

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4497 OF 2014

New Delhi, this the 30th day of August, 2016

CORAM:

**HON'BLE SHRI P.K.BASU, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

Anil Bansal, aged 29 years,
S/o Sh.O.P.Bansal,
C/o Kumar Machinery Store Ratia
Road Tohana, Fatehabad,
Haryana 125120

í í Applicant

(By Advocate: Shri 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

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Respondents

(By Advocate: M/s Vijay Pandita & Anmol Pandia for Respondents 1 & 2; and Mr. Ravinder Agarwal for R-3)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- ða) declare that the impugned action/inaction shortlisting criteria impugned at Annexure A/1 is absolutely illegal, arbitrary and unjustified;
- b) direct the respondents to further consider the candidature of the applicant to the post of Assistant Public Prosecutor for the purpose of appointment in accordance with their merit position;
- c) award all consequential benefits; and
- d) pass any order/relief/direction(s) may deem fit and proper in the interests of justice in favour of the applicants.ð

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 (14081315209) 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:

ðAge: 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.”**

2.2 In response to the Advertisement, the applicant submitted online recruitment application as a General candidate. In his online

recruitment application, under the column “Educational Qualification(s)”, the applicant mentioned as follows:

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	LLB	Law	Graduation-Law		Maharishi Dayanand University, Rohtak/ Department of Law	Jun 2006 – May 2009	14-07-2009	IInd	Percentage / 57	31-03-2010

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, were 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 & 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 his Roll No.62.

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	EQ(A) raised to LLM + EQ(B) raised to 4 years and 9 months	7	81 (Including 03 PH- B(Blind) & 02 PH-OH (Orthopaedically Handicapped)
6	GENERAL	EQ(A) raised to LLM + EQ(B) raised to 4 years and 9 months	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 filed this Original Application on 16.12.2014 seeking the reliefs as aforesaid. The Tribunal, by its interim order dated 17.12.2014, directed the respondent-UPSC to allow the applicant to participate in the interview provisionally, with the stipulation that his 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.

2.8 In compliance with the Tribunal's interim order dated 23.2.2015, the respondent-UPSC produced the results of interview before the Tribunal on 5.3.2015. After perusing the results of interview, the Tribunal observed that the applicant's name appeared in the list of candidates qualified in the interview, vide order dated 5.3.2015.

3. In the above context, it was submitted by Shri Ajesh Luthra that when the statutory Recruitment Rules prescribe LL.B. qualification, and three years experience at the bar for a person to be eligible for being considered for appointment to the post of Assistant Public Prosecutor, the respondent-UPSC ought not to have evolved and adopted the impugned shortlisting criteria solely on the basis of administrative instructions contained in the Advertisement, as a consequence of which the candidates, like the applicant, were excluded from the zone of consideration, although they fulfilled the eligibility criteria stipulated in the Recruitment Rules and remained entitled to be considered for selection.

3.1 It was also submitted by Shri Ajesh Luthra, the learned counsel appearing for the applicant that if at all the respondent-UPSC decided to shortlist the candidates to be called for interview, the respondent-UPSC ought to have held a Recruitment Test which was also one of the five methods mentioned in the Advertisement for shortlisting the candidates. The

respondent-UPSC acted illegally and arbitrarily in evolving and adopting different shortlisting criteria for different categories of candidates.

3.2 It was also submitted by Shri Ajesh Luthra that the applicant had gained two years^Ø experience of working as ad hoc Assistant Public Prosecutor under the Home Department, Government of NCT of Delhi. As per notes 1 and 2, appended to Column (8) of the Schedule to the Recruitment Rules for the post of APP, both educational qualification and experience qualification are relaxable at the discretion of the respondent-UPSC. Therefore, taking into consideration the applicant^Øs working experience as A.P.P., the respondent-UPSC ought to have shortlisted the applicant to be called for interview.

3.3 It was also submitted by Shri Ajesh Luthra that when a selection process is aimed to find out the best talent, the applicant having succeeded in the interview is proved to be better than others and, therefore, he should not be denied appointment for any reason whatsoever including the reason relating to administrative inconvenience. It was, thus, contended by Shri Ajesh Luthra that it is a fit case where the Tribunal should direct the respondent-UPSC to declare the result of the applicant, and nominate him for appointment.

4. *Per contra*, Mr.Ravinder Agarwal, the learned counsel appearing for the respondent-UPSC submitted that the shortlisting criteria have been evolved and adopted by the respondent-UPSC as per the provisions contained in the Advertisement. It was also submitted by

Mr.Ravinder Agarwal that while making online recruitment application, the applicant was once again made to understand about the shortlisting criteria to be evolved and adopted by the respondent-UPSC in the event of number of applications being large. It was contended by Mr.Ravinder Agarwal that the terms and conditions contained in the advertisement being sacrosanct are binding on the UPSC and the candidates, and, therefore, the applicant cannot be allowed to question the shortlisting criteria which have been evolved and adopted in accordance with the terms and conditions of the Advertisement.

4.1 It was also submitted by Mr.Ravinder Agarwal that having failed to fulfill the shortlisting criteria, the applicant was not shortlisted for being called to appear for interview. There being no infirmity in the decision of the respondent-UPSC in not shortlisting the applicant to appear for interview, the O.A. filed by the applicant is liable to be dismissed. When in compliance with the Tribunal's interim order, the applicant was only provisionally allowed to appear at the interview, he cannot be allowed to claim either publication of result or recommendation of his case by the UPSC to the Government on the basis of result of his interview for appointment to the post.

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

- (i) **Madhya Pradesh Public Service Commission, etc. Vs. Navnit Kumar Potdar and another, (1994) 6 SCC 293;**

- (ii) **Union of India and another Vs. T.Sundarraman and others**, (1997) 4 SCC 664;
- (iii) **B.Ramakishenin alias Balagandhi Vs. Union of India and others**, MANU/SC/4387/2007: (2008)1 SCC 362
- (iv) **Swapnil Gupta, etc. Vs. Union Public Service Commission, etc.**, OA No.832, 808 and 842 of 2015, decided on 18.9.2015; and

4.2.1 **In Madhya Pradesh Public Service Commission, etc. Vs. Navnit Kumar Potdar and another** (supra), the question that arose for consideration of the Hon'ble Supreme Court was as to whether in the process of short-listing, the Commission altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It was held by the Hon'ble Supreme Court that where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis. Where selections are to be made only on the basis of interview, then such interview/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. The sole purpose of holding interview is to search and select the best among the applicants. It would be possible to carry out a satisfactory viva voce test if

large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It is 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. 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 the 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. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the

number 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 the 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 also been held by the Hon'ble Supreme Court that 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) of the M.P. Industrial Relations Act, 1960 which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c), *ibid*, 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.

4.2.2 In Union of India and another Vs. T.Sundarraman and others (supra), the Union Public Service Commission issued advertisement inviting applications for three posts of Assistant Professors of Medicine. The

essential qualifications for the post were set out in the advertisement. One of the qualifications was: at least three years^Ø teaching experience in the speciality concerned as a Lecturer/Tutor/Demonstrator/Senior Resident/Registrar after obtaining the requisite postgraduate degree qualification. Note 21 to the advertisement stated that the prescribed essential qualifications were the minimum qualifications and a mere possession of minimum qualifications does not entitle the candidates to be called for interview. Where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or by holding a screening test. 37 applications were received for the three posts. The Commission thereupon shortlisted the candidates to be called for interview on the basis of 4 years^Ø experience or more. As a result, 20 candidates were called for interview. Respondent No.1 did not qualify for shortlisting and hence he was not called for interview. Being aggrieved, he filed an application before the Tribunal for setting aside the selection by challenging the shortlisting. The Tribunal remitted the case to the Commission for reprocessing all applications including that of the applicant for fresh selection, disapproving of the shortlisting done by the Commission. Setting aside the order of the Tribunal and allowing the appeal, the Hon^{ble} Supreme Court held thus:

04. 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 qualifications. In the case of **M.P. Public Service Commission V. Navnit Kumar Potdar**, (1994) 6 SCC 293, 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 A.P. V. P. Dilip Kumar**, (1993) 2 SCC 310, 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 qualifications to enter the zone of consideration. The procedure, therefore, adopted in the present case by the Commission was legitimateí ..ö

4.2.3 **In B. Ramakichenin alias Balagandhi Vs. Union of India and others** (supra), the Honorable Supreme Court has observed thus:

020. However, in this case we have noticed that in paragraph 3.1 of the advertisement of the UPSC dated 23.5.1998, the method of short-listing has been given. Hence the UPSC cannot resort to any other method of short-listing other than that which has been prescribed in paragraph 3.1. In the said paragraph of the advertisement, it is mentioned that the Commission may restrict the number of candidates on the basis of either qualifications and experience higher than the minimum prescribed in the advertisement or on the basis of the experience higher than the minimum prescribed in the advertisement or on the basis of experience in the relevant field. In other words, it was open to the UPSC to do short-listing by stating that it will call only those who have Ph.D. degree in Agriculture (although the essential degree was only M.Sc. degree in Agriculture). Similarly, the UPSC could have said that it would only call for interview those candidates who have, say, five years experience, although the essential requirement was only two years experience. However, experience after getting the M.Sc. degree cannot be said to be higher than the experience before getting the M.Sc degree. Also, the advertisement dated

23.5.1998 does not mention that two years experience must be after getting the M.Sc. degree.ö

4.2.4 In **Swapnil Gupta, etc. Vs. Union Public Service Commission, etc.** (supra), the coordinate Bench of the Tribunal, relying on the decisions of the Honøble Supreme Court in **Madhya Pradesh Public Service Commission, etc. Vs. Navnit Kumar Potdar and another** (supra), and **Union of India and another Vs. T.Sundarraman and others** (supra), dismissed the Original Applications filed by the applicants challenging the power and authority of the Union Public Service Commission to shortlist the candidates for being considered in the selection process for appointment to any post.

5. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions in the light of the decisions cited by Mr.Ravinder Agarwal, the learned counsel appearing for the respondent-UPSC, we have found no substance in any of the contentions of the applicant. The shortlisting criteria are found to have been evolved and adopted by the respondent-UPSC in accordance with the terms and conditions of the Advertisement. The terms and conditions of the Advertisement being sacrosanct are binding on the respondent-UPSC and all candidates, and, therefore, the applicant cannot be allowed to question the shortlisting criteria. Mere possession of the eligibility qualifications by the applicant, as prescribed in the Recruitment Rules, does not make him entitle either to be shortlisted for interview or to be considered for selection. As the shortlisting criteria for different categories of candidates are found to have

been evolved and adopted by the respondent-UPSC strictly as per the terms of the advertisement with due regard to the number of applications received from different categories of candidates, we do not find any illegality or irrationality in the shortlisting criteria. When candidates possessing the qualification and experience as per the shortlisting criteria were available and were in fact called to appear for interview, we do not find any substance in the contention of the applicant that in view of his working experience as ad hoc Assistant Public Prosecutor under the Government of NCT of Delhi for about two years, the respondent-UPSC ought to have shortlisted him to appear for interview and considered him for selection by relaxing the qualification mentioned in the shortlisting criteria as per the provisions of the Recruitment Rules. When the applicant was not entitled to be shortlisted for interview because of his not having fulfilled the shortlisting criteria, and when there was no infirmity in the decision of the respondent-UPSC in not short-listing and calling the applicant to appear for interview, we do not find any substance in the contention of the applicant that his success in the interview goes to prove that he is better than others and, therefore, the respondent-UPSC should recommend him for appointment to the post. As the applicant is not entitled to the relief claimed by him and the O.A. being devoid of merit is liable to be dismissed, he cannot be allowed to derive any benefit out of the Tribunal's interim order, on the basis of which he appeared in the interview. The acceptance of the applicant's contention would amount to granting the relief to which he is not legally entitled.

6. In the light of our above discussions, we hold that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. The interim order stands vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(P.K.BASU)
ADMINISTRATIVE MEMBER

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