

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 440 of 1991

Date of decision 25-6-1991

Dr.Ramesh Tiwari Applicant

versus

Secretary,
Union Public Service Commission,
Dholpur House, New Delhi ... Respondent

Coram: Hon'ble Mr. B.S.Sekhon, Vice Chairman.
Hon'ble Mr. D.K.Chakravorty, Member(A).

For the applicant - Mr.P.P.Khurana, Advocate.
For the respondent - Mr. K.C.Mittal, Advocate.

B.S.SEKHON, VC:

The sole important question requiring adjudication in the instant case is as to whether applicant possessed the qualifications/experience etc. laid down by the Union Public Service Commission(for short the 'Commission') in the process of short listing. The aforesaid process was resorted to for determining the candidates to be called for interview for the posts of E.N.T. Specialists in the Ministry of Health and Family Welfare(Department of Health) Specialist Grade-II of the Central Health Service (Non-Teaching) Specialist Sub-Cadre) Group 'A'. 8 vacancies of the said post were advertised vide Demand 10 in the Employment News issue of 26th May - 1st June, 1990 (Annexure A-5).

2. Culled from the pleadings and the relevant records produced by the respondent, the material facts are:-

Out of the 8 posts which were advertised, two were reserved for SC/ST candidates. Another post in the General Category was added by clubbing

thus raising the vacancies to be filled to 9. The essential qualifications as on 14th June, 1990 - the closing date specified in Annexure A-5 are:

- (i) A recognised medical qualifications included in the First or the Second Schedule or Part II of the Third Schedule (Other than Licentiate qualifications) to the Indian Medical Council Act, 1956/Holders of educational qualifications included in Part II of the Third Schedule should also fulfil the conditions stipulated in sub-section(3) of Section 13 of IMC Act, 1956.
- (ii) Postgraduate qualifications in Speciality i.e. M.S. (Oto-Rhino-Laryngology), Speciality Board of Oto-Rhino-Laryngology (USA), DIO, DORL or equivalent.
- (iii) 3 years work in the concerned Speciality in the case of Post-graduate degree holders and five years work in the concerned Speciality in the case of Post-graduate diploma holders.

Applicant, admittedly, did his MBBS from Banaras Hindu University in December, 1982. He has also done M.S. in E.N.T. in 1987. It is further admitted on both hands that after obtaining MBBS Degree, applicant did one year Internship in the Banaras Hindu University from January 1983 to December, 1983 and Senior Residency in the University College of Medical Sciences and G.T.B. Hospital, Shahdara, Delhi from 31-7-87 to 30.7.90. The Certificate dated 15.9.90 (Annex. A-3) also confirms the factum of Senior Residency. As per the certificate, Annexure A-4, it has been certified that applicant did three years' course in the Department of E.N.T. of the Institute of Medical Sciences and passed M.S. (E.N.T.) Examination held in January, 1987. The criterion for calling the candidates for interview by short-listing in respect of the candidates belonging to the general category laid down by the Commission is

'5/7 years experience in the Speciality in case of Post-graduate Degree/Diploma'. It is not in dispute that applicant possessed the essential qualifications. Stating that he has 5 years 10 months and 13 days experience in the Speciality, applicant has averred that the Commission could not resort to short-listing as statutory Rules cannot be whittled by executive decisions. It is further stated by the applicant that his case is covered even by the short-listing criterion. The other pleas raised by the applicant are that the Commission have called candidates with lesser experience, two of such candidates named by the applicant are Dr. S.K.Verma and Dr. Sanjeev Sood, and that the weightage of two years given by the Commission to the Post-graduation is arbitrary and irrational. The Post-graduation in Banaras Hindu University as also in the PGI Chandigarh and AIIMS spreads over three years as against the period of two years in some other Institutions/Universities.

3. Applicant's request for being called for interview did not yield any fruitful result. Applicant has, however, been interviewed on provisional basis pursuant to the orders dated 25th February, 1991, whereby applicant's request for interim relief was disposed of. As per the said order, the Commission was directed to interview the applicant purely on provisional basis on 28.2.91. It was also directed that the result of the interviews held shall not be finalised or announced without the orders of the Tribunal.

4. Respondent's defence as set out in the counter is that mere possession of essential qualifications does not entitle a candidate to be called for interview. Where

the number of applications received is large, it is not convenient or possible for the Commission to interview all the candidates. The Commission restricts the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of the experience higher than the minimum prescribed in the advertisement or on the basis of the experience in the relevant field or by holding a screening test. The total experience of the applicant according to the respondent is 4 years 10 months and 13 days which is less than the short-listing criterion.

5. We have perused the pleadings and the records produced by the respondents and have also given our earnest consideration to the arguments addressed by the learned counsel for the parties and to the pleadings and the documents on record.

6. We may, in the first instance, deal with what may appropriately be termed as insubstantial plea. The insubstantial plea pertains to the validity of the action of short-listing adopted by the Commission. It is by now well settled that the Commission is within its rights to adopt the method of screening or that of short-listing for the purpose of restricting the number of candidates to be called for interview when the number of applications received is unmanageably large. Mere possession of essential qualifications does not confer a vested right in an applicant to be called for interview. The aforesaid plea thus merits rejection out of hand and the same is hereby rejected. We may add that it is also

not within the province of the court/Tribunal to sit in judgment over an otherwise valid criterion laid down in this behalf by the Commission or any other Selection Board.

7. Turning to the central question, it would bear repetition to state that the criterion for short-listing ^{for general candidates} approved by the Commission /was that candidates with 5/7 years experience in the Speciality in case of Post-graduate degree/diploma qualification were to be called for interview. Applicant, who is, admittedly, a post-graduate in the E.N.T.Speciality, would be covered by the aforesaid criterion, if he is found to possess 5 years' experience in the E.N.T. Speciality as on 14th June,1990. Applicant possessed the following experience in the E.N.T.Speciality as on the aforesaid date:-

- (i) 3 years' Residency Course.
- (ii) Senior Residency from 31.7.87 to 14.6.90 = 2 years 10 months 13 days.

This experience/work in the E.N.T. Speciality has been specified by the applicant in para 4(vi) of the Application. In the corresponding sub-para of the reply, respondent has not denied the averments made in para 4(vi) of the Application. The precise defence of the respondent as disclosed in para 5 of the reply is that a weightage of only two years' experience is given by the Commission to the junior Residency. In other words, the Commission, by adopting the device of weightage, has taken into account two years' experience instead of the actual experience of three years, which the applicant had while doing post-graduation course.

The learned counsel for the parties did not join issue on the question that a period of three years is needed for doing post-graduation course in the Banaras Hindu University and that the applicant had actually put in three years while doing the said course. After giving our earnest consideration to the matter, we are of the considered view that reduction of actual experience of three years to two years by importing an extraneous formula of weightage is both unwarranted and arbitrary. We may say so, if we may, that the same is also unfair and irrational. We would accordingly hold that the respondent's action in reducing the actual experience of three years to two years by adopting a formula of weightage is unsustainable and that applicant is entitled to the inclusion of three years' experience which he actually had while doing post-graduation in the Speciality. In view thereof, it can be safely stated that the applicant possessed experience of 5 years 10 months and 13 days in the Speciality as on 14-6-90.

8. From the foregoing it would follow that the applicant is fully covered by the short-listing criterion and as such was entitled to be called for interview. Since the applicant has already been interviewed, respondent is directed to finalise the result by treating the applicant's case as fully covered by the short-listing criterion. The ad-interim order dated 25-2-91 injuncting the Commission from finalising or announcing the result of the interviews is hereby vacated.

9. Application stands disposed of with the aforesaid direction. No order as to costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)
25-10-1991 AM.

B.S.Sekhon
(B.S.SEKHON)
VC.
25/10/91