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CENTRAL ADMINISTRATIVE TRIBUNAL

BUCKNOW BENCH

LUCKNOW

Original Application No. 277 of 1990

K.K. Narang and others

Applicants.

versus

Union of India & others

Respondents.

Shri A. Mannan

Counsel for Applicants.

Dr. D. Chandra

Counsel for Respondents.

Counsel:

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants who were working as Assistant Chemists in the pay scale of Rs 2000-3500 Group B Gazetted, and are posted in the Chemical Division, Northern Region of Geological Survey of India, Lucknow, and they have been working for the last 10 to 12 years. The applicants have approached the Tribunal praying that the selection for the post of Chemist (Junior) made by the Union Public Service Commission may be quashed and fresh selection may be made. This prayer has been made by the applicants because they have been excluded from the selection, because their applications were entertained and later on they were excluded from the interview process and the candidates who were ineligible and junior to them were allowed to participate in the interview and were selected.

2. The applicants have stated that as Assistant Chemists the applicants have experience of conducting the work of Chemical Analysis. The U.P.S.C. on 15.7.89



advertised 14 posts of Chemist (Junior) Group A Gazetted in the scale of Rs 2200-4000 and essential qualification required for the post, according to the advertisement was 1) M.Sc in Chemistry, 2) three years experience of working in the Chemical Analysis of Rock, Ores and Minerals. The applicants fulfilled the qualification and the last date for application being 14th August, 1989, they applied for the same. The other persons who were working on the post of Senior Technical Assistants in the scale of Rs 1640-2900 also applied for the same. According to the applicants they have no experience of conducting chemical analysis independently in rocks, Ores and minerals or in the field of geology and their job was to assist the analyst such as petitioners/applicants. Screening took place by the U.P.S.C. and the U.P.S.C. for the purposes of selection, took into consideration those who had total 7 years experience of any grade either of independent Chemical Analysis of rocks and minerals or those who had assisted in the job of analysis as Junior Technical Assistant or Senior Technical Assistant in the grade of Rs 1400-2300 and 1640-2900 respectively. The applicants have given instances of those who had 6 years or more experience and were in the higher grade of Rs 2000-3500 were eliminated and those who worked on lower posts, were called for the selection. The applicants submitted representations against the same. Their representations bore no fruit and that is why they have approached this Tribunal.



3. The applicants have challenged the entire process on the ground that the same is contrary to the conditions mentioned in the advertisement and they have been equated with unequal in violation of Articles 14 and 16 and they have been discriminated by the arbitrary action of the U.P.S.C. and that it was a direct selection from open market and academic qualification should have been the criterion for screening and if experience is to be taken into account the experience of equal status must have been taken into consideration, not of experience of higher and lower status together.

4. The respondents have opposed the application and have stated that the selection of the candidates was made in accordance with the essential qualification and the large number of applications were received which were reduced by short listing and the applicants were not fulfilling the criterion adopted by the Commission. The instructions provided that mere possession of the minimum qualification would not be a qualification to be called for interview, and as such there was no option but to restrict the number of candidates for interview to a reasonable limit by shortlisting, i.e. on the basis of qualifications and experience higher than the minimum prescribed for the posts. Out of 874 candidates, 145 General candidates possessed the essential qualification, due to short listing 55 general candidates were found

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suitable and the applicants were not found suitable and that is why they were not called. According to the respondents, under the essential qualification(iii), about three years experience was required in a laboratory concerned with utilisation of ores and minerals and the essential qualifications(iii) did not specify the required experience at any particular level and the whole experience was taken for deciding the eligibility of the candidates. The experience conditions were applied to all the candidates. It has been stated by the applicants that several candidates, who were not called in interview in the earlier selection in this but they were called for/selection due to ~~marx~~ illegal criteria of short listing of candidates.

5. Shri A. Manna, learned counsel for the applicants contended that the post was for Junior Chemist and the essential qualifications were to be read together and one could not be detached from the other.

6. The question for consideration in this case is although it is in order to short listing that whenever the number of candidates is large, it is always open for the respondents/authorities to short list the candidates not to call each and every candidate but to adopt this criteria but this criteria cannot go against the essential qualifications or terms of advertisement., unless itself earlier essential qualification/ is changed/or corrigendum is issued. The minimum qualification prescribed about 3 years experience and no corrigendum was issued regarding the

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said qualification. In the absence of any corrigendum, to the said advertisement, experience could not have been changed by the respondents, nor adopt short listing criteria and the same would have tantamounted/breach of the terms of advertisement which would have been a different matter though for about three years they would have fixed norms of not less than 3 years but 3 years could not have been made 7 years to exclude those who have 3 years experience. In the case of Dr. Vinay Ram Pal Vs. State of Jammu and Kashmir(1984) 1 SCC, 160, the minimum eligibility condition as required in the advertisement inviting applications for admission should be the basis of selection of candidates who applied in response to that advertisement. The selection of eligible candidate was refused on the ground of failure to satisfy government order while others were selected on the basis of the advertisement. No reference to the order was made in advertisement nor was any allegation that advertisement was erroneously issued ignoring the order. No corrigendum was issued to the advertisement before selection. It was held that denial of admission was discriminatory and unjustified. In Jit Singh and others Vs. State of Punjab and others A.I.R. 1979, SC page 1034, the age of eligibility was reduced. The court held that it was not permissible for the State Government to reduce the requirement of continuous service from six years to four years for the purposes of eligibility for promotion to the Punjab Police Service because rule-14 as it stood at the relevant period of time when promotions

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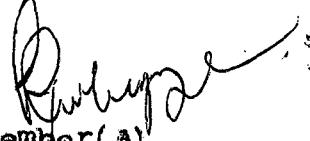
of respondents were made, did not permit any relaxation of the nature ordered by State Government in 1963 or 1965. In Umesh Chandra Shukla vs. Union of India and others, A.I.R. 1985, SC page 1351, under the orders of the High Court in writ petition, the names of the candidates who had not initially secured the minimum qualifying marks by resorting to device of moderation by increasing minimum qualifying marks being improper the list prepared by the High Court after adding moderation marks was struck down.

7. In the instant case, the qualification as prescribed could not have been changed which could have been done only in the manner, the same were prescribed. The reducing of period of experiences for the purposes of short listing amounts to change of essential qualification also even no corrigendum to advertisement was issued and as such, there could not have been any change in the essential qualification.

8. It is because of this change the applicants have been deprived of consideration of their names. The result will be that their cases have got to be considered but this matter has become very old and the result will be that those who have already been given higher promotion will be disturbed and the same would tantamount to unsettle the settled state of affairs, if the applicants are promoted subsequently.

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9. The respondents will consider their cases by holding a supplementary selection through U.P.S.C. and in case they are found eligible, they will be promoted ~~im~~ nationally with effect from the date others were promoted. As far as possible the process may be completed within six months. With these observations the application stands disposed of finally. No order as to costs.


Member (A)


Vice-Chairman

Lucknow Dated: 4/3/1993

Shakeel/-