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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 328 of 1999

DATE OF JUDGMENT: 18th OCTOBER, 2000

BETWEEN:

THOTA SREEDHAR

.. APPLICANT

AND

1. Union Public Service Commission,
Dholpur House, New Delhi-110011,
rep. through its Secretary,
2. The Central Provident Fund Commissioner,
& Chief Executive Officer, Central Board
of Trustees, Employees' Provident Funds
Organisation, HUDCO Vihala Buildings,
14, Bikaji Cama Place,
New Delhi 110 066,
3. The Regional Provident Fund Commissioner Gr.I,
Barkatpura,
Hyderabad 500 027.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.K.N.PURANIK


COUNSEL FOR THE RESPONDENTS: Mr.B.N.SARMA,Sr.CGSC for R1
Ms.Madhurima for R-2 & R-3

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)





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JUDGEMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.K.N.Puranik for the applicant, Mr.B. Narasimha Sarma and Ms.Madhurima for the respondents.

2. The applicant in this OA was initially joined as Lower Division Clerk in the Ministry of Rural Development, New Delhi and worked there from 19.3.1993 to 16.8.1994 in the Accounts branch. Thereafter he joined the Employees' Provident Fund Organisation under R-3 in Sub Regional Office, Nizamabad from 17.8.1994. Presently he is designated as Upper Division Clerk and ^{is} working in the Accounts and Establishment Sections of EPF Organisation. He obtained B.A. degree in May 1995 from Andhra University, Waltair.

3. The Union Public Service Commission invited applications for filling up 234 posts of Enforcement Officers/Assistant Accounts Officers in the Employees' Provident Fund Organisation, Ministry of Labour, Non-GCS, Group-B, Non-Gazetted by the Advertisement NO.SPL/4/97 (Ref.NO.F.1/501/96.R-VI) dated 13.9.97. The qualifications prescribed are as follows:-

"ESSENTIAL:

(i) Degree of a recognised University or equivalent,

(ii) Three years' experience in Accounts or establishment.

(iii) Age as on 3.10.1997 not exceeding 30 years.



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Note: The date determining the eligibility of all candidates shall be the normal closing date prescribed for receipt of applications viz., 3.10.1997.

DESIRABLE: Degree in law from a recognised University or equivalent."

4. The applicant applied for the said post. He passed the test conducted in connection with the above advertisement and he was informed by the letter F.No.F.1/501/96-SPC (ROLL NO.4035) dated 21.12.1998 (Annexure A-V at page 16 to the OA) that he had qualified for the interview and he was asked to fill up the detailed application form which was enclosed to that letter and also he was directed that the documents mentioned in that letter are to be forwarded along with the application form failing which the application will be rejected.

5. It has been noted in that letter that mere sending of the detailed application form does not, ipso facto, confer any right on the applicant for admission to the interview and a letter for interview will be issued in due course, if he is found eligible in all respects.

6. Accordingly, the applicant submitted his application which is at Annexure A.VI at page 18 to the OA. The said application does not contain full details. Hence we have perused the application form sent to the applicant for filling up as above which is enclosed to the additional reply statement dated 7.7.2000 at page 10. Item 10(a) and

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(b) are relevant to be noted. The above items 10(a) and (b) are reproduced below:-

"10. (a) Do you possess the required experience as per essential qualification? (YES-1; NO-2)

(b) If yes, total experience after acquiring essential educational qualification(s)."

7. As per item 10(b) above, it is stated that if the applicant possesses the required experience as per the essential educational qualifications, he should indicate the total experience after acquiring the educational qualification(s).

8. The case of the applicant for interview was rejected by the impugned order dated 5.2.99 (Annexure A-VII at page 21 to the OA). That letter is reproduced below:-

"With reference to your candidature for the above mentioned posts, I am directed to state that in the Commission's Advt. No.SPL 4/97 published in the employment News dated 13.9.97, it was mentioned that a candidate for the above posts should possess (i) Degree of a recognised University or equivalent and (ii) Three years' experience in Accounts/ Establishment (after acquiring the Degree Qualification) as Essential Qualifications. Therefore, only a

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candidate who possessed the above qualifications by the closing date (viz. 03-10-97) for submission of applications was eligible to apply for the above posts. You had mentioned in your application for the written tests that you possessed the above qualifications. You were, therefore, allowed to appear at the Written Test and on the results of the Written Test, you were also declared qualified for the interview provisionally. However, it has now been noticed from the entries made by you in column 8 of the detailed application form and the experience certificate submitted by you that you did not possess three years' experience in Accounts/Establishment as on 3.10.97 after acquiring the Degree Qualification. Your candidature for the above post is therefore, hereby cancelled."

9. From the above, the respondents submit that the applicant did not possess three years' experience in Accounts and Establishment on 3.10.97 after acquiring the Degree qualification which he obtained in May 1995. Hence his candidature for the above post was cancelled.

10. This OA is filed to set-aside the impugned letter dated 5.2.99 and for consequential direction to R-1 to interview the applicant along with the other eligible candidates or at a later date.

11. The main point that arises for consideration in this OA is whether the experience is to be counted only after the applicant acquired the Degree qualification or





experience gained even earlier to his acquiring the Degree qualification. The UPSC notification only says that the essential qualification is three years' experience in Accounts or Establishment. It does not clearly state that the three years' experience should be counted after acquiring the Degree qualification.

12. The respondents contend that in the application form which was filled by the applicant and sent by UPSC along with the letter dated 21.12.1998, it is clearly stated in item 10(b) that the experience is to be gained after acquiring the essential qualification to the extent of three years. The applicant in his application which was sent by him and enclosed as Annexure to the reply, stated that he possesses the experience of four years and six months. The respondents contend that the applicant has misled the court by improperly quoting the experience by combining the experience gained by him both prior to and after his obtaining the Degree qualification. The said item clearly states that the experience should be gained only after he acquires the essential educational qualifications. Hence even though the UPSC Advertisement does not state that the experience should be after acquiring the Degree qualification, in the application form it has been clearly stated so. Hence rejection of the case of the applicant for not possessing the experience as per the Application is in order.

13. R-I filed a reply. The main contention of R-1 is that when number of eligible candidates are substantially more than the number of posts, the Commission restricts the

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number of candidates to be called for interview on the basis of a reasonable classification based on a consciously devised objective shortlisting criteria/by holding recruitment test. It is further stated by R-1 that expecting large number of applications for the said posts, the Commission decided to hold a recruitment test to shortlist the candidates to be called for interview. Accordingly, the posts were advertised on 13.9.97 with closing date as 3.10.97. Since the Commission decided to hold the recruitment test, candidates were asked to submit the application form as appended in the advertisement which contained general information regarding age, community, essential educational qualifications etc. It is stated that in Column 10(a) of the application form the candidates were required to indicate whether they possess the required experience as per the essential qualification. The column 10(b) states that, "if YES total experience after acquiring essential educational qualification(s)." The candidates were shortlisted on the basis of their claim in the said application form regarding age, qualification, experience, etc. The candidates who qualified in the written test were declared eligible to appear for interview provisionally. The successful candidates were sent detailed application form and they were asked to submit the application form duly filled in alongwith the necessary documents/certificates. Since the applicant was declared qualified provisionally for interview, the applicant was asked to submit the detailed application form duly filled in along with necessary documents/certificates. On verification of the application form and the attached documents/certificates, it was observed that the applicant passed



Bachelor of Arts in May, 1995. It was further observed that he had acquired the experience less than three years from May 1995 to 3.10.1997 i.e, closing date of the advertisement. As he did not possess three years' experience as per the advertisement, he was not allowed to appear in the interview.

14. From the above contention, the question posed before us is whether R-1 without indicating in the initial Advertisement dated 13.9.97 that the essential qualification has to be acquired after obtaining the Graduation, can impose such a condition later in the application form to treat justification of his stand to short list the candidates, if number of candidates applied in response to the notification are substantially more than the number of posts.

15. We have considered the above contention. It is first to be noted whether the Recruitment Rules of the Department i.e, of R-2 and R-3 Department provide for experience to be acquired after Graduation. Hence we have asked the Department to produce before us the Recruitment Rules in regard to filling up the post of Enforcement officer/Assistant Accounts Officer in their organisation. The notification for the Recruitment Rules for the said post was produced.

16. The said Rules are called "The Employees' Provident Fund Organisation Enforcement Officer/Assistant Accounts Officer Recruitment Rules, 1990" and those rules came into force from the date of publication.

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17. The above notification was issued in exercise of the powers conferred by sub-section 7(a) of Section 5(D) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952). In the Schedule enclosed to the above notification, it is stated that the said post is to be filled by selection and the essential educational and other qualifications required for direct recruits are reproduced below:-

"ESSENTIAL:

i) Degree of a recognised University or equivalent.

(ii) 3 Years' experience in Accounts or establishment.

Note: 1. Qualifications are relaxable at the discretion of the U.P.S.C. in the case of candidates otherwise well qualified.

Note 2: The qualification(s) regarding experience is/are relaxable at the discretion of the UPSC in the case of candidates belonging to Scheduled Castes and Scheduled Tribes if at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

DESIRABLE:

Degree in Law from a recognised University or equivalent."



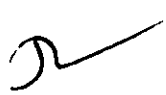


18. 25% of the posts are to be filled by direct recruitment. From the above, the essential qualification does not state that the three years' experience in the Accounts or Establishment is to be obtained after acquiring the Degree qualification. As per the note under the above heading, it is clearly seen that the UPSC can relax the qualification in the case of the candidates otherwise well qualified. Some relaxation also was given for the reserved community candidates which is not necessary to discuss as the applicant does not belong to the reserved community. For the general category, UPSC has got power to relax the qualification at their discretion for well qualified candidate. But nowhere it is stated in the Recruitment Rules that the UPSC has got powers to upgrade the qualification. In the Recruitment Rules, the experience required is three years in the Accounts and Establishment. As stated earlier, it is not stated that experience should be acquired after getting the Degree qualification. The insistence of the UPSC to count the experience after acquiring the Degree qualification is to be treated as upgradation of the qualification which, in our opinion, is not permissible as per the Recruitment Rules. Only reduction in the qualification in the case of the candidates otherwise well qualified is permitted. Hence on that score itself, the application form sent by the UPSC wherein item 10(b) states that the experience should be gained after acquiring the essential qualification, may not be permissible and the UPSC may not have such powers to do.



19. In this connection, the judgement of the Central Administrative Tribunal, Chandigarh Bench reported in 1998 (3) SLJ 538 (Dr.Jai Dev Wig. FRCS v. Union Territory, Chandigarh and others) observes that the UPSC is a recommendatory body and hence it has to consider the views of the employer. In this OA it has not been stated that the employer viz., R-2 and R-3 had asked R-1 to upgrade the experience qualification by counting it after acquiring the essential Degree qualification. Hence, in our opinion, employer having not expressed his views to upgrade the qualification, the UPSC cannot on its own upgrade the qualification without obtaining necessary approval from the employer department.

20. The UPSC justifies its stand for counting the experience of three years after obtaining the minium educational qualification on the ground that it was necessary to shortlist the candidates due to the number of applications received. We have no doubt in our mind that if there are number of applications, shortlisting is permissible and it is also upheld by the Apex Court. But when a written examination was conducted earlier to the interview, filtering could have been done at that stage





itself by increasing the marks in the written selection so that only required number of candidates are called for interview. That will be the better process of short listing rather than upgrading the experience qualification in the application which is not contemplated in the notification as well as in the Recruitment Rules.

21. In the reported case in 1998 (1) SLJ 302 (Amar Preet Singh Bawa v. Union of India and others), it has been held that the UPSC has to go by the qualification and the rules given by the user Department. It was further stated in that judgment that the above said view of the Chandigarh Bench was supported by the judgment of the Hon'ble Punjab and Haryana High Court in Sri Salig Ram Kumar v. The Secretary, Haryana Public Service Commission and Another (CWP 3096 of 1969 decided on 13.10.1972) in which it has been held that it is not open to Commission to go against the opinion of the Appointing Authority regarding qualification and experience. It is further stated in that judgement that the Hon'ble Supreme Court in a catena of judgments has also upheld the ratio given in the judgement of the Hon'ble Punjab and Haryana High Court.

22. In the reported case in (2000) 1 SCC 128 (Anil Kumar Gupta and others v. Municipal Corporation of Delhi and others), a question arose whether the applicants have

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two years professional experience gained both while holding diploma as well as degree qualifications and after obtaining clarification, the Supreme Court had held that on the language of notification, in that case, dated 30.6.89, they were of the view that the two years' professional experience need not entirely be the experience gained after obtaining the degree.

23. Similar view can be taken in this OA also. On the language of the notification dated 13.9.97 and the Recruitment Rules stated above, we are of the view that the three years' professional experience need not entirely be the experience gained after obtaining the Degree qualification. As stated earlier, UPSC cannot upgrade the essential qualification required for the purpose of short listing especially when written examination was conducted prior to the interview.

24. The applicant had qualified in the written examination. Hence, he having been admitted to the examination, cannot be denied the benefits gained by him even though he was ineligible to take the examination. This is the view taken by the Ernakulam Bench of this Tribunal reported in (1994) 28 ATC 190 (Joseph K.T. v. Director General of Posts, New Delhi and another; O.A.No.1592/92, date of judgment 1.3.1994).

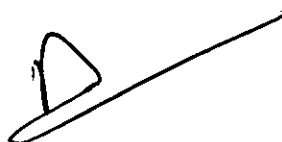
25. In the reported case in 1972 SLR 706 (Kuldip Singh Gill v. State of Punjab, it was held by the Punjab and Haryana High Court that the qualification mentioned for selection and appointment mentioned in the Advertisement



cannot even be relaxed. If the relaxation has to be made, the advertisement should again be issued enabling all eligible persons to apply for the job according to the relaxed qualifications. When the relaxation itself cannot be permitted, upgradation is not permissible.

26. The applicant is Upper Division Clerk in the Employees' Provident Fund Organisation. Applications were called for direct recruitment both from UDC and LDC cadres who possess the qualification stated therein. If an LDC possesses three years' experience qualification and continuing as LDC, he is ~~not~~ permitted to appear for interview whereas higher grade official viz., UDC, just because he does not possess the three years' experience qualification after graduation, if his case is rejected, it does not appear to be ~~irrational~~ ~~not~~ as the higher grade official will not be permitted for interview whereas the lower grade official will be allowed to appear in the interview.

27. From the above analysis, we are of the opinion that the rejection of the case of the applicant by the impugned order dated 5.2.99 is not sustainable and it has to be set aside and the applicant has to be interviewed afresh now if he has not already been interviewed. As an interim order was passed in this OA on 3.3.99 whereby one post of Enforcement Officer against unreserved quota should be kept vacant until further orders, there may not be any difficulty for the respondents to appoint the applicant if he is qualified in the interview and comes within the number to be appointed.

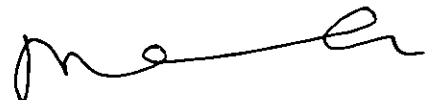


28. In the result, the impugned order dated 5.2.99 is hereby set-aside. The respondents are directed to issue notice to the applicant to appear for interview if he has not already been interviewed. On the basis of the interview, a decision has to be taken in regard to his empanelment for the above said post against the direct recruitment quota. If he is found fit as per the direction given above and comes within the number to be empanelled, the applicant should be empanelled and further action should be taken to appoint him in the post in accordance with law.

29. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

18/10/00


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 18th OCTOBER, 2000

