

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No-2307/2015

Order Reserved on: 21.03.2016

Order Pronounced on: 12.09.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)**  
**Hon'ble Mr. Raj Vir Sharma, Member (J)**

Smt. Latha Kumari Antherjanam,  
D/o Sh. Vishnu Nampoothiri,  
Assistant Legal, Legislative Department,  
Ministry of Law & Justice,  
Shastri Bhawan,  
New Delhi.

-Applicant

(Applicant in person)

**-Versus-**

1. Union Public Service Commission,  
Through Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi.
2. Union of India  
Through Secretary,  
Ministry of Law & Justice,  
Department of Legal Affairs,  
"A" Wing, Shastri Bhawan,  
New Delhi.

-Respondents

(By Advocate: Shri Ravinder Aggarwal, for UPSC R-1)  
Shri Ramjan Khan for Shri Hanu Bhaskar  
For R-2)

**ORDER**

**Per Sudhir Kumar, Member (A):**

The applicant of this OA has challenged the decision of Respondent No. 1, Union Public Service Commission (UPSC, in short) uploaded on its website, in respect of Advertisement No 15/2014, for filling up the 14 posts of Assistant Legal Advisers in the Ministry of Law and Justice, intimating thereby the criteria for short-listing, the modalities adopted,

the list of short-listed candidates, and the list of the candidates whose candidature has been rejected, and has assailed the rejection of her candidature on the ground of “Better Candidates Available” (BCA, in short).

2. The facts of this case can be stated very briefly. The Respondent No.1 had issued an Advertisement in September, 2014 calling for applications for filling up 14 posts of Assistant Legal Advisers in the Department of Legal Affairs, Ministry of Law & Justice, on direct recruitment basis, through Advertisement produced at Annexure A-2. This Advertisement had prescribed the educational qualifications, experience and duties and other criteria for the concerned posts as follows:-

**“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 recognized University or LLB 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 a 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. **Note I:** The 'qualified legal practitioner' in relation to appointment to a duty post in Grade II by direct recruitment means an advocate or a pleader who has practiced as such for at least thirteen years, or an attorney of the High Court of Bombay or Calcutta who has practiced as such attorney and an advocate for a total period of at least eleven years. **Note II:** The candidate should be eligible for enrollment as an advocate in the Supreme Court under Supreme Court Rules, 1950 as amended from time to time and for registration as an Advocate on Record of that Court under the said rules.

**Note III:** A superior post in the Legal Department of a State means that he 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.

**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 liability to serve anywhere in India.”**

(Emphasis supplied).

3. Considering herself to be fulfilling all the eligibility criteria, the applicant applied for the said post, duly filling in the online application form within the prescribed time limit, in which she had applied under the category of ‘Central Government Servant’, and had also claimed the permissible age relaxation, as provided in the Service Rules, and the general terms and conditions fixed by the respondents. Thereafter, she received a letter dated 22.01.2015 of Respondent No.1-UPSC asking her to furnish the self attested photocopies of the relevant documents, including the experience certificate, in response to which she sent the required documents, including the experience certificate by email on 04.02.2015. She had obtained the experience certificate from her present employer, i.e., Respondent No.2, which would also have been in her future employer, in case of her selection to the said post. The said certificate stated that she had experience of more than 16 years of working pertaining to legal affairs in various departments of Govt. of India. In the impugned Circular, the Respondent No.1-UPSC has intimated that for the purpose of short listing, it had fixed the experience criteria as being equivalent to 13 years 03 months in respect of the General Category candidates, and the applicant is aggrieved that they have still rejected her application on the ground of BCA, perhaps because her experience at the level of LDC/UDC has not been considered as relevant. She has assailed this, since the impugned Advertisement, as well as the impugned Circular, both say that a Central Government

Servant who has acquired experience in legal affairs for more than 7 years would be considered to be eligible.

4. The applicant has, therefore, taken the ground that Respondent No.1 was under an obligation to follow the conditions as mentioned in the impugned Advertisement, and as she was a candidate, who had applied under the category of “Central Government Servant”, she has sought relief from this Tribunal to direct the respondents not to put any extra conditions, which were not there originally, and have been imposed without any logical basis, and without having a direct nexus to the object sought to be achieved. She has submitted that while in the Advertisement, in respect of superior posts in the Legal Department of a State, it has been mentioned that the applicant should have had experience in the State Government in a post which is not clerical, and which requires qualification of Degree in Law for appointment to it, such a condition had not been prescribed in the case of Central Governments Servants, who have had experience in legal affairs for not less than 7 years.

5. The applicant had approached this Tribunal on 06.07.2015, after she had not been called for the interviews for the posts of Assistant Legal Advisers, scheduled to be held from 06.07.2015 to 09.07.2015, and she had still not received the Interview call letter, despite her claim of possessing the necessary qualifications and experience, and having submitted all the necessary documents, as called for by the Respondent No.1 vide letter dated 22.01.2015. She had, therefore, assailed the

changes brought about in the eligibility conditions qua the candidates who had applied under “Central Government Servant” category, inasmuch as apparently in their cases also, the work rendered, and the experience gained in the post of LDC/UDC, was held by the Respondent No.1 to be not eligible to be counted for the purposes of determining the eligibility, which she contended was against the Recruitment Rules, and the recruitment criteria as advertised by Respondent No.1-UPSC.

6. Resultantly, the applicant had taken the ground that the Circular uploaded by Respondent No.1 is illegal and invalid, because it appears to have travelled beyond the original eligibility conditions set out in the Advertisement, and also for being *de hors* the Recruitment Rules, and that any such modification has no direct nexus with the object sought to be achieved, and amounts to Respondent No.1 UPSC exceeding its jurisdiction, and violating the provisions of Service Rules, and service jurisprudence. It was contended that after having advertised the post, the Respondent No.1-UPSC had no authority to modify the eligibility conditions qua “Central Government Servants”, at the later stage of short-listing of the candidates for the purposes of interview.

7. It was submitted that since she already had a professional Degree in Law even before she started working in the post of LDC/UDC, her experience of working in those posts cannot be brushed aside, since post-wise experience was not material in the case of a “Central Government Servant” as prescribed in the initial Advertisement. It was submitted that when even her employer(s), who were also going to be her

future employer(s), have certified that she had done the required legal work, and an experience certificate had been issued to that effect, because in the Central Government hierarchy, officials at that level are entrusted with the work of a higher calibre, Respondent No.1 UPSC has only attempted a narrow rationalization for the purpose of rejecting her candidature, on the basis of a ground which has got no legal sanction, and is, thus, invalid and illegal. She has further taken the ground that she should have been called for the interview, and her candidature could not have been rejected on the ground of BCA, when it is settled administrative propriety and legal position that the authorities are bound to follow the Statutory Rules and orders while making recruitments to public service, and they were required to strictly go by the vacancy circular as published and advertised, and any modification/alteration could only have been made in conformity with the RRs, and the recruitment process already prescribed. She had submitted that she had also applied against Advertisement No.19/2014 for filling up the post of Assistant Legislative Counsel in the Ministry of Law and Justice, Legislative Department, where also her candidature has been rejected on the ground of BCA, and for that cause of action she had filed an OA No.2157/2015, but the Respondent No.1-UPSC has already conducted the interviews, and even declared the results in that case on the basis of such interviews.

8. The applicant had submitted that the impugned action of Respondent No.1 in the instant case, on the basis of impugned Circular, is violative of her fundamental rights, and principles of natural justice

and fair play, and also in violation of principle of legitimate expectation. She has also submitted that in the case of non-consideration of her case, she would suffer irreparable loss and injury, as she has completed 45 years of age, which is the maximum age prescribed for the Central Government Servants for applying to the said posts, and the other equivalent posts. In the result, she had prayed for the following reliefs:-

**“Reliefs:**

- “(a) allow the present application and grant all consequential benefits;
- (b) declare the decision of the Respondent No.1 contained in “Circular” No.F.1/161/(11)2014-R-II Union Public Service Commission, R-II Section dated nil issued and uploaded in its website in respect of Advertisement No.15/2014, Vacancy No.14091507213 as illegal, unjust, arbitrary, discriminatory and untenable qua this applicant insofar as it excludes the experience gained by the Applicant in the post of LDC;
- (c) direct the Respondent No.1 to call the Applicant for interview and examine here candidature for the purpose of appointment to the concerned post;
- (d) pass such other order or orders, which this Hon’ble Tribunal may deem fit just and equitable in the facts and circumstances of the case.”

9. Respondent No.1 filed counter reply on 27.08.2015, explaining the duties and functions of the UPSC, and defending its powers to make a reasonable classification, as upheld by the Hon’ble Apex Court in the case of **M.P. Public Service Commission vs. Navnit Kumar Potdar, (1994) 6 SC 302**. It was submitted that in discharge of its constitutional obligations, the Commission acts strictly in terms of the RRs and of the Advertisement, and Courts cannot review the decision, but can review only the process of making the decision, if the decision making process has been vitiated by arbitrariness, bias or malafides, as had been held by the Hon’ble Apex Court in the case of **Union of India vs. A.K. Narula**

**(2007) 11 SCC 10.** It was further submitted that it is a settled proposition of law that findings of an expert body are not ordinarily to be interfered with by the Courts in exercise of their power of judicial review, in submitting which the Respondent No.1 had relied upon the Hon'ble Apex Court judgment in the case of **UPSC vs. Jaganath Mishra, (2003) 9 SCC 237.** Reproducing the essential qualifications for the posts concerned once again, the Respondent No.1-UPSC had said that it was clear from them that for the posts of Assistant Legal Advisers in question, the requisite experience should be in the field of legal affairs, or teaching, or research. It was further submitted that as per Note-I of Para-3 of the Instructions and Additional Information to Candidates, it had been clearly stipulated that the prescribed essential qualifications are the minimum qualifications, and mere possession of the same would not entitle candidates to be called for interviews. It was also submitted that in case of number of applications being large, the Respondent No.1-UPSC is empowered to adopt a short-listing criteria to restrict the number of candidates to be called for interview to a reasonable number, by any of the methods as prescribed in this behalf.

10. It was submitted that since 1044 applications had been received as against the 14 posts of Assistant Legal Advisers, and 553 applications out of those 1044 applications were from candidates belonging to unreserved category, the Commission had adopted the short-listing Criteria by which the period of EQ(A) (i) + EQ (A) (ii) was raised to 13 years 03 months. By applying this criteria, the number of candidates was brought down to 45, and only those persons had been called for



interviews. It was submitted that at the time of reviewing of applicant's experience, it was seen that her initial experience of 9 years 01 month and 02 days was as an LDC in the Office of Development Commissioner, Handicrafts, Ministry of Textiles, which was not found relevant for the posts of Assistant Legal Advisers in question, and, as such, her candidature was rejected under the category of BCA.

11. It was further submitted that there would be many other candidates, with actual experience higher than the applicant, but less than the requisite experience of 14 years, but because of the short listing criteria as adopted, their cases had also been rejected under the BCA category. It was further submitted that in compliance with the interim order passed by this Tribunal, the result of the selection has been declared by stating it to be subject to the outcome of the present OA.

12. It was denied that the actions of the respondent-UPSC were in any manner illegal, arbitrary, discriminatory or violative of the applicant's rights under Article 14 of the Constitution. It was further submitted that the modalities adopted in her case were the same as applied uniformly for all candidates, and experience at the level of LDC/UDC had not been considered to be relevant in any case, and more so in the case of applicant, since her experience of 9 years 01 month and 02 days was only as an LDC in the Office of Development Commissioner, Handicrafts, Ministry of Textiles, which was not found to be relevant to the field of law. It was submitted that since in Note-II of Para-3 of the "Instructions and Additional Information to Candidates", it had already been stated

and notified in the Advertisement that the Respondent No.1-UPSC will adopt appropriate short-listing criteria to restrict the number of candidates being called for interview to a reasonable number, and even the possible methods had also been declared in advance, the Respondent No.1-UPSC could not be faulted for having resorted to the short-listing, as had been done uniformly. Since the applicant was not found to be fulfilling the experience criteria according to short-listing criteria adopted, it was justified that her candidature was rightly rejected on the ground of BCA. It was denied that the Respondent-UPSC has exceeded its jurisdiction in any manner, or violated any of the provisions of Service Rules and Service Jurisprudence. It was reiterated that invocation of short-listing criteria does not amount to modification of the eligibility conditions, as had been alleged by the applicant. It was further submitted that any experience gained by a Central Government Servant, having a professional Degree in Law, could not be considered to be relevant, when that experience had been gained only while working in a clerical post, that too most of it being in an Attached Office.

13. It was further submitted that when the Advertisement had clearly stipulated that the experience as a Central Government Servant must be only in legal affairs, the applicant's experience of 9 years 01 month and 02 days as an LDC in the Attached Office of Development Commissioner Handicrafts was not found relevant to the post in question, and it was denied that the Respondent No.1 UPSC has attempted a narrow rationalization in rejecting her candidature, and that they have not taken a conscious decision, strictly in accordance with the Rules. It was

submitted that invocation of a short-listing criteria does not amount to modification of the essential or desirable qualifications, and any gender bias in making public appointments, as alleged by the applicant in this OA, had also been denied. It was further denied that any action of the Respondent No.1-UPSC had been in violation of Articles 14 & 16 of the Constitution, or in violation of principles of natural justice and fair play, and, therefore, it was prayed that the OA may be dismissed with costs.

14. The applicant filed her rejoinder on 20.11.2015, more or less reiterating her contentions as already raised in the OA. It was submitted that it has been admitted by the respondents that she fulfils all the eligibility criteria, and the issue is whether or not the action on the part of Respondent No.1-UPSC rejecting her candidature, despite her having more than 16 years' experience in legal affairs, is valid and legal *vis-a-vis* the criteria stipulated in the Advertisement issued by it for filling up the post. It was submitted that no authority can be allowed to apply any procedure or process of service jurisprudence, in an arbitrary or irrational manner without it being adopted on a logical and valid basis, and it was submitted that any such classification should be based on some reasonable and logical methodology, flowing from the eligibility criteria as stipulated in the Advertisement concerned. It was further submitted that it is also a settled proposition of law that the Courts can interfere with the findings of an Expert Body, if it is proved that such findings are not based on some valid and reasonable grounds. It was, therefore, submitted that Respondent No.1 was wrong in rejecting her candidature by excluding her legal experience in the post of LDC for a

period of 9 years 01 month and 02 days, while only not less than 07 years' experience in legal affairs was required for a Central Government Servant. It was, therefore, submitted that the action of the Respondent No.1 is violative of the eligibility terms and conditions as stipulated in the Advertisement, by excluding the legal experience gained by her in the post of LDC, which could not have been ignored in view of her possessing a professional Degree in Law. It was reiterated that this stipulation or condition was only in respect of State Government Servants that there should have been legal experience in a superior post, and experience in a post which is clerical in nature should have been excluded only in their cases. Therefore, it was again prayed that the OA may be allowed.

15. Even before the counter reply was filed by the respondents, the applicant had moved an MA No. 2082/2015 praying for grant of liberty to amend/modify the prayer clause in Para-8 (b) of her OA, as to specify that the challenge to the impugned Circular was limited to the extent it related to the applicant's case, and it was prayed that the amendment/modification in prayer clause-8(b) should be allowed for it to be read as follows:-

“(b) declare the decision of Respondent No.1 contained in Circular No. F.1/161(11)/2014-R-II Union Public Service Commission, R-II Section dated nil issued and uploaded in its website in respect of Advertisement No. 15/2014, Vacancy No. 14091507213 as illegal, unjust, arbitrary, discriminatory and untenable qua this applicant insofar as it excludes the experience gained by the applicant in the post of LDC”.

16. This MA seeking amendment/modification in the prayer had been allowed by a Coordinate Bench including one of us [Hon'ble Shri Raj Vir Sharma, Member (J)] on 03.07.2015.

17. Heard. The applicant argued her case in person. On the other hand, learned counsel for the respondents filed a copy of the interim order dated 09.06.2015 passed by a Vacation Bench of this Tribunal, in the applicant's other OA case, in which, while rejecting the interim relief prayed for by the applicant in that OA, the Bench that day had excluded the period of 09 years and one month's experience, stating that the 9 years and one month's experience, during which period she was working in the post of LDC cannot be considered as relevant, which did not require possession of a degree in law, and which was not a superior post. The Bench had then come to the conclusion that out of the total experience of 16 years, 10 months and 02 days, the balance experience left was of only 07 years and 09 months. The Bench on that date had held that when she was left with the experience of only 07 years and 09 months, while the requirement for the post of Assistant Legislative Counsel was raised from 7 to 14 years for the purpose of short-listing of candidates, she was not entitled to any interim relief.

18. We have given our anxious consideration to the facts of the case. Firstly, in its original form in the present OA, the prayer at Para 8 (b) was in the nature of a Public Interest Litigation (PIL, in short). But, the applicant covered her tracks, and through filing her MA No.2082/2015, which was allowed on 03.07.2015, she sought the Circular to be declared

as illegal only qua the applicant herself alone, in order to save her OA from the vice of being in the nature of a PIL. Secondly, as per the practice of this Tribunal, the Vacation Benches, though presided over by a single Member, have all the powers of the Division Bench for the purposes of providing relief. Therefore, when in the applicant's own second OA No. 2157/2015, the Vacation Bench had on 09.06.2015 considered the same issue, and had held that her 09 years and 01 month's experience in the Attached Office of Development Commissioner Handicrafts cannot be considered as valid, when she had been working only against the post of LDC, which did not require a degree of law as an essential qualification for holding the post, and which was also not a superior post, under the law as laid down by the Hon'ble Apex Court in **SI Roop Lal and others vs. Lt. Governor through Chief Secretary of Govt. of NCT of Delhi: JT 1999 (9) SC 597**, we are bound by that observation, and we also have to exclude that period of 09 years and 01 month's experience claimed by the applicant in this O.A. also.

19. Though the applicant is correct in pointing that the words "superior post in Legal Department" have been prescribed only in respect of employees who have held relevant posts in the Legal Departments of State Governments, and in the case of "Central Government Servants", the words "superior post" have not been mentioned, and the words mentioned were only to the effect of dealing in Legal Affairs for not less than 07 years, the clarification with regard to "superior posts" in Legal Department of a State should mean experience in the State Government in a post, which is not clerical, and which necessarily requires

qualifications or degree in law, and that prescription is not directly applicable for “Central Government Servants”. However, the issue would then arise as to what is the meaning of the “Central Government Servant having had experience of not less than 07 years in dealing with Legal Affairs”. Just because all the Office Notes of all the Ministries and Departments of Govt. of India emanate from the LDCs’/UDCs’ level, every single LDC/UDC of any Ministry or Department of Govt. of India can claim to have, at some point of time, prepared some Notes in respect of some matters, which concerned legal issues or matters. But it cannot be the intention of the Legislature and the Executive in having framed the RRs in the manner that any such occasional experience would also count. Even in the Ministry of Law itself, perhaps, all the LDCs and UDCs cannot claim that they have had experience in legal affairs for more than 07 years, just because they are working in the Ministry of Law, and have been putting up files concerning some legal matters.

20. The test, therefore, is, as was observed by the Vacation Bench also, as to whether possession of a Law Degree was an essential qualification for that post or not. Even the LDCs and UDCs of even the Ministry of Law, being a part of Central Secretariat Clerical Service, do not require to have a Degree in Law as an essential qualification for being appointed to and posted as LDCs/UDCs in the Ministry of Law. That requirement of possessing a degree of law only arises in respect of the posts higher than those of LDCs/UDCs.

21. Therefore, concurring with the Vacation Bench, we also hold that even experience as LDC/UDC within the Ministry of Law itself could not have counted as experience in matters of legal affairs, and the applicant before us cannot certainly be allowed to count her experience in a clerical post in the Office of Development Commissioner, Handicrafts, Ministry of Textiles, to be counted as her having handled legal affairs under the relevant RRs.

22. We are also bound by the law laid down by the Hon'ble Supreme Court that Respondent No.1-UPSC is competent to prescribe higher cut-off criteria, in order to short-list and reduce the number of candidates to be invited for interviews. Therefore, even when the applicant fulfilled the criteria of 07 years of experience other than LDC in an Attached Office, but since the Respondent No.1 UPSC had, for the purpose of short-listing candidates, raised the bar to 13 years and 03 months, in view of the cited judgments, as pointed out by the respondents in the counter reply, the Respondent No.1-UPSC was fully within its powers to devise such an objective short-listing criteria, in order to reduce the number of candidates to be called for interviews.

23. Therefore, we find no merit in the OA, and the OA is dismissed, but there shall be no order as to costs.

**(Raj Vir Sharma)**  
**Member (J)**

**(Sudhir Kumar)**  
**Member (A)**

cc.