

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI

OA 441 of 1991

Date of decision 25-10-1991

Dr. Ramanuj Bansal

.....

Applicant

versus

Secretary,  
Union Public Service Commission  
Dho-lpur House, New Delhi.

...

Respondent

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

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

B.S.SEKHON:

The instant Application is directed against the omission of the Union Public Service Commission ('Commission' for short) in not calling the applicant for interview for the post of E.N.T.Specialist 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', advertised vide Demand No.10 of the advertisement (copy Annexure A-3).

2. The factual matrix germane to the adjudication of the Application, concisely stated, is:-

Applicant obtained MBBS Degree from Maulana Azad Medical College, Delhi in 1983. He did his diploma in Oto-Rhino-Laryngology, ..... in 1985 from University of Delhi under Roll No. 94 (copy of the diploma is at page 16 of the paper-book). Applicant is also a Post-graduate in E.N.T. Speciality. He did his postgraduation

in 1988. The Commission invited applications for 8 posts (2 reserved for candidates belonging to SC/ST) as per the aforesaid advertisement. The number of posts to be filled was subsequently increased to 9 by clubbing another vacancy. The essential qualifications specified for the said post are as follows:-

- (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 Postgraduate degree holders and five years work in the concerned Speciality in the case of Postgraduate diploma holders.

Applicant applied for the said post. Vide communication dated 12-11-90 (Annexure A-5), applicant was asked to submit a certificate (with a photostat copy thereof) from the competent authority that he had got 5 years experience in the Speciality of E.N.T. as on or before 14-6-90.

Applicant sent a reply dated 27-11-90 (Annexure A-5/A) to the aforesaid communication. In the reply, applicant had, inter-alia, stated that his experience in the Speciality of E.N.T. as on 14th September, 1990 stands at 5 years and 2 months. Applicant also submitted an appeal dated 7-2-91 (Annexure A-6) against non-receipt of interview call for the said post and as per the letter dated 14-2-91 (Annexure A-7), applicant was sent a conditional call for interview. The

condition subject to which the interview call was issued is worded as follows:-

"This call for interview is provisional subject to production of a certificate (with a photostat copy thereof from the Head of the Department/ Institution at the time of interview that you have got 5 years (five years) experience in the Speciality of E.N.T. (3 years experience in addition to P.G. Degree) as on or before 14-6-90, failing which you will not be interviewed and no T.A. will be paid to you."

3. Applicant's case is that the respondent could not decline unconditional interview call to him as he possessed the essential qualifications laid down by the Recruitment Rules and respondent cannot resort to short-listing as Statutory Rules cannot be whittled by any executive decision. Applicant has added that his total experience in the Speciality is more than 5 years.
4. Vide order dated 25th February, 1991, whereby applicant's request for interim relief was disposed of, 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.
5. 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 in the relevant field or by holding a screening test. The total experience of the applicant, according to the respondent, is 4 years 7 months, which is less than the short listing criterion.

6. We have heard the arguments addressed by the learned counsel for the parties and have also perused the pleadings, documents on record and the records produced by the respondent with due care and attention.

7. It would appear to be appropriate to dispose of at the very outset the insubstantial points. Inviting our attention to the applicant's reply, Annexure A-5/A at page 26 of the paperbook, the learned counsel for the respondent contended that even according to the applicant's own statement in the concluding para of the aforesaid reply, he possessed experience of 5 years and 2 months as on 14th Sept., 1991. The learned counsel added that it clearly implies that applicant did not possess the requisite experience of five years as on 14th June, 1990. The learned counsel for the applicant met the aforesaid point on the reasoning that the month '9' in the concluding sentence of Annexure A-5 is the result of the printer's devil and there would appear to be little sense in mentioning the aforesaid month when the qualifications were to be seen as on 14-6-90. The aforesaid explanation given by the learned counsel for the applicant seems to be valid. Figure '9' representing the month seems to have been indicated instead of figure '6' on account of clerical error. In any case,

→ the aforesaid point would not damn the applicant's case, if he is found to be covered by the short-listing criterion.

8. The other insubstantial point which was put forward by the learned counsel for the applicant was that the essential qualifications having been laid down by the Recruitment Rules, it is not permissible for the Commission to lay down higher qualification by adopting the device of short-listing. To buttress this point, the learned counsel submitted that statutory Rules cannot be whittled down by executive decisions/orders. By now it is well settled that if the number of candidates for a particular post is, unduly large, it is open to the Selection Board concerned to restrict the number of candidates to be called for interview to a reasonable limit by adopting the process of screening or that of short-listing. Mere possession of eligibility qualifications does not confer on a candidate an infeasible right to be called for interview. This point urged by the learned counsel for the applicant is, therefore, hereby negatived.

9. As the Commission was within its right to take recourse to short-listing, the crucial issue falling for determination in this case is as to whether the applicant's case is covered by the short-listing criterion laid down by the Commission. This is so to say the mat issue in this case. It would <sup>be</sup> pertinent to mention in this connection that for the general candidates, the short-listing criterion laid down by the Commission was as under:-

"5/7 years' experience in the Speciality in case of Post-graduate Degree/Diploma."

Since the applicant has done his post-graduation in the Speciality, it is to be seen as to whether he possessed 5 years' experience in the Speciality as on 14-6-90.

Applicant has specifically averred in paras 4(ii) and 4(v) that he has the following experience in the Speciality:-

- (i) 1-7-83 to 31-12-83 in E.N.T. L.N.J.P.Hospital, New Delhi (Junior Residency) = 6 months.
- (ii) 2-12-85 to 31-7-86 (Batra Hospital and Medical Research Centre) = 8 months
- (iii) Senior Residency 30-7-88 to 8-9-88 = 39 days
- (iv) D.L.O. = 1 year.
- (v) M.S. (E.N.T.) = 2 years
- (vi) 13-6-89 to 14-6-90 L.N.JP Hospital, New Delhi = 1 year

Respondents have not specifically denied the averments made in the aforesaid paragraphs of the Application. However, according to the respondents, applicant possessed experience of only 4 years and 7 months, as mentioned in para 4(viii) of the counter. The assertion of the applicant about the experience/work in the Speciality is borne out from Annexure A-2, the certificate dated 15th October, 1986 at page 17 of the paper-book; certificate of June, 1990 at page 21 of the paper-book, certificate dated 3-7-85 at page 15 of the paper book; certificate dated 2.4.89 at page 18 and certificate dated 27.11.90 at page 22 of the paper-book. Respondent's case is that the applicant possessed total experience of 4 years 7 months in E.N.T. Speciality. Respondent has not given the applicant credit for the experience/work during the period he did his DLO. The experience gained by the applicant while he was doing his diploma cannot be denied to him on any justifiable grounds. The aforesaid experience is in the Speciality and

is, undoubtedly, an experience in the Speciality. If this period of one year is also included, it can be safely stated that the applicant possessed experience of more than 5 years in the Speciality. That being so, we hold that the applicant's case stands covered by the short-listing criterion and as such he 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 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.

10. Application stands disposed of with the aforesaid direction. No costs.

*D.K. Chakravorty*  
(D.K. Chakravorty)  
27/8/91 AM

*B. S. Sekhon*  
(B.S. Sekhon)  
25-10-91 VC