

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O.A./~~EXX~~. No 2242 of 1997

Decided on: 22/6/98

Shri Suresh Chandra .....Applicant(s)

(By Shri Applicant in Person Advocate)

Versus

U.O.I. & Another .....Respondent(s)

(By Shri R.V. Sinha Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? yes

2. Whether to be circulated to the other Benches of the Tribunal? yes

  
(K. MUTHUKUMAR)  
MEMBER (A)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2242 of 1997

New Delhi this the 27<sup>th</sup> day of June, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Suresh Chandra  
R/o 1017, Sector XII, R.K. Puram,  
New Delhi.

...Applicant

Applicant in person.

Versus

1. Union of India through  
the Law Secretary,  
Ministry of Law and Justice,  
Shastri Bhawan,  
New Delhi.
2. The Secretary,  
Union Public Service Commission,  
Dholpur House,  
Shahjahan Road,  
New Delhi.

...Respondents

By Advocate Shri R.V. Sinha.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The eligibility of the applicant for appointment to the post of Deputy Legal Adviser by direct recruitment in pursuance of the advertisement No.21/4 in this behalf issued in November, 1996 is the subject matter of this application. Applicant contends that he fulfils the essential qualifications prescribed for this post whereas the respondents have considered him ineligible for the recruitment to the above post and have, therefore, not called him for interview. The applicant contests the decision of the respondents and by an interim direction of this Tribunal, the results of the interview held, were directed not to be published.

2. The grievance of the applicant is that respondents have not taken into consideration his representation dated

15.9.97 and held the interview without approving his candidature and declaring him ineligible for recruitment to the above post and did not take into account the statutory provisions of the Indian Legal Service Rules.

3. The contention of the applicant is that he was appointed to the Grade-IV of the Indian Legal Service (hereinafter referred to as "ILS") by direct recruitment in 1992 which stipulated that the prescribed qualification was a (i) Degree in Law and (ii) if applicant is a Central Government, he should have had experience in legal affairs not less than 7 years. He was appointed in Grade-IV of the service as Assistant Legal Advisor on 23.6.93. The post of Deputy Legal Adviser covered by the aforesaid advertisement No.21/4 is in the Grade-III of the Indian Legal Service. The essential qualifications for this post are as under:-

"3. Qualification Essential

(i) Degree in Law of a recognised University or equivalent.

AND

(ii) Should either be a member of a State Judicial Service for a period of not less than ten years or should have held a superior post in legal department of a State for not less than ten years or should be a Central Government servant who has had experience in legal affairs for not less than 10 years or possesses a Master's degree in Law and has had teaching or research experience in Law for not less than eight years or is a qualified legal practitioner of not less than 35 years of age.

Note I: The term 'qualified legal practitioner' means, an advocate or a pleader who has practised as such for at least ten years, or an attorney of the High Court of Bombay or Calcutta who has practised as such for at least eight years or has practised as such attorney and an advocate for a total period of at least eight years.

Note II: In computing (a) the period during which a person has held any office in the State Judicial Service or in the legal department of a State or under the Central Government there shall be included any period during which he has held any of the other aforesaid offices or any period during which he has been a legal practitioner and (b) the period during which he has been a qualified legal practitioner, there shall be

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included any period during which he has held any office in the State Judicial Service or has held a superior post in legal department of a State or has been a Central Government servant having experience in legal affairs.

Note III: Preference shall be given to a person (not being a member of State Judicial Service or a legal practitioner) with experience in legal advice work.

Note IV: (The qualifications are relaxable at Commission's discretion in case of candidate otherwise well qualified).

Note V: (The qualifications regarding experience are relaxable in the case of candidates belonging to Scheduled Tribes)." (emphasis added)

4. The above eligibility qualifications are in accordance with Rule 7 of the Recruitment Rules, 1957 as amended in respect of this post in Grade III of the ILS.

5. The applicant submits that he is normally eligible for appointment in Grade III by promotion also under the promotion quota as he has the requisite service of 3 years in Grade IV as per the Recruitment Rules.

6. The applicant contends that he had worked in various Government departments as follows:-

"As Assistant in CPWD from 10.4.84 to 31.10.1983, as Section Officer in the CSIR from 1.11.1988 to 30.12.1992 and thereafter as Law Officer in the National Airport Authority from 31.12.1992 to 23.6.93 after which he joined Grade IV of the ILS under the respondents on 23.6.93".

7. The applicant submits that he is fully eligible for being considered for the above direct recruitment as he has besides the Law qualification, experience for more than 10 years in legal affairs. He, therefore, contends that the action of the respondent No.2, UPSC in not calling him for

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interview is arbitrary and illegal.

8. We have heard the applicant in person and also the counsel for the respondents and have also perused the record.

9. The main point of contention of the respondents is that the experience gained by the applicant during his service in the CSIR which is an autonomous body, cannot be treated as experience under the Central Government. As he had less than 10 years experience, as required for essential qualification, he was not called for interview. It is also stated that the respondents No.2 has meticulously followed the provisions of Recruitment Rules for the post of Deputy Legal Adviser in a uniform and consistent manner and as the applicant has not fulfilled the essential requirement of the eligibility qualification, he has not been considered and his candidature has been rejected. It is contended by the respondents that he was not called for interview in view of the fact that he did not fulfil the requirements under any of the qualifications prescribed under essential qualification (ii), which deals mainly with the service as a member either of a judicial service or service in the Legal Department of the State or as a Central Government servant with 10 years experience in legal affairs, besides other qualifications which are not relevant here, like Master's Degree in Law etc. as alternate qualification.

10. The applicant has filed his written submissions also. He argued that the respondents themselves had reckoned his service in the autonomous body, namely, the CSIR when he was

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appointed to the Grade IV of the ILS and, therefore, they could not possibly take a different stand now in excluding his service in the CSIR. We do not propose to consider this submission, as this is not a part of his pleadings in the C.A. He also argued that under Rule 16(7) of the CCS (Pension) Rules, 1972, service rendered in the Central Government/ autonomous bodies is also defined as "Central Government Service". Relying on the judgment of the Hon ble Supreme Court in *The Sales Tax Commissioner etc. etc. Vs. B.G. Patel etc. etc.*, JT 1995(6) SC 271, the applicant contends that as held in the aforesaid case where a person having not less than 2/3rd of the period as specified in the Recruitment Rules in the aforesaid case, it was necessary in public interest to appoint such person by promotion, the applicant submits that on the basis of the above decision also, the respondents could have considered his case. The applicant further contends that while the respondents counted the same experience for his recruitment in Grade IV and selected him for the said post, they are now not prepared to consider the same service for ineligibility for the post in Grade III under direct recruitment. He further submits that by joining as Grade-IV of the ILS, he had to resign his service in his parent department wherein he could have had a better future. By the respondents refusal to entertain his candidature for the aforesaid post by direct recruitment, he has been treated unfairly.

11. We have given our anxious consideration to the contentions raised by the applicant.

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12. Before we deal with this, it is necessary to advert to the additional affidavit filed by the respondents in response to the directions of the Tribunal wherein they have clarified that the applicant was granted 50% relaxation towards experience at the time of his recruitment in Grade IV in terms of Note 5 below E.Q.(ii) specified in the advertisement for the post of Assistant Legal Adviser Grade IV. We have considered this aspect also. Even granting that such relaxation was given at that stage, the issue before us is not whether he will be entitled to relaxation again. This is not his prayer. The ground on which his application has not been considered is not on account of the fact that he was once granted relaxation but on the ground that his service in the CSIR cannot be treated as eligible service under the Central Government. Therefore, the issue boils down only to this aspect and not to the question of relaxation or concession in experience specified under the rules.

13. As mentioned in para 3 above, any candidate for direct recruitment for the above post of Deputy Legal Adviser in the Grade III of the ILS should have a Degree in Law of a recognised university or equivalent and should be a Central Government servant who has had experience in legal affairs for not less than 10 years. He can be a member of a State Judicial Service also for a period of not less than 10 years or should have held a superior post in legal department of a State for not less than 10 years. The other alternate qualifications are also prescribed, which are not relevant for our purpose. It is not the case of the respondents that the applicant does not have the requisite 10 years of experience in legal affairs.

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The contention of the respondents, as stated, can be seen from the reply statement in para 4.4. Since the respondents have stated that the experience of the applicant in the CSIR from 1.11.1988 to 30.12.1992 cannot be counted as relevant experience as a Central Government servant and have, therefore, held that the applicant does not fulfil the basic eligibility condition in this recruitment. A plain reading of the eligibility condition as mentioned at 3.2 of the advertisement No.21/4 which is the same as in the relevant Recruitment Rules, i.e., to say Rule 7(1)(c), suggests that at the time of application, if the candidate happens to be a Central Government servant, he should have had experience in legal affairs for not less than 10 years. It is nowhere stated either in the eligibility condition under the advertisement or under the relevant Recruitment Rules cited above that the experience in legal affairs should be under the Central Government. Since it is a direct recruitment and the opportunity is given to the Central Government servants also to participate in such recruitment, the emphasis is on the Government servant having 10 years experience in legal affairs. Such an experience in legal affairs need not necessarily be under the Central Government alone unless it is specifically stated to be so required under the relevant Recruitment Rules or notification in the advertisement. It is not the case of the respondents that the experience gained by the applicant in the CSIR cannot be considered as experience in legal affairs. In the light of this, we are of the considered view that the applicant's candidature cannot be denied for the purposes of interview for the above said post by the competent authority on the ground that he does not have experience in legal affairs of

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10 years under the Central Government. We hold that in terms of the Recruitment Rules as well as the eligibility condition prescribed in the advertisement calling for applications for the direct recruitment for the above said post, the candidature of the applicant cannot be rejected.

14. In the conspecuts of the above discussion, this application succeeds and accordingly the respondents are directed to call the applicant for interview and include the result of his interview in the results pending declaration and thereafter, declare the results of the aforesaid selection. No order as to costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

  
(MRS. LAKSHMI SWAMINATHAN)  
MEMBER (J)

Rakesh