before being a law graduate has



to be counted. While on behalf of the respondents, it was urged that the applicant did not have the necessary experience which has to be counted after he had acquired the degree in law. The Union Public Service Commission had further urged that they had adopted a short-listing criteria and only the number of years in the legal affairs after obtaining the degree in law were taken into account.

11. Our attention was drawn towards the decision of this Tribunal in the case of Dr. (Mrs.) Usha Mittal v. Union Public Service Commission & Others, OA No.1764/1994, decided on 29th July, 1999. In the said case Dr. (Mrs.) Usha Mittal was aspirant for the post of Principal in Government Senior Secondary Schools under Directorate of Education. An advertisement has been issued by the UPSC. The minimum qualification for the post was 2nd Class Masters Degree or equivalent and 10 years experience in a High or Higher Secondary School or an intermediate College. This Tribunal on the facts of that case held that the experience acquired before the educational qualification also be counted because the advertisement did not indicate otherwise.

12. A perusal of the said case clearly shows that in the facts of that case the experience was in the High or Higher Secondary School and therein the 2nd Class Masters Degree was not relevant. In that backdrop, it must be stated that this was confined to the peculiar facts of that case.

Ab Ng

13. The Supreme Court had gone into this controversy in different decisions, namely, in N. Suresh Nathan v. Union of India, AIR 1992 SC 564; in M.B. Joshi v. Satish Kumar Pandey, AIR 1993 SC 267; in Anil Kumar Gupta & Ors. v. Municipal Corporation of Delhi & Ors. (2000) 1 SCC 128 and in the case of A.K. Raghuman Singh & Ors. v. Gopal Chandra Nath & Ors. (2000) 4 SCC 30. But it becomes unnecessary for us to again delve into the same because of Full Bench decision of the High Court referred to above where precedents referred to above have been taken note of.

14. But before doing so, we can refer with advantage to a Single Bench decision of the Delhi High Court in the case of Shri Dharam Chand Vashisht v. Delhi Electric Supply Undertaking & Others in Civil Writ No. 3868/1995 decided on 4.4.2002. In the said case, the post advertised was of Assistant Engineer/Assistant Executive Engineer. The recruitment rules prescribed that the concerned person should have: (1) Degree in Electrical/Mechanical Engineering from a recognised university or equivalent, and (2) Two years professional experience preferably in a large electric supply Undertaking. The concerned person who was the petitioner before the Delhi High Court had been initially appointed as Technical Apprentice in Delhi Electric Supply Undertaking and had remained there till 10.7.1984. Thereafter, he was appointed as Engineering Assistant. The Delhi High Court took note of the decision of the Supreme Court in the case of Anil Kumar Gupta & Ors. (supra) and A.K. Raghuman Singh & Ors. (supra) and thereupon held that there is neither a word 'or' nor



(30)

8-

and between first and the second qualification and consequent past experience could not be ignored. The findings are:

"13. In the instant case before hand the recruitment rules postulate degree in Electrical Engineering from recognised university or equivalent. There is neither a word 'or' nor 'and' and the second essential criterion is two years professional experience preferably in a large electric supply Undertaking. If that is the requirement of rule UPSC in its wisdom to select the best could have adopted any method or manner in consonance with the recruitment rules. How they have put the word 'after' for the purpose of taking into consideration experience, which is reflected in the counter affidavit filed by them at page 72 of the paper book, when the experience after obtaining the degree was not prescribed in the recruitment rules? The same would be without justification by the UPSC."

15. As is apparent from the recruitment rules of the post before the Delhi High Court and the recruitment rules which we have referred in the opening paragraph, there was a basic difference between the two recruitment rules and therefore the decision rendered by the Delhi High Court in the case of Shri Dharam Chand Vashisht (supra) must be held to be distinguishable.

16. Reverting back to the Full Bench decision of the Delhi High Court in S.P. Dubey v. Municipal Corporation of Delhi and Ors., C.W.P. No. 4696 of 1993 decided on 25th January, 2002, the recruitment rules for the post provided that a person should be a Graduate Engineer with three years service or Diploma holders with 8 years service as Junior Engineer is to be counted for promotion to the post of Assistant Engineer in the event they had duly qualified for the degree holders. But the Judgement provides the ratio

Ms Ng

deci dendi that has to be adopted. Various judgements of the Apex Court were taken note of. While discussing the decision of the Supreme Court in the case of Anil Kumar Gupta (supra), the Supreme Court held:

"Whether, while deciding whether the respondents had two years experience gained while holding diplomas could also be counted in addition to the experience gained after obtaining degree?

It answered the said question stating:

"18. On this question, the learned Senior Counsel Shri P.P.Rao for the selected candidates contended that the experience of the respondents while holding diploma has to be counted in addition to the period of experience which they obtained after getting their degrees. Reliance in this behalf was placed upon M.B.Joshi v. Satish Kumar Pandey and D. Stephen Joseph v. UOI. On the other hand, learned Senior Counsel for the appellants Shri Rakesh Dwivedi, Shri Ravinder Sethi and Shri S.B.Sanyal contended that the experience of the respondents while holding diploma could not be counted. They relied upon N. Suresh Nathan v. UOI.

19. We may point out that in the present case, the relevant provision applicable and the notification dated 3/6/89 inviting applications refer to essential qualification as (i) degree, and (ii) 2 years professional experience. As stated earlier, experience upto 2 years, is the minimum and3 to 12 years, the maximum marks being 5 for experience.

20. We may at the outset state that the provision regarding experience speaks only of professional experience for two years and does not in any manner connect it with the degree qualification. In our view, the case on hand is similar to Subash v. State of Maharashtra, where while considering Rule 3(e) of the relevant recruitment rules, namely, the Maharashtra Motor Vehicles Deptt (Recruitment) Rules, 1991, this Court pointed out that Rule 3(e) which required one year's experience in a registered automobile workshop did not make any difference between acquisition of such experience prior to or after the acquisition of the basic qualification.



21. It is true, in N. Suresh Nathan case the experience of a candidate while holding a diploma was not counted. There the relevant rules stated: "Section Officers possessing a recognised Degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years' service in the grade..."

17. The decision rendered by the Supreme Court in the case of Indian Airlines Ltd. & Others v. S. Gopalakrishnan, JT 2001(1) SC 28 was again taken note of and the Delhi High Court distinguished the same and held:

"At this juncture, we may notice Indian Airlines case 2001(1) Judgment Today 28. In that case the rule which fell for consideration of the Apex Court was:

"SSC or its equivalent with three years Government recognised diploma in Mechanical Electrical/Automobile Engineering and having two years experience in equipment operations of driving and possessing current heavy vehicle driving licence."

It was held:

"...Indeed in prescribing qualification and experience, it is also made clear in the general information instruction at item No.6 that, "experience will be computed after the date of acquiring the necessary qualification". Therefore, when this requirement was made very clear that he should have experience only after acquiring the qualification, the view taken by the High Court to the contrary either by the learned Single Judge or the Division Bench, does not stand to reason.,"

It is true that as has been submitted by Mr. Sethi that when N. Suresh Nathan and Anil Kumar Gupta was noticed. Citation to Gurdial Singh v. State of Punjab was made by mistake in place of Subash v. State of Maharashtra 1995(3) SCC 332. As indicated herein before, Anil K. Gupta is not an authority for the proposition that necessity to obtain experience would arise only after acquisition of requisite qualification, but it is contrary

As Ag

thereto. Learned counsel for the parties appeared to be remiss in bringing the said fact to the notice of the Court even subsequent to the decision of the Apex Court explaining N. Suresh Nathan. As indicated herein before it had not been cited. Indian Airlines' case (supra) must be held to have been rendered in the fact situation obtaining therein and cannot be said to be laying down a law in absolute terms the experience must be obtained upon acquisition of necessary qualification. In any event, having regard to the earlier binding decisions and keeping the aforementioned explanation the said decision must be held to have been rendered incuriam."

18. It is abundantly clear from the aforesaid that necessarily the relevant rules of each post have to be taken note of and thereafter a conclusion has to be arrived at, if in that particular case the past experience even, if any, can be looked into before a person acquires minimum qualifications.

19. We have already reproduced above the recruitment rules and the advertisement. It clearly shows that the minimum qualification is a degree in law. The experience provides that he must have 13 years experience. The sequence shows that he has to have 13 years of service in State Judicial Service or 13 years experience in the legal department of a State or 13 years experience in Central Government and should have experience in legal affairs or is a qualified legal practitioner as defined under Rule 2(e)(i) of the Rules. For all these other posts, before a person even can enter the profession or the service, he has to have the degree of law. Therefore to state that because applicant was a Central Government servant and he has been dealing with legal affairs before even he graduated in law, his experience would be counted is incorrect. This

Isk

(34)

- 12 -

interpretation as put forward by the learned counsel for the applicant would run counter to the Scheme of the rules and cause injustice to the plain language because the minimum qualification prescribed is a graduate in law and therefore, the necessary experience has to follow after he obtained the said degree.

20. Not only that the Union Public Service Commission further points out that large number of applications were received against six posts, it had been decided to shortlist the candidates. The applicant had applied under the Scheduled Caste category. A criteria for shortlisting was made. The experience in legal affairs was counted after acquiring degree in law. The said criteria adopted is:

Category-I

Candidates possessing EQ(A) + EQ(B) with at least 1 years experience as an Asstt. Legal Adviser/Deputy Legal Adviser of Indian Legal Service in the Department of Legal Affairs, Ministry of Law, Justice & Company Affairs.

Category-II

Candidates possessing EQ(A) and 22 years or more experience under EQ(B) i.e. as Member of a State Judicial Service or a superior post in the Legal Department of a State or Central Govt. Servant who has had experience in Legal Affairs or a qualified legal practitioner.

Category-III

Candidates possessing EQ(A) and 20 years experience as an Advocate/Attorney of the High Court of Calcutta or Bombay."

18 Aug

(AS)

- 13 -

21. The applicant did not belong to Indian Legal Service. He did not fulfil the said criteria because he only possesses 12 years 7 months experience after obtaining the degree in law while only candidates with 22 years and more experience are called for interview.

22. It is not the case of the applicant that different criteria was adopted for different persons. Thus, principles of equality had been followed. Further the Union Public Service Commission has a right to shortlist the candidates when it is not possible to call all the persons for interview. Once the shortlisting had been done and the criteria had been made applicable to all, there is no illegality or irregularity in the decision that has been taken by the respondents.

23. In this view of the matter, we find that the applicant has rightly not been called for the interview.

24. For these reasons, there is no merit in the present application. It must fail and is dismissed. No costs.

U. R. Nayak

(R. K. Upadhyaya)
Member (A)

V. S. Aggarwal

(V. S. Aggarwal)
Chairman

/NSN/