

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO 131 OF 1987

Date of decision .. November 30, 1987

Padmalochan Das,
S/o Akshaya Kumar Das,
Transmission Executive,
All India Radio, Sambalpur,
At/P.O/P.S. Sambalpur
Distt. Sambalpur ... Applicant

Versus

1. Union of India, represented through
the Secretary, Ministry of Information &
Broadcasting, New Delhi.
2. Union Public Service Commission,
represented through its
Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110 001. ... Respondents

M/s L. Mohapatra,
D.K. Misra, Advocates ... For Petitioner

Mr A.B. Misra,
Senior Standing Counsel (Central) ... For Respondents

C O R A M

THE HON'BLE MR B.R. PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes
2. To be referred to the reporters or not ? *yes.*
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes

J U D G M E N T

B.R. PATEL, VICE-CHAIRMAN

The Union Public Service Commission(here-in-after referred to as U.P.S.C) published an advertisement bearing No. 21 and item No.7 on 24.5.86 inviting applications for recruitment to 244 posts of Programme Executives in the Directorate General of All India Radio and Doordarshan, Ministry of Information and Broadcasting. The posts belong to General Central Service Group B Gazetted(Non-Ministerial) (Annexure 1 and Annexure R-1). In response to the advertisement, the applicant applied for one of the 3 posts in the 'Features and Spoken Words' discipline under Oriya Language. His application was duly received by the U.P.S.C and he was allotted Roll No.5432. The U.P.S.C decided to select suitable candidates by interview. Since the number of applications received was very large, the U.P.S.C short-listed the candidates to be called for interview. The applicant's name was not included in the short-list and consequently he has not been called to the interview. The applicant has prayed in this application for a direction to be issued to the respondents to call him for the interview and to consider his case for the post of Programme Executive in the category of 'Spoken Words and Features' in Oriya. The interview has been held in the meantime and selection has been made. Interview was on when the applicant moved this Bench on 18.5.87 for relief.

2. No written statement has been filed on behalf of Respondent No.1, the Union of India represented through the Secretary, Ministry of Information and Broadcasting.

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It has, however, been stated on behalf of respondent No.2, the U.P.S.C, in the counter-affidavit that the U.P.S.C had the right to short-list candidates when their number is too large. As a result of short-listing only 40 candidates who satisfied the 'raised criterion' were called for the interview and the applications of the remaining candidates were rejected on grounds of 'availability of better candidates'. As the applicant did not fulfill the qualifications required under the 'raised criterion', though he had the minimum qualification prescribed in the advertisement, he was not called for the interview. The U.P.S.C has further stated that "since the applicant is similarly treated with candidates similarly circumstanced and there has been no discrimination against the applicant, his application is liable to be rejected and is not maintainable".

3. We have heard Mr D.K Misra, learned Counsel for the applicant and Mr. A.B Misra, learned Senior Standing Counsel on behalf of the respondents and carefully perused the relevant documents. Mr D.K Misra, at the time of admission of the case, on 18.5.87 prayed for issuance of interim orders. By order dated 18.5.87 his prayer was dismissed subject to the condition that the result of the application would govern the future service benefits of the petitioner. Mr D.K Misra, moved an application on 20.3.87 calling for the file of the U.P.S.C on short-listing of the candidates which was allowed by order dated 23.9.87. This file has been produced by the U.P.S.C and we have gone through it.

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4. Mr D.K Misra has urged that the applicant has been serving the media T.V and Radio for the last 6 years in production of programmes and has earned a Certificate of Merit in Akashwani National Award, 1985 and a second prize in Radio documentary in National Award for 1986 at the national level and both the programmes were produced in Oriya language (Annexure 3 Annexure 4 respectively). Besides this, he has got a number of documents, publications and performances to his credit (Annexure 5), a list of which he had enclosed to his application sent to the U.P.S.C. The applicant fulfills all the qualifications prescribed in the advertisement (Annexure 1) and the post of Programme Executive advertised is the next promotional post for a Transmission Executive, in which capacity the applicant has been working for the last 6 years having been directly recruited to the post by the Staff Selection Commission in the year 1981. In regard to this averment, we would like to point out that as the advertisement was issued inviting applications from all the qualified candidates, the method of filling up the vacancies was by 'direct recruitment' and not by 'promotion' for which there is separate procedure and we would agree with Respondent No.2 that the applicant has no right to any of these posts of Programme Executive by virtue of his working as Transmission Executive for the last 6 years.

5. Mr D.K Misra does not question the authority of the U.P.S.C to short-list candidates in certain circumstances.

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What he objects to is that the U.P.S.C has not adhered to its own principles which they had evolved and intimated to the candidates for short-listing of candidates for the interview. In this connection he has drawn our attention to item 21 of the instructions to candidates for recruitment by selection which forms part of Annexure 1 and Annexure R/1. Mr D.K Misra has contended that the candidate satisfies the norms for short-listing as intimated to the candidates and any other criterion evolved contrary to this, cannot but be arbitrary and discriminatory. Mr A.B Misra has also drawn our attention to the copy of the instructions to the candidates for recruitment by selection, which forms part of Annexure R/1, as it does of Annexure 1 and has urged that as the applicant had full knowledge of these instructions when he applied for the post, he is estopped to challenge the same and that the criterion adopted by the U.P.S.C is in public interest. It is a normal recruitment practice to avoid over-crowding of candidates and such preliminary elimination is based on reasonable nexus, i.e., on the ground of availability of better candidates which is in the interest of recruitment to public service and as such the criteria of short-listing should not be interfered with.

6. As Mr D.K Misra and Mr A.B Misra, have both banked upon item 21 of the instructions to candidates for recruitment by selection to substantiate their respective points of view, we considered it necessary to closely examine these instructions with reference to the criteria actually adopted by the U.P.S.C in short-listing the candidates. While going

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through the relevant file produced by the U.P.S.C, we have noticed at page 14(note) ante that Shri B.P.Shimpi, Under Secretary(R) of the U.P.S.C has proposed in his note dated 9.1.87 as follows:-

" Criterion for General Candidates -

Applicants who possess a Master's degree in Oriya and who fulfill EQ(ii) either under (A) or (B) may be called for interview ".(A and B refers to the Essential Qualifications against item 3 of the advertisement). This is marked 'K' on the margin of page 14 ante.

The Roll Nos. which fulfill^y this criterion have been indicated below and are marked 'H' on the margin. This proposal was recommended by Shri A.J.Bajaj, Deputy Secretary at page 1 of his note dated 13.1.87. His recommendation marked as 'Y' on the margin reads :-

" It is proposed to call 41 candidates for interview (R.Nos. indicated at 'H' at p 14N/ante) who fulfill the criteria suggested at 'K' at the same page ..."

The aforesaid suggestion of the Deputy Secretary was endorsed by the Joint Secretary(R) the same day. It was approved by Member, U.P.S.C on 14.1.87. The Chairman, U.P.S. saw it on 15.1.87, while approving the relaxation suggested on other portion of the note of the Deputy Secretary. It has to be^h seen now how far this criterion conforms to the principles laid down at item 21 of the instructions to the candidates. These instructions read as follows:-

" The prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview.

Where the number of applications received in response to an advertisement is large and it will not be

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convenient or possible for the Commission to interview all the candidates , the Commission may restrict the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the Advertisement or by holding a Screening Test. "

It is admitted that the number of applications received in response to the advertisement for these 3 posts is large. It is also admitted that it would not be convenient or possible for the Commission to interview all the candidates and further that the Commission may restrict the number of candidates to reasonable limit. According to these instructions the number of candidates will be restricted to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or ... (Underlining has been done by us for emphasis). According to the advertisement, Essential Qualifications are " 3.(A)(i) M.A or M.Sc. degree of a recognised University or equivalent, (ii) A record of literary or dip-dramatic or debating activities or publications or popular Science, Or B(ii) ". The applicant, admittedly is an M.A in Economics and he secured first class in M.A examination. Besides he had got the Gold Medal for securing the highest marks in B.A Examination of Sambalpur University. He has claimed that he has a first class career from high-school upward to P.G Level. The applicant also has an impressive record of literary/debating/dramatic activities and publications which has been listed at Annexure 5, which also furnishes the list of programmes which he has produced. Two of his

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programmes have also earned him Certificate of Merit and a second prize at the national level (vide Annexure 3 and 4). There is, therefore, no doubt that the candidate satisfied essential qualification at 3(A)(ii) besides having satisfied most satisfactorily the qualification at A(i). He has also satisfied the alternative essential qualification at 3(B)(ii) relating to 5 years continuous employment in production and/or programming in a broadcasting organisation. The candidate thus fully satisfies EQ(ii) both under 3(A) and under 3(B).

7. The criterion adopted by the U.P.S.C for short-listing of candidates as we have seen in the relevant file has two parts. (1) Master's degree in Oriya and (2) E.Q(ii) either under A or B of the advertisement. As we have indicated above there is no doubt that he fulfills E.Q(ii) both under A and B. But he does not possess a Master's degree in Oriya because he is an M.A in Economics. Obviously, therefore, the candidate has been eliminated on the ground that he does not possess a Master's degree in Oriya. This is corroborated further by the orders of the U.P.S.C rejecting the representation addressed to the Chairman. We have noticed that his representation has been duly processed and has been rejected on the ground that the candidate does not have a Master's degree in Oriya. The Deputy Secretary's proposal, in this connection dated 22.5.87 is reproduced below:-

" R.No.5432 does not possess Master's degree in Oriya and hence his rejection as B.C.A is justified and may stay ".

This has been approved by the Additional Secretary(R) and Member, U.P.S.C. According to the instructions issued to

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the candidates which we have quoted above, the U.P.S.C can raise qualifications and experience to a higher level than the minimum prescribed in the advertisement. It is beyond our comprehension as to how a Master's degree in Oriya is a higher qualification than a Master's degree in Economics or for that matter in any other discipline. The corollary is still more absurd in that a third class Master's degree in Oriya will be taken to be higher qualification than a first-class Master's degree in Economics or Physics or for that matter any other subject. As the application has been invited through a general advertisement from candidates who possess an M.A or M.Sc degree of a recognised University or equivalent, raising of qualification will have reference only to the minimum prescribed. In our opinion it cannot be stretched to preferring one discipline or subject to the exclusion of all other disciplines or subjects and that too without any reference to standard of attainment. But this is what has actually been done by the U.P.S.C by adopting a criterion which excludes post graduate degree holders in all the subjects except Oriya. This is not only contrary to the principles of short-listing which the U.P.S.C themselves have evolved and intimated to the candidates as we have analysed above, but also is discriminatory particularly when applications have been invited from candidates possessing post graduate degrees in subjects of both Science and Humanities. The argument that the posts relate to Oriya Language and as such knowledge of Oriya is a must and a post graduate degree in Oriya would have



precedence over such degrees in other subjects does not carry much conviction. Firstly because if such was the intention, nothing prevented the U.P.S.C from issuing an advertisement confining it to candidates possessing Master's degree in Oriya and secondly because there are numerous instances where men having formal education in one subject or academic area have made their mark in other areas particularly in the domain of artistic and creative work. Instances are not rare of Science students or teachers having earned a name as creative writers of eminence. For the reasons stated above, we hold that serious prejudice has been caused to the candidate for not being called for the interview and we hereby direct that a meeting of the same Interview Board which interviewed other candidates for these posts should be convened to interview the applicant and to consider his suitability for one of the three posts for 'Features and Spoken Words' under Oriya, for which he was a candidate. If, for any reason, it would not be possible to assemble the same Interview Board, another should be constituted and the applicant interviewed. All this should be done and the result finalised within 2 months of the receipt of a copy of this judgment.

8. The application is thus allowed, leaving the parties to bear their own costs.

K.P ACHARYA, MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack
November 30, 1987/N.J. Joseph, SPA.

..... 30.11.87
Vice-Chairman

..... 30.11.87
Member (Judicial)

