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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 294
T.A. No.

1988.

DATE OF DECISION 19.9.89.

Mr. Dyulok Chowdhuri Applicant (s)

Shri R.P.Oberoi, Advocate for the Applicant (s)

Versus

Union of India & Ors. Respondent (s)

Shri M.L.Verma, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Administrative Member.

The Hon'ble Mr. T.S. Oberoi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

Yes
No

JUDGEMENT(ORAL)

(Judgement of the Bench deliver by Hon'ble
Shri P.Srinivasan, Administrative Member.)

In this application made under Section 19 of the Administrative Tribunals Act, 1985 (the Act), the applicant complains that respondent No.2, namely, the Union Public Service Commission has not called him for interview for, the post of Industrial Adviser for which an advertisement dated 11.7.1987 was issued. He seeks a direction from this Tribunal to the said respondents not to hold any interview without the petitioner being called for it.

2. The brief facts are that on 11.7.1987, the U.P.S.C. issued an advertisement for one post of Industrial Adviser in the Ministry of Industry. The qualifications essential for the post as well as ^{the} desirable additional qualifications were set out in the advertisement. The applicant applied for the post since he had already been working with the Tata Engineering and Locomotive Company Ltd. (TELCO), for some years and had the

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necessary minimum qualifications. He came to know subsequently that the U.P.S.C. had short-listed candidates for being called for interview and that he was not one of the candidates figuring in the short-list. Hence, he filed the present application. During the pendency of this application, we were told that interviews for the post were to be held on 24/25th March, 1988^{and} as an interim measure, we directed that the applicant also be interviewed on that date. Thereafter, the applicant is not aware as to what happened since he was not called for interview nor has he been selected for the post.

3. When the matter came up for hearing today, Shri M.L. Verma, learned counsel for the respondents submitted that the whole case of the applicant falls to the ground because in another case, namely, Shri G.B. Jakhethia Vs. Union of India & Ors., OA-471/1988 decided by this Tribunal on 13.7.1988, the advertisement dated 11.7.1987 for the post of Industrial Adviser and all other steps taken in pursuance of the said advertisement have been quashed by this Tribunal. This Tribunal also held that the post should not be filled by direct recruitment but by promotion to which the applicant in that case was entitled. Since the entire process has been struck down, the applicant can have no more basis to contend that he should be considered for appointment to that post for whatever reason..

4. Shri Oberoi submitted that the respondents have held back information from this Tribunal by not stating at an earlier stage the connection between the application filed by Shri Jakhethia and the present application. In fact, at one stage both these applications were clubbed to be heard together and the applicant was not aware of this. The respondents cannot now spring a surprise by pointing out the decision in Jakhethia's case to defeat the claim of the applicant. If the U.P.S.C. short-listed candidates in the field to be called

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for interview, the criteria applied for such short-listing should have been announced. In any case, while short-listing candidates, new qualifications could not be introduced, which did not appear in the advertisement. On an earlier occasion, the applicant had applied for a post of Deputy Director in the Metallurgical Section of the Small Industrial Development Organisation, Ministry of Industry and had actually been selected for the post, being placed first in the list of selected candidates. The U.P.S.C. also recommended that he be given five increments over the minimum of the pay scale of the post. Yet, he had not been offered the post on the ground that he had not been drawing Rs.2,500/- by way of emoluments for a period of seven years prior to the date of selection. This was an arbitrary criterion which did not appear in the advertisement.]

5. The applicant had thus been wrongly denied the post of Deputy Director earlier and this injustice had been compounded by his not being called for interview for the post of Industrial Adviser.

6. Shri M.L.Verma, sought to refute the contention of Shri Oberoi. Dealing with the recruitment to the post of Deputy Director, Shri Verma pointed out that one of the qualifications prescribed was "5 years experience in a responsible capacity in a technical organisation or industrial concern of repute in foundry work heat-treatment of different varieties of steel and tools." Since a very large number of applications were received and there was only one post available for ^a general candidate, the U.P.C.S. prepared a short-list of 20 candidates. For short-listing candidates, the criteria had to be higher than what was prescribed in the advertisement itself. The U.P.S.C., therefore, decided to draw the line at 7 years' experience as on 5.1.1987 as against 5 years laid down in the advertisement. So far as persons working in Government/Semi-Government/ Public Undertakings/

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statutory/autonomous organisation were concerned, the experience had to be in a post carrying the pay scale of Rs.700-1300 while those working in Private Sector were required to have worked in posts carrying monthly emoluments of Rs.2500/ and above, for the same period of seven years. The applicant had stated in his application that he was drawing monthly emoluments totalling Rs.2500/- and above from 1980 and on this representation he was called for the interview. He was no doubt, selected in the interview but that was subject to his proving that he fulfilled the higher criterion of having draw monthly emoluments of Rs.2500/- or above for a period of seven years prior to 5.1.1987. To ascertain this, letters were addressed to TELCO who had in their reply furnished figures which showed that the applicant was not actually drawing Rs.2500/- or above for the 7 year period. A copy of the letter received from TELCO dated 23.9.1987, appearing as an annexure to the respondent's reply showed that for the financial years 1981-82 and 1982-83 the monthly emoluments of the applicant were less than Rs.2500/-. It was on account of this that he was not recommended for appointment. As for the post of Industrial Adviser, no person can now be appointed on the basis of the advertisement dated 11.7.1989 in view of the judgement in Jakhetia's case rendered by this Tribunal against which Special a/Leave Petition was filed but was rejected by the Supreme Court.

7. We have given the matter the most anxious consideration. The selection to the post of Deputy Director is not the issue before us. The prayer of the applicant is only in relation to the post of Industrial Adviser. Whatever may be the complaint of the applicant against the manner in which candidates were short-listed or against information in regard to Jakhatia's case not having been furnished to this Tribunal earlier, the position in law as it stands now is that no recruitment is possible in pursuance of the advertisement dated 11.7.1987, either of the applicant or of any one else for that matter. The application has thus become infructuous,

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since the very foundation has been removed. We cannot, therefore, allow the application.

8. Even though the appointment to the post of Deputy Director is not within the purview in this application, we notice that an elaborate note was prepared in the office of the U.P.S.C. for prescribing criteria for short-listing candidates in the field. Shri Oberoi submitted that applying different criteria in regard to pay drawn earlier for employees in Government and Public Undertakings from those applied to employees of Private Organisations amounted to discrimination. We do not agree. After all for employment in Government, if the Government prescribes somewhat different requirements for persons already working in the Government, there is no element of discrimination. Moreover, the criteria set out in the note prepared by the office of the U.P.S.C. have been applied uniformly to whoever applied for the post and we cannot attribute any personal malice against the applicant or anybody else in preparing the note. There was an honest attempt to short-list candidates by prescribing qualifications somewhat higher than those prescribed in the advertisement and once we agree that it was an honest exercise we cannot substitute our view for that of the U.P.S.C. We leave the matter at that.

9. In view of the above, the application is devoid of merit and deserves to be dismissed.

10. Before parting with this application, we may, however, mention that the applicant seems to have performed rather well in the interview for the post of Deputy Director as he was placed first among the candidates selected. No doubt, he could not be given the appointment because of the higher criteria fixed by the U.P.S.C. for short-listing candidates for interview. At the same time, we feel that if possible the respondents should consider the applicant for any other post on the basis of his performance in that interview and his qualifications and experience. We are suggesting this because

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we feel that this is a somewhat unfortunate case: we are told that the applicant has had to resign from his earlier post in TELCO and is now unemployed. Since he is apparently a well qualified man, the respondents could certainly try and see if they can accommodate him in a suitable post.

11. In the result, we dismiss the application leaving the parties to bear their own costs.

T. S. Oberoi 19/9/89
(T.S. Oberoi)
Member (Judl.)

P. Srinivasan 19/9/89
(P. Srinivasan)
Member (Admn.)