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M.K. Sharma

V/s.

U.P.S.C. & Anr.

..... Respondents.

CORAM:

Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*.
2. To be referred to the Reporter or not? *Yes*.
3. Whether their lordships wish to see the fair copy of the judgment? *No*.
4. To be circulated to all Benches of the Tribunal? *No*.

(J.P.SHARMA)
Member (J)

(P.C. JAIN)
Member (A)

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1873/1990. DATE OF DECISION: 9-5-1991.

M.K. Sharma Applicant.
(In person)

V/s.

U.P.S.C. & Anr. Respondents.

Shri N.S. Mehta Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is working as Assistant Director of Estates (Lit.), Directorate of Estates, New Delhi, has challenged the list prepared by the Union Public Service Commission (hereinafter referred to as the Commission) for interviewing candidates for the post of Assistant Legal Adviser (Grade IV of Indian Legal Service) in the Ministry of Law and Justice, Department of Legal Affairs, advertised by Advertisement No.33/Item No.13 dated 19.8.89, for direct recruitment. The facts of the case, in brief, are as under: -

The Commission advertised one post of Assistant Legal Adviser (Grade IV of Indian Legal Service) in the Department of Legal Affairs, Ministry of Law & Justice, vide Advertisement No.33/Item No.13 on 19.8.89, for which the applicant also applied as a candidate. In all, there were 184 candidates. The Commission took recourse to shortlisting the candidates in terms of para 21 of the "INSTRUCTIONS TO CANDIDATES FOR RECRUITMENT BY SELECTION" which read as under: -

"21. The prescribed essential qualifications are the minimum and the mere possession of the

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same does not entitle candidates to be called for interview. Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the Advertisement or by holding a Screening Test."

As a result of shortlisting, the list of candidates selected for interview by the Commission stood at 27, which did not include the name of the applicant. Interviews were to be held on 17th and 18th September, 1990 and before that, the applicant filed this O.A. on 13.9.1990. As an interim relief, the applicant prayed for:

"Pending final decision on the application, the applicant seeks the following interim relief:

- (i) to direct the Respondent No.1 not to proceed with the interviews and finalise the results thereof to be held on the 17th and 18th Sept., 1990 for the selection of ALA in the Deptt. of Legal Affairs."

On 18.9.1990, a Bench of this Tribunal ordered for issue of notice to the respondents on admission and interim relief prayed for, returnable on 1st October, 1990, till which date "any promotion made on the basis of the interview being held yesterday and today will be subject to the outcome of this application". The interim order passed on 18.9.1990 has been continuing. On 5.10.1990, we further directed that if any appointment to the post of A.L... is made in the meantime on the basis of the advertisement No.33 - item No.13 dated 19.8.1989, the appointee shall be specifically informed in the offer of appointment that the appointment is subject to the outcome of O.A. 1873/90 (the instant Application).

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2. After going through the record of the case and having heard the applicant, who appeared in person, and the learned counsel for the respondents, both on admission and merits, we feel that this case can be disposed of at the admission stage itself.

3. The reliefs prayed for by the applicant are as under: -

- "(i) to call for the records of the applicants who have applied for the post of Assistant Legal Adviser in response to Advt. No.33, Item No.13 dated 19-8-89 and Advt. No.36, Item No.11 dated 3.9.88 (Annexure 'C' and 'H' to the application) of the Respondent No.1 and all records of the Commission relating to processing of these two cases;
- (ii) to call for the records of the Respondent No.1 relating to examination of the representation dated 11.9.90;
- (iii) to hear the case and quash the criterion fixed and followed in recruitment to the post of A.L.A. and quash all such proceedings taken in pursuance of interviews to be held on the 17th and 18th Septe., 1990;
- (iv) to direct the Respondent No.1 to prepare a fresh list of interviews in accordance with law and relevant rules having regard to past precedent cases.
- (v) Direct the Respondent No.1 not to proceed with interviews and make any selection in the present case until the interviews for 7 posts of ALA advertised earlier take place after disposal of objections raised by the Respondent No.2 i.e. Ministry of Law and Justice;

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(vi) to award the cost of the present application to the applicant;

(vii) any other order or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case and in the interest of justice."

4. In response to an earlier advertisement of the Commission for 7 posts of ALA in the Department of Legal Affairs (Advertisement No.36, item No.11) dated 3.9.1988 also, the applicant applied for the post, his roll number being 343. Selections in the said case are yet to be finalised. In the O.A., the applicant stated that "incongruity of holding interviews earlier for a post which was advertised much later than those posts in the same grade and cadre where the Commission is yet to formulate or evolve its opinion could be fathomed from a simple instance that the candidate to be selected on the basis of interview on 17/18th Sept., 1990 would at once rank senior to those who may eventually be selected in other case where selection is yet to take place (Advt. No.36, Item No.11)." In reply to this aspect of the grievance of the applicant, the Commission in para 4(p) has stated that "the Commission have since taken cognisance of the situation and decided to withhold recommendation in the case until selections in the case advertised earlier are finalised".

5. In short, the grievance of the applicant boils down to the point that he has not been included in the list prepared by the Commission for interviews for one post of ALA which were to be held on 17th and 18th September, 1990 on the basis of shortlisting the candidates. He claims that the Commission has no power to shortlist the candidates and such an action is illegal, arbitrary, discriminatory, without authority and, as such, violative of Articles 14 and 16 of the Constitution.

6. Before we take up rival contentions of the parties, we may refer the qualifications prescribed for the post of Assistant Legal Adviser in the advertisement dated 19.8.89 (Annexure-C). There are three categories of persons who are eligible. One category is of qualified legal practitioners of not less than 30 years. We are not concerned with this category. The second category is of those who possess Master's Degree in Law and have had teaching or research experience in Law for not less than five years. We are not concerned with this category too. The third category is of those who (i) possess Degree in Law of a recognised University or equivalent, and (ii) have either been Member of a State Judicial Service for a period of not less than seven years or have held a superior post in the legal department of a State for a period of not less than seven years, or Central Government servants who have had experience in legal affairs for not less than seven years. The applicant's case falls in the third category, e.g., possessing degree in Law and a Central Government servant having experience in legal affairs for not less than seven years. NOTE III in the relevant advertisement stipulates that "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. The applicant claims that his case falls in the category of those who possess Degree in Law, have experience in legal affairs for not less than seven years, and are entitled to preference as per NOTE III above. In his application, he has stated that he is a First Class LL.B. (Professional) from Delhi University; he joined the Department of Legal Affairs on 1.7.1975; has been performing the duties of Assistant (Legal) since 11.8.1981; was attached with the learned

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Attorney General for India from March 1990 to 30th August, 1990; and since 31.8.90, he has been selected and appointed as Assistant Director of Estates (Lit.) in the Directorate of Estates, Ministry of Urban Development, in the pay scale of Rs.2000-3500 and in that capacity, he is looking after all legal matters of the Directorate. Here it may be stated that the scale of post of Assistant (Legal) is Rs.1640-2900, of Superintendent (Legal) Rs.2375-3500, and of Assistant Legal Adviser, the post for which the applicant applied is Rs.3000-4500. It is also not in dispute that the post of Assistant (Legal) is a feeder post for the post of Superintendent (Legal) and the post of Superintendent (Legal) is a feeder post for the post of A.L.A. This is not directly relevant as the post of A.L.A. as per the advertisement under reference is to be filled by direct recruitment and not by promotion; but this will be of some relevance when one of the main contentions of the applicant is considered later on.

7. The main contention of the applicant is that the Commission has not framed and published for information of general public any rule regarding its power to shortlist and, as such, the Commission has no such power. He has, therefore, contended that any exercise of short-listing will be illegal, arbitrary, discriminatory, without authority and, therefore, violative of Articles 14 and 16 of the Constitution and liable to be struck down on this count alone. It is further argued that assuming (but not admitted) that item No.21 of the Instructions to Candidates is a rule framed and published by the Commission in this regard, the same has not been properly applied in this case for the purpose of shortlisting. This general issue had come up in O.A. 1292/87 (Shri R.S. Murthy Vs. Secretary, UPSC & Another) before a Division Bench of the Principal Bench of the CAT and the decision dated 31.8.1988 is at Annexure 'E'. The Tribunal in

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para 7 of its judgment held as below: -

"7. In view of the legal submissions made by the parties, it is necessary to arrive at a legal conclusion. In the case of Om Parkash Baburam Sharma Vs. State of Madhya Pradesh and another (supra), the Madhya Pradesh High Court has enunciated the legal position in clear terms. A Public Service Commission is a body of specialised persons constituted under the Constitution to advise the Government with regard to selection of candidates. Their selection is not justiciable except when there is a violation of any statutory rule. It is also true that a person possessing requisite qualification has no absolute right to be called for interview. A Public Service Commission has discretion, subject to rules, to adopt its own method of selection. A classification made by a Public Service Commission according to qualification, experience, etc. does not amount to discrimination violative of Article 14 or Article 16 of the Constitution. Once a Public Service Commission has been asked to make a selection, it is entirely in the wisdom and discretion of the Commission as to how it would proceed. The Public Service Commission is free to screen the applicants, classify them into various categories according to their experience and call for interview only those candidates who satisfy the criteria adopted and eliminate others who do not satisfy such criteria. Such classification does not tantamount to any hostile discrimination. Screening and shortlisting are practical necessities when a large number of candidates are in the field for a limited number of posts. Any person who possesses the qualification

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requisite for eligibility has a right to apply for the post but there is no right to be called for interview merely because he is eligible for being appointed. An applicant cannot question his elimination at the threshold if he does not come in the classification resorted to by the Commission in the process of shortlisting. Thus, the UPSC was within its rights to shortlist the candidates and call not all the applicants but those who satisfied the criteria laid down by it."

We respectfully agree with the above observations and accordingly hold that the Commission cannot be faulted for shortlisting the candidates for purpose of calling them for interview and the course adopted by the Commission in shortlisting cannot be held to be either arbitrary or discriminatory or illegal or in violation of Articles 14 and 16 of the Constitution. It is pertinent to mention here that in their reply, the respondents have stated that in all 184 candidates had applied for one post of Assistant Legal Adviser, for which as many as 150 candidates were found to have had the requisite essential qualifications eligible for interview by the Commission for selection. The Commission shortlisted 27 of the above 150 candidates for being called for interview.

8. The other contention on which the applicant has laid considerable emphasis is that the Commission has nowhere defined or followed consistently the reasonableness of the number of candidates to be called in proportion to the number of post(s). He has cited half a dozen cases from which it is sought to be shown that no such criteria exists. According to the cases cited, for 11 posts of Assistant (Legal), 102 candidates are said to have been called in pursuance of the advertisement dated 9.4.88. Similarly, for 3 posts of Deputy Legal Adviser, 38 candidates were called for selection in 1987. For 2 posts of Superintendent (Legal), 24 candidates

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were called in 1988. Against one post of Superintendent (Legal), 10 candidates were called in 1990. Against four posts of Assistant Government Advocate, 24 candidates were called. He has, therefore, contended that "in view of the above position the only inference that could perhaps be drawn is that the shortlisting is done keeping in view the qualifications and experience of a particular candidate in whom someone in the Commission's hierarchy may be interested". The respondents have controverted this contention. Even otherwise, this contention cannot be upheld, firstly, because it is based on conjectures rather than on any solid fact. Secondly, it is inherent in the process of shortlisting that no category of candidates who are otherwise eligible for consideration in accordance with the relevant recruitment rules can be totally eliminated as it would be contrary to the statutory rules, and among the various categories, those better than others as per the criteria that may be laid down by the Commission, and who may be equally placed within that criteria, have to be called. For such a process, it is neither feasible nor necessary to lay down any rigid arithmetical formula or ratio of the candidates to be called for interview vis-a-vis the number of posts for which selection is to be made. There are no allegations of malafide, nor any particulars thereof have been mentioned. No person / authority has been made a party by name. We, therefore, see absolutely no force in this contention.

9. The other main contention of the applicant is that "he has reasons to presume that the Commission has exercised its 'power to shortlist' and decided to limit the field of choice to persons working in the grade of Supdt. (Legal) (pay scale Rs.2375-3500) or equivalent". However, in para 6(c) of his O.A., he has stated:

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"..... I understand among others, Shri R.K. Singh, a practising Advocate, Shri P.M. Misra, Asstt. Director of Estates (Lit), Shri U.K. Jha, Supdt. (Legal), Department of Legal Affairs, Shri Ashok Kumar, Asstt. Director (Lit.) DGS&D have been called for interview."

If the contention of the applicant that the shortlisting has been confined to persons working in the grade of Superintendent (Legal) were to be taken as correct, then his other contention that Assistant Director of Estates (Lit.) and Assistant Director (Lit.), DGS&D, have also been called for interview, cannot be correct. The respondents have stated in their reply that the shortlisting was based on qualifications and experience higher than those prescribed in the advertisement and since the applicant did not reach the criteria adopted for the purpose, he was not shortlisted for being called for interview. They have also stated that apart from the LL.B. degree, the other attributes claimed by him in relation to his experience shall perforce limit to the closing date prescribed in the advertisement i.e., 18.9.1989, as any qualification and/or experience acquired thereafter cannot influence consideration of his candidature. It is also asserted that the field of choice has by no means been restricted to only Superintendent (Legal) or equivalent, but broad-based enough to cover candidates of different categories. It has further been stated that no person junior to the applicant has been called for interview in question. In R.S. Murthy's case (supra), the Tribunal had found that the Commission could not over-ride the statutory provisions like Rule 7(1A) by adopting a scale of pay which does not exist in a particular Department at all. In that case, the yardstick laid down by the Commission for shortlisting related, among others, ^{to} 10 years' experience in the scale of Rs.650-1200, but the scale was not available

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to persons working on the legal side in the Department of Legal Affairs, as the scale prescribed for the Superintendent (Legal) was Rs.840-1200. Accordingly, the Tribunal held that the petitioner therein and those similarly situated candidates who were working in the Department of Legal Affairs on the identical posts or were having similar experience, have been discriminated against by not considering them for selection to the post of Deputy Legal Adviser. The facts of the instant case are not on all fours with the cited case. Experience for a longer period or at a higher level could be adopted as a relevant yardstick by the UPSC; the minimum requirement of seven years' experience is good enough for eligibility, but may not be good enough for shortlisting when the eligible candidates are said to be 150 and that too for a single post. Such a yardstick would not deviate from the sound principle that the object of selection is to select the best and the most meritorious. If the selection does not comprise both the written test as well as interview, but is only confined to the interview, then, as held by us above, shortlisting is a reasonable and sensible method. Unless it is shown that anyone who is equally placed with the applicant has been shortlisted for being called for interview, but the applicant has not been allowed this opportunity, or the process of selection is violative of the statutory rules, or it is tainted by malafides or malice in law, there would be no occasion for interference in the process of judicial review in the selection to be held by the competent authority. None of the above factors is present in this case.

10. The applicant cited the following two cases in the course of oral submissions before us: -

- (1) S.K. Ghosh and Another v. Union of India & Others (AIR 1968 SC 1385).
- (2) Dr. Keshav Ram Pal v. U.P. Higher Education Services Commission, Allahabad and Others (1986) 1 SCC 671).

In S.K. Ghosh's case (supra), the issues involved were totally different and there is nothing in that case which might help the applicant. In Dr. Keshav Ram Pal's case (supra), the observations of the Hon'ble Supreme Court in the case of Ajay Hasia v. Khalid Mujib (1981) 1 SCC 722; in the case of Lila Dhar v. State of Rajasthan (1981) 4 SCC 159; and in the case of Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417, are mentioned. All these related primarily to the controversy between the merits and demerits of selection by a written test and interview on the one hand and by interview alone on the other hand. The question of the competence of the Commission in shortlisting candidates being called for interview was not at all considered. The general principles enunciated by the Hon'ble Supreme Court in those cases are directly not relevant to the facts of the case before us. In his rejoinder, the applicant has emphasised that the right of an Indian citizen under Article 16(1) of the Constitution includes the right to make an application for any post under the Government and further guarantees a right to be considered on the merits for the post for which he has applied. He has also referred to the doctrine of reasonable classification, ~~xxxxxxxxxxxx~~ ~~xxxxxxxxxxxx~~. If the applicant seeks to establish that all persons who apply for a job have the right to be called for interview, then this contention cannot be upheld in view of the principles laid down in R.S. Murthy's case (supra), with which, as we have already indicated above, we respectfully agree. Article 14 of the Constitution prohibits class legislation, but does not prohibit reasonable classification. The process of shortlisting resorted to by the Commission falls within the category of reasonable classification, the object being to select the best and call for interview only those who are better than the others in the background of the qualifications and

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experience prescribed. The process of shortlisting, as discussed above, cannot be said to be violative of the doctrine of reasonable classification and, as such, there is no violation of Article 14 of the Constitution.

11. In the light of the above discussion, we see no reason to interfere in the process of selection adopted by the UPSC (Respondent No.1) for the post of Assistant Legal Adviser on the basis of advertisement No.33 dated 19.8.89. The O.A. is accordingly dismissed at the admission stage itself as devoid of merit, leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)
Member (J) 9.5.91

P.C. Jain 9/5/1991
(P.C. JAIN)
Member (A)