

**Central Administrative Tribunal
Principal Bench**

**OA No. 832/2015
OA No. 808/2015
OA No. 842/2015**

New Delhi this the 18th day of September, 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

OA No. 832/2015

Swapnil Gupta, Age 29,
S/o late Shri Prem Narayan Gupta,
R/o 173-S, Chitra Gupta Road,
Aram Bagh, Pahar Ganj,
New Delhi-110055
(Presently Laboratory Assistant)
O/o Central Forensic Science Laboratory (CBI)
Block No.4, CGO Complex, Lodhi Road,
New Delhi-110003

-Applicant

(By Advocate: Shri K.L. Manhas)

Versus

1. Union Public Service Commission,
Through its Chairman,
Dholpur House, Shahjahan Road,
New Delhi
2. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, IP Estate,
New Delhi-110002
3. The Director
Forensic Science Laboratory,
Govt. of NCT of Delhi,
Sector 14, Rohini, Delhi

-Respondents

(By Advocates: Shri Ravinder Aggarwal and Ms. Alka
Sharma)

OA No. 808/2015

1. Sarita Sharma (31 years)
W/o Sh. Ravi Sharma
Working AT:
Scientific Assistant (Documents)
Forensic Science Laboratory (Home Deptt.)
Govt. of NCT of Delhi,
Sector-14, Rohini, Delhi
2. Ajay Kumar (40 years)
S/o Sh. Anand Prakash Sharma,
Working At:
Sr. Scientific Assistant (Documents)
Forensic Science Laboratory (Home Deptt.)
Govt. of NCT of Delhi,
Sector-14, Rohini, Delhi
3. Rashmi Sharma (30 years)
W/o Sh. Virendra Bhardwaj
Working AT:
Sr. Scientific Assistant (Documents)
Forensic Science Laboratory (Home Deptt.)
Govt. of NCT of Delhi,
Sector-14, Rohini, Delhi

-Respondents

(By Advocate: Shri T.N. Tripathi)

Versus

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-Respondents

(By Advocates: Shri Ravinder Aggarwal and Ms. Alka Sharma)

OA No. 842/2015

Prashant Sharma,
 S/o Shri Omkar Sharma,
 R/o 47, Dak Bagalia,
 Near TB Hospital Etah,
 Uttar Pradesh
 Pin Code: 207001

-Applicant

(By Advocate: Shri Girijesh Pandey)

VERSUS

Union Public Service Commission,
 Dholpur House,
 Shahjahan Road,
 New Delhi-110069

-Respondent

(By Advocate: Shri Ravinder Agarwal)

ORDER (Oral)

By Mr. A.K. Bhardwaj, Member (J):

These three Original Applications raise common question of law and facts, thus are taken for disposal together.

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In terms of the advertisement published in Employment News 14-20.12.2013, the Union Public Service Commission invited applications for the post of Sr. Scientific Officer (Document) in Forensic Science Laboratory, Home Department, Government of NCT of Delhi. The essential and desirable qualifications as well as

experience for the post, mentioned in column 16 read thus:-

“13. Qualifications: Essential: A. Educational: Master’s degree in Physics or Mathematics or Forensic Science with Physics or Mathematics or Forensic Science as one of the subjects at B.Sc. level from a recognised University or equivalent. B. Experience: Three years’ experience of analytical methods/research therein in the relevant field. Desirable: Doctorate degree in concerned discipline from a recognised University or equivalent.

16. Qualifications: Essential: A. Education: Master’s degree in Physics or Chemistry or Computer Science or Forensic Science with Physics or Chemistry or Forensic Science or Computer Science as one of the subjects at B.Sc. level from a recognized University or equivalent OR B.D/B.Tech. in Computer Engineering or MCA/MSc. in Computer Science from a recognized University or equivalent. Experience, Desirable, Duties and HQ: Same as in time No.13 above.”

2. The applicant herein, who fulfilled the essential qualification, applied for the post but was not shortlisted for the interview. According to the learned counsel for the applicant, once the applicant fulfilled the essential qualification, there could be no reason for not including him in the list of eligible candidates for being considered in selection process. The further argument put forth by him is that the Commission had altered the eligibility criteria for the post

3. On the other hand, Mr. Ravinder Agarwal, learned counsel for the respondents, submitted that since against the very few posts (three in number), 425 candidates had applied, the Commission exercised its power of short-listing and evolved the following criteria:-

“Criteria I: EQ(A) + EQ(B) raised to 8 years.
Criteria II: EQ(A) raised to Ph.D+EQ(B).”

4. Confronted with the stand taken by the learned counsel for the respondents, Mr. K.L. Manhas, learned counsel for the applicant, submitted that respondents have even included such candidates in the eligibility list, who have not fulfilled the short-listing criteria.

5. In the facts of the case, the short issue arise to be determined is whether the Commission is empowered to short-list the candidates for being considered in the selection process for appointment to any post. The question was answered by the Hon'ble Supreme Court in the case of **Madhya Pradesh Public Service Commission vs. Navnit Kumar Potdar & Anr.** (1994) 6 SCC 293. In the said judgment, the Hon'ble Supreme Court ruled that the process of short-listing is permissible and shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospects. Paras 6 and 9 of the judgment read thus:-

“6. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Office, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates amongst the applicants. In most of the services screening tests or written tests have been introduced to limit the numbers of the candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

9. In Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil **Services** Examination" it has also been pointed out in respect of interview where a written test is also held as follows:

The number of candidates to be called for interview, in order of total marks in written papers, should not exceed, we think twice the number of vacancies to be filled....

10. In this background it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be

pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of process of selection. Once the applications are received and the Selection Board or the **Commission** applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the **Commission** if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an Advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.”

In Union of India & Anr. Vs. T.Sundararaman & Ors.

1997) 4 SCC 664, the Hon’ble Supreme Court ruled as under:-

“4. The Tribunal has clearly erred in doing so. Note 21 to the advertisement expressly provides that if a large number of applications are received the Commission may shortlist candidates for interview on the basis of higher qualifications although all applicants may possess the requisite minimum

qualification. In the case of M.P. Service Commission v. Navnit Kumar Potdar this Court has upheld shortlisting of candidates on some rational and reasonable basis. In that case, for the purpose of shortlisting, a longer period of experience than the minimum prescribed was used as a criterion by the Public Service commission for calling candidates for an interview. This was upheld by this Court. In the case of Govt. of AP v. P. Dilip Kumar also this Court said that it is always open to the recruiting agency to screen candidates due for consideration at the threshold of the process of selection by prescribing higher eligibility qualification so that the field of selection can be narrowed down with the ultimate objective of promoting candidates with higher qualification to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimate. The decision of the Tribunal is, therefore, set aside and the appeal is allowed. There will, however, be no order as to costs.”

6. In view of the aforementioned, we find no infirmity in the action of the respondents in not including the name of the applicant in the list of eligible candidates for being considered for selection to the post of Senior Scientific Officer (ibid). The OA being found bereft of merit and is accordingly dismissed. Nevertheless, it is made clear that the respondents would not consider any such candidate for appointment to the post in question who does not fulfil the short-listing criteria mentioned in the counter reply of the respondents.

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7. Mr. Tripathi, learned counsel for the applicants, additionally argued that in terms of the judgment of the

Hon'ble Supreme Court in **Duddilla Srinivasa Sharma & Ors. vs. Chrysolite**, 2014(1) AISLJ 386, the respondents could not introduce the criteria not mentioned in the recruitment rules for shortlisting. Para 17 of the judgment read thus:-

“17. We fail to understand how a person who fulfils the eligibility conditions as per the recruitment rules can be excluded even from appearing in the qualifying written examination by fixing higher educational qualification bench mark. That would be permissible where the post is to be filled by main written examination (with marks obtained therein to be included in the total marks) followed by viva-voice test OR where the post is to be filled by interview mode alone. Thus, having regard to the specific provision of shortlisting, we are of the opinion that the impugned judgment of the High Court has taken the correct view.”

8. In the present case, we find from the recruitment rules placed on record that in Note 1 of column 8, it was mentioned that the UPSC had discretion to relax the qualification for the reasons to be recorded in writing and further the Doctorate in concerned discipline from the recognized University or equivalent is one of the desirable qualification mentioned in the rules itself. As has been ruled by the Hon'ble Supreme Court in the judgments cited hereinabove, experience can be one of the criteria for shortlisting. As far as judgment in **Duddilla Srinivasa Sharma & Ors. vs. Chrysolite** (ibid) is concerned, in the said case,

the short-listing was done to allow the candidates to participate in the written examination. In para 12 of the judgment, the Hon'ble Supreme Court ruled that whenever a particular criterion for shortlisting is adopted, the validity thereof is to be examined keeping in view whether the same is rationale and having nexus with the objective sought to be achieved. It would depend on the facts and circumstances of each case as to whether a particular criteria is valid or not. Para 12 of the judgment read thus:-

“12. Therefore, what follows from the above is that whenever a particular criterion for shortlisting is adopted, the validity thereof is to be examined keeping in view whether the same is rationale and having nexus with the objective sought to be achieved. It would depend on the facts and circumstances of each case as to whether a particular criteria is valid or not. At the same time, it also becomes clear that whenever there is a particular provision for short listing the candidates in the Rules or Instructions, then the short listing is to be resorted to in accordance with the criterion mentioned in those Rules or Instructions.”

9. As far as the present case is concerned, as has been explained in the reply of the Commission, the Forensic Science Laboratory, Government of NCT of Delhi, has different divisions - Documents, Ballistics, Photo, Physics, Chemistry, Biology, to name a few, which are rendering forensic support services to the various Investigating Agencies in scientific analysis of exhibits and collection/detection of relevant physical clues from scenes

of crime. Keeping in view the nature of duties proposed, the Commission introduced and adopted the shortlisting criteria. We do not find any irrationality in adoption of such criteria. As has been ruled by the Hon'ble Supreme Court in the case of **Collector of Central Excise, Calcutta v. M/s Alnoori Tobacco Products & another**, 2004(6) SCALE 232, the judicial precedents cannot be referred to as statute and need to be applied with reference to the facts of the case involved therein. In the case of **Duddilla Srinivasa Sharma & Ors. vs. Chrysolite** (ibid), the Hon'ble Supreme Court has also made it clear that each case is to be examined in the backdrop of the facts involved therein.

10. However, learned counsel for the applicants espoused that the applicant nos. 2 and 3, namely, Ajay Kumar and Rashmi Sharma were not shortlisted even when they satisfied the shortlisting criteria. The stand of the UPSC in respect of Mr. Ajay Kumar is that he did not have the experience in the relevant field. Nevertheless, regarding qualification possessed by Ms. Rashmi Sharma, they are silent.

11. In the wake, the OA is disposed of with directions to the respondents to re-visit the record of the applicants to ascertain whether they satisfied the short-listing criteria or

not before declaring result. In such process, the respondents may obtain the view of the expert, if they so desire.

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12. As can be seen from the record, the experience possessed by the applicant was six years, eleven months and eight days i.e. less than 8 years. His academic qualification is Masters in Forensic Science. Thus he does not satisfy either of the shortlisting criteria. The OA is accordingly dismissed. No costs.

**(Dr. B.K. Sinha)
Member (A)**

**(A.K. Bhardwaj)
Member (J)**

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