

Central Administrative Tribunal, Principal Bench

O.A. No.1899/2004

New Delhi this the 15th day of July 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. D.R. Tiwari, Member (A)

1. Dr. Kanwar Singh
Assistant Archaeologist (ASI),
C/o Shri Roshan Lal Yadav
B-2 Urban Estates, Sector-IV, Gurgaon, Haryana.
 2. R.K. Verma
Assistant Archaeologist
Headquarter Office, ASI,
Janpath, New Delhi.
 3. Teeka Ram Sharma
Deputy Superintending Archaeologist,
Archaeological Survey of India,
Dehradun Circle, Dehradun
C/o Dr. V.K. Dixit
7B-Astley Hall, Dehradun, Uttaranchal.
 4. T.J. Alone
Deputy Superintending Archaeologist,
Archaeological Survey of India,
Janpath, New Delhi.
 5. Niraj Kuar Sinha
Assistant Archaeologist,
Archaeological Survey of India,
Excavation Branch-II, 7th Floor, Block No.704,
Lok Nayak Bhawan, Frazor Road,
Dak Bungalow Esquire, Patna, Bihar.
 6. Nizamuddin Taher
Deputy Superintending Archaeologist,
Archaeological Survey of India,
Mini Circle, B02, Happy Home,
St. Inez, Panaji, Goa.
 7. V. Gopala Rao
Foreman
Archaeological Survey of India,
Mini Circle, B02, Happy Home,
St. Inez, Panaji, Goa.
-Applicants

By Advocate: Applicant Nos. 1 and 2 in person.

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Versus

1. Union of India
Through: Secretary,
Department of Culture,
Shastri Bhawan,
New Delhi-110 001.
2. Union Public Service Commission
through: Secretary,
Jam Nagar House,
Shahjahan Road,
New Delhi-110 003.
3. Archaeological Survey of India,
Through : Director General,
Headquarters – Janpath,
New Delhi. ...Respondents

By Advocate: Ms. Rekha Pali, Counsel for respondent Nos.1 and 3.

Shri Rajinder Nischal, Counsel for respondent No.2.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicants filed this OA for quashing the interview conducted by the UPSC on 2.8.2004 for selection on the post of Superintending Archeologist (SA) in pursuant to its advertisement dated 27.12.2003/2.1.2004 as illegal, unfair selection process and discriminatory. They also seek a declaration that the applicants were eligible to be called for the said interview and a direction to the respondents that fresh selection process for filling up the post of SA by calling the applicants also for interview should be started.

2. Briefly, the facts are that the applicants No.1, 2 and 5 are Assistant Archeologist (AA), applicants No.3, 4 and 6 are Deputy Superintending Archeologist (DSA) and applicant No.7 is a Foreman, working in the Archaeological Survey of India (ASI), respondent No.3. The respondent No.2 – UPSC, issued an advertisement for filling up 4 posts of SA against 25% direct recruitment quota. These applicants also submitted their

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applications but they were not called to attend the interview conducted by the UPSC on 2.8.2004. The applicants are aggrieved. Their contention is that the applicant No.1 possessed Ph.D degree and other applicants had long field and administrative experience making them eligible for appointment to the post of SA, which is a key post, and should be manned by a qualified and an experienced person. They have alleged that in the past, non-degree holders Assistant Archeologists were selected by the UPSC for appointment to the post of Superintending Archeologist, but in the present selection, they have been completely excluded. They have referred to the selections of Shri B.R. Meena in 1991, Mrs. Subra Pramanik in 1991, D.V. Sharma in 1994 and A.K. Sinha in 1994. They have also referred to the cases of S/Shri R.S. Bisht, R.S. Fonia, G.T. Shende, and S.B. Ota, who were non-holders of Ph.D Degree and were selected and appointed to the post of SA in the years 1977, 1991, 1991 and 1994 respectively. The applicants also stated that out of 14 candidates, who were called to attend the interview on 2.8.2004, Dr. Manoj Kumar did not fulfil the essential qualification since he possessed the Ph.D degree in 'Astrology' which was not the relevant subject and Dr.P.K. Mishra submitted his application after the expiry of last date for submission of the application, i.e., 15.4.2004. According to them, the action of the UPSC in not calling the applicants for interview is discriminatory, arbitrary and violative of the principles of equality enshrined in Article 14 of the Constitution of India. It was submitted that applicant No.1 was a holder of Ph.D degree and applicant No.3 was called for interview by the UPSC for the post of Keeper (Central Asian Antiquities) in the National Museum in the year 1993, interview for which was held in 1994, which carried a similar pay scale but required more stringent eligibility condition, still they have not been called. Hence the OA.

3. The respondent Nos.2 and 3 have filed their separate replies to the OA. Respondent No.2, the UPSC, stated that the recruitment related to the 4 posts of Superintending Archeologist in the Archeological Survey of India, Ministry of Human

M. K. Mishra

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Resource Development (Department of Culture) in the pay scale of Rs.10,000-15200/-.

Out of the four posts, one post was reserved for Other Backward Classes candidates and the remaining three posts were unreserved. These posts were advertised in the Employment News dated 27.12.2003-2.1.2004. The closing date of receipt of the application was 15.1.2004 and not 15.4.2004. The essential qualifications required for the post were:-

(i) At least a second class Master's Degree of a recognized university or equivalent in Indian History/Archaeology/Anthropology with knowledge of Stone Age Archaeology/Geology with knowledge of Pleistocene Geology.

(ii) Diploma in Archaeology from the Archaeological Survey of India with three years field experience
Or

Field experience of at least five years in Archaeology and knowledge of Monuments and Antiquities.

(iii) Doctorate Degree in any of the above subjects or equivalent published research work (evidence to be furnished).

Desirable qualification was "knowledge of Sanskrit; Pali, Prakrit, Persian or Arabic up to degree level" etc. etc.

4. In response to the advertisement, 169 effective applications were received. The criterion adopted for calling candidates for interview for the post was essential qualification (i) + (ii) mentioned above and Doctorate Degree awarded in the prescribed subjects, before the normal closing date of the application. The candidates not possessing Ph.D degree before the closing date were not short-listed for the interview etc. etc. Experience acquired after EQ (i) only was considered. The candidates who had submitted their thesis but were not awarded the Ph.D. degree before the closing date of application, were not short listed for interview. In all 15 candidates fulfilled the above mentioned criterion and all of them were called for interview and all attended the interview. The interview was held on 2.8.2004. Recommendation letter has been issued on 4.8.2004.

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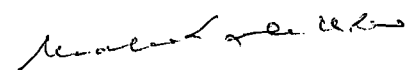
The applicants were not possessing the essential qualification (iii) as per recruitment rules, so they were not called for interview. The applicant No.1 was awarded Ph.D. degree on 16.4.2004 as per his own admission and he was not possessing Ph.D. degree on the normal closing date. He was not short listed for interview. The other applicants' did not possess Ph.D. degree. The applicant No.3 has made a representation claiming that he possessed qualification before research work to satisfy EQ (iii) but the criteria adopted for short-listing in this case was possession of Ph.D. degree by the normal closing date of the application. The summaries of the qualification of 16 candidates and 153 applications of the candidates not selected for interview, were forwarded to the office of the Director General, Archaeological Survey of India, vide letter dated 28.6.2004 in which it was clearly indicated that the Commission would welcome and consider the suggestions from the Ministry/Department regarding suitability of the applicant for interview. The reason for the suggestions made, were also sought by 15.7.2004. But no comments were received and it was presumed that the Department has no comments to make. The Archaeological Survey of India has also nominated Shri R.K. Sharma as the Ministry's representative but no representation on the suitability of the applicants were received to the Demi Official letter dated 28.7.2004 received from Additional Director General, Archaeological Survey of India, which cannot override the existing recruitment rules for the post which, inter alia, required Doctorate degree in any of the prescribed subjects or equivalent published research work and further the letter was received as late as the interview was fixed for 2.8.2004. It is further submitted that the UPSC is a constitutional body under Articles 315 to 323 [part (xiv)] Chapter IInd of the Constitution of India and the Constitution has enjoined upon it the solemn duty of making recruitment to all civil services/posts under the Union Government. In discharge of its constitutional obligation, the UPSC is vested with power to frame its own method/manner for recruitment under which a reasonable classification of various applicants on the basis of their qualifications

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and experience is permissible. The power of the UPSC for reasonable classification has been the subject matter of judicial scrutiny and has been upheld by various judicial fora including the Supreme Court of India. The UPSC sets in motion the process of recruitment by advertising the required posts directly in conformity with the notified Recruitment Rules framed by the President of India under Article 309 of the Constitution of India. The functioning of the UPSC is governed by the well-settled norms and regulations based on various recruitment rules, guide-lines and instructions. The last recruitment for the same post was conducted in 1997. At that time, for two posts of Superintending Archaeologist, Archeological Survey of India, 5 candidates were called for interview and all of them were having Ph.D. degree in the prescribed subject. It was denied that Dr. Manoj Kumar did not have Ph.D. degree in the relevant subject. He had obtained Ph.D. degree in 1997 in the subject Ancient Indian History, Culture and Archaeology, which is a relevant subject. It was also denied that Dr. P.K. Mishra has submitted his application after the expiry of the last date. It was stated that his application was received on 8.1.2004 as against closing date of 15.4.2004. It was stated that the application has no merit and should be dismissed.

5. In the rejoinder, the applicants have reiterated their own case and denied the allegations of the respondents.

6. The respondent No.3, Archaeology Survey of India, in a short affidavit had repudiated the claim of the applicants and submitted that the UPSC was the selection agency and the case pleaded by respondent No.2 in its counter-affidavit was being adopted as a reply on behalf of the respondent No.3 also. It was stated that the post of Superintending Archaeologist plays a very important role in the functioning of the Archaeological Survey of India and a lot of inconvenience was being faced by it for want of incumbents to man the vacant posts of Superintending Archaeologist and, hence, were required to be filled up urgently.



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7. The applicants have filed a rejoinder to the reply of the respondent No.3 in which they have controverted the allegations of the respondents.

8. We have heard the learned counsel for the parties and have also perused the relevant record.

9. The vacancies for four posts of SA were advertised by the UPSC to be filled in by direct recruitment. In the advertisement, the necessary eligibility condition as to the age, the educational qualification, experience etc. were mentioned. One of the requisite educational qualifications was, "Doctorate degree in any of the above subjects or equivalent published research work". The candidate was required to possess Ph.D. degree in the subjects, Indian History/Archaeology/Anthropology with knowledge of Stone Age Archaeology/Geology with knowledge of Pleistocene Geology. In response to the advertisement, 169 effective applications were received by the UPSC. The UPSC adopted criterion for calling the candidates for interview which is as under:-

"Essential qualification (i) + (ii) mentioned above and Doctorate Degree awarded in the prescribed subjects, before the normal closing date of the application. The candidates not possessing Ph.D degree before the closing date were not short-listed for the interview etc. etc. (Experience acquired after EQ (i) only was considered, the candidates who had submitted their thesis, but were not awarded the Ph.D. degree before the closing date of application were not short listed for interview.

10. In all, the 15 candidates fulfilled the above criteria. They were short-listed and called for interview. All of them attended the interview on 2.8.2004. The applicants, who were also aspirants to the post and submitted their applications, were not called at the interview by the UPSC. All of them were working in the Archaeological Survey of India as Assistant Archaeologist or Deputy Superintendent of Archaeologist barring applicant No.7, who was the Foreman. According to them they possessed the requisite qualification and in addition had also long working experience in the Archaeological Survey of India which made them a better candidate. Applicant No.1, admittedly, was awarded a Ph.D. degree in April, 2004, i.e., long after the closing date of the receipt of the applications by

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the UPSC, i.e., 15.1.2004. Others did not possess Ph.D. degree. According to the UPSC, all the 15 candidates, who were short-listed, inter alia, possessed Ph.D. degree in the relevant subject. Neither the nodal Ministry nor the Department of Archaeological Survey of India responded and offered suggestion invited by the UPSC by its letter 15.7.2004 on the applications received by the Commission in response to the advertisement. A Demi Official letter of Additional Director General of the Archaeological Survey of India was received, but it was not an opinion/advice of the Department or the Ministry. Moreover, it was too late to be taken into consideration. Applicants have given example of recruitment in the previous years of 1977, 1991 and 1994 where non-Ph.D. candidates were called at the interview. They were selected and appointed to the post of SA. They allege that non calling of the applicants at the interview is, therefore, arbitrary, unfair and discriminatory and is violative of Article 14 of the Constitution of India. Conversely the UPSC has pleaded that it is a constitutional body and the constitution has enjoined upon it with duty of making recruitment to all the civil services and posts under the Union Government. In discharge of its constitutional obligation, the UPSC is vested with powers to frame its own method, manner of recruitment under which a reasonable classification of various applicants on the basis of their qualification and experience is permissible. It is stated that the powers of the UPSC for reasonable classification have also been upheld by various judicial fora including the Supreme Court in Civil Appeal No.44/90 U.O.I. Vs.T. Sundaraman and Others and this Tribunal in OA 552/90 and by this Tribunal in the case of M. Chandrasekharan. 169 effective applications were received and calling all of them for interview for the four posts was not feasible so the criteria adopted for shortlisted/calling candidate for interview for the post reserved for OBC candidates and also for unreserved post was decided as under:-

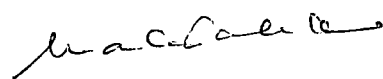
“Essential qualification (i) + (ii) & Doctorate Degree awarded in the prescribed subjects on or before the closing date of applications”.

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11. Applying this criteria, the candidates who possessed the Ph.D. degree on or before the closing date were short-listed for interview and the experience required after essential qualification (i) only was considered. As regards to the calling of non-Ph.Ds. in earlier selection, it was submitted that in 1997 for the 2 posts of SA, 5 candidates all of whom possessed Ph.D. degrees in the prescribed subjects were called. As regards to the selection in the years 1977, 1991 and 1994 it was submitted by the UPSC that short-listing criteria devised for the same post may vary from time to time depending on the number of posts for which the recruitment is being made and the number of candidates who apply on that occasion. Every selection was an independent selection.

12. The case of the respondent No.2 – UPSC is that in discharge of its constitutional obligation it is vested with power to frame its own method, manner of recruitment under which reasonable classification of various applicants on the basis of their qualification and experience may be done by its has been upheld by the Hon'ble Supreme Court in the case of U.O.I. Vs. T. Sundaraman and Others (Supra) and also by this Tribunal in various pronouncements. In the instant case the advertisement was issued for recruitment on four posts – one post reserved for OBC and the remaining three unreserved posts of Superintending Archaeologist. In all 169 effective applications were received by the respondents. The UPSC, in its wisdom within its power, short-listed 15 applications. This could be done on the basis of reasonable classification and for short-listing the candidates for interview. It fixed the criteria of Ph.D qualification. All 15 candidates short-listed possessed that qualification. The contention of the applicants that one of the candidate did not have the Ph.D in the relevant subject or the application of another candidate was received after the closing date of the receipt of the application has been controverted by the respondents and there is no reason for us to disbelieve the respondents in this regard.



13. Though the applicant may have possessed the qualification for applying in response to the advertisement issued by the UPSC, but the fact remains that the UPSC had the power and it has adopted a reasonable criteria for short-listing candidates for interview in view of large number of candidates applying for the posts. Simply because the applicants were more experienced than many of the candidates who were shortlisted would not bring any infirmity in the discretion exercised by the UPSC in limiting the number of candidates who were to be called for interview.

14. One of the main plank of the applicant for challenging the order of the respondent No.2 – UPSC in not calling them at the interview is that in the past some non-Ph.Ds were called and were also selected in the recruitment for the post of SA. But the UPSC has explained the reason. Every case is an independent selection and keeping in view the total number of posts which were to be filled in and the number of candidates who had applied, the UPSC has to fix the shortlisting criteria. From the averment made in the counter-reply by the UPSC it is clear that wherever the adequate number of candidates with Ph.D were available, the shortlisting criteria was calling candidates for interview who possessed Ph.D in relevant subject. But wherever sufficient number of Ph.Ds had not applied some non-Ph.D's were called at interview and were also selected. It has to be remembered that Ph.D is one of the essential qualification for appointment to the post of SA. The candidates who had equivalent public research work were treated to be equivalent to a Doctorate's degree. Many of these applicants may have some published research work in their name. But UPSC cannot be faulted if non-Ph.Ds with some public research work were not called to the interview. The criteria adopted for short-listing in view of large number of applicants, cannot by no logic, be said to be not reasonable. For these reasons there does not appear any substance in the argument of the applicants that they had been discriminated against by the UPSC in not calling them to attend interview in August, 2004 or they have not been treated with equality since in the earlier three

selections in the year 1977, 1991 and 1994 some non-Ph.Ds were called at the interview, selected and appointed to the post of SA.

15. In State of Punjab and Others Vs. Manjit Singh and Others, (2003) 11 SCC

559 the Hon'ble Supreme Court observed as under:-

"7. Now advertent to the point under consideration, it may be observed that so far as the powers and functions of the Commission in shortlisting of candidates are concerned, there can certainly be no doubt about it. Say, for example, 10,000 candidates apply for recruitment to 100 posts, it would obviously not be possible to take full test/examination and interview of such a large number of applicants, though eligible. In that event shortlisting of the candidates by screening out those, in respect of whom it would serve no purpose to call them for further test, may be excluded by adopting the method of screening test. Generally speaking, a ratio of 3:5 candidates for one post is normally accepted depending upon the number of seats. Therefore, for 100 posts the selecting body may in order of merit take out about first 500 candidates for further tests/interview. The rest of the candidates would be screened out. No candidate excluded by adopting such a method of shortlisting can raise any grievance whatsoever".

16. The power of the UPSC in fixing a reasonable criteria for short-listing candidates called for interview is upheld by Hon'ble Supreme Court in the above cited case. Reasonableness of the criteria adopted by the UPSC in shortlisting of candidates in the case cannot be faulted. It cannot be termed as unfair, unjust, arbitrary and discriminatory. Principles of equality enshrined in Articles 14 and 16 of the Constitution of India have not been violated.

17. The learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court in the case of P.M. Latha and Another Vs. State of Kerala and Others, (2003) 3 SCC 541. In this case petitioner applied in response to the advertisement for recruitment to the post of lower primary/upper primary teachers in Government schools. The prescribed qualification was "pass in TTC" (Trained Teachers' Certificate). Some B.Ed. degree holders were selected on the basis that B.Ed. was a higher qualification than TTC. The Hon'ble Supreme Court held that B.Ed. degree holder


was not eligible for selection and B.Ed. cannot be held to be a higher qualification than TTC. It was further held that fixation of higher qualification was a matter of recruitment policy.

18. The applicants have also relied upon Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others (2003) 3 SCC 548. In the said case petitioners applied in response to an advertisement issued for the post of Assistant Teacher in Primary Schools of Municipal Corporation. Teachers Training Certificate was prescribed in the advertisement as essential qualification for the post. The Hon'ble Supreme Court held that the candidates holding B.Ed degree cannot be considered.

19. The judgments in Yogesh Kumar and Others (Supra) and P.M. Lata (Supra) are cited to counter the contention of the applicant that they fulfilled eligibility conditions and were also possessing long experience of the working in the Archaeological Survey of India, therefore, they were more suitable to hold the post of SAs. To our view, the judgments are not of much help because in the present case the question is whether the UPSC was within its right and had the powers to make reasonable classification of the applicants and shortlist some of them for calling for interview. In the present case we cannot say that the classification adopted by the UPSC was not a reasonable classification and shortlisting criteria suffered from legal infirmity. None of the grounds on which the applicants has claimed relief in this case has merit. The action of the UPSC in not calling them at interview cannot be held unfair, unjust, arbitrary or discriminatory. Since every selection is a new selection new criteria devised for short-listing candidates may be different. Simply because the Assistant Archeologists are stagnating in their post for 20 years or more is no ground to give them preference in recruitment against direct recruit quota. For this they may make representation to the cadre controlling authority to provide more avenues for advancement in career or amend the recruitment rules.

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20. The result of the above discussion is that we do not find any merit in the application so it is dismissed but without any order as to costs.


(D.R. Tiwari)
Member (A)


(M.A. Khan)
Vice Chairman(J)

Rakesh