

Central Administrative Tribunal
Principal Bench

O.A. 365/2000
with
O.A. 1416/2000

New Delhi this the 3rd day of May, 2001

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

O.A.365/2000

Jagdish Kumar Khosla,
Flat No. 210,
Delhi Administration Flats,
Gulabi Bagh,
Delhi-110007. ... Applicant.

(By Advocate Shri P.P. Khurana)

Versus

1. Union of India through
Lt. Governor of India,
Raj Niwas,
Delhi.
2. Chief Secretary,
Government of National Capital
Territory of India,
5-Shamnath,
Delhi-110006
3. Principal Secretary of Land/
PWD of Delhi,
Government of National Capital
Territory of Delhi,
Vikas Bhawan, I.P. Estate,
New Delhi-110002.
4. Union Public Service Commission,
through the Secretary,
Dhaulpur House,
New Delhi.
5. V.B. Pande,
Legal Adviser cum Standing Counsel,
Land and Building Department,
Government of NCT of Delhi,
Vikas Bhawan,
New Delhi. ... Respondents.

(By Advocates Ms. Geeta Luthra - for Respondents 1-3,
Shri Rajinder Nischal - for Respondent 4 and Shri
Rajender Pandita with Shri G.D. Gupta for Respondent 5)

O.A.1416/2000

Umesh Prasad Singh,
Flat No. 2089,
Delhi Administration Flats,
Gulabi Bagh,
Delhi-110007.

... Applicant.

(18)

(By Advocate Shri K.R. Sachdeva)

Versus

1. Union of India through
Lt. Governor of India,
Raj Niwas,
Delhi.
2. Chief Secretary,
Government of National Capital
Territory of India,
5-Shamnath,
Delhi-110006
3. Principal Secretary of Land/
PWD of Delhi,
Government of National Capital
Territory of Delhi,
Vikas Bhawan, I.P. Estate,
New Delhi-110002.
4. Union Public Service Commission,
through the Secretary,
Dhaulpur House,
New Delhi.
5. V.B. Pande,
Legal Adviser cum Standing Counsel,
Land and Building Department,
Government of NCT of Delhi,
Vikas Bhawan,
New Delhi. ... Respondents.

(By Advocates Ms. Geeta Luthra - for Respondents 1-3,
Shri Rajender Nischal - for Respondent 4 and Shri
Rajender Pandita with Shri G.D. Gupta for Respondent 5)

O R D E R

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

In these two applications (O.A.365/2000 and O.A.1416/2000), the applicants have impugned the validity of the action taken by the respondents in not calling them for interview for the post of Legal Adviser-cum-Standing Counsel (hereinafter referred to as 'LA') in the office of the Land and Building Department,

VS

Govt. of NCT, Delhi for which interviews were held by Respondent 4/UPSC on 8.10.1999. They have also impugned the Notification dated 9.7.1997 in terms of which the post of LA has been thrown open to direct recruitment only.

(19)

2. The applicants have submitted that they were fully eligible and qualified as per the advertisement issued for this purpose by Respondents 1-3. They have submitted that on the basis of the interviews held by the UPSC, Respondent 5 has been appointed as LA vide order dated 25.11.1999.

3. As the relevant issues and facts in the aforesaid two applications are the same, they were heard together and are being disposed of by a common order. For the sake of convenience, the facts in the application filed by Shri Jagdish Kumar Khosla (OA 365/2000) have been referred to. Wherever required, the submissions made by Shri K.R. Sachdeva, learned counsel in Umesh Prasad Singh's case (OA 1416/2000) have also been referred.

4. In OA 365/2000, Shri P.P. Khurana, learned counsel for the applicant, has drawn our attention to the reply filed by Respondent 4/UPSC, in which they have admitted their mistake in rejecting the applicant's application. The UPSC have stated that the application of Shri Khosla was rejected by the computer as over-aged which could not unfortunately be checked. They have categorically stated that he is, however, eligible to be called for interview in terms of the "Note" below the

P.K.

column of method of recruitment in the relevant Recruitment Rules. They have further submitted that the UPSC have, therefore, decided to re-convene an Interview Board at a convenient date to assess the suitability of the applicant in OA 365/2000. However, with regard to the second contention of the applicant that Notification dated 9.7.1997 in terms of which the post of LA has been thrown open to direct recruitment only, they have submitted that his contention is wrong.

(20)

5. In OA 1416/2000, with regard to the same advertisement for recruitment to the post of LA in the Land and Building Department, in the reply filed by Respondent 4/UPSC, they have submitted that the applicant, Shri Umesh Prasad Singh, had not completed the requisite 10 years of regular service in the grade of Departmental OSD (Litigation)/Deputy Legal Adviser (DLA) and, therefore, he could not be given the benefit of age relaxation as per the provisions of the "Note" below the column of age as published by the Commission. They have submitted that his date of birth is 13.11.1941 and he was more than 55 years of age on the closing date of the advertisement. Therefore, even with 5 years' relaxation, as admissible to Government servants, he was over-aged for the post. Therefore, his representation was rejected, on the ground that he was over-aged on the closing date of receipt of the applications, which is the crucial date for determining the eligibility of the candidates in all respects.

192

6. Shri K.R. Sachdeva, learned counsel for the applicant in OA 1416/2000 has, however, contended that as per the provisions of the relevant Recruitment Rules, age limit does not apply in the case of Departmental candidates with 10 years service. He has submitted that the applicant was appointed to the post of Officer on Special Duty (Litigation) w.e.f. 30.8.1985 and has continued in this post. The advertisement for the post has been given in the "Employment News" for October 10-16, 1998. Learned counsel has, therefore, submitted that on the closing date for applications, that is 29.10.1999, the applicant had more than 13 years experience as OSD (Litigation)/DLA and, therefore, he was eligible for being called for interview. He has also submitted that even his selection to the post of OSD (Litigation) was on the recommendation of the UPSC in 1985. By Office Order No. 397 dated 6.4.1994, the applicant had been appointed to the post of Deputy Secretary in Law with the Government of NCT Delhi by transfer on deputation basis initially for a period of one year where he continued till he was repatriated to his parent Department, that is, the Land and Building Department, Government of NCT w.e.f. 30.6.1997 and he is continuing in the post of OSD (Litigation) in that Department. Shri Sachdeva, learned counsel has referred to the Government of India, DOP&T O.M. dated 10.4.1989, (Chapter 53 on Promotions, paragraphs 4.3.1 and 4.3.2 of Swamy's Manual on Establishment and Administration (Seventh Edition)). He has submitted that as the applicant in OA 1416/2000 was on deputation and has since been repatriated to his parent office as OSD (Litigation) and has been holding that post since 30.8.1985, he was

eligible for being included in the list of names to be considered by the UPSC for promotion to the post of LA. This has, however, not been done. He has relied on the judgement of the Supreme Court in **Roop Lal Vs. Lt. Governor of Delhi** (AIR 2000 SC 594). Learned counsel has also drawn our attention to the reply filed by Respondent 5 and, in particular, to Paragraphs 4.1 to 4.10, 4.19 and to the Verification in which that respondent has stated that the replies are correct as per the "official records" which he has stated he could not have relied upon in the case. He has also submitted that the application is not barred by limitation as this O.A. has been filed on 26.7.2000 impugning the appointment order of Respondent 5 to the post of LA dated 25.11.1999 without considering the applicant. During the hearing, it has been mentioned that the applicant in OA 365/2000 will retire in September, 2000 and the applicant, Shri Umesh Prasad Singh in OA 1416/2000 will retire in November, 2001.

22

7. We have seen the replies filed by Respondents 1-3 and heard Ms. Geeta Luthra, learned counsel. The respondents have submitted that O.A. 365/2000 is not maintainable and is barred by the principles of constructive res judicata. Ms. Geeta Luthra, learned counsel has submitted that the applicant in this application had filed an earlier application (OA 2038/96) which was disposed of by order dated 21.1.1997. In that application, it is stated that the grounds taken are mainly in respect of the alleged arbitrary and illegal action of the respondents in issuing the advertisement for filling the post of LA on contract basis. It was

8

23

further observed that in the amended O.A., however, an entirely different set of grounds has been canvassed, wherein the challenge is in respect to the appointment of Shri Pandey - Respondent 5 to hold additional charge of the said post till the regular appointment is made with the consultation of the UPSC. In the circumstances, it was held that the grounds taken in the O.A. have been drastically revised and the respondents' objection was sustained and MA 2346/96 seeking amendment was rejected, with liberty given to the applicant to file a fresh O.A., if so advised in accordance with law after impleading all the necessary parties. Taking into account the decision of the Tribunal in OA 2038/96, we are unable to agree with the contention of Ms. Geeta Luthra, learned counsel for the respondents, that O.A. 365/2000 is barred by the principle of constructive res judicata as the issues raised in the present O.A. have not been adjudicated upon in the earlier O.A.

8. Another contention taken by the learned counsel for Respondents 1-3 is that since Respondent 5 has already joined in the post of LA, and there is no illegality but only an error has been committed by the UPSC, the application may not be allowed. She has also very vehemently submitted that Respondent 4/UPSC has taken a totally contrary stand in these two O.As. She has drawn our attention to Paragraph 8 of the reply of the UPSC in OA 1416/2000 wherein they have stated that as Respondent 5 fulfills the requirements, he was called for interview and was considered most suitable for the post from amongst the 11 candidates interviewed on 8.10.1999 and recommended. They have, therefore, stated that there

18:

is no point in holding fresh interview for the post of LA which, according to the learned counsel for respondents 1-3, is different from the stand taken by them in O.A. 365/2000. This reply of the UPSC has been filed on 17.11.2000 which is after the reply filed by them in OA 365/2000 which was filed on 11.5.2000. She has, therefore, submitted that it is for the UPSC to explain how they have taken different stands in the two applications dealing with the same advertisement and interview held for selection to the post of LA. She has submitted that the applicant in OA.1416/2000 does not fulfil the criteria laid down for promotion to the post of LA, as on the closing date of applications, that is 29.10.1998, the applicant had completed 56 years and 11 months, which makes him ineligible for consideration even after giving him 5 years age relaxation as per the Government orders and Recruitment Rules. Respondents 1-3 in their reply have also stated that DLAs/OSD (Litigation) having 10 years' regular service and eligible as per the Rules have also been given an opportunity for selection to the post of LA by direct recruitment, in which that opportunity has not been denied to the departmental candidates, provided they fulfil the eligibility conditions with regard to the age, qualifications and experience, etc. as laid down in the Recruitment Rules. Learned counsel has prayed that the O.As may, therefore, be dismissed with costs. She has relied on **Mohd. Riazul Usman Gani & Ors. Vs. District and Sessions Judge, Nagpur** (2000(2) SCC 606). She has also relied on the Govt. of India, DP&AR O.M. dated 9.4.1981, copy placed on record. In this O.M., it is provided, inter alia, that the Government servants may be

2A

allowed, on a uniform basis, relaxation of a maximum of 5 years in the upper age-limit for recruitment to other Group 'A' or Group 'B' posts by advertisements through the Commission. She has, therefore, contended that the Advertisement issued by the UPSC in which there is a "Note" that departmental DLAs and OSD (Litigation) with 10 years' regular service shall be considered irrespective of upper age limit, is contrary to the Recruitment Rules. However, the learned counsel was not able to explain as to why the respondents had not cared to point out this mistake, as alleged now, to the UPSC at the relevant time before the interviews were held in pursuance of the Commission's advertisement till the time of the interview or even after the selection and subsequent promotion order was issued to Respondent 5 dated 25.11.1999, which has been impugned here.

(25)

9. We have also heard Shri Rajender Nischal, learned counsel for Respondent 4/UPSC in both the aforesaid cases. He has submitted that there is nothing inconsistent with the Recruitment Rules and the advertisement issued by them for direct recruitment to the post of LA which, inter alia, states that the departmental Deputy Legal Adviser/OSD (Litigation) with 10 years' regular service in the grade and possessing educational qualifications prescribed for direct recruit shall also be considered irrespective of upper age limit. He has submitted that as per the Recruitment Rules for the post of LA, in the Schedule, column 11, for direct recruitment, the Note provides that the Departmental Deputy Legal Adviser/OSD (Litigation) with 10 years' regular service in the grade and possessing the

18/1

educational qualifications prescribed for direct recruits should also be considered along with the candidates from outside and in case he/she is selected for appointment to the post, the post shall be deemed to have been filled by promotion. The provision with regard to the relaxation of 5 years for Government servants in accordance with the instructions or orders issued by the Central Government, as given in Column No.6 would, therefore, not be applicable to Departmental candidates who are Deputy Legal Advisers/OSD (Litigation) with 10 years' regular service in that grade and possessing the required educational qualifications for whom age limit is not prescribed. He has, therefore, submitted that it was in those circumstances that the UPSC had fairly admitted their mistake in the matter of giving age relaxation to the applicant in OA 365/2000.

(26)

10. Shri Rajinder Pandita, learned counsel for Respondent 5, has submitted that the above applications are much belated. Respondents 1-3 and this respondent have also submitted that the applicants have not exhausted the administrative remedies available in the Department by making any representation and, therefore, the O.A. should be dismissed on this ground alone. Learned counsel for Respondent 5 has submitted that if the applicants were aware that there is no upper-age limit for being called for the interview, they need not have waited till Respondent 5 was appointed. He has contended that the advertisement is not in accordance with the Rules. Besides, according to him, the UPSC had adjudged Respondent 5 the best amongst the other 11 persons who had appeared for the interview. Admittedly,

(27)

Respondent 5 is an outsider and not a Departmental candidate who has been recruited as a direct recruit LA. He has also taken the same plea as taken by the learned counsel for Respondents 1-3 that OA 365/2000 is also barred by the principles of res judicata. Written submissions submitted by Respondent 5 are also placed on record.

(27)

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

12. We see force in the submissions made by Shri Rajinder Nischal, learned counsel for Respondent 4/UPSC that there is no inconsistency in the Recruitment Rules to the post of LA and the advertisement issued by the Commission, as contended by Ms. Geeta Luthra, learned counsel for Respondents 1-3. By the Notification issued by the Govt. of NCT - respondents 1-3 dated 9.7.1997, it is noted that Column 9 under the heading 'Whether age and E.Q. prescribed for direct recruits will apply to the case of promotees', it has been indicated as 'Not Applicable (NA)'. Further, under Column No.11, the following has been substituted:

"Direct Recruitment"

Note under Col.11: The Departmental Deputy Legal Adviser/OSD (Lit) with 10 years regular service in the grade and possessing the educational qualification prescribed for direct recruits shall be considered along with the candidates from outside and in case he/she is selected for appointment to the post, the post shall be deemed to have been filled by promotion".

B/

(Emphasis added)

13. It is clear from the above provision that in the case of Departmental Deputy Legal Adviser/OSD (Litigattion) with 10 years regular service in the grade have to be cosidered along with outside candidate and no age limit is prescribed. In case such a person is selected for appointment to the post which is by way of direct recruitment, it has to be deemed to be filled by promotion. Taking into account the new provisions under Columns 9 and 11 of the Notification dated 9.7.1997, we find that there is no inconsistency with the advertisement issued by the UPSC and the relevant recruitment rules for direct recruitment to the post of LA. The contentions of Ms. Geeta Luthra, learned counsel to the contrary based on the Government of India, DPAR O.M. dated 9.4.1981 which relates to direct recruitment to Group 'A' or Group 'B' posts and relaxation of a maximum of 5 years in the upper age limit for Government servants, would, therefore, not be applicable to Departmental candidates, who are otherwise qualified under the relevant Recruitment Rules for being considered for the post of LA. The contention of learned counsel for Respondents 1-3 that merely because the aforesaid Notification provides that if the post is filled by a Departmental candidate, it shall be deemed to be filled by promotion, but still the age relaxation can only be 5 years, as provided in the general circular applicable to direct recruits, cannot be accepted, as this would be contrary to the specific provisions of the Rules as amended by Notification dated 9.7.1997. In this view of the matter, the submission of Respondent 4/UPSC that there has been a mistake in rejecting the application of

28

YB

the applicant in OA 365/2000 as over-aged by the computer, is correct. Their further submission that, therefore, that applicant was eligible to be called for interview in terms of the Note below the column of "Method of Recruitment in the Notified Recruitment Rules which is also the same as given in the advertisement, is legally in order. That being the case, the Departmental Deputy Legal Adviser/OSD (Litigation) with 10 years' regular service in the grade and possessing the educational qualifications prescribed for direct recruits, have to be considered, irrespective of their age, along with the outside candidates for appointment to the post of LA. This has not been done in the present case because of the aforesaid mistake, now acknowledged by the UPSC. As a Constitutional Body, the UPSC must take necessary steps to ensure that such mistakes do not recur in future.

(29)

14. In case of the applicant, Shri Umesh Prasad Singh in OA 1416/2000, it is noted that Respondent 4/UPSC have committed the same mistake where they have stated that even with 5 years' age relaxation, as admissible to Government servants, he was found over-aged for the post on the closing date of the receipt of applications. Considering what has been stated above, the same criteria as applicable to Shri Khosla, the applicant in OA 365/2000, with regard to the age limit would be applicable to this applicant also as he is also a departmental candidate for recruitment to the post of LA. In U.P. Singh's case, the UPSC has also stated that he has been found possessing less than 10 years regular service in the grade of Departmental OSD (Litigation)/DLA

V2

and thus, he was not found eligible for consideration. We also find force in the submission of Shri K.R. Sachdeva, learned counsel that this applicant, who had been appointed as OSD (Litigation) in the Department of Land and Building on the recommendations of the UPSC w.e.f. 30.8.1985 has more than the requisite 10 years regular service in the grade. His period of deputation to the post of Deputy Secretary in Law and Justice, Legislative Affairs, Government of NCT from 6.4.1994 till he was repatriated to his parent department on 30.6.1997 cannot also be ignored, taking into account the DOP&T O.M. dated 10.4.1989. After his repatriation to his parent department as OSD (Litigation) on 30.6.1997, he has been continuing in that post. Therefore, he has more than 10 years regular service in the grade of OSD (Litigation) in the Department and again the stand of Respondent 4 that he does not fulfil the eligibility conditions on this account cannot be accepted. As he has much more than 10 years regular service as OSD (Litigation) in the Department of Land and Building, therefore, there is no reason why this applicant should not also be called for interview as in the case of the applicant in OA 365/2000 for whom Respondent 4 has agreed to hold an interview. To this extent, we find the stand taken by the UPSC in their later affidavit dated 17.11.2000 not willing to hold a fresh interview for the post of LA, inconsistent, unwarranted and untenable in law. By excluding Departmental candidates who were otherwise eligible to be called for interview, who have been wrongly excluded on the grounds of age and educational qualifications, the UPSC cannot change their stand that because Respondent 5 was called for interview,

30

he fulfilled the requirements and was found best amongst the 11 candidates, there is no need to hold a fresh interview. Such a stand would be patently contrary to the relevant Rules and instructions and their earlier stand taken in the affidavit dated 11.5.2000 in OA 365/2000 ~~which~~ is the correct stand.

(31)

15. The contention of Respondent 5 that the O.As are belated as the applicants had waited till he had been appointed is rejected. The applicants have filed these applications on 20.2.2000 and 26.7.2000, that is well within one year of the impugned order dated 25.11.1999 appointing Respondent 5 to the post of LA.

16. A plea has also been taken by Respondents 1-3 and 5 that the applicants have not exhausted the departmental remedies available to them under Section 20 of the Administrative Tribunals Act, 1985 and hence, the O.A. should be dismissed on this ground alone. Section 20 of the Act provides that the Tribunal shall not "ordinarily" admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The present applications have not been admitted and taking into account the facts and issues raised here, that preliminary objection is also rejected.

17. One other contention of Ms. Geeta Luthra, learned counsel for Respondents 1-3 has to be referred to. She has contended that the UPSC has issued an advertisement with regard to the age factor which is

15

inconsistent with the Recruitment Rules. This point has been taken apparently only when these two O.As have been filed in the Tribunal, as the Govt. of NCT had not cared to raise it with the UPSC at any time earlier. It was also mentioned during the hearing that the UPSC had sent the relevant papers to the Respondents but received no comments from them before the interview. It was very vehemently submitted by the learned counsel for Respondents 1-3 and 5 that no further interview should be held by the UPSC as Respondent 5 has already been appointed as LA. We are unable to agree with these contentions because it is needless to say that the provisions of the Recruitment Rules and the procedure laid down therein for holding interviews for selection have to be strictly followed by the concerned bodies to avoid arbitrary or illegal actions where the people will lose faith in the institution of Public Service Commission, and "the authenticity of selection" (See the observations of the Supreme Court in **State of U.P. Vs. Rafiquddin** (AIR 1988 SC 162 which case has been relied on by Respondent 5). In that case, it has been held that once selection is made, the Commission should not reopen it by lowering down norms in the instance of the Government. That is not the position in the cases before us, where by applying wrong rules/norms, eligible Departmental candidates have been denied a fair opportunity to appear at the interview held by the UPSC on 8.10.1999. Therefore, the results of this interview cannot be sustained in law. In the circumstances of the case where the UPSC themselves have admitted their mistake that by oversight they have not called Shri Khosla, applicant in OA 365/2000 for interview for whom

(32)

they are prepared to hold a fresh interview, we see no reason why they should not take the same stand also ^{as} for the other similarly situated applicant in OA 1416/2000.

(33)

18. In view of what has been stated above, the challenge of the applicants to the validity of Notification dated 9.7.1997 is rejected.

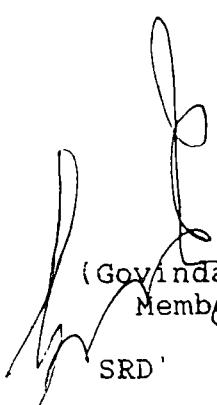
19. In the result, for the reasons given above, O.A.365/2000 and O.A.1416/2000 succeed and are allowed as follows:

(1) The appointment order dated 25.11.1999 issued by Respondents 1-3, appointing Respondent 5 to the post of Legal Adviser-cum-Standing Counsel, based on the recommendations of the UPSC by their letter dated 20.10.1999, on the basis of the interview held on 8.10.1999, is quashed and set aside;

(2) The UPSC shall hold a fresh selection of the eligible candidates, including the applicants, for selection to the aforesaid post of Legal Adviser. This shall be done as expeditiously as possible, and in any case within two months of the receipt of a copy of this order.

No order as to costs.

20. Let a copy of this order be placed in OA 1416/2000.


(Govindan S. Tamai)
Member (A)

SRD


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)