

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.3209/2016

Today this the 12th day of October, 2020

Through video conferencing

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Renu Sinha

...Applicant

(By Advocate : Mr. Yogesh Sharma)

Versus

Union Public Service
Commission

...Respondents

(By Advocate : Mr. Hanu Bhaskar for Resp. No. 1 and
Mr. Ankur Chibber for UPSC)





Order (Oral)

Justice L. Narasimha Reddy, Chairman

The Union Public Service Commission (UPSC) issued an advertisement in the year 2016, notifying 3 vacancies of Deputy Legislative Counsel, in the Ministry of Law. The qualifications for the post as well as the experience under the relevant rules are mentioned. It was also stated that the UPSC reserves its right to short list the candidates, depending upon the number of applications received.

2. The applicant joined the service of Ministry of Law and earned various promotions. As of now, he is holding the post of Assistant Legal Counsel on substantive basis, and the post of Deputy Legal Counsel on adhoc basis. He too applied for the post.

3. The UPSC issued the short listing criteria after the last date of receiving the applications. Two salient features are that the



experience which was stipulated as 10 years under the rules was enhanced to 18 years, and the experience in the post of Assistant (Legal) was decided to be omitted.

4. The applicant contends that while the decision of the UPSC to enhance the experience from 10 years 18 years would fit into the parameters stipulated for fixation of the short listing criteria, the one for omission of the experience in the post of Assistant (Legal) cannot be sustained in law.

5. He contends that on account of the omission of the experience in the post of Assistant (Legal) he is not treated as qualified or to be within the zone of consideration. He filed this OA with a prayer to declare the short listing criteria adopted by the respondents as illegal, arbitrary and untenable and to direct the respondents to treat him as qualified.

6. On behalf of the UPSC a detailed counter affidavit is filed. It is stated that for 3 posts of Deputy Legislative Counsel, 251 applications were received and having regard to the qualifications and experience possessed by the candidates the short listing

 criteria were adopted. Their plea is that while the experience of 10 years was enhanced to 18 years, the one at the bottom of the service in the legal department, namely Assistant Legal and Translator, is omitted. They submit that the short listing criteria were adopted strictly in accordance with the guidelines contained in the advertisement itself.

7. We heard Shri Yogesh Sharma, learned counsel for the applicant and Shri Hanu Bhaskar, learned counsel for the 1st respondent and Shri Chibber, learned counsel for UPSC.

8. The selection for the 3 vacancies of the Deputy Legislative Counsel in the Ministry of Law commenced with the issuance of advertisement in the year 2016. The qualifications for the posts are stipulated as under :

“Qualifications : Essential : (A) Educational : A person shall not be eligible for appointment by direct recruitment to a duty post in Grade III, unless he/she holds a Degree in Law of a recognized University or Bachelor Degree in Law from a University established or incorporated by or under a Central Act; a Provincial Act or a State Act or any Institution for higher education deemed to be a University by the Central Government or any other Institution or foreign University approved by the Central Government and unless he/she has been a member of a State Judicial Service for a period of not less than ten years or has held a supervisor post in the legal department of a State for a period of not less than ten years or a Central Government servant who has had experience in legal affairs for not less than ten 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.....”



9. From the above it is clear that a candidate should possess a Degree in Law from a recognized University and have 10 years of experience in the Central or State Department or other departments. Certain other combinations were also indicated.

10. The UPSC reserved to itself, the right to frame short listing criteria, in case large number of applications, compared to available vacancies, are received. Even in the context of the framing of short listing criteria it has its own guidelines and they read as under :

- (a) *On the basis of higher qualifications than the minimum prescribed in the advertisement; or*
- (b) *On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement; or*
- (c) *By counting experience before or after the acquisition of essential qualification; or*
- (d) *By holding a Recruitment Test.*

11. The UPSC adopted short listing criteria, on two aspects, both of which are referable to the experience. While the duration of experience is enhanced from 10 years to 18 years, the one referable to the post of Assistant (Legal) occurring at the bottom of the service in the department is to be omitted.

12. The applicant did not have any qualms with the enhancement of experience by 8 years. However he does not fit

into the criteria on account of the omission of the service in the post of Assistant (Legal).



13. It is strongly pleaded that omission to count the experience in the post of Assistant Legal would amount to altering the qualifications itself. Reliance is placed upon a judgement of this Tribunal in OA.3238/2009 dated 02.03.2010. In that case the issue was not about the omission to take into account, the experience in a post, as a short listing criteria. On the other hand the stipulation denied the reckoning of the experience in a particular service. The Tribunal felt that the experience of the candidate therein was very much relevant for the post in question, and held that the same ought to have been permitted. The order in the said OA has no bearing on the short listing criteria.

14. Reliance is also placed upon the case of Hon'ble Supreme Court in ***B.Balakichenin @ Balagandhi vs. Union of India and Others***. In that case, one of the prescribed qualifications was 2 years experience in the field of extension in Agriculture.



However, in the short listing criteria the UPSC insisted that the experience must be after the M.Sc Degree. The Hon'ble Supreme Court found that it would amount to alteration of the qualifications. We are of the view that the adjudication in that case would not have any bearing on the facts of the present case.

15. The very purpose of adopting short listing criteria is to ensure that the level of competition or scrutiny is reduced to the manageable levels and thereby the need scrutinize every application received in response to the advertisement and to interview all the candidates. We are of the view that the short listing criteria adopted by the UPSC are part of the same exercise. While the first one, namely, enhancing it from 10 years to 18 years has the effect of adding length to the yardstick at the top, omission of the experience in the post of Assistant (Legal), has the effect of the chopping of the yardstick at the bottom. Either way the objective is only to ensure that the best material is available for selection. It hardly needs any mention that in the context of the selection to higher post, the experience in the lowest category, would seldom, by of any use, though it may enable the candidate to apply.

16. We do not find any merit in the OA the same is dismissed accordingly. There shall be no order as to costs.



(Aradhana Johri)
Member (Admn.)

(Justice L.Narasimha Reddy)
Chairman

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