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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 3237 of 1992

New Delhi, this the 19th day of March, 1999

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN (J)
HON'BLE MR. K.MUTHUKUMAR, MEMBER (A)

Nank Chand Tekwani, S/O Sh. Lok Chand
Tekwani, Asstt. Legislative Counsel,
Legislative Department, Ministry of Law,
Justice and Company Affairs, Shastri
Bhavan, New Delhi.

--APPLICANT.

(By Advocate Sh. A.K.Singh)

Versus

1. Union of India, though its Secretary, Legislative Department, Ministry of Law, Justice and Company Affairs, Shastri Bhavan, New Delhi.
2. Union Public Service Commission through the Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. Sh. V.K.Bhasin, Asstt. Legislative Counsel, Legislative Department, Ministry of Law, Justice and Company Affairs, Shastri Bhavan, New Delhi.

--RESPONDENTS.

(By Advocates-Sh. N.S.Mehta for respdt.No.1)

Sh. Rajinder Nishal for respdt. No.2

Sh. C.Hari Shankar for respdt. No.3)

O R D E R (ORAL)

By Hon'ble Mr. Justice S. Venkatraman, Vice Chairman (J)

The applicant who was aspiring for the post of Dy.Legislative Counsel, Legislative Department, Grade-III of the Indian Legal Service for which post, applications were called for by an advertisement in the news paper, is aggrieved by the selection of the 3rd respondent for the post.

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2. As per the advertisement, the requirements for the post were that the candidate should hold a Degree in Law or equivalent and that he should have been a Member of State Judicial Service for a period not less than 10 years or be a Central Govt. servant with five years experience in legal affairs for not less than 10 years etc. It is also indicated that preference would be given to a person with experience in Legislative Drafting.

3. The main grounds on which the applicant has challenged the selection of 3rd respondent are that the 3rd respondent did not have the requisite experience of 10 years in legal affairs and that he also did not possess the preferential qualification and experience in Legislative Drafting.

4. Learned counsel for the applicant sought to rely on the particulars given by the 3rd respondent in his counter to point out that the 3rd respondent did not have an experience of 10 years in legal affairs. It is no doubt true that if the particulars given in the reply are taken into account, that experience would appear to be short of 10 years. But the learned counsel for the respondents points out that it is by a clerical error, the period of service as Asstt. Director (Sales Tax), Grade-I in DGS&D, Deptt. of Supply has been shown as 11.3.85 to 28.2.86 whereas it should have been 11.3.85 to 31.7.88. Alongwith the counter, he has produced the Certificate (Annexure A-15) which shows that the applicant was working as Asstt. Director (Sales Tax), Grade-I, DGS&D, Deptt. of Supply from 11.3.85 to 28.2.86 in pre-revised pay scale and from 1.3.86 to 31.7.88 on

revised pay scale. It would appear that by mistake the later portion of service under revised pay scale has not been included in the particulars given in the reply filed by 3rd respondent. However, the Certificate produced alongwith the counter clearly shows that he was working in that post upto 31.7.88. That apart, the official respondents have simply stated in the reply that the applicant was serving in that post till 31.7.88. If that period is taken into account, it will be seen that the total period of service including the service in Law Commission would come to 10 years 5 months.

5. Learned counsel for the applicant next sought to contend that the experience as Dy. Director (Sales Tax) and Asstt. Director (Sales Tax) cannot be taken to be an experience in legal affairs. In support of this plea, he sought to rely on some observations in Sanjay Tripathi Vs. Union of India & Others - 1993 (3) SLJ Vol.III 198. That was a case where the post for which the advertisement was issued, was that of Additional Legal Advisor, Ministry of Law and Justice. The question was whether the experience of teaching and research in law can be taken into account for purpose of requisite "Experience in Legal Affairs". In the course of that judgement, a reference was made to an earlier case wherein it was stated that the word legal has a wide connotation and everything connected with law is legal, that, however, at the same time the spirit of the rules is the particular set of individuals who have got specific experience of imparting legal advise may be considered for the post where the functionary discharge only the function of giving opinion on variety of cases

coming to the Deptt. of Legal Affairs. It is also observed that the exclusion of teaching experience cannot be said to be arbitrary in the light of the scheme of the rules. That decision cannot be of much help in the instant case as the post in question is the post of Dy. Legislative Counsel and all that the rules require is that he should have experience in Legal Affairs. In the context in which the Expression in "Legal Affairs" has been used, it should be taken to mean experience in handling legal matters. There is no stipulation that the experience should be in any particular law. If a candidate has experience in handling matters connected with any law, he would be a person having experience in legal affairs.

6. In the instant case, the 3rd respondent has produced the Recruitment Rules for the post of Asstt. Director (Sales Tax). It is seen from the Recruitment Rules that for the post of Asstt. Director (Sales Tax), Grade-I, the essential requisites are; Degree in Law of a recognised University or equivalent, three years' purchase experience in Government, Semi-Government or a commercial organisation of repute with knowledge of Sales Tax Act and the rules framed thereunder and their application to purchase of stores. The essential educational qualifications for the post of Dy. Director (Sales Tax) are; Degree in Law of a recognise University or equivalent with seven years' experience of sales tax laws in a Government, Semi-Government or a Commercial Organisation of repute or as a practising advocate/legal adviser. These rules show that before a person could have been appointed as either Asstt. Director (Sales Tax) or

Deputy Director (Sales Tax), he must have had not only a Degree in Law but also experience in matters connected with Sales Tax Act and Rules. He has also produced the certificate to show that as Asstt. Director (Sales Tax) and Dy. Director (Sales Tax), he was rendering legal advise to various purchase directorates etc. on legal matters relating to Sales Tax and arising under Contract Act, Sales of Good Act, Sales Tax Act and Constitution of India, issuing various office orders and IDs bringing out the changes in the Sales Tax Laws of the various States, to act or plead or to contest the Sales Tax Cases/Sales Tax litigation including appearing before quasi judicial authorities on behalf of DGS&D. If we take into consideration the essential requisites for the post of Asstt. Director (Sales Tax) and Dy. Director (Sales Tax) as well as the nature of duties performed by the 3rd respondent in the capacity of Dy. Director (Sales Tax) and Asstt. Director (Sales Tax), it cannot be said that his experience in those posts had nothing to do with legal affairs.

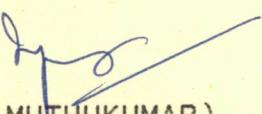
7. With regard to the desirable qualification, Law Commission of India has issued a Certificate stating that the duties prescribed for the post of Addl. Law Officer in Law Commission are research in the field of law, which quite often involves model draft bills and draft amendments or modifications in the existing enactments in India. He has also produced a Certificate issued by the Member of Law Commission which says that the applicant was assisting him in drafting work on a few projects involving legislation. In view of these documents, if the selecting body was satisfied that the 3rd respondent

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had desirable experience in drafting, we do not think that we can characterise the action of that body as arbitrary.

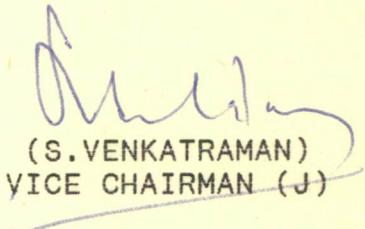
8. On merits, we find that the applicant has not made out any good case to interfere with the selection of 3rd respondent. Apart from this, we see that in the application, the applicant has nowhere challenged his non-selection nor he has sought for a fresh selection being held in case the selection of 3rd respondent is quashed. In fact, the applicant is not aggrieved by his non-selection and in that sense, he cannot be said to be an aggrieved party. If he is not an aggrieved party, then he will have no locus standi to challenge selection of 3rd respondent only in public interest. In this view of the matter also, the applicant cannot succeed.

9. For the above reasons, this application fails and the same is dismissed. No costs.



(K. MUTHUKUMAR)
MEMBER (A)

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(S. VENKATRAMAN)
VICE CHAIRMAN (J)