

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD.

O.A. 430/92

Dt. of Decision : 29.4.1994.

K.K.H.M. Syam Sundar

1. Applicant.

Vs

The Union Public Service Commission,  
Represented by its Secretary,  
New Delhi - 1.

.. Respondent.

Counsel for the Applicant : Mr. G. Bikshapathy

Counsel for the Respondent : Mr. R.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

a letter dt. 20.5.1992 to the respondent requesting them to allow him <sup>for</sup> to interview. This OA was filed on 25.5.1992 praying for the reliefs referred to above. In pursuance of the interim order dt. 25.5.1992, the applicant was interviewed. But the result of his interview was withheld until further orders as directed by order dt. 25.5.1992.

5. It is pleaded for the respondent that 3023 general candidates had applied for against 23 posts notified in ~~the~~ Gr.V vacancies of Central Labour Service and out of them 1036 general candidates possess the minimum qualifications prescribed for the posts. <sup>As</sup> Neither <sup>was</sup> it was possible nor convenient for the respondent commission to call all the 1036 general candidates for personal interview against the 23 posts, the respondent Commission had taken a decision to short-list the candidates by evolving a criteria, that only those candidates who had six years experience in posts in the pay scale of Rs.1640-2900 if working in the Government / Sector or those having 6 years experience drawing consolidated emoluments of Rs.2500/- and above consistently while employed in the private sector. It is stated for the respondent that on the basis of the above criteria 300 candidates were called for the interview for the different posts and that the applicant had not satisfied the said criteria, and therefore he was not called for the interview.

6. As per Clause-3, point-1 of Instructions and Additional Information to candidates for Recruitment by selection, ~~that~~ it is open for the respondent Commission, that in case number of applications received in response to the advertisement is large and it will not be convenient to interview all the candidates,

3. He passed B.Com., M.A.(Sociology) and also LL.B. He is also having P.G.Diploma in Personnel Management and Industrial Relations from St. Joseph's College of Business Administration, Bangalore, Diploma in United Nations & International understanding with specialisation in International Labour Organisation, and also P.G. Diploma in Personnel Management, Industrial Relations and Labour Welfare (course recognised by Government of A.P.).

4. In pursuance of Advertisement No.1 published in the Employment News dt. 11-17 January, 1992, he applied for the post in Gr.V of Central Labour Service. Out of the 38 posts notified for the Gr.V of Central Labour Service, 5 posts and 10 posts were reserved for SC & ST categories respectively and the remaining posts were unreserved. The essential qualification for the said post was notified as Degree of a recognised University or equivalent, Degree in Law or Post Graduate Degree or Diploma in Social work/Labour Welfare/Industrial Relations/Personnel Management of a recognised University/Institution or equivalent, and two years experience in a responsible capacity in handling/dealing with labour problems in a Government establishment, industry or trade union organisation. It is not in controversy that the applicant was having those requisite qualifications by the date of the said notification. His application was received in the office of the Union Public Service Commission (Respondent) in time. But, when the applicant had not received any call letter for the personal interview, which was being conducted for 12 days from 18.5.1992, The applicant addressed

dt. 31.1.1994 filed by the Under Secretary of the Respondent Commission that as the total emoluments paid from region to region and from place to place in India <sup>vary</sup> ~~varies~~, the total emoluments of the candidates working in the organisations where there is no pay scale <sup>was</sup> ~~was~~ fixed at Rs.2500/-.

8. The learned counsel for the applicant argued that taking of the pay scale or the emoluments as one of the criteria for short-listing is contrary to the instruction 3.1. It is further urged that if it is going to be held that the same is in accordance with Instruction No.3.1, the said instruction has to be held as violative of Articles 14 & 16 of the Constitution of India, for more meritorious are not called for interview while less meritorious were called for interview on the basis of the criteria based on pay-scale/emoluments. It is stated that one who is working in Hyderabad in a particular post may be paid Rs.2500/- while for the same post one may be paid Rs.5000/- at Bombay/Delhi and thus one who is paid only Rs.2500/- in Bombay/Delhi will be occupying the post far lower than the post for which only one will be paid less than Rs.2500/- in Hyderabad. Thus, one who gets Rs.3000/- at Bombay/Delhi may get only Rs.2000/- at Hyderabad. By adopting the above criteria, the more meritorious <sup>Hyderabad or Delhi places</sup> candidates who are working in Bombay/Delhi are not called for interview while those who are less meritorious and who are working in Bombay/Delhi are called for interview. But, the <sup>tone</sup> of the counter dt. 31.1.1994 suggests that by occupying keeping in view the emoluments that are paid in some Regions for posts of the same level are less than the emoluments that paid in metropolitan cities or in big centres, the total

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the Commission may<sup>be</sup> restrict the number of candidates to a reasonable limit on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of experience higher than the minimum prescribed in the advertisement or on the basis of experience in the relevant field or by holding a screening test. The criteria evolved for short-listing the candidates who applied for Gr.V of Central Labour Service is in accordance with para-3.1 of the Instructions and Additional Information to candidates for recruitment by selection, argued by the learned counsel for the Respondent. But, Sri G.Bikshapathy, the learned counsel for the applicant contended that even the said instruction does not refer to short-listing the candidates on the basis of salary/emoluments and it can be either on the basis of qualifications and experience or on the basis of experience or by holding Screening test. As the salary was taken as basis for short-listing, the criteria evolved for short-listing on the basis of pay-scale/emoluments <sup>is</sup> ~~is~~ contrary to Instruction No.3.1 and also violative of Articles 14 & 16 of the Constitution, ~~contended the learned counsel for applicant~~

7. The candidates who were eligible for applying for Gr.V posts in Central Labour Service are either Government employees, or employees in Public Sector, or Private Sector, or those who are working in trade union organisation. Probably, on the basis that those who are working in higher posts with sufficient period of experience may be called for interview, the Respondent Commission <sup>has</sup> chosen to decide that those who are in the pay scale of Rs.1640-2900 with six years experience should be called for interview. But a difficulty was experienced as generally the private sector organisations do not adopt any pay-scale. It is also stated in the counter

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Hence, it cannot be stated that by adopting emoluments as one of the criteria, equals are treated as equals; and on the other hand less meritorious satisfied that criteria while more meritorious had not satisfied the same. Hence, it cannot be stated that there is no force in the contention of the learned counsel for the applicant that by adopting the emoluments as one of the criteria, the same is violative of Articles 14 & 16 of the Constitution.

9. It has to be further noted that even para-3.1 of the additional information, merely refers to qualifications and experience or length of service as the criteria for short-listing, if screening test is not going to be adopted. The qualifications and experience will have a bearing in short-listing for they can even be prescribed as the essential qualifications even at the time of issuing the notification calling for the applications for the posts. Of-course, even then it has to be seen that more qualified should not be left out while less qualified are permitted by adopting a particular period of experience as basis and those who are working in the higher cadre should not be left out while those who are working in the lower cadre are made eligible.

10. In this context, the Judgment of Supreme Court reported in [ 1994(1) SLR 824 - Mrs.Shakuntala Sharma Vs. High Court of Himachal Pradesh and Anor. ] can be looked into. The relevant facts which are having a bearing for consideration of that case are that there are two sets of posts in the

emoluments are fixed at Rs.2500/- only. Be that as it may, the Tribunal can take cognizance that the conveyance and House Rent Allowance that are paid in industrially advanced States and in metropolitan cities are far higher than the House Rent Allowance and conveyance allowance paid to the employees in less advanced States, and places other than the metropolitan cities. Even the respondent Commission is conscious of the same. But the stand taken by the respondent Commission is that keeping in view of the same, the total emoluments in the organisations where there is no pay scale, were fixed at a low amount of Rs.2500/-. But the effect of it is that one who is in the lower level in Metropolitan cities was called for interview when he satisfied the emoluments criterion, an employee in a higher level in places other than the metropolitan cities or less advanced States were not called for interview on the ground that they had not satisfied the emoluments criterion. It can be better appreciated by an illustration: Assume that an Officer of particular level is paid Rs.2500/- at Hyderabad and Rs.5000/- at Bombay. Then it can be safely assumed that an Officer of a lower level will be paid Rs.2000/- at Hyderabad, and Rs.3500-4000/- at Bombay. When it is so stated in the additional affidavit of the applicant, the same is not controverted. Thus, while an Officer of a lower level drawing Rs.2000/- at Hyderabad was not called for interview, and an employee of equal level working in Bombay having satisfied the criterion in regard to the emoluments would have been called for interview.

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employees of higher post for promotion to the still higher post, it is not just and fair to prescribe any eligibility period for those who are working in the higher post for consideration for promotion. It is on the basis of the principle that any rule which is having the effect of making the employees in the higher post ineligible for no fault of theirs, while the employees in the lower level are made eligible is violative of Articles 14 & 16 of the Constitution. Even the principle underlying seniority is that a junior cannot have unfair advantage over his senior. Till the case of a senior who <sup>for this</sup> possesses the requisite tests prescribed <sup>and</sup> or who is having the requisite qualifications prescribed is considered, the case of a junior, cannot be considered for promotion. Thus, while when a senior in the same cadre is having such a right over his junior, can it be stated that the case of an employee in the lower cadre can be considered for double promotion without considering the case of an employee in the higher cadre who passes the tests prescribed and or possess the qualifications prescribed for promotion. The answer can be in the negative. Of-course such a question arises in regard to promotions.

12. Even in-service candidates are eligible for applying for direct recruitment as per the various statutory rules. Then, xx can it be stated that a valid rule can be laid down to the effect that an employee in the lower level is eligible while the employee in the higher level is not eligible for a post in higher scale of pay when such post has to be filled up by direct recruitment where inservice candidates are <sup>also</sup> eligible. The answer to this also will be negative. Even inservice



High Court of Himachal Pradesh - one category consists of Clerks, Translators and Revisors while the other category consists of Clerks, Senior Assistants and Deputy Superintendents. There is a post of Superintendent above the posts of Revisors and Deputy Superintendents and the post of Superintendent is common promotional post to both the categories. Out of every 5 vacancies, 4 vacancies in the post of Superintendent had to be filled up from the category of Senior Assistants and Deputy Superintendents while the 5th vacancy had to be filled up from amongst Translators and Revisors. The relevant rules also stipulated the eligibility period of service for Revisors and Deputy Superintendents as three years and Translators and Senior Assistants as six years. In the said case, the applicant who was a Revisor worked for less than 3 years as Revisor by the relevant date eventhough she worked for more than six years as Translator before she was promoted as Revisor.

As there was no other Revisor who completed 3 years of service and as there was no Deputy Superintendent who had completed 3 years of service, Senior Assistant who worked for more than 6 years was promoted as Superintendent. Then, it was held by the Supreme Court that when ~~an~~ employees in the lower posts <sup>are</sup> ~~were~~ also made eligible along with employees in the higher category for promotion to the post of still higher category, it is inequitous and unjust to prescribe the eligibility period for one who is working in the higher level for consideration for promotion.

11. Of-course, the Supreme Court was dealing with a rule in regard to promotion and not a statutory rule in regard to direct recruitment. But, the principle laid down is that when employees of a lower post <sup>are</sup> ~~were~~ made eligible along with the

is considered the case of an employee in the lower post cannot be considered. Any rule or criterion which excludes an employee in higher post while making an employee in the lower post eligible for consideration for the post still in higher level, will be a case of denying an opportunity to candidates who is more suitable and thus it will be violative of Articles 14 and 16 of the Constitution. Thus, even though period of service can be prescribed in regard to the employee in the lower cadre as one of the criteria for short-listing, no period of service should be prescribed for one working in the higher post, when the employees in both the higher and lower posts are made eligible as per the criteria prescribed for short-listing.

13. It is true that such a contention was not pleaded for the applicant. But, when all the relevant facts are there and when it is a matter for consideration in accordance with the Judgment reported in X 1994(1) SLR 824 X and when the party can be permitted to raise a question of law at any stage, I feel that it is a case where the said question can be considered though not pleaded for determining the issue involved in this O.A. Further, if the said point is not adverted, it will be a case of requiring the Respondent Commission to evolve criteria for short-listing without referring to pay-scale or emoluments as the criteria, as the contention that adoption of the same as one of the criteria is violative of Articles 14 & 16 of the Constitution of India was held as tenable.

14. It may be noted that as it is stated that on the basis of the performance, the applicant is within the 23 ranks (in fact it is alleged for the applicant that he stood first),

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candidates are eligible for the Gr.V posts in Central Labour Service, the post for which the applicant also applied for. By the time he applied for the said post, he was working as Labour Enforcement Officer in the pay scale of Rs.2000-3200, a post just below the post in Gr.V of Central Labour Service viz. Rs.2200-4000. It is stated for the applicant, and it is not controverted for the respondent, that Labour Enforcement Officer is eligible for promotion to the post in Gr.V of Central Labour Service. As per the criteria adopted by the Respondent Commission for short-listing, even an employee in Central Labour Service in the pay scale of Rs.1640-2900 with six years experience was called for interview. By the date of notification, the applicant was in service as Labour Enforcement Officer in the pay scale of Rs.2000-3200 for about one year. Of-course earlier to it, he worked only in the private organisations and he was not in Government service or service in public Sector. The effect of the criteria in regard to the pay scale with six years experience is that one who was in the lower post with 6 years or more experience was called for interview while one who was in the higher post with experience of less than 6 years was not called for interview. The Supreme Court held in [ 1994(1) SLR 824 ] that if the employees in both the higher and cadre and lower cadre are eligible, it is not just and fair to prescribe any eligibility period for one working in the higher post. Eventhough, the said observation was made while considering about the ambit and scope of rule in regard to promotion, I feel that the same applies with equal force even in case of direct recruitment where inservice candidates are also eligible. As already observed, it is on the basic principle that unless the case of a qualified person in the higher post

O.A.No.430/92.

Date: 29.4.94.

J U D G M E N T

[ as per Hon'ble Sri R.Rangarajan, Member(Administrative) ]

I had the opportunity of reading the judgment of the learned Vice Chairman. The applicant in this O.A. fulfilled the minimum educational qualification as prescribed in Advertisement No.1 in the Employment News 11-17 January, 1992. For selecting 23 candidates for Gr.V Central Labour Service from the unreserved candidates, 1036 general candidates possessing minimum qualification were available. Hence, the Commission resorted to the reduction in the number of unreserved candidates to be called for interview by evolving a criteria by considering only those candidates who had six years of experience in posts in pay scale of Rs.1640-2900 if working in Government/Public Sector or those having 6 years experience drawing consolidated emoluments of Rs.2500/- and above consistently while employed in private sector. By adopting the above criteria it was stated that 300 candidates were short-listed to be called for interview and as the applicant had not satisfied the said criteria, he was not called for the interview, though he possessed the minimum qualification as per initial notification of U.P.S.C.

2. In Government departments, indents are placed on U.P.S.C. for selecting candidates for <sup>Gr.V</sup> ~~Gr.V~~ services and other services in a limited way. While placing the indent the indenting department indicates the number of vacancies, educational and other qualifications, and experience required for selecting the candidates. The U.P.S.C. advertises on the basis of the above details. In the present case U.P.S.C. advertised for Gr.V Central Labour Service and because of the overwhelming response to the advertisement

the appointments were given in regard to other 22 out of 23 unreserved posts and then a question arises whether it will be necessary to set aside of those appointments when the criteria adopted for short-listing have to be held as violative of Articles 14 & 16 of the Constitution. But we feel that instead of directing the respondent to evolve fresh criteria for short-listing, it can be held that the applicant also should have been called for interview as such of the employees in Central Labour Service who are in the lower cadre in the pay scale of Rs.1640-2900 with six years experience satisfied the eligible criteria, <sup>by</sup> holding that the prescribed six years service for one who is working in the pay scale of Rs.2000-3200 <sup>is alleged</sup> when the employees who are working in the pay scale of Rs.1640-2900 were called for interview.

14. For the reasons stated above, it has to be held that the applicant also should have been called for Interview when the employees in the lower pay-scale of Rs.1640-2900 in Central Labour Service satisfied the criteria evolved by the Respondent Commission for short-listing, and as the applicant was already interviewed as per interim order dt. 25.5.1992 in this O.A., the respondent Commission is directed to announce the result in regard to the applicant and he has to be appointed if selected, and he should be given the scale of pay in Gr.V from the earliest date on which <sup>his junior's out of</sup> any of those 22 selected candidates joined service, and he should be given the difference in the salary and other emoluments from that date. It is needless to say that he will have the seniority if selected, as per the ranking given.

15. The O.A. is ordered accordingly. No costs.

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Date.....

Court Officer

Central Administrative Tribunal

grade of Rs.2000-3200, was not called for interview as he had joined directly in the higher post and had put in only one year of service in that grade and had not put in six years of service in the lower grade of Rs.1640-2900.

5. Learned Vice Chairman had relied on the judgment of the Supreme Court reported in [ 1994(1) SLR 824 - Mrs.Shakuntala Sharma Vs. High Court of Himachal Pradesh ] to state that when employees in the lower posts are made eligible for consideration for promotion, employees in the higher grade compared to those in the lower grade who are considered for selection, cannot be left out of consideration even if they do not possess the eligibility condition of service in the higher grade. The ruling in this citation in my opinion cannot be adhered to if the selection for direct recruitment are made by independent recruiting agencies like U.P.S.C. without getting suitable advise/recommendation from the concerned departments. UPSC being an independent recruiting agency, it will be guided only by criteria fixed for short-listing of candidates without looking into the finer aspects whether the candidates/employees who are in higher grade are being left out while calling/selecting candidates in the lower grade, possessing the experience as prescribed. It is possible to avoid such discrepancies/irregularity only if it consults the indenting departments. The indenting departments in almost all occasions will be aware of higher grade employees applying for direct recruitment at some stage or other i.e. while forwarding the application or at the time the candidates are called for interview and any criteria to be fixed for short-listing the candidates will be done after taking note of these points. Hence, I am of the opinion that the

~~and because of the circumstances~~

it has resorted to the above said criteria to short-list the candidates to be called for interview. This was done in accordance with the para 3.1 of the instructions and additional information to candidates. This para empowers the U.P.S.C. to add extra qualifications and experience without consulting the indenting departments. In the present case by the above said criteria mentioned in para-~~above~~ UPSC has enhanced the experience required for short-listing the candidates to be called for interview for the said Gr.V Central Labour Service. How far the enhancement of the experience requirement unilaterally by U.P.S.C. without consulting the indenting department is appropriate is a point for consideration.

3. Learned Vice Chairman himself has said in para-8 of his judgment that there is force in the contention of the learned counsel for the applicant that by adopting the emoluments as one of the criteria, the same is violative of the Articles 14 & 16 of the Constitution. I have nothing more to add in regard to this criteria. I agree with the inference drawn by the learned Vice Chairman on this point.

4. The second point is in regard to leaving out the candidates to be called for interview while less qualified are permitted by adopting a particular period of experience as basis. In the present case, the applicant herein was a Labour Enforcement Officer in the pay scale of Rs.2000-3200, a post just below the Gr.V of Central Labour Service namely Rs.2200-4000. By the criteria adopted by the Respondent Commission, even an employee in the Central Labour Service in the pay scale of Rs.1640-2900 with six years experience was called for interview. The applicant though in the higher

discretion given to UPSC as per para-3.1 of the instructions requires review. I am not expressing any view in this connection or going further into this aspect as this para 3.1 is not challenged in this O.A. If this is challenged and subsequently struck down as violative of the rights of the applicant, it will cause hardship to those candidates who are already selected and appointed. Hence, I only observe that the respondent commission may keep this observation in mind in future while fixing additional criteria for short-listing the candidates if the response is overwhelming and the number of candidates to be called for selection is to be reduced to a manageable level.

6. With the above observations I concur with the learned Vice-Chairman in regard to the final conclusion.

In the result the O.A. is ordered as per the Paragraph No.14 above.

CERTIFIED TO BE TRUE COPY  
Date.....  
Court Officer  
Central Administrative Tribunal  
Hyderabad Bench  
Hyderabad.

To

1. The Secretary, Union Public Service Commission, New Delhi-1.
2. One copy to Mr. G. Bikshapathy, Advocate, CAT, Hyd.
3. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyd.
4. One copy to Library, CAT, Hyd.
5. One spare copy.

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