

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1374/89

DATE OF DECISION: 20.9.1990.

DR. R.K. JINDAL

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

ADVOCATES:

SHRI G.D. GUPTA

FOR THE APPLICANT

SHRI M.L. VERMA

FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Dr. R.K. Jindal, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the action of the Union Public Service Commission (UPSC) in not calling him for interview for the post of Assistant Professor of Surgery.

2. The relevant facts of the case are that the applicant obtained M.B.B.S. degree in the year 1976. He did his Internship of one year and thereafter Housing job for one year from Maulana Azad Medical College in 1977 and 1978 respectively. After obtaining M.S. degree in Surgery in 1982, he remained senior Resident in General Surgery in Lady Hardinge Medical College from January, 1985 to January, 1986. He was appointed Assistant Professor in Surgery on adhoc basis in September, 1986 in Maulana Azad Medical College and Associated Hospitals. Since the posts of Assistant Professor in Surgery in accordance with the

Recruitment Rules are required to be filled up by direct recruitment, three posts were advertised by the UPSC on 16th July, 1988. The applicant submitted his application for one of the posts as he is said to be eligible in accordance with the prescribed conditions. He was however, not called for interview held on 17th & 18th July, 1989. His grievance is aggravated further as some of his colleagues e.g. Dr. Gulshanjit Singh, Dr. Deepak Bagga who did not fulfil the conditions of eligibility were called for interview. His grievance is further aggravated by the fact that on the earlier occasions when the post of Assistant Professor in Surgery was advertised by the U.P.S.C. in October, 1986 and March, 1988, he had been called for the interview (but was not selected). He was however not called for interview for the post advertised in 1987. He represented to the UPSC against his not being called for interview on 8th March, 1989 and again on 30-6-1989 and 7th July, 1989. He has also submitted that though the number of posts advertised was three, the number was increased later to four. The case of the applicant is that at least for the additional post which was added after March, 1989, he should have been called for interview as, by that time, he had fulfilled the internal prescription of 5 years teaching experience fixed by the U.P.S.C. for short listing the candidates. As his representations were of no avail, he approached the Tribunal to seek redressal of his grievance. By way of relief, he has prayed that Tribunal may:

- i) set aside the act of the UPSC in enhancing the Teaching experience from three years, as fixed in the Recruitment Rules, to five years,
- ii) declare the applicant as entitled to be called for interview against the fourth post which was added after March, 1989.

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When the matter came up before the Tribunal on 13-7-1989, as ad-interim relief, the respondents were directed to admit the applicant for interview that was scheduled for the 17th & 18th July, 1989 or any other date to which it is postponed, for the post of Assistant Professor in Surgery. The respondents were also directed not to publish the result of the interview. The interim order was modified on 26-7-1989 to say that the result of the applicant alone should be withheld and that the appointments made as a result of the interview held on 17th and 18th July, 1990 would be subject to the result of this application. On 27-7-1989, the interim order was further modified to the effect that status quo shall be maintained, the interim order as modified has continued to be in operation.

3. The respondents in their written statement have submitted that the applicant was not called for interview by the UPSC as he did not possess the requisite period of experience in the speciality, as on 16.8.1988, the cut off date period. It has further been submitted that in response to the advertisement for three posts, 75 candidates submitted their applications. The UPSC therefore had no alternative but to undertake short-listing as is normally done when for a few posts, the number of candidates is much too large. The minimum period of experience of three years for the post was enhanced to 5 years to short list the candidates. As the applicant did not possess 5 years' experience as on the closing date viz. 16-8-1988, he was not called for interview. The applicant was however allowed to appear in the interview in accordance with the Tribunal's

order dated 13-7-1989. The experience of the applicant as on 16-8-1988 amounts to 4 years 11 months as against the requisite 5 years' fixed on the cut-off date. The respondents have accepted that Dr. Gulshanjit Singh and Dr. Deepak Bagga were not eligible to appear for the interview and they were therefore not interviewed. The respondents have also submitted that the possibility of enhancing the qualifications of short-listing is indicated in the instructions of the candidates supplied to them along with the application form.

4. Shri G.D. Gupta, learned counsel for the applicant conceded that the procedure of short-listing by the UPSC has been upheld in several judicial pronouncements, and, therefore, he was not going into the need for short-listing of candidates. He, however, urged that it was illegal to enhance the period of experience than what is laid down in the statutory rules. Since statute provides three years' experience, the UPSC cannot use its discretion to increase it to five years. The Statutory Rules cannot be varied by an executive action. The learned counsel urged that the UPSC could have devised a suitable methodology so that it does not conflict with the statutory provisions made in the Recruitment Rules. To fortify his case the learned counsel cited the case of J.N. Goel & Other.

AIR-1968-SC-33 and 1987(4) ATC - 487

The learned counsel further urged that while the UPSC's discretion to short listing candidates in certain situations was acceptable, but the discretion has to be used within well defined limits.

The second point urged by the learned counsel was that the number of posts advertised was three, and one post was added after March, 1989 and clubbed with the three

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vacancies advertised in 1988. He drew our attention to the photo copy of the interview call letter dated 4-2-1989 and another letter dated 23-3-1989. While in the first interview letter the number of posts of Assistant Professor (surgery) were indicated to be three in the latter, the number of posts are indicated as four. The learned counsel, therefore, submitted that the increase in the number of vacancies had taken place sometime between 4-2-1989 and 23-3-1989. The learned counsel therefore urged that even if the applicant was not eligible to be considered for the three advertised posts, he should have been considered for the fourth post which arose sometime after Feb. 1989. The applicant had attained 5 years' experience by that time, as on 11-8-1989 he fell short of 5 years only by 29 days.

This argument, however, suffers from the fact that as of the cut off date the standard applied for short-listing will have to be relaxed for the applicant. Further, it will be discriminatory to consider only the applicant for the 4th post clubbed later on. He cannot be considered in isolation as there must be much larger number of candidates who would be falling within the zone of three to five years experience. Whether one fell short by one day or by 29 days is not material fact to influence the UPSC in calling the candidates for the interview, whether the UPSC can vary vacancies, once they have been notified in an advertisement, however, is a question which needs to be considered. We have observed that the UPSC had received large number of applications against the advertised posts and had to resort to short listing to bring the number of candidates within reasonable limit. The fact, however, remains that the specific number of vacancies were advertised by the UPSC. In our view these number of vacancies should not have been varied.

5. Shri M.L. Verma, learned counsel for the respondents maintained that the UPSC was well within its right to short-

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list candidates, as for three posts the Commission had received 75 applications from the general candidates. The critaria adopted for short-listing was uniformly applied to all the candidates and as such no candidate was discriminated against. The applicant did not possess five years' experience on the closing date and therefore he was not eligible to be interviewed. In support of short-listing the learned counsel for the respondents cited:

1989 (2) CAT- 113- Mrs. Jitendera Gauba V. UPSC & Anr.

1990 (1) CAT - 167 - SLJ - Sh. Satbir Singh Dahiya V. UOI & Ors.

AIR - 1987 - SC - 454

1988 (8) ATC - SC - 944 - Dr. M.C. Bindal V. R.C. Singh & Others.

Regarding the number of posts the learned counsel submitted that initially two general posts and one ST post were advertised on 16.7.1988. Three posts were later added (one SC, one ST and one General) raising the total number of posts to six, which included three posts for unreserved category. For the three unreserved posts 15 candidates were called for interview on July 17, 1989. The learned counsel submitted that additional posts were clubbed with the three advertised posts much before the initiation of recruitment action.

We have heard Shri G.D. Gupta, learned counsel for the applicant and Shri M.L. Verma, learned counsel for the respondents and considered the material before us, carefully. The unfettered right of the Public Service Commission to evolve its own method of selection for the most suitable candidate has been upheld in a catena of judicial pronouncements. The other aspect meriting consideration relates to the enhancement of the required experience from three to five years for the purpose of

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short-listing of candidates. The notification of 16.7.1988 invited applications from the candidates for the post of Assistant Professor (Surgery) prescribed the following qualifications in regard to the experience:-

"....At least three years teaching experience in the concerned speciality as Registrar/Demonstrator/Lecturer/Tutor/Sr. Resident after the requisite post graduate degree qualifications.

NOTE:I (The qualifications are relaxable at Commission's discretion in the case of candidates otherwise well qualified...."

Thus the provision regarding qualifications specifically provides at least three years' teaching experience. This is the minimum prescript and is not a finite number. It means that the experience can be increased but it cannot be varied to less than three years. The conflict with the Statutory Rules would arise only if any candidate with experience less than three years is called for the interview. This is not the case here. There is no contravention of any Statutory Provision in fixing the minimum standard for selection on the basis of plus qualification and/or plus experience.

We are, however, not persuaded to accept the view that the UPSC could vary vacancies after a specific number had been notified in the advertisement and the recruitment process had gone well under way. The respondents have not produced any evidence to indicate that the additional vacancies were added well before the recruitment action was initiated. In this view of the matter we hold that selection should have been confined to the number of vacancies as advertised in the notification No.F.1/323/88-R.I dated 16.7.1988.

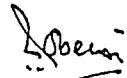
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In view of the above, while none of the reliefs prayed for by the applicant would be available to him and in that view of the matter the application fails in regard to relief claimed vide paragraph-8 (v), we order and direct that the respondents shall hold fresh selection after advertising the posts which were clubbed after the recruitment action had been initiated and selection made for them from the candidates who had applied against the advertised number of posts after short-listing the candidates is upheld, but the selection made against the additional posts clubbed in February-March, 1989 with those advertised posts in July, 1988, however is held as violative of the principles of natural justice.

The OA is disposed of in accordance with the above directions with no orders as to the costs.


(I.K. RASGOTRA)
MEMBER (A) 20/9/1990


20.9.90
(T.S. OBEROI)
MEMBER (J)