

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4446 OF 2014

New Delhi, this the 16th day of May, 2016

CORAM:

**HON'BLE SHRI V.N.GAUR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

Ms.Anju Bharti,

Aged 32 years,

D/o Chaman Lal Bharti,

R/o 190 Main Road, Vill Khichripur,

Delhi, Pin Code 110091

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Applicant

(By Advocate: Mr.Ajesh Luthra)

Vs.

1. Government of NCT of Delhi,
through the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
2. The Director,
Directorate of Prosecution,
Government of NCT of Delhi,
Room No.139,
Tis Hazari Courts, Delhi 54
3. Union Public Service Commission,
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi 110069

í í Respondents

(By Advocates: Mr.Amit Yadav for-R 1 & 2; and Mr.Ravinder Agarwal for R-3) í í í ..

ORDER

Per Raj Vir Sharma, Member(J):

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the action of the respondent-UPSC in not short-listing her as an OBC candidate for being called to appear in the interview for selection and recruitment to the post of Assistant Public Prosecutor in the Directorate of Prosecution, Home Department, Government of NCT of Delhi, and has also prayed for a direction to the respondent-UPSC to consider her candidature in the selection process.

2. The relevant facts of the case, which emerge from the pleadings of the parties and are not disputed by either side, are as follows:

2.1 Respondent No.1-Union Public Service Commission (UPSC) issued Advertisement No.13/2014 inviting online recruitment applications (ORA) from eligible persons for recruitment by selection to various posts. Vide Sl.No.15 of the Advertisement, online recruitment applications were invited by the UPSC from candidates fulfilling the following eligibility criteria for recruitment by selection to 32 (SC-2, ST-4, OBC-7, UR-19) posts of Assistant Public Prosecutors in the Directorate of Prosecution, Home Department, Government of NCT of Delhi:

oAge: 30 yrs.

QUALIFICATIONS: ESSENTIAL:

A. EDUCATIONAL: A degree in Law of a Recognized University or equivalent.

(Note: Equivalent referred to in A above may be treated as L.L.B.)

B. EXPERIENCE: Three yearsøexperience at the Bar.
DESIRABLE: Experience as Government Advocate.ö

2.1.1 The Advertisement also contained the following instructions to the candidates for recruitment by selection:

ö3. MINIMUM ESSENTIAL QUALIFICATIONS: All applicants must fulfill essential requirements of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least the essential qualifications laid down for various posts. No enquiry asking for advice as to eligibility will be entertained.

NOTE-1: IN THE EVENT OF NUMBER OF APPLICATIONS BEING LARGE, COMMISSION WILL ADOPT SHORT LISTING CRITERIA TO RESTRICT THE NUMBER OF CANDIDATES TO BE CALLED FOR INTERVIEW TO A REASONABLE NUMBER BY ANY OR MORE OF THE FOLLOWING METHODS:

- (a) On the basis of Desirable Qualification (DQ) or any one or all of the DQs if more than one DQ is prescribed.
- (b) On the basis of higher educational qualifications than the minimum prescribed in the advertisement.
- (c) On the basis of higher experience in the relevant fields than the minimum prescribed in the advertisement.
- (d) By counting experience before or after the acquisition of essential qualifications.
- (e) By holding a Recruitment Test.

THE CANDIDATES SHOULD, THEREFORE, MENTION ALL HIS/HER QUALIFICATIONS AND EXPERIENCE IN THE RELEVANT FIELD OVER AND ABOVE THE MINIMUM QUALIFICATIONS.

öWARNINGö

CANDIDATES WILL BE SHORTLISTED FOR INTERVIEW ON THE BASIS OF THE INFORMATION PROVIDED BY THEM IN THEIR ONLINE APPLICATIONS. THEY MUST ENSURE THAT SUCH INFORMATION IS TRUE. IF AT ANY SUBSEQUENT STAGE OR AT THE TIME OF

INTERVIEW ANY INFORMATION GIVEN BY THEM OR ANY CLAIM MADE BY THEM IN THEIR ONLINE APPLICATIONS IS FOUND TO BE FALSE, THEIR CANDIDATURE WILL BE LIABLE TO BE REJECTED AS THEY MAY ALSO BE DEBARRED EITHER PERMANENTLY OR FOR A SPECIFIED PERIOD BY THE:

- COMMISSION FROM ANY EXAMINATION OR SELECTION HELD BY THEM.
- CENTRAL GOVERNMENT FROM ANY EMPLOYMENT UNDER THEM.

The printout of the online application and the following Original Documents/Certificates along with self attested copies and other items specified in the Summon Letter for Interview are to be produced at the time of interview, failing which the candidate would not be allowed to appear in the Interview, in which case such candidate will not be entitled to receive the Commission's contribution towards travelling expenses:-

- a) Matriculation/10th Standard or equivalent certificate indicating date of birth, or mark sheet of Matriculation/10th Standard or equivalent issued by Central/State Board indicating Date of Birth in support of their claim of age. Where date of birth is not available in certificate/mark sheets, issued by concerned Educational Boards, School leaving certificate indicating Date of Birth will be considered (in case of Tamil Nadu & Kerala).
- b) Degree/Diploma certificate along with mark sheets pertaining to all the academic years as proof of educational qualification claimed in the absence of Degree/Diploma certificate, provisional certificate along with mark sheets pertaining to all the academic years will be accepted.
- c) Order/letter in respect of equivalent Educational Qualifications claimed, indicating the Authority (with number and date) under which it has been so treated in respect of equivalent clause in Essential Qualifications, if a candidate is claiming a particular qualification as equivalent qualification as per the requirement of advertisement.
- d) Certificate(s) in the prescribed proforma from the Head(s) of Organization(s)/Department(s) for the entire experience

claimed, clearly mentioning the duration of employment (date, month & year) indicating the basic pay and consolidated pay. The certificate(s) should also mention the nature of duties performance/experience obtained in the post(s) with duration(s). Experience Certificate not in prescribed proforma but containing all the details as mentioned above would be considered on merits by the Commission.

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2.2 In response to the Advertisement, the applicant submitted online recruitment application as an OBC candidate. In her online recruitment application, under the column öEducational Qualification(s)ö, the applicant mentioned as follows:

Qualification Type	Degree	Subject	Qualification Level	Specialization/ Mandatory Subject	University/College	Duration from-To	Date of Notification Result/Issue of Final Marksheets	Division/Class	Result Type/Result Score	Date of Degree
Essential	LLB	Law	Graduation-Law	LAW	Ch.Charan Singh University Meerut/LLOYD Law College	Nov.2005 ó Nov.2008	25-11-2008	1 st	Percentage / 61	30-06-2009

2.3 The respondent-UPSC received 1610 applications for 32 posts. The category-wise breakup of posts reserved under various categories, and number of applications received from each category, was as follows:

Sl.No.	Category	No. of Posts	No.of applicants
1	ST	4	066
2	SC	2	371
3	OBC	7	492
4	GEN	19	681
5	PH-B(Blind) or PB (Partially Blind)	1*	050
6	OH ó OH (Orthopaedically Handicapped)	1*	050
	Total	32	1610

2.4 In September 2014, the respondent-UPSC published a list of candidates to whom roll numbers were issued after scrutiny of the

applications. In the said list, the applicant's name appeared with her Roll No.726.

2.5 The respondent-UPSC fixed the following criteria for short-listing of candidates under various categories for the purpose of limiting the number of candidates to be called for interview:

Sl. No.	Category	Criteria fixed for shortlisting	No. of vacancies	No. of candidates called
1	PH-B (Bind) Or PB (Partially Blind)	EQ(A) + EQ(B)	1	06
2	PH-OH (Orthopaedically Handicapped)	EQ(A) raised to LLM + EQ(B)	1	07
3	ST	EQ(A) + EQ(B) raised to 4 years and 9 months	4	38
4	SC	EQ(A) raised to LLM + EQ(B) raised to 4 years and 9 months	2	54 (Including 01 PH-OH(Orthopaedically Handicapped))
5	OBC	-do-	7	81 (Including 03 PH-B(Blind) & 02 PH-OH (Orthopaedically Handicapped))
6	GENERAL	-do-	19	75 (Including 03 PH-B(Blind) & 02 PH-OH (Orthopaedically Handicapped))

2.6 Thereafter, on 4.12.2014, the respondent-UPSC published a list of shortlisted candidates and the short-listing criteria on its website. In the said list of shortlisted candidates, who were called for interview scheduled to

be conducted on and from 15.12.2014 to 18.12.2014, the applicant's name did not appear.

2.7 Being aggrieved, the applicant submitted a representation, dated 5.12.2014, to the respondent-UPSC, stating therein that having acquired the qualification of LLM, and the requisite experience, she fulfilled the short-listing criteria adopted for OBC category, and was, therefore, entitled to be shortlisted for interview. Along with her representation, the applicant also submitted copies of LLM Certificate, Experience Certificate issued by the Delhi Bar Association, etc..

2.8 S/Shri Rajiv Kumar Kamboj and Ankit Agarwal were not initially shortlisted to appear for interview. They made representations stating that they had mentioned in their online recruitment applications regarding possession of LLM qualification. On examination of their online recruitment applications, it was found by the respondent-UPSC that both the said two candidates had made a claim in their online recruitment applications with regard to possession of LLM degree though not under Educational Qualification but under Desirable Qualification column. Therefore, the respondent-UPSC called them to appear for interview.

3. The Tribunal, by its interim order dated 15.12.2014, directed the respondent-UPSC to allow the applicant to participate in the interview provisionally, with the stipulation that her result may not be declared until further orders of the Tribunal. In compliance with the Tribunal's direction,

the respondent-UPSC allowed the applicant to appear for interview. The applicant appeared in the interview along with others.

4. In the above context, it was submitted by Mr.Ajesh Luthra, the learned counsel appearing for the applicant that while making online recruitment application the applicant mentioned her qualification of LLM under Educational Qualification column, but the same was not saved due to technical glitch in the software.

4.1 It was also submitted by Mr. Ajesh Luthra that soon after publication of the list of shortlisted candidates, the applicant having submitted the representation, along with copies of LLM Certificate, Experience Certificate, etc., the respondent-UPSC ought to have declared her as fulfilling the short-listing criteria, and allowed her to participate in the interview, more so when the respondent-UPSC considered the representations of S/Shri Rajiv Kumar Kamboj and Ankit Agarwal and allowed them to appear for interview, even though they did not mention their LLM qualification under the Educational Qualification, and were not initially shortlisted.

4.2 It was also submitted by Mr.Ajesh Luthra that the applicant having fulfilled the short-listing criteria fixed by the respondent-UPSC, and her name having been included in the list of candidates qualified at the interview, she should not be deprived of appointment to the post merely because in her online recruitment application there was no mention about her possessing LLM qualification. In this regard, Mr.Ajesh Luthra placed

reliance on the decision of the Hon'ble Supreme Court in **Commissioner of Police, Delhi and Another Vs. Dhaval Singh**, 1998 STPL (LE) 25579 SC.

4.2.1 **In Commissioner of Police, Delhi and Another Vs. Dhaval Singh** (supra), the respondent was a candidate for selection and recruitment to the post of Constable in Delhi Police. He was alleged to have concealed from mentioning in the application form, against the relevant column, as to whether there was a criminal case pending against him. He had put a cross-mark in the relevant column. The application form was submitted by him on 21/27.8.1995. After the written test, physical endurance test, and interview, he was provisionally selected for appointment to the post, pending verification of his character. However, before any order of appointment could be issued in his favour, he, realizing the mistake, wrote a letter to the Dy. Commissioner of Police on 15.11.1995 in which he, inter alia, stated:

“I am to state that I have appeared in the Special recruitment held at Muradabad, U.P. on 21.8.95 against Roll No.1457 and declared successful. I have also gone through the Medical Examination and declared fit for the post of Constable (Exe.). I have to point out here that at the time of submission of application form I have inadvertently not mentioned the Criminal Case pending against me in the appropriate column. This has been done due to lack of knowledge. I may be excused for the above lapse and this application may be treated as an information from my side.”

On verification of the conduct and character of the respondent, the appellant-Department came to know that a Criminal Case was registered against the respondent. On the ground that the respondent had concealed a material fact from the application form, which he had filled in, his candidature was cancelled on 20.11.1995. He was acquitted by the trial court vide judgment

dated 8.12.1995. On being so acquitted, the respondent filed a representation before the Commissioner of Police for reconsideration of his case, but that representation was turned down. The O.A. filed by him was allowed by the Tribunal. The Tribunal set aside both the orders of cancellation of candidature, and rejection of his representation, and also directed the Department to consider offering appointment to the respondent. Dismissing the appeal, the Hon'ble Supreme Court observed thus:

õThat there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it, on 15-11-1995, to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial Court it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above.ö

4.3 It was also submitted by Mr.Ajesh Luthra that on the facts and in the circumstances of the case, the Tribunal should direct the respondent-UPSC to declare the result of the applicant, and nominate her for appointment, by way of special dispensation.

5. *Per contra*, Mr.Ravinder Agarwal, the learned counsel appearing for the respondent-UPSC submitted that there was no technical glitch in the software. Had there been such glitch in the software, none of the candidates could have mentioned the LLM qualification in the Educational Qualification column, while making their online recruitment applications. The short-listing of the candidates was made only on the basis of information furnished by them in the online recruitment applications.

5.1 It was also submitted by Mr.Ravinder Agarwal that in her representation dated 5.12.2014 the applicant did not state that she had mentioned her LLM qualification in appropriate column of the online recruitment application, but the same could not be saved due to technical glitch in the software. Therefore, the plea of technical glitch, as now raised before the Tribunal, is an afterthought, besides being not supported by any material whatsoever.

5.2 It was also submitted by Mr. Ravinder Agarwal that the applicant was not similarly placed as S/Shri Rajiv Kumar Kamboj and Ankit Agarwal who had mentioned about their possessing LLM qualification under the Desirable Qualification column. The applicant had nowhere mentioned

in her online recruitment application about her possessing LLM qualification.

5.3 It was also submitted by Mr. Ravinder Agarwal that as per the terms and conditions of the Advertisement, when the short-listing of the candidates had to be made only on the basis of the information furnished by them in their online recruitment applications, and when the applicant failed to mention her LLM qualification in the online recruitment application, the action of the respondent-UPSC in not entertaining the applicant's representation dated 5.12.2014 along with copies of LLM Certificate, etc., and in not short-listing and calling the applicant to appear for interview.

5.4 It was also submitted by Mr.Ravinder Agarwal that when the applicant was not entitled to be shortlisted for interview, and when, in compliance with the Tribunal's interim order, the applicant was only provisionally allowed to appear at the interview, she cannot claim publication of her result.

5.5 In support of his contentions, Mr.Ravinder Agarwal placed reliance on the following decisions:

- (i) **Dr.Vineet Relhan Vs. Union Public Service Commission and another,** W.P. (C) No. 13451 of 2009, decided by the Hon'ble High Court of Delhi on 13.1.2010;
- (ii) **Union Public Service Commission Vs. Government of NCT of Delhi,etc.** W.P. (C) Nos. 9949 of 2009 and

connected writ petitions, decided by the Hon'ble High Court of Delhi on 25.1.2010;

(iii) **Union Public Service Commission Vs. Dheerender Singh Paliwal**, W.P. (C) No. 2734 of 2010, decided by the Hon'ble High Court of Delhi on 30.9.2010; and

(iv) **Dr.Poonam Gupta Vs. Union of India and others**, O.A.No.2053 of 2014, decided by the Tribunal on 19.12.2014.

5.5.1 In Dr.Vineet Relhan Vs. Union Public Service Commission and another (supra), the petitioner was an applicant for selection and recruitment to the post of Specialist Grade II (Dermatology). When she was not called for interview, he filed O.A. before the Tribunal. During the pendency of the O.A., the petitioner received a letter from the respondent-UPSC informing him that since he had not annexed the necessary certificates, his application form was not accepted. The certificates that the petitioner did not submit with the application form were:

- (i) Matriculation certificate as proof of date of birth;
- (ii) MBBS Degree certificate; and
- (iii) M.D. (Dermatology) degree certificate.

On a perusal of the original application form, the Tribunal found that the petitioner did not submit the aforesaid documents, and, on that basis, rejected the O.A. filed by him. Hence, the writ petition was filed by him

challenging the Tribunal's decision. Dismissing the writ petition, the Hon'ble High Court of Delhi observed thus:

¶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.

11. From the counter affidavit filed before us, it appears that the candidature of some other candidates were also rejected on the ground that they failed to submit the requisite certificate of educational qualifications, experience, community, etc. It has also been mentioned in the counter affidavit that the UPSC had clearly mentioned in the advertisement that no provisional claim would be accepted and the requisite certificates must be filed along with the application form. Given these facts, we are not inclined to re-open the selection process or interfere with the impugned order.¶

S.L.P. (C) No.5984 of 2010 filed by the petitioner was dismissed by the Hon'ble Supreme Court, vide order dated 14.9.2012.

5.5.2 In Union Public Service Commission Vs. Government of NCT of Delhi, etc. (supra), the Hon'ble High Court of Delhi dealt with batch of writ petitions directed against similar orders passed by the Tribunal. The issue was whether the Detailed Application Forms (DAFs) submitted by the respondents (either without the required documents or the documents being in the wrong format) for appointment as Assistant Public Prosecutor in the Directorate of Prosecution, Government of NCT of Delhi, ought to have been accepted by the Union Public Service Commission (UPSC). The Hon'ble High Court opined that the DAFs submitted by the respondents (in

nine cases) were rightly rejected by the UPSC, and the Tribunal erred in setting aside the decision of the UPSC. In paragraphs 25 to 28, the Hon'ble High Court made the following observations:

25. With such a large number of DAFs having been received by the UPSC, it is impracticable to expect the UPSC to give a go by to the instructions that have categorically and specifically been mentioned in the advertisements issued by it. It is one thing to say that procedure is a handmaid of justice but it is another thing, in practical life, to give procedure a complete go by for the sake of accommodating a few people. If this is done, then there would be no obligation on anybody to follow any procedure resulting in a completely unmanageable situation.

26. If the submission made by learned counsel for the Respondents is placed on a larger canvas (since the UPSC conducts dozens of such examinations annually), one can well imagine the resultant chaos. For example, it is well known that the UPSC receives lakhs of applications for the Central Civil Services Examination. If every such applicant submits an incomplete application, that is to say that the relevant information is not submitted along with the application, the processing time for the UPSC would take several months and would, in the long run, be completely counterproductive. Consequently, in our opinion while it is true that procedure is the handmaid of justice, it is not possible to ignore practical difficulties that may arise in a given case.

27. The present case is such a case where, because of a very large number of applications received by the UPSC, if it is compelled to accept procedurally incomplete applications, there would be serious practical difficulties that it would have to encounter and this may very well lead to a break down in the system. We also cannot overlook the fact that the applicants/Respondents are all highly educated persons claiming to have an LLB degree and three years experience at the Bar. Therefore, it must be assumed that they fully understood the contents of the advertisements and the DAF. There was a duty cast on them to correctly fill up the DAF and they cannot be allowed to contend that despite this, their application should be accepted even if it is incomplete only because procedure is the handmaid of justice.

28. The matter may be looked at from another point of view. The UPSC has rejected the candidature of 45 persons due to non-submission of the required documents and/or submission of documents in the wrong format. If any relief is granted to the

Respondents before us, surely it would be appropriate to grant a similar relief to other similarly placed candidates, some of whom may not have approached the Tribunal for relief. If this exercise were to be undertaken, perhaps the entire examination would require to be cancelled. In our opinion this is neither in the interest of the candidates who have qualified nor is it in the public interest to cancel the entire examination for the sake of accommodating a few persons, such as the Respondents.

29. The facts of this case are singular and we are of the opinion that given the very large number of applications received and the number of candidates involved, we must give the benefit of the necessity of sticking to procedural requirements to the UPSC.ö

5.5.3 In Union Public Service Commission Vs. Dheerender Singh

Paliwal (supra), the respondent was a candidate for selection and recruitment to the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory, Home Department, Government of Delhi. The Advertisement stipulated öQUALIFICATIONS: ESSENTIAL: A. EDUCATIONAL: MasteröS Degree in Zoology or Botany or Anthropology or Human Biology or Bio-chemistry or Micro-Biology or Genetics or Biotechnology or Molecular Biology or Forensic Science with Zoology or Botany or Forensic Science as one of the subjects at B.Sc. level from a recognized University. B.EXPERIENCE: 3 years experience in analytical methods/research therein in the field.ö It was also stipulated in the Advertisement that if no copies of the certificates were sent with the application, it was liable to be rejected, and no appeal against its rejection would be entertained. Admittedly, the respondent did not submit the B.Sc. degree certificate obtained by him when he submitted the application form. He was not called for interview, and, upon inquiry made, was informed that his application was rejected since he furnished no proof that when he

obtained graduation degree he had studied the discipline of Zoology or Botany or Forensic Science. The respondent made enquiries and learnt that two persons who had not furnished their graduation degrees had been called for interview. The respondent approached the Tribunal and questioned the action taken by UPSC and succeeded. Challenging the Tribunal's decision, the UPSC filed writ petition. Allowing the writ petition, and setting aside the Tribunal's decision, the Hon'ble High Court observed thus:

11. The reasoning of the Tribunal is that the respondent had a Master's degree in Zoology, photocopy whereof was submitted by him after attesting the same and since the prerequisite to undertake the Master's course was a graduation degree, it could safely be inferred that the petitioner had Zoology as a subject at the graduation level.

12. UPSC has questioned the logic and the reasoning of the Tribunal by urging that today it is possible to switch disciplines at the graduation level and due to inter-disciplinary relationship it is possible to obtain a Master's degree in a discipline having no direct relationship with the same discipline at the graduation level. In any case, urges UPSC, it conducts thousands of entrance tests in which lakhs of candidates apply and that UPSC is not to conduct inquisitorial or deductive exercises; the candidates have to strictly comply with the letter of the advertisement. With reference to the advertisement in question, UPSC highlights that what more could it do other than to repeatedly highlight to the candidates the requirement of submitting the necessary attested copies of the certificates establishing the eligibility of the candidate. If the candidate chose to remain negligent, he had to suffer.

13. A similar issue had arisen before the Tribunal when various Original Applications filed by Lawyers were allowed. Pertaining to the post of Assistant Public Prosecutor the advertisement concerned clearly stipulated that minimum educational qualification was a Degree in Law from a recognized University. Three years experience at the Bar was also stipulated as an eligibility condition. The applicants before the Tribunal had furnished self-attested photocopies of enrolment certificates issued by the State Bar Council. They did not submit self-attested photocopies of L.L.B degree which they claimed to possess and urged before the Tribunal that it was

known to one and all that the prerequisite of enrolment with the State Bar Council was a Degree in Law. The Tribunal held in their favour. By and under judgment and order dated 25.1.2010 and connected writ petitions were allowed by a Division Bench of this Court holding that the letter of the advertisement had to be complied with and since UPSC conducts a large number of exams, it is impracticable to expect UPSC to give a go by the instructions that have been categorically and specifically mentioned in the advertisement. The plea that procedure is the hand made of justice was repelled by holding that in practical life, to give procedure a complete go by would mean that nobody would be obliged to follow the procedure resulting in unmanageable situations. It was observed that if UPSC was compelled to accept procedurally incomplete applications there would be serious practical difficulties that it would have to encounter and this may well lead to a break down in the system.

14. We respectfully concur.

15. We have highlighted herein above the repeated emphasis at different places in the advertisement repeatedly cautioning the candidates to strictly comply with each and every requirement of the advertisement. The respondent must suffer for being negligent.

16. As regards the plea of discrimination, Shri Naresh Kaushik learned counsel for UPSC informs us that applications were invited for 37 disciplines, as detailed in the advertisement, and the same were processed discipline-wise by different Under Secretaries at UPSC and that one Under Secretary wrongly accepted applications of two persons, but not in the discipline in which the respondent had applied, but this would not entitle the respondent to any relief.

17. We concur. Equality in the negative is not recognized by law. There cannot be equality in a wrong.ö

5.5.4 **In Dr.Poonam Gupta Vs. Union of India and others (supra),**
the applicant, while working as Assistant Professor (Microbiology) in the
Lady Hardinge Medical College, New Delhi, she made online recruitment
application on 8.9.2013 for selection and recruitment to the post of Specialist
Grade II (Microbiology)/Non-Teaching. In her online recruitment
application, the applicant did not mention her to have possessed the essential

qualification. On 3.6.2014, she sent copies of her Degree Certificate of M.D.(Microbiology), which certificate she had obtained in the year 2009, and Experience Certificate, along with a representation to the UPSC. As the applicant was not called to appear for interview, and her application was rejected, she filed O.A. before the Tribunal. The learned counsel appearing for the applicant contended that as the applicant had, in fact, possessed the essential qualification of Degree of MD (Microbiology) in the year 2009 and intimated the said fact to the respondent-UPSC, vide her representation dated 3.6.2014, along with copy of the certificate of Degree of MD (Microbiology), the rejection of her online application was illegal and arbitrary. On the basis of the interim order passed by the Tribunal, she appeared at the interview, and, as per the result of her interview, she was recommended for appointment. *Per contra*, it was submitted by the learned counsel for the respondent-UPSC that the applicant's online application was rightly rejected. The short-listing of candidates was done by the UPSC on the basis of the information furnished by the candidates in their online applications. The interim order passed by the Tribunal directing the respondent-UPSC to allow the applicant to provisionally appear at the interview could not, in law, revive her application which was rejected by the UPSC in accordance with the terms and conditions of the advertisement. The applicant's interview and her result of the interview, being subject to the outcome of the O.A. would not entitle her to the relief sought in the O.A. The applicant cannot be allowed to derive any benefit out of the interim

order which is always subject to the final result of the O.A. Dismissing the O.A. filed by the applicant, the Tribunal observed thus:

ð13. From the copy of the applicant's online application (Annexure A/2 to the O.A.), it transpires that the applicant in her online application, under the heading '**Educational Qualification(s)**', mentioned as follows:

ðEducational Qualification(s)

Qualification Type	Degree	Subject	Qualification level	Specialization (Mandatory Subject)	University / College	Duration From & To	Date of Notification of Result/Issue of Final Marksheets	Division/Class	Result Type/Result Score	Date of Degree
Essential	MBBS	MBBS	Graduation & Medical/ Dental/ Vet/AYUSH		Himachal Pradesh University Shimla/Indira Gandhi Medical College, Shimla	Aug 1997 & May 2002	24-05-2002	1 st	Percentage / 62	23-11-2003

It is thus clear that the applicant did not mention in her online application to have possessed the essential qualification **(ii) Post Graduate Degree, i.e., 'MD (Microbiology)' and other details, like qualification level, the name of the University/College, duration of the course, date of notification of result/issue of final mark sheet, division/class assigned to her in the Degree Examination, percentage of marks scored by her, and the date of Degree, under the heading 'Educational Qualification(s)'**. The closing date for submission of online applications was 12.09.2013. The letters were issued to the candidates by the UPSC on or about 30.5.2014 asking them to send the self-attested copies of the documents to the UPSC. The applicant, perhaps, after coming to know that candidates were issued letters on or about 30.5.2014 to send the self-attested photocopies of documents in support of the particulars furnished in the online applications, and that she did not fill the particulars regarding her Degree qualification, i.e, MD (Microbiology) in her online application, she made a representation dated 3.6.2014, along with the copy of the Degree Certificate of MD (Microbiology), to the Secretary, UPSC. As, admittedly, the applicant did not mention her essential qualification, i.e., MD (Microbiology) in the online application, and the UPSC short-listed the candidates, who were found to have submitted the online applications complete in all respects and mentioning the essential qualification with particulars thereof and were also found eligible on the basis of the information provided by them in the online applications to be called to appear for the interview, there was no scope for the UPSC to accept the Degree Certificate of MD (Microbiology) sent by the applicant along with her representation dated 3.6.2014 and entertain her

application. Acceptance of copy of the Degree Certificate of MD (Microbiology) of the applicant by the UPSC, after short-listing of candidates was done, would not only have breached the terms and conditions of the advertisement/recruitment notice, but also given rise to similar claims by other candidates whose online applications were rejected by the UPSC, while short-listing the candidates, because of their not mentioning the essential qualifications and particulars thereof in the online applications, besides creating sheer administrative chaos and resulting in legal complications in the entire gamut of selection process. Keeping in mind the ratio of the decisions in *S.Krishna Chaitanya's case(supra)*, *Sachin Kumar Rana's case(supra)*, *Shri N.K.Joshi's case (supra)*, and *Gudipati Gayatri Kashyap's case (supra)* and after having given our anxious consideration to the facts and circumstances of the case and the rival contentions raised by the learned counsel appearing for the parties, we find no infirmity in the decision of the respondent-UPSC rejecting the application made by the applicant because of her non-mentioning the essential qualification in the online application.ö

6. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contentions of the applicant.
7. Admittedly, the applicant did not mention her LLM qualification in the online recruitment application. As per the terms and conditions of the Advertisement, the respondent-UPSC shortlisted the candidates for interview on the basis of the information provided by them in their online recruitment applications. In view of the fact that several candidates were shortlisted on the basis of the information provided them, which included the LLM qualification, in their online recruitment applications, we are not inclined to accept the applicant's plea of technical glitch in the software. The Advertisement nowhere provided that in a case where the candidate failed to mention any qualification in his/her online

recruitment application, he/she could make a representation along with copies of certificates, and the respondent-UPSC could entertain the same and consider his/her candidature on the basis of those certificates. Having failed to mention her LLM qualification anywhere in the online recruitment application, the applicant had no right to be shortlisted for interview on the basis of LLM qualification certificate subsequently furnished by her along with the representation dated 5.12.2014. Therefore, the action of the respondent-UPSC in not shortlisting and calling the applicant to appear for interview cannot be said to be fraught with any illegality or irregularity whatsoever.

8. As regards the applicant's plea of discrimination, we have found that S/Shri Rajiv Kumar Kamboj and Ankit Agarwal had mentioned about their LLM qualification though not under Educational Qualification column but under Desirable Qualification column of their online recruitment applications. The applicant, who did not mention about her LLM qualification anywhere in the online recruitment application, cannot be said to be similarly placed as S/Shri Rajiv Kumar Kamboj and Ankit Agarwal. Furthermore, even if it is assumed that the said S/Shri Rajiv Kumar Kamboj and Ankit Agarwal ought not to have been allowed to appear in the interview in view of their having mentioned the LLM qualification not under Educational Qualifications but under Desirable Qualification column of their online recruitment applications, and the respondent-UPSC wrongly allowed them to appear in the interview, neither the applicant could claim to

be allowed to appear in the interview, nor could the Tribunal declare the action of the respondent-UPSC in not shortlisting and/or allowing the applicant to appear in the interview as illegal and arbitrary, on the ground that the said S/Shri Rajiv Kumar Kamboj and Ankit Agarwal were allowed to appear in the interview. The doctrine of discrimination is founded on existence of an enforceable right. Article 14 of the Constitution of India would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. Article 14 of the Constitution of India is not meant to perpetuate illegality, and does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such decision does not confer any legal right on the applicant to get the same relief. One may be wrong, but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. Equality in the negative is not recognized by law. There cannot be equality in a wrong. In view of the above, we find that the plea of discrimination raised by the applicant in support of the relief claimed by her in the O.A, besides being baseless, is untenable.

9. When the applicant was not entitled to be shortlisted for interview, and when there was no infirmity in the decision of the respondent-UPSC in not short-listing and calling the applicant to appear in the interview, we do not find any substance in the contention of the applicant that having fulfilled the short-listing criteria, and having been named in the

list of candidates qualified at the interview, she should not be deprived of appointment to the post merely because of her not mentioning the LLM qualification in the online recruitment application. As the applicant is not entitled to the relief claimed by her in the O.A, she cannot be allowed to derive any benefit out of Tribunal's interim order, on the basis of which she appeared at the interview. The acceptance of the applicant's contention would amount to granting the relief to which she is not legally entitled.

10. As discussed by us in paragraph 4.2.1 above, the respondent in **Commissioner of Police, Delhi and another Vs. Dhaval Singh** (supra) was a candidate for selection and recruitment to the post of Constable in Delhi Police. After written test, physical endurance test, and interview, he was provisionally selected for appointment, pending verification of his conduct and character. Prior to issuance of the appointment order, he voluntarily intimated the appellant-authority that an inadvertent mistake was committed by him in not mentioning in his application about a criminal case pending against him. The appellant-authority, without considering the respondent's plea, cancelled his candidature, and rejected his representation. Therefore, the Tribunal set aside the orders issued by the appellant-authority, and the Hon'ble Supreme Court upheld the decision of the Tribunal.

10.1 But, in the instant case, on the basis of the information provided by her in the online recruitment application, the applicant was not eligible to be shortlisted to be called to appear in the interview for selection and recruitment to the post of Assistant Public Prosecutor, for which the

minimum essential qualification was Degree in Law/LL.B. with three years of experience at the Bar. Her application was rejected at the threshold. That is to say, she was not shortlisted to be called to appear in the interview. But, by virtue of the Tribunal's order, she was provisionally allowed by the respondent-UPSC to appear in the interview. Before the Tribunal, she failed to substantiate her pleas about technical glitch in the software, and discrimination. In the above view of the matter, and considering the level of educational qualifications and experience required to be possessed by the candidates for selection and appointment to the post of Assistant Public Prosecutor, we are not inclined to take a view that the mistake committed by the applicant in not mentioning her LLM qualification in the online recruitment application was inadvertent and/or minor in nature and could have been condoned by the respondent-UPSC when the applicant subsequently made the representation dated 5.12.2014 along with the copy of LLM certificate. Therefore, we find that the decision in **Commissioner of Police, Delhi and another Vs. Dhaval Singh** (supra), besides being distinguishable on facts, is of no help to the case of the applicant.

11. Tested on the touchstone of the decisions of the Hon'ble High Court of Delhi in **Dr. Vineer Relhan Vs. Union Public Service Commission and another** (supra); **Union Public Service Commission Vs. Government of NCT of Delhi, etc.** (supra); and **Union Public Service Commission Vs. Dheerender Singh Paliwal** (supra); and the decision of the Tribunal in **Dr. Poonam Gupta Vs. Union of India and others** (supra),

which have been discussed by us in paragraphs 5.5.1 to 5.5.4 above, we have no hesitation in holding that the present O.A. is devoid of merit and liable to be dismissed.

12. Accordingly, the O.A. is dismissed. The interim order stands vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(V.N.GAUR)
ADMINISTRATIVE MEMBER

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