

(5)

Central Administrative Tribunal
Principal Bench: New Delhi

Regn.No.OA-445/90

Shri O.P.Nahar

Regn.No.OA-545/90

Shri N.C.Jain Vs.
Union of India & Ors.
For the applicants

For the respondents

Date of Decision: 8.6.90.

1.. Applicants

2.. Respondents

... In person.

... Mrs.Raj Kumari Chopra,
Advocate.

CORAM: Hon'ble Shri I.K.Rasgotra, Member (Administrative).
Hon'ble Shri J.P.Sharma, Member (Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

Both these applications moved under Section 19 of the Administrative Tribunals Act, 1985, by the applicants for redressal of their grievance of not being called for the interview for the post of Grade II, Additional Legal Adviser, Indian Legal Service, by the respondents, Union Public Service Commission (UPSC). The applications, therefore, have been heard together and are being finally disposed of, after hearing the applicants in person separately and the learned counsel for the respondents at the admission stage, by a common judgement, as the common question of facts and law are involved. The applicant in OA-445/90 has sought the following reliefs:

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- a) quashing and setting aside the impugned proceedings of interview held on 14th and 15th March, 1990 for the posts advertised vide No.12 Item No.7; and
 - b) restraining the respondents from taking any action on the basis of said interview for filling up these posts; and
 - c) directing the respondents to hold fresh interview for the said posts; and
 - d) calling the applicant alongwith other candidates for such interview
 - e) pending hearing of this application the said posts be ordered to be kept vacant and intact.

In OA-545/90, the applicant Shri N.C.Jain, has sought the following reliefs:

- a) quashing and setting aside the impugned proceedings of interview held on 14th & 15th March, 1990 for the posts advertised vide advertisement No.12, item No.7;

8) Pending hearing of this application the said posts be
 order to be kept vacant and intact or declare and
 quash an ultra vires the rule 7(1)(b) of the Indian
 Legal Service Rules, 1957, if the interpretation
 contend by the applicant is not agreed to.

essential for the post are as follows: (1) ~~experience~~

- (ii) Should have been a member of a State Judicial Service for a period of not less than thirteen years or have held a superior post in the Legal Department of state for a period of not less than thirteen years or has been a Government Servant who has had experience in a superior post for not less than thirteen years or is a member of a State Judicial Service.

In relation to appointment to a duty post in Grade II by direct recruitment as Advocate or a Pleader who has practised at least thirteen years, or an Attorney, Court of Bombay or Calcutta who has practised as an Attorney and an Advocate for a total period of seven years.

application OA-443/90, relevant for the decision of this case,

wherein the applicant was working as Sub Inspector, Delhi Police

with effect from 23.3.65 when he obtained the Degree of Law

and competed for Delhi Police Service for which he was selected

on 20.5.1974. He worked as a Sub Magistrate there till

1.3.1978. The applicant also worked as Junior Law Officer in the

Law Commission from 1.3.1978 to 28.7.1982 and Assistant Legal

Officer from 28.7.1982 to 31.12.1982 as Deputy Legal Adviser,

Department of Legal Affairs from 1.1.1983 upto date. It is

stated by the applicant that earlier he worked as a part-time

Lecturer and taught law in the Institute of Commercial Practice

run by Delhi Administration. By this declaration it has been

expressed by the applicant that he has legal affairs experience

of 16 1/2 years. As per the above quoted declaration, the applicant

alleges to have become eligible for the post of Addl. Legal Adviser.

The applicant is also referred to the

recruitment Rules of Indian Legal Service, 1957 and Rule 7

(Annexure II), as quoted below:

1. A person shall not be eligible for appointment by direct recruitment: -

a) To a duty post in grade IV or above unless he holds a degree in Law of a recognised University or equivalent and unless he has been in the legal department of a Government servant who has had experience of not less than thirteen years or is a qualified legal practitioner.

b) To a duty post in grade V or above unless he holds a degree in Law of a recognised University or equivalent and unless he has been in the legal department of a Government servant who has had experience of not less than ten years or is a qualified legal practitioner of not less than 35 years.

c) To a duty post in grade VI or above unless he holds a degree in Law of a recognised University or equivalent and unless he has been in the legal department of a Government servant who has had experience of not less than ten years or is a qualified legal practitioner of not less than 35 years.

d) To a duty post in grade VII or above unless he holds a degree in Law of a recognised University or equivalent and unless he has been in the legal department of a Government servant who has had experience of not less than ten years or is a qualified legal practitioner of not less than 35 years.

included any period during which he was holding 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.

4. The contention of the applicant is that he was called for interview in March, 1989 (Annexure IV), for the post of Additional Legal Adviser after taking into consideration his experience in the police department. The interviews for the post this year held on 14th and 15th March, 1990 and the applicant was not called for the interview. The applicant made a representation (Annexure A) and since he has not received any reply, he filed this application on 16th March, 1990.

5. The respondents contested the application by filing counter on 3.5.1990 denying the allegation of the applicant that he was eligible to be considered for the advertised four posts of Additional Legal Adviser by respondent No.1. The interview has since taken place on 14th and 15th March, 1990 and the posts were not two but four. It is contended that by over-right the applicant was called for interview in 1989, but that will not confer any right on the applicant to be called for similar interview subsequently for the post advertised for the next year. On the basis of educational qualification, it is said that the applicant while working as Sub Inspector in the Delhi Police, has obtained the degree of law and continued to serve there for three years even after obtaining the degree and he was selected in Delhi Judicial Service in May, 1977 and counting his experience of judicial service as well as of the service rendered in the Ministry of Legal Affairs the period comes to 12 years. That the applicant's case was not considered as eligible to be called for interview as according to the Recruitment Rules 7(1)(b), he is not qualified. The respondents have also referred to a judgement of this Tribunal passed in the case of G.D. Chopra Vs. Union of India, 14-1082/CN-2958 of 1984 decided by the Principal Bench, where, it has been observed: "A comparison of the qualification (b) and (c) extracted above reveals that research and research experience has been required in (b) and (c) and it cannot be said that the applicant is not qualified."

of legal affairs in experience gained by a person working as Law Officer in other Central Govt. Departments."

Though, this judgement is said to be assailed before the

Hon'ble Supreme Court in SLP for the purpose of bringing out

the distinction between Clause (b)(c) to Rule 7 Sub Rule 1,

the learned counsel for the respondents convassed that the

teaching experience cannot be allowed to be counted as

per the Recruitment Rule 7 and nothing can be added to the rule,

which have got statutory force, regarding the minimum

qualification for a particular post.

6. In OA-545/90, Shri N.C.Jain, gave his bio-data

regarding his experience stating that he was Assistant

Professor of Law of Rajasthan University from 5.8.1973 to

22.11.1984 and after this last date he has worked as Assistant

Legal Adviser till 31.5.1988 and after that he was Deputy

Legal Adviser till to date in the Department of Legal Affairs,

Ministry of Law and Justice. Thus, the applicant desires that

his whole experience from 1973, if counted comes to more than

13 years and he is eligible to be considered for the advertised

post of Additional Legal Adviser which is Grade II post in the

Department of Legal Affairs. This contention of the applicant

has been assailed by the respondents almost on the same grounds

as that of Mr. Nahar (Supra) like the other applicant, he too

was not qualified, lacking in minimum qualification or experience

prescribed under the Recruitment Rules of 1957, Section 7(1)(b)

read with sub-section 3(b) as well as the advertisement as

information to candidates Annexure II attached to the counter.

The contention of the respondents that the experience acquired

partly by teaching/research and partly by rendering legal

advice as an officer of the Indian Legal Service cannot be

clubbed together in view of the Recruitment Rules. Both the

applicants have also challenged the vires of Rule 8(1)(b) and

Rule 1(a)(1) of the Indian Legal Service Rules, 1957 on the

ground that the rules are discriminatory and violative of

fundamental rights as enshrined in Article 16(a) of the

Constitution of India.

7. We have heard the applicants in person and the learned counsel, Mrs. Raj Kumari Chopra, for the respondents at length.

As regards, challenge to violation of Article 16(1) of the Constitution, it is pressed by the applicants that by excluding teaching experience from the purview of eligible qualification for consideration to the post of Additional Legal Adviser, the rule making authority have grossly discriminated against person having knowledge of law inasmuch as one is devoted to research and teaching work cannot get advantage which is available to a similarly qualified incumbent giving legal advice for practising in law. In fact, there may be unequals among equals.

What is to be adjudged is that equality must remain in its predominant form. Teaching by itself is a different profession.

Teacher devotes his time either in finding out new lines of judicial approach in the jurisprudential innovations or imparts knowledge in various branches of the subject in academic sphere.

Giving legal advice is a practical aspect and is not a theoretical concern. Though, there may be certain common cases and even-lapping may occur but that occurs in rarest of rare cases. Thus, it cannot be said that exclusion of teaching experience operates as an arbitrary restriction on a law teacher and his teaching experience which is not advisory in nature, cannot be considered for an advertised post of Additional Legal Adviser. Not only this, the branches of law may give

compartmental knowledge to the teaching profession unconnected with the recent problems of practical administration of the

concepts of law as applicable to day to day problems. The word legal has a wide connotation and everything connected

with law is legal. At the same time, the spirit of the rules is that a particular set of individuals who have got specific experience of imparting legal advice may be considered for

the post where the functionary discharges only the function of giving opinion on variety of cases coming to the department

of Legal Affairs. Thus, it cannot be said that there is any arbitrariness in the rule to the extent of hitting Article 16(1) of the Constitution of India and jeopardising the fundamental rights of the applicant.

82 The next point argued by the applicant is that he experience of applicant Shri O.P.Nahar as Sub Inspector, Delhi Police be also counted as he was having the duty in detection and prosecution of Crime and maintenance of Law and order. This period, according to the applicant is from 22.3.1965 to 25.5.1977. In any view of the matter, this is totally unconnected with the legal affairs because being a Sub Inspector of Police, there was not necessity, at all, to deal with legal matters which is the domain of specific legal branch in the prosecution section of the Delhi Police. Thus, Shri O.P.Nahar could only count his period from 25.5.1977 from which date he was working as Metropolitan Magistrate in Delhi Judicial Service posted at Delhi and upto the date required to have 13 years of experience of legal affairs. The applicant, Shri O.P.Nahar, could not gather that experience of 13 years. So, he has been rightly excluded from consideration for being called for interview.

91 As regards, the case of Shri N.C.Jain, the applicant desired that his period from 5.8.1973 to 22.12.1984 when he was working as Assistant Professor of Law in Rajasthan University be counted to qualify for 13 years experience of having dealt with legal affairs which was necessary for being called for interview for the advertised post of Additional Legal Adviser. As observed earlier in this part of the judgement teaching Sub-profession is not specifically mentioned in sub clause b of Rule 1 of Section 7, while it is mentioned in sub-clause 'c' of sub-rule 1 for the post of Deputy Legal Adviser. This goes to show that the rule making power has purposely omitted from consideration the length of experience of teaching law in consideration of the duties and responsibilities attached to the post of Additional Legal Adviser. The contention of the applicant is that the teaching provision also has some connection with the legal matters because a teacher teaches law and also

supervise research in law; Moreover, the applicant is LL.M.

As said above the definition of the 'legal affairs' may not cover

the experience as teacher of law; In fact, the teaching syllabus

of law may cover aspect of the subject including Municipal Law

and other varied subject. Inclusion of teaching as a profession

may give rise to a situation where a teacher of law teaching

a particular subject not at all necessary to qualify for giving

legal opinion in the day to day matters coming to law Ministry

may claim eligibility even when teaching that branch of law will

not in any way contribute to the skills and faculties required for

giving opinion or advice in the matters coming before the

Ministry. Then, again, if a teacher of a particular branch of

law is excluded and that that of any other branch is included,

will amount to discrimination between the categories of teachers

in the same branch of law. Thus, the exclusion of the teaching

experience has been rightly excluded from consideration for the

post of Additional Legal Adviser.

Now the question arises as to why teaching has been

given weightage in the case of the post of Deputy Legal Adviser.

The answer is obvious. Additional Legal Adviser is the person

in Grade II who also exercises administrative control. He may

be called upon to give legal opinion in administrative matters

and as Deputy Legal Adviser, in the course of his working at

that post may add to the experience of giving legal information

till the time he is considered for promotion to the higher

post of grade II of Additional Legal Adviser. Thus, in our opinion,

there can be no parity between a teacher of law and a person

dealing in legal affairs either as Advocate or as a Member of

the Bench or in a legal advisory section of the Central Government.

11. Both the applicants tried to reinforce their arguments

by citing certain authorities. They relied on M.M.C. Fernandes,

Section Superintendent Mormugao Port Trust Vs. The Mormugao Port

Trust and Others, reported in 1985 Vol. II SLJ 439. The reference

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has been made to para 10 but the matter dealt in para 10 is only to the effect that if only one post is advertised, the two posts cannot be filled. In the present case, in fact, the advertisement was issued for two posts but later on the respondents disclosed that the posts to be filled up are four.

The applicants have not challenged the point raised now that the respondents be restrained from filling up the four posts, and the only grievance of the applicants was that they were not called for interview. Thus, they cannot take any advantage of a plea which they have not challenged in the application.

12. Again a decision of the Allahabad High Court reported in 1988 Vol. I SLR 701, Dr. Arvind Kumar Vs. State of U.P. and Ors has been referred to by the applicants but this case is totally on different points and does not help the applicants at all.

13. In view of the discussion above, we are of the opinion that the applicants have no case and both the applications are devoid of merit and are dismissed with no order as to costs.

14. The interim order passed on 30.3.1990 stands vacated.

(J.P. Sharma)
Member (Judl.)

(J.K. Rasgotra)
Member (Adm.)

8/6/90

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Dated.....



(J.K. SHARMA)
Section Officer
Central Administrative Tribunal
Principal Bench, New Delhi