

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No.693/2014

Order reserved on: 09.02.2017

Order pronounced on: 14.03.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. R.J.R. Kasibhatla,  
R/o Flat No.204A, Dwarka Apts.,  
Sector-7, Plot No. 21, Dwarka, New Delhi-110075

-Applicant

(By Advocate: Shri Amit Mishtra)

**Versus**

1. Union Public Service Commission  
(UPSC) through Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi.
2. Ministry of Law & Justice,  
Department of Legal Affairs,  
Through Secretary,  
Department of Legal Affairs,  
Govt. of India,  
Shastri Bhawan, 4<sup>th</sup> Floor,  
Dr. Rajendra Prasad Road,  
New Delhi-1.

-Respondents

(By Advocate: Shri Amit Yadav and Shri Rajesh Katyal)

**ORDER**

**Hon'ble Mr. K.N. Shrivastava, Member (A):**

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

“(a) that the action of UPSC is unfair, unreasonable and arbitrary and contrary to the settled principles of fair opportunity hence liable to be quashed in the interest of justice.

(b) that it is against the principles of equal employment opportunity and the extant Rules.

(c) that it is Contrary to the stand taken by the PSC in their Affidavit dated 5.02.2014.

(d) that denying an opportunity to the applicant who is fulfilling the required conditions not only violation of his right but also prejudice to the career prospects and the applicant suffer irreparable loss.

Or

Alternatively this Tribunal may be pleased to direct the UPSC to consider the candidature of the applicant as done in the case of OA No.224/2014 for the forthcoming interviews on 24.02.2014.

Or

Any other relief or remedy which this Honorable Tribunal deems fit and just in the interest of justice.”

2. The brief facts of this case are as under.

2.1 The applicant was selected as an Assistant Law Officer (ALO) through direct recruitment in the Department of Legal Affairs, Ministry of Law and Justice, Government of India. He joined the said post on 13.09.2001. The post of ALO comes under Group IV of Indian Legal Service (ILS). He was later on selected as an Assistant Legal Adviser (ALA) in the same department, i.e., Department of Legal Affairs again through direct recruitment. He joined the post of ALA on 17.07.2002. He got promoted to the post of Deputy Legal Adviser (DLA) in the due course, the post which he continues to hold.

2.2 The Union Public Service Commission (UPSC)-respondent No.1 advertised two posts of Additional Legal Adviser (Group-II of ILS)

vide Annexure A-1 advertisement No.10/13. The qualifications prescribed for the post as indicated in the advertisement was as under:

“6. (Vacancy No.13071006227)

Two Additional Legal Adviser in Department of Legal Affairs, Ministry of Law and Justice. The posts are unreserved. QUALIFICATIONS:ESSENTIAL: EDUCATIONAL: A person shall not be eligible for appointment by direct recruitment to a duty post in Grade II, unless he holds a degree in law of a recognised university or equivalent and unless he has been a member of a State Judicial Service for a period of not less than thirteen years or has held a “superior post in the legal department of State for a period of not less than thirteen years or a Central Government servant who has had experience in legal affairs for not less than thirteen years or is a qualified legal practitioner.” ‘Superior post in the Legal Department of a State’ means that the applicant should have experience in the State Government in a post which is not clerical and which requires qualification of Degree in Law for appointment to it. Note:-Preference will be given to a person with experience in legal advice work. DUTIES: To give advice on all matters referred by the various Ministries/Departments of the Government of India. To look after Government litigation work. To conduct court cases and to appear in courts on behalf of the Central Government wherever required and to perform administrative and other works as may be assigned. HQ: New Delhi/Mumbai/ Kolkata/Chennai/Bengaluru with liable to serve anywhere in India.”

2.3 The last date for submitting the applications was 18.08.2013. The selection was to be done only through interview, which was scheduled for 24.02.2014. In all, 314 applications were received by UPSC but only 20 of them were shortlisted. The applicant was not in the shortlisted list purportedly due to his incomplete application.

2.4 The applicant submitted his Annexure A-4 representation dated 14.02.2014 to UPSC-respondent No.1, which was forwarded by his department (department of Legal Affairs) vide letter dated 17.02.2014. As there was no action by the UPSC on the

representation of the applicant dated 14.02.2014, the applicant approached this Tribunal in OA-693/2014 praying for the following main reliefs:

“(a) direct the respondents not to exclude the applicant from consideration for appointment to the post of Additional Legal Advisor in the process initiated vide advertisement no. Issued in July-August 2013.

(b) In an event, the UPSC has already evolved a shortlisting criteria which is violative of Recruitment Rules and excludes or tends to exclude the applicant

(c) from consideration to the post, the same may kindly be quashed and set aside;

(d) The respondents be directed to further consider the candidature of the applicant for appointment to the post in question and if selected, he be appointed to the post, with all consequential benefits;”

The Tribunal passed an interim order on 24.02.2014, directing the respondents to allow the applicant to participate in the interview provisionally. The interim order also said ‘his result shall not be declared until further orders of this Tribunal’.

2.5 Another similarly situated applicant for the post of Additional Legal Adviser, Shri Rajveer Singh Verma, had also filed OA-224/2014, praying for the similar reliefs. Identical interim relief was also granted to him as well. On the basis of the interim relief granted, the applicant in the instant OA and Shri Rajveer Singh Verma, applicant in OA-224/2014 were called for interview by the UPSC. There were some other persons who too had not been called for the interview by the UPSC and they too had filed various OAs and had been granted identical interim reliefs.

2.6 Before all these OAs could be taken up for adjudication, the interviews had already been conducted. The Tribunal felt that it would be proper to adjudicate OAs of only those applicants who have been selected by UPSC after the interview and that it would be a futile exercise to consider the remaining OAs whose applicants had not been selected by UPSC. Accordingly, the UPSC was directed to produce the results in a sealed cover. The results were accordingly placed before the Tribunal. When the sealed cover was open, it was found that the applicant in OA-693/2014, who is also the applicant in the instant OA and the applicant in OA-224/2014 – Shri Rajveer Singh Verma only had been found selected in the interview against the two posts. The Tribunal, therefore, decided to adjudicate only these two OAs and finally allowed them vide a common order dated 25.02.2015. The Tribunal also issued the following direction to the UPSC in the *ibid* order:

“9. In view of above, UPSC is directed to accordingly consider the candidature of the candidates for appointment to the post in question and send their recommendation for appointment with respect to the applicants in both these OAs for the said post. This shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.”

2.7 The UPSC challenged the order of the Tribunal dated 25.02.2015 in OA-693/2014 and OA No.224/2014 in two separate WP (C) No.3941/2015 in respect of OA-224/2014 and WP (C) No.3947/20515 in respect of OA-693/2014. Both the Writ Petitions were disposed by the Hon'ble Delhi High Court by a common

judgment dated 08.09.2015 with the following observations/directions:

“2. Today in the writ petitions a diametrically opposite stand is sought to be taken by learned counsel for the petitioner based on the counter affidavit filed before the tribunal. Although we have heard the matter at some length, the present writ petitions are disposed of with the following agreed order :

(i) The writ petitions are dismissed as not pressed at this stage leaving all legal grounds open to the parties.

(ii) The petitioner may file an application seeking the review of the order dated 25.02.2015. In case the review petition is filed within two weeks, the respondents would not raise the plea of limitation.

(iii) The order passed by the tribunal would remain suspended till the application for review is heard.

(iv) Both the writ petitions are disposed of. The tribunal would endeavour to dispose of the review application within a period of one month.”

2.8 As per the liberty granted by the Hon’ble Delhi High Court in its order dated 08.09.2015, the UPSC filed two Review Applications; RA No.258/2015 in OA-224/2014 and RA No.268/2015 OA No.693/2014 against the order of the Tribunal dated 25.02.2015

2.9 Both the RAs were allowed by the Tribunal vide order dated 29.01.2016 and thus the order of the Tribunal dated 25.02.2015 in OA-224/2014 and OA-693/2014 was recalled; the operative part of the order reads as under:

“10. In the light of our above discussions, we have no hesitation in holding that the order dated 25.02.2015, *ibid*, is liable to be reviewed/recalled. Accordingly, the order dated 25.2.2015 passed in OA Nos.224 and 693 of 2014 is reviewed and recalled, and O.A. Nos.224 and 694 of 2014 are restored. In view of the submission made by respondent no.1-UPSC (review petitioner) that both the O.As. should not have been decided by the Tribunal by way of a common order, we direct that O.A. Nos.224 and 693 of 2014 should not be heard and decided by the Tribunal independently. The O.As. be listed for fresh hearing before appropriate Bench as per roster.”

2.10 This is how we are seized of the matter.

3. The arguments of the learned counsel for the parties were heard on 09.02.2017.

4. Shri Amit Mishra, learned counsel for the applicant submitted that the essential qualification required for the post of Additional Legal Adviser, as notified by UPSC in their advertisement No.10/13, was that an applicant should be a Law Graduate with not less than 13 years of legal experience. He further submitted that since a large number of applications were received (314 in number) for the advertised two posts of Additional Legal Adviser, the UPSC raised the level of essential qualification as could be seen in the counter-reply filed by the UPSC in OA-224/2015 (Annexure A-3). The upgraded criteria fixed for short-listing the candidates for being called for interview were as under:

Criteria No.I-Essential Qualifications (A):

- (i): Raised to Ph.D in Law +
- (ii) Minimum of legal experience of 13 years (no change in it).

Criteria No.II-Essential Qualifications (A):

- (i) Raised to Post Graduation in law +
- (ii) Raised to minimum of 20 years legal experience.

4.1 The learned counsel argued that the applicant has a total legal experience of 23 years, one month and 21 days, the breakup of which is as under:

- a) Legal experience in the Department of Legal Affairs-12 years.
- b) Experience as an Advocate-Two years+9 months
- c) Teaching/Legal Research Experience- 08 years.

4.2 Shri Mishra vehemently argued that the applicant is having Ph.D in Law and has more than 13 years of legal experience, and thus he is entitled for consideration for the post even under the upgraded essential qualification criteria. The learned counsel for the applicant in support of his case placed reliance on the following judgments:

- i) **Union Public Service Commission v. Gyan Prakash Srivastava**, [2012 (1) UJ 0001];

**Held:** “Degree in Law of a recognised University or equivalent was an essential qualification for the post of Legal Advisor. The candidates were required to attach with their applications attested/self certified copies of Matriculation or equivalent certificate in support of their declaration of age and degree or Diploma Certificate or other certificates in support of their educational qualifications. No person can be admitted as an Advocate unless he has obtained Degree in Law. Since, the Respondent had attached with his application the certificate issued by the Bar Council of Uttar Pradesh, the Commission was not at all justified in refusing to entertain his application for the post of Legal Advisor.”

- ii) **Dheerender Singh Paliwal v. UPSC**, [2016 (4) SCLAE 573];

**Held:** “...It was not a case of the Appellant not possessing the required essential qualifications but was of only not enclosing the certificate in proof of the added qualification. The outcome of the interview was that the Appellant should be cleared of his selection. The production of their caste certificate was not in the prescribed proforma initially, nevertheless those candidates were allowed to produce the original caste certificate issued by the competent authority and after verifying the same by accepting the attested photo copies of such caste

certificates their cases were cleared. Therefore, when such a course was adopted by the Respondent in regard to those two candidates there was no reason why the candidature of the Appellant alone was kept under suspension, though he also cleared interview process.”

5. Per contra, Shri Ravinder Aggarwal with Shri Rajesh Katyal, learned counsel for UPSC-respondent No.1 stated that the total experience of over 23 years, as claimed by the applicant in his online application also includes his teaching experience as Lecturer/Principal in various Law Colleges/Institutions for a considerably long period from 21.01.1993 to 12.09.2001, which cannot be considered for reckoning his legal experience in terms of the advertisement. He further stated that the applicant’s experience as a practising advocate and that in the Ministry of Law as ALO/ALA/DLA could only be considered for the purpose of short-listing, provided his claim is supported by a requisite experience certificates. Shri Aggarawal further said that while the applicant has submitted the experience certificate issued by his present employer (Ministry of Law) but has not submitted any certificate in regard to his experience as a practising advocate either from the Bar or from the Court where he had practiced as an Advocate. Hence, his application was rejected under ‘incomplete’ category. In support of his arguments, the learned counsel placed reliance on the following judgments of the Delhi High Court:

i) Judgement dated 13.01.2010 in Writ Petition (Civil) No.13451/2009 -**Dr. Vineet Relhan v. UPSC & Anr.**, wherein it has been held as under:

“10. In so far as the present case is concerned, there is nothing on record to suggest that the Petitioner submitted the requisite documents at the appropriate time. That apart, it is not as if the Petitioner is uneducated or could not have filled the form intelligibly. He claims to hold a degree of M.D. (Dermatology) and he ought to have been clear about the fact that the requisite certificates must be furnished along with the application form. For his failure to do so, the Petitioner has only himself to blame.”

ii) Judgment dated 25.01.2010 in Writ Petition (Civil) Nos.9949 and 10058/2009 – **UPSC v. Govt. of NCT of Delhi**; wherein it was held that submission of the application without attaching the LLB Degree was an incomplete application and hence was rightly rejected, as required by the advertisement.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

7. It is well understood and appreciated that since only two posts of Additional Legal Adviser were advertised against which 314 applications had been received, the UPSC was fully justified to apply the upgraded short-listing criteria whereby the essential qualifications for short-listing were upgraded as indicated in para-4 supra. In the upgraded criteria, for a Ph. D. holder in Law, the minimum legal experience required was 13 years. The applicant passed the law degree examination in January, 1990 from

Nagarjuna University, a certificate to that effect was issued by the University on 24.06.1996 (page-63). He completed his L.L.M. in June, 1992 from Bangalore University, a certificate to that effect was issued by the Bangalore University on 27.01.2005 (page-64). He also completed his Ph.D in Law on the thesis **“Legal analysis of Biological Divers and Ecological Order in India”** from Berhampur University in March, 2008; a certificate to that effect was issued by the Berhampur University on 06.06.2008 (page-65).

8. The applicant was registered as a lawyer by the Bar Council of the State of Andhra Pradesh on 12.04.1990 and a certificate to that effect was issued by the Bar Council which is at page-67. Regarding his teaching experience, the details available on the records are as under:

- a) Lecturer in law at Margadarshi College of Law, Karimnagar (AP) from 27.01.1993 to 04.07.1996 (page-74).
- b) Lecturer in law at Rajiv Gandhi Institute of Law, Kakinada (AP) from 02.09.1997 to 04.02.2000 (page-76).
- c) Lecturer at West Bengal University of Juridical Sciences, Kolkata from 14.02.2000 to 12.09.2001 (page-75).
- d) Principal of Justice Kumarayya College of Law from 03.08.1996 to 05.08.1997.

The total teaching experience of the applicant comes to about eight years.

9. It is pertinent to note that the applicant registered with Bar Council of the State of A.P. on 12.04.1990. He continued as an advocate till he joined as a Lecturer in law at Margadarshi College of Law, Karimnagar (AP) on 27.01.1993. Therefore, it would be reasonable to assume that he was a practising lawyer from 12.04.1990 to 26.01.1993, i.e., for about two years and nine months. It would be ludicrous to assume otherwise. In our country, there is no system of a certificate being issued by the concerned Bar Council to certify the legal practice of a lawyer where he is registered or by the Courts where he has normally practised. Even in its advertisement No.10/13 (Annexure A-1), UPSC has not stipulated as to the requirement of such a certificate and from whom? The registration certificate issued by a Bar Council must be considered as a proper and appropriate document for the purpose. For this reason, it would be perfectly in order to assume that the applicant was indeed practising as a lawyer from 12.04.1990 to 26.01.1993 and thus acquired experience as a legal practitioner of about two years and nine months.

10. There is no dispute with regard to the legal experience acquired by the applicant while working in the Department of Legal Affairs, Ministry of Law and Justice from 13.09.2001 to August,

2013 (about 12 years). Thus, taking the experience of the applicant as a legal practitioner of two years and nine months and 12 years experience of his working in the Legal Affairs Department, his total legal experience would be more than 14 years against the minimum requirement of 13 years. For reckoning the legal experience period, his teaching experience as a law Lecturer/Principal is to be discounted for the reason that the applicant being a regular teaching faculty, the college rules would not have permitted him to do private practice.

11. To conclude, we are of the view that the applicant had fulfilled the enhanced criteria for short-listing, i.e., Ph. D. with minimum 13 years of legal experience, as discussed in details in the preceding paras. We, therefore, hold that the applicant was eligible for short-listing for interview. Since on the basis of an interim order of this Tribunal, he has already been interviewed by the UPSC (respondent No.1) and has been declared selected, it is only logical that the UPSC recommends his case for appointment to the post of Additional Legal Adviser to the concerned authority in the Central Government.

12. In the conspectus of the discussions in the foregoing paras, the OA is allowed. The respondent No.1-UPSC is directed to recommend the candidature of the applicant for appointment to the post of Additional Legal Adviser in the Department of Legal Affairs,

Ministry of Law & Justice to the competent authority in the Central Government. This shall be done within a period of 04 weeks from the date of receipt of a certified copy of this order.

13. No order as to costs.

**(K.N. Shrivastava)**  
**Member (A)**

**(Justice Permod Kohli)**  
**Chairman**

‘San.’