

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**



O.A./100/4354/2018
 M.A./100/2748/2019
 M.A./100/443/2020
 M.A./100/815/2020
 With
 O.A./100/1470/2019
 O.A./100/1800/2019
 O.A./100/1467/2018
 O.A./100/4396/2018
 O.A./100/4427/2018
 O.A./100/4432/2018
 O.A./100/4434/2018
 O.A./100/4437/2018
 M.A./100/5036/2018
 O.A./100/4458/2018
 O.A./100/4460/2018
 O.A./100/544/2017
 O.A./100/545/2017

New Delhi, this the 4th day of March, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

O.A./100/4354/2018

1. Dr. R.J.R. Kasibhatla, Age 52
 Dy. Legal Adviser,
 Flat No.204A, Dwarka Apartments,
 Plot No.21, Sector 7
 Dwarka, Delhi-110075 ...Applicant

(Through Shri Anupam Lal Dass, Senior Advocate with Shri Sameer Kumar, Advocate)

Versus

1. Secretary,
 Union Public Service Commission
 Dholpur House, Shahjahan Road,
 New Delhi-110001
2. Secretary,
 Department of Legal Affairs,
 Ministry of Law and Justice,
 New Delhi
3. Secretary,

Department of Personnel and Training,
 Ministry of Personnel, Public Grievances and Pensions,
 North Block, New Delhi ... Respondents

(Through Shri R.V. Sinha with Shri Amit Sinha, for respondent 1
 Shri Hanu Bhaskar, for respondent 2)



O.A./100/1470/2019

Krishan Dev Pachauri, Age 44 years
 S/o Shri Om Prakash Sharma
 R/o 164, Akash Kunj Apts
 Sec-9, Rohini, Delhi-110085 ...Applicant

(Through Shri Praveen Kumar Singh, Advocate)

Versus

1. Union of India
 Through Ministry of Law and Justice,
 Department of Legal Affairs,
 4th Floor, A – Wing, Shastri Bhawan,
 New Delhi-110001
 Through its Secretary
2. Union Public Service Commission
 Shahjahan Road, New Delhi-110001
 Through It's Chairman ...Respondents

(Through Shri Hanu Bhaskar, for respondent 1
 Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/1800/2019

Reeta Sharma, Aged about 49 years
 D/o Shri R.C. Sharma
 Presently working as Additional Public Prosecutor
 Directorate of Prosecution, Govt. of NCT of Delhi
 Tis Hazari Court Complex, Delhi-110054
 R/o C6/12B, Keshav Puram,
 Delhi-110035 ...Applicant

(Through Shri S.K. Das, Advocate)

Versus

1. Union of India Through Secretary
 Department of Law & Justice,
 Shastri Bhawan, New Delhi
2. Union Public Service Commission
 Dholpur House, Shahjahan Road,
 New Delhi-110001
 Through It's Secretary ...Respondents

(Through Shri R.K. Jain, for respondent 1
 Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/1467/2018



Raj Bahadur, aged about 50 years
 S/o Late Shri Ram Yadav
 R/o B 2204 Ace City, Post Bisrakh,
 Dist. Gautam Budh Nagar,
 Uttar Pradesh ...Applicant

(Through Shri Suvesh Kumar, Shri Sahil Chaudhari and Shri Sandeep,
 Advocates)

Versus

1. Union of India
 Represented Through Secretary
 Department of Legal Affairs,
 Ministry of Law & Justice,
 4th Floor, A-Wing, Shastri Bhawan,
 New Delhi-110001
2. Union Public Service Commission
 Represented Through Secretary,
 Dholpur House, Shahjahan Road,
 New Delhi-110069 ...Respondents

(Through Shri Rajesh Katyal, for respondent 1
 Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/4396/2018

Mukesh Kumar
 S/o Shri Nathu Ram
 R/o 18/C, Devine Heritage,
 Gyan Khand-II, Ghaziabad,
 Uttar Pradesh
 Aged about 46 years (Group 'A') ...Applicant

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Union of India Through its Secretary
 Ministry of Law & Justice,
 Shastri Bhawan, New Delhi
2. Union Public Service Commission
 Through its Secretary,
 Dholpur House, Shahjahan Road,
 New Delhi-110069 ...Respondents

(Through Shri Hanu Bhaskar, for respondent 1
Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/4427/2018



Avinash Shukla, son of Prakash Narain Shukla,
Aged 53 years, presently working as Editor, Group-A
(Rank: Deputy Secretary) in the Ministry of
Law & Justice, Legislative Department,
VSP, having its office at ILI Building, 3rd Floor,
Bhagwan Das Road, New Delhi-110001 ...Applicant

(Appeared in person)

Versus

1. Union Public Service Commission
Through its Secretary, having its office at
Dholpur House, Shahjahan Road,
New Delhi-110069
2. Union of India, Through Secretary
Ministry of Law & Justice,
Department of Legal Affairs,
4th Floor, Shastri Bhawan,
New Delhi-110001 ...Respondents

(Through Shri R.V. Sinha with Shri Amit Sinha, for respondent 1
Shri Hanu Bhaskar, for respondent 2)

O.A./100/4432/2018

Neeraj Bhardwaj,
Son of Shri K.D. Bhardwaj,
R/o 121, Gagan Vihar Extension
Delhi-110051
Aged about 43 years (Group 'A') ...Applicant

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Union of India, Through its Secretary
Ministry of Law & Justice,
Shastri Bhawan, New Delhi
2. Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069 ...Respondents

(Through Shri Hanu Bhaskar, for respondent 1
Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/4434/2018

Krishna Mohan Arya, Age 45
 S/o Shri Munni Lal
 R/o 8/1, Block-2, New Minto Road Hostel,
 C.P.W.D., Government Complex,
 New Delhi-110002

...Applicant



(Through Shri Satya Mitra, Advocate)

Versus

1. Union Public Service Commission (UPSC) through
 The Secretary
 Shahjahan Road, New Delhi-110069
2. Department of Legal Affairs (DoLA)
 Through the Secretary,
 Ministry of Law and Justice,
 4th Floor, A-Wing, Shastri Bhawan,
 New Delhi-110001
3. Department of Personnel and Training (DoP&T)
 Through the Secretary,
 Government of India, North Block
 Central Secretariat,
 New Delhi-110001

...Respondents

(Through Shri R.V. Sinha with Shri Amit Sinha, for respondent 1
 Shri Hanu Bhaskar, for respondent 2)

O.A./100/4437/2018

1. Japan Babu, Age-about 45 years,
 S/o Shri Roshan Singh,
 R/o : Plot No.192/193, Pocket-3,
 Sector-25, Rohini,
 Delhi-110083
2. Mohd. Muqeem, Age-about 45 years,
 S/o Shri Mohd. Saleem,
 R/o : House No.4566, Gali Shahtara,
 Ajmeri Gate, Delhi-110006
3. Pradeep Kumar Srivastava, Age-about 44 years,
 S/o Shri C.S. Srivastava
 R/o : House no.683, Sector-4,
 R.K. Puram, New Delhi-110022

...Applicants

(Through Shri Amit Kumar, Advocate)

Versus

1. The Union Public Service Commission (UPSC) through
 its Secretary, Dholpur House,

Shahjahan Road, New Delhi

2. The Ministry of Law & Justice
Govt. of India, Through its Secretary,
Shastri Bhawan, New Delhi
3. The Department of Personnel and Training
Ministry of Personnel, PG & Pensions,
Through its Secretary, North Block
New Delhi

...Respondents

(Through Shri R.V. Sinha with Shri Amit Sinha, for respondent 1
Shri Hanu Bhaskar, for respondent 2)



O.A./100/4458/2018

Sohan Kumar Sharma, Age-about 42 years,
Working as Deputy Legal Advisor, Group 'A' in
Department of Legal Affairs,
Ministry of Law and Justice,
S/o : Shri Vishwanath Sharma,
R/o : H.No.109, Second Floor,
Pocket-21, Sector-24, Rohini,
Delhi-110085

...Applicant

(Through Shri Amit Kumar, Advocate)

Versus

Union of India & others, through:

1. The Secretary,
Govt. of India,
Department of Legal Affairs,
Ministry of Law & Justice,
4th Floor, A Wing,
Shastri Bhawan, New Delhi-110001
2. The Union Public Service Commission through
its Secretary, Dholpur House,
Shahjahan Road, New Delhi-110001
3. The Department of Personnel and Training
Ministry of Personnel, PG & Pensions,
Through its Secretary, North Block
New Delhi

...Respondents

(Through Shri Hanu Bhaskar, for respondent 1
Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/4460/2018

Dharmender Rana, Age- 41 years, Group 'A'
S/o Late S.S. Rana
R/o D-23 Saket Courts Residential Complex,

New Delhi-110017

...Applicant

(Through Shri Saurabh Sharma, Advocate)

Versus

1. Union of India
Represented through Secretary,
Department of Legal Affairs,
Ministry of Law and Justice,
4th Floor, A – Wing, Shastri Bhawan,
New Delhi-110001
2. Union Public Service Commission through
its Chairman, Dholpur House,
Shahjahan Road, New Delhi-110001 ...Respondents

(Through Shri Hanu Bhaskar, for respondent 1
Shri R.V. Sinha with Shri Amit Sinha, for respondent 2)

O.A./100/544/2017

Shri Raj Bahadur,
S/o Late Shri Shri Ram
Age : 48 years,
Appointment : Group A Post
R/o SB 202, Block-8, Hudco Place,
New Delhi-110049 ...Applicant

(Through Shri Suvesh Kumar, Shri Sahil Chaudhari and Shri Sandeep, Advocates)

Versus

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

(Through Shri R.V. Sinha with Shri Amit Sinha, for respondent 1
Shri Hanu Bhaskar, for respondent 2)

O.A./100/545/2017

Shri Mukesh Kumar
S/o Late Shri Nathu Ram
Age : 46 years,
Appointment : Group A Post
R/o House No.09, Andrew Ganj Extension
New Delhi-110049 ...Applicant

(Through Shri Tanveer Ahmed Ansari, Advocate)

Versus

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

...Respondents

(Through Shri R.V. Sinha with Shri Amit Sinha, for respondent 1
Shri Hanu Bhaskar, for respondent 2)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

In the Ministry of Law and Justice, Department of Legal Affairs, there exists a cadre of Joint Secretary and Legal Adviser (JS&LA). Appointment to that post is by way of promotion to the extent of 90% from the feeder categories, failing which by direct recruitment. Independently, there exists a provision for direct recruitment, to the extent of 10%, of the cadre.

2. The UPSC issued advertisement No.06/2018, inviting applications for various posts, including the post of JS&LA on 23.03.2018. Six vacancies (UR-3, OBC-2 and SC-1) were notified. The educational qualifications stipulated for the post are, Degree in Law from a recognized University. As regards experience, it is mentioned that one should be a

member of the Indian Civil Service, permanently allotted to the Judiciary or of a State Judicial Service for a period not less than sixteen years or has held a superior post in the legal department of a State for a period not less than sixteen years or should be a Central Government servant who has experience in legal affairs of not less than sixteen years.



3. The applicants in these OAs are from different categories mentioned in the advertisement. The 1st respondent is said to have received 154 applications for the 6 posts, advertised. It has adopted certain short listing criteria and in the process, several candidates in the UR category were excluded from consideration. A list thereof is contained at the bottom of the notification dated 'nil' which is filed as an annexure A-6. The roll numbers of the applicants figured therein.

4. In this batch of OAs, the applicants challenge the action of the respondents in excluding them from consideration, on the ground that the length of service or experience to their credit, is not adequate.

5. The applicants contend that the 1st respondent has taken into account, just the length of their service in the government but not their experience as legal practitioners.

According to them, rule 7 (3) of the Indian Legal Service Rules (for short “the Rules”) mandates that in computing the service of a Judicial Officer or of a Central Government officer, the period during which he worked as a legal practitioner, is also required to be taken into account. On this premise, various other contentions are also urged.



6. The OAs are contested by the Union of India as well as the UPSC and they filed counter affidavits. According to them, rule 7 of the Rules deals with the selection for the posts, in Grade I to IV of the cadre. Their contention is that in rule 7 (1), there is no reference to “legal practice”, and the length of service alone, is to be taken into account, for the post of JS&LA, which is in the Grade I. They contend that it is only with reference to posts in Grade II, III and IV, that legal practice becomes relevant and that the contention of the applicants cannot be accepted at all. They further submit that rule 7 (3) of the Rules has no application to the facts and circumstances of the present cases and even otherwise, being explanatory in nature, it cannot bring about any independent set of qualifications. Reliance is placed upon certain precedents.

7. We heard Shri Anupam Lal Dass, Sr. Advocate and Shri Ajesh Luthra, Shri Sameer Kumar, Shri Praveen Kumar Singh, Shri S.K. Das, Shri Suvesh Kumar, Shri Sahil

Chaudhari, Shri Sandeep, Shri Satya Mitra, Shri Amit Kumar, Shri Saurabh Sharma and Shri Tanveer Ahmed Ansari, advocates for the applicants and Shri R.V. Sinha, Shri Hanu Bhaskar, Shri Amit Sinha, Shri R.K. Jain and Shri Rajesh Katyal, advocates for the respondents.



8. The post of JS&LA is part of Indian Legal Service (ILS). The appointment to it is governed by 1957 Rules. In the advertisement issued by the 1st respondent, the qualifications for the post are mentioned as under:

“QUALIFICATIONS: ESSENTIAL: (A) EDUCATIONAL :

A person shall not be eligible for appointment by direct recruitment to a duty post in Grade I, unless he hold a Degree in Law or of a recognized University or equivalent and unless he has been a member of the Indian Civil Service permanently allotted to the judiciary or of a State Judicial Service for a period of not less than sixteen years or has held a superior post in the legal department of a State for a period of not less than sixteen years or a Central Government servant who has had experience in legal affairs for not less than sixteen years. **(B) EXPERIENCE : As mentioned in A above. NOTE-I :** In making appointment by direct recruitment to a duty post in Grade I, 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 if such post is in the Legal Adviser Service cadre in the Department of Legal Affairs.”

9. From a perusal of the above, it becomes clear that the selection is confined only to those who are already in the State Judicial Service or in the legal department of a State or the Central Government. For all the categories, the length of service stipulated as a qualification is sixteen



years. The entire controversy is about the manner of reckoning of the period of sixteen years. The respondents insist that it shall be nothing short of the active service either in judicial service or the service in a State or the Central Government. The applicants, on the other hand, contend that their experience as Advocate i.e. legal practitioner should also be taken into account, for this purpose.

10. Rule 7 of the Rules deals with appointment to the posts of Grade I, II, III and IV by direct recruitment. It reads as under:

“7. APPOINTMENT TO DUTY POST BY DIRECT RECRUITMENT:

- 1) A person shall not be eligible for appointment by direct recruitment -
 - a) to a duty post in Grade I, unless he holds a Degree in Law of a recognized University or equivalent and unless he has been a member of the Indian Civil Service permanently allotted to the judiciary or of a State Judicial Service for a period of not less than sixteen years or has held a superior post in the legal department of a State for a period of not less than sixteen years or a Central Government servant who has had experience in legal affairs for not less than sixteen years;
 - b) to a duty post in Grade II, unless he holds a Degree in Law of a recognized University or equivalent and unless he has been a member of a State Judicial Service for a period of not less than thirteen years or has held a superior post in the legal department of a State for a period of not less than thirteen years or a Central Government servant who has had experience in legal affairs for not less than thirteen years or is a qualified legal practitioner;



- c) to a duty post in Grade III, unless he holds a Degree in Law of a recognized University or equivalent and unless he has been a member of a State Judicial Service for a period of not less than ten years or has held a superior 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.
- d) to a duty post in Grade IV, unless he holds a Degree in Law of a recognized University or equivalent and unless he has been a member of a State Judicial Service for a period of not less than seven years or has held a superior post in the legal department of a State for a period of not less than seven years or a Central Government servant who has had experience in legal affairs for not less than seven years or possesses a Master's Degree in Law and has had teaching or research experience in Law for not less than five years or is a qualified legal practitioner of not less than 30 years.

Note 1- The upper age limit for direct recruitment under clauses (a) to (d) of sub-rule (1) shall be as follows:-

Grade I : Preferably below 50 years

Grade II : Preferably below 50 years

Grade III : 50 years

Grade IV : 40 years

Note 2- The upper limit in respect of all the above posts is relaxable for Government servants up to five years in accordance with the instructions and order issued by the Central Govt.

Note 3- The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (other than in the Andaman and Nicobar Islands and Lakshadweep).

1A). In making appointment by direct recruitment to a duty post in Grade I, Grade II, Grade III or Grade IV, preference shall be given:-

- i) to a person (not being a member of a State Judicial Service or a legal practitioner) with



experience in legal advice work if such post is in the Legal Adviser Service cadre in the Department of Legal Affairs, research work if such post is in the Law Officer Service cadre in the Department of Legal Affairs and experience of litigation work if such post is in the Government Advocate Service cadre of the Department of Legal Affairs. Further, in making appointment by direct recruitment to any duty post in the Government Advocate Service cadre in the Department of Legal Affairs, the candidate should be eligible for enrolment as an advocate in the Supreme Court under the Supreme Court Rules, 1950 as amended from time to time and for registration as an Advocate-on-Record of that court under the said rules.

- ii) to a person with experience in legislative drafting, if such post is in the Legislative Department.

7.(2) Every direct recruitment to a duty post shall be in consultation with the Commission unless such consultation is not necessary under the general regulations in force in that behalf.

7.(3) For the purposes of sub-rule (1) :-

- a) in computing 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 had held any of the other aforesaid offices or any period during which he has been a legal practitioner.
- b) in computing the period during which a person has been a qualified legal practitioner, there shall be included any period during which he has held any office in the State Judicial Service or has held a superior post in the legal department of a State or has been a Central Government servant having experience in legal affairs.”

11. From a perusal of the rule extracted above, it becomes clear that even for direct recruitment to Grade-I, it is only the members of the State Judicial Service or the legal department of the State or the Central Government and not the legal practitioners, who are eligible. In contrast, for

recruitment to the post of Grade-II, III and IV, not only the members of State Judicial Service or the legal department of the State and the Central Government but also the legal practitioners with certain experience, i.e., standing at the Bar, are eligible to apply.



12. We are concerned with rule 7 (1) (a). The eligibility stipulated therein is:

- (a) holding of a Degree in law;
- (b) being a member of the Indian Civil Service permanently allotted to the judiciary of a State Judicial Service;
- (c) or holding a superior post in the legal department of the State or the Central Government.

In all the three categories, the standing is required to be of sixteen years in legal affairs.

13. Admittedly, the applicants do not have the length of service to the extent of sixteen years. They fall back upon rule 7 (3) (a). According to them, the period during which they functioned as legal practitioners, is also required to be taken into account. The respondents, on the other hand,

insist that appointment to the post of Grade-I is governed by rule 7 (1) (a) alone and rule 7 (3) (a) has no application to that post at all. In fact, this is stated in the clarification issued by the Ministry of Law and Justice also through their communication dated 8.02.2018. The concluding paragraph of the same reads as under:



“7. It is further stated that the apprehension of ambiguity between Rule 7(1)(a) relating to appointment of Joint Secretary & Legal Adviser – Grade I of ILS (by direct recruitment) and Rule 7 (3) on the issue of qualified legal practitioner and the computation of period of legal practice to determine the experience in legal affairs in the instant recruitment process is unfounded. Rule 7(1)(a) which is applicable in the present recruitment process does not provide for experience as a qualified legal practitioner. However, experience as a qualified legal practitioner is applicable for direct recruitment to post of Grade-II and below. Accordingly, provisions of sub rule (3) of Rule 7 are not applicable to the recruitment made under Rule 7(1)(a) of ILS Rules, 1957. Moreover, Central Government is vested with the power of interpretation of ILS Rules under Rule 15 of the said Rules.”

14. Therefore, it needs to be seen as to whether the applicants are entitled to count the duration of their legal practice, in the context of reckoning the experience of sixteen years, mentioned in rule 7 (1) (a). Here, itself an important aspect needs to be taken into account.

15. Obviously because large number of applications were received by the respondents, they have prescribed the short listing criteria. The experience of sixteen years was

enhanced to eighteen years. Though arguments were also advanced as to the competence of the UPSC to prescribe the short listing criteria, we are not inclined to entertain the same. The UPSC does have the power to adopt its own short listing criteria, whenever the number of applications received by it are relatively large, compared to the number of available vacancies.



16. The applicants would have been treated as qualified in case the short listing criterion was not adopted. Their contention is that even if the short listing criterion is adopted, they will be within the zone of consideration if the duration of their practice as lawyer is taken into account. Therefore, the entire scene shifts to the interpretation of rule 7 (3) (a) and (b).

17. A perusal of Rule 7 (3) discloses that the only purpose of incorporating it is to expand or to explain, the expression “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” occurring in clauses (a), (b), (c) and (d) of rule 7 (1). The effort of the rule making authority is to explain what exactly that expression connotes, instead of making a detailed description, wherever it occurred. Sub-rule 3 of Rule 7 has another purpose to serve. As mentioned earlier, rule 7 (1) (b), (c) and (d) deal

with the appointment to the post of Grade-II, III and IV. Unlike for Grade-I, the legal practitioners are also entitled to be considered for such appointment straightaway. In the context of reckoning the legal practice, the rule making authority wanted to extend the benefit of length of service during which a person worked as Law Officer, also.



18. On behalf of respondents, reliance is placed upon the judgment of the Hon'ble Supreme Court in **S. Sundaram Pillai & ors. Vs. V.R. Pattabiraman & ors.**, (1985) 1 SCC 591. That was a case which arose under the Rent Control Legislation. The issue was about the purport of definition of the phrase "wilful defaulter". An explanation was added to the provision by an amendment. It reads as under:

"Explanation – For the purpose of this sub-section, default to pay or tender rent shall be construed as willful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent."

Their Lordships referred to catena of decisions on the interpretation of statutes, and pointedly to those dealing with the ambit of "explanation" occurring in the provisions of a legislation. The purpose, which an "explanation" is supposed to serve, is stated as under:

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-



(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”

19. It is evident that though the explanation in the concerned Act was supposed to be a tool, to understand the purport of the expression “wilful defaulter”, it emerged that, an altogether new instance of “wilful defaulter” was added and that was held to be not in accordance with law.

20. In the instant case, the rule making authority decided –



- a) to count the period, during which a Judicial Officer or an official in the law department of State or Centre functioned as legal practitioner, as forming part of the length of service in that office (Rule 7 (3) (a); and
- (b) to count the period of service as Judicial Officer or as an officer of law department of State or Centre, if any, as part of the standing as a legal practitioner (Rule 7 (3) (b)).

21. In other words, legal practice on the one hand and service as Judicial Officer or the one in law department on the other, are treated as inter-changeable, for the purpose of computing experience or standing in the context of the stipulation in a provision. The purport of rule 7 (1) (a) cannot be relegated to any lesser or inconsequential position.

22. What the Rule making authority did by adding Rule 7(3) not something which is new or novel. Article 217(2) of the Constitution stipulates that a person shall not be qualified for appointment as a judge of a High Court, unless, he held a judicial office or has been an Advocate of a High Court, at least for 10 years. In the explanation, it is mentioned that the period during which, the person practised as an Advocate shall be included in the period

during which he held the judicial office and vice-versa. The provision reads as under:

“Article 217”



(1)(Omitted as not necessary in this case)

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and

- (a) has for at least ten years held a judicial office in the territory of India; or
- (b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

Explanation- For the purposes of this clause

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an Advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

(3)(Omitted as not necessary in this case)”

23. Through Rule 7(3), an exercise, akin to the above, is undertaken. There is nothing to suggest that the facility there-under, is not available to posts in Grade-I. It is fairly well settled that where law requires a thing to be done in a particular manner, it shall be done in that manner, or not at all.



24. Viewed from any angle, we do not find any basis for not taking into account the period of “legal practice” of the applicants while reckoning their eligibility.

25. We, therefore, allow the OAs and direct the respondents to take into account, the “legal practice” which the applicants have to their credit, in the context of their eligibility.

26. The Tribunal passed interim orders in the OAs directing that the applicants shall be interviewed but their results be kept in the sealed cover. Since the OAs are allowed, in such of the cases where the interviews are held and results are kept in sealed covers, the sealed covers shall be opened and steps shall be taken in accordance with their merit. The exercise in this behalf shall be completed within a period of eight weeks from the date of receipt of a certified copy of this order.

27. We make it clear that barring the above, we did not decide any other aspect raised in different OAs. There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/