

**Central Administrative Tribunal
Principal Bench**

**OA No.4404/2012
MA No.3506/2018, MA No.1168/2017 and MA
No.3808/2018**

New Delhi, this the 26th day of September, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Dr. Kamal Chandra Tiwari, Age 42 years
S/o Sh. Ram Pher Tiwari
R/o Flat No.5, Kudale Patil Corner
Vadgaon B.K., Sinhgad Road
Pune-1. ...Applicant

(By Advocate: Sh. S.K. Gupta and Shri Vikram Singh)

Versus

Union of India through

1. Secretary, Ministry of Defence
South Block, New Delhi.
2. National Defence Academy
Through its Commandant
Kharakwasla, Pune-411023.
3. Union Public Service Commission
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi.
4. Dr. Jagmohan Mehar
Department of Political Science
National Defence Academy
Kharakwasla, Pune. ..Respondents

(By Advocates: Shri Rattan Lal with Shri Akhil Chaudhary for Res. No.1 and 2, Shri R.V. Sinha with

Shri Amit Sinha for Res. No.3 and Shri L.R. Khatana for Res. No.4)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

This OA is filed challenging the selection to the post of Professor (Political Science) in the National Defence Academy, Kharakwasla (Respondent No.2), in terms of Advertisement No.7/2012, as illegal and arbitrary. The applicant has also sought a declaration to the effect that respondent No.4 is ineligible in terms of the essential requirements of the advertisement. Direction to respondent No.3 (UPSC) to conduct the selection afresh, is also sought.

2. The relevant facts are that, the National Defence Academy (NDA), the 2nd respondent issued an advertisement in July 2012 inviting applications for the post of Professor(Political Science). The process of selection was entrusted to the UPSC, the 3rd respondent. The applicant herein, the 4th respondent and one Shri S.S. Mishra applied. All the three are internal candidates and were found to be eligible. The interview was conducted on 10.12.2012. The 4th

respondents was selected and appointed as Professor(Political Science).

3. The applicant contends that the 4th respondent did not hold the essential qualifications stipulated in the Recruitment Rules and the advertisement; and still he was treated as eligible and appointed. According to him, scoring of 400 marks in the Appraisal Performance Indicator (API) is essential and though the 4th respondent claimed that he has 422 marks to his credit, it is far less than that, if properly calculated. The applicant further contends that the selection committee did not apply the correct criterion and the entire selection process is vitiated.

4. Separate counter affidavits are filed by respondent Nos.1 & 2, respondent No.3 and respondent No.4. They contend that in the advertisement itself it was clearly mentioned that the score in API is an alternative for the outstanding performance with established reputation in Political Science and even if it is assumed that the API score of the 4th respondent is not adequate, the selection is not vitiated. They further contend that the relevant note appended to the notification, clearly

mentioned that the API need not be insisted upon and the Ministry of Finance has also endorsed the same view in the context of the present selection.

5. We heard Shri S.K. Gupta, learned counsel for the applicant and Shri Rattan Lal, Shri Akhil Chaudhary, Shri R.V. Sinha and Shri L.R. Khatana, learned counsel for the respondents.

6. The selection and appointment is to the post of Professor (Political Science) in the NDA. It is an unreserved post and all the same the candidates with certain extent of physical disability are also treated as eligible. The essential qualifications stipulated for the post are as under:-

"(A)(i) An eminent scholar with Ph.D qualification(s) in Political Science and published work of high quality, actively engaged in research with evidence of published work with a minimum of ten publications as books and/or research or policy papers. (ii) A minimum of ten years of teaching experience in Political Science in University/College, and/or experience in research at the University/National Level Institutions/Industries, including experience of guiding candidates for research at doctoral level. (iii) Contribution to educational innovation design of new curricula and courses, and technology -mediated teaching learning process (iv) A minimum score of 400 as stipulated in the Academic Performance Indicator (API) based performance Based

Appraisal System (PBAS) by the University Grants Commission(UGC) OR (B) An outstanding professional with established reputations in Political Science, who has made significant contributions to the knowledge in Political Science, to be substantiated by credentials. Note: 1 to Note 6, Duties & HQ are same as in Item No.2 above."

7. Here itself it becomes necessary to refer to Note No.2 which exists in the same notification, but in the context of another vacancy. It reads as under:-

"Note No.2: The term Outstanding Professional" for the post of Professor means that those candidates who possess the essential educational at par with (A) (i) to (iii) above. However, the EQA (iv) i.e. API score should not be insisted upon."

8. From a perusal of this, it becomes clear that a candidate, to be treated as eligible must ;

(i) hold Ph.D. qualification in Political Science having published work of high quality and have actively engaged in research with evidence of published work with a minimum of 10 publications as Books or research or policy papers; [A(i)]

2(a) have a minimum 10 years of teaching experience in Political Science in University/College; or

b) experience in Research at the University/National Level Institutions/Industries including experience of guiding candidates for research at doctoral level. [A(ii)]

3. have contributed to educational innovation design of new curricula courses and technology mediated teaching learning process.[A(iii)]

4(a) have scored 400 marks in the API performance based Appraisal System(PBAS) by the UGC. [A(iv)] or

b) be an outstanding Professor, with established reputation in Political Science; who made significant contribution to the knowledge in Political Science.

9. As regards the first requirement, there is no alternative and invariably a candidate must hold a Ph.D. with a publication to his credit as indicated therein. The second requirement has two alternatives

i.e., a minimum of 10 years of teaching experience in University/national level institutions; or the experience in research at the university level institutions/industries. This requirement is singular.

10. Coming to the 4th requirement, there are two clear alternatives. If a candidate had to his credit, a score of 400 marks in the API, he would be eligible. In case he does not have to his credit such marks, he would still be eligible if he is assessed as outstanding Professional with established reputation, in Political Science. The guidelines issued by the UPSC would help one to determine whether or not a person can be treated as outstanding professional.

11. Respondent Nos. 1, 2 and 3 processed the three applications and found them to be in order. Then began this process of selection, which is totally in the realm of UPSC.

12. The endeavour of the applicant is to convince the Tribunal that the 4th respondent did not hold the requisite qualification at all. Though there is serious dispute as to the reckoning of marks of API, adopted by him, we give the benefit of doubt to the applicant and

proceed on the assumption that the 4th respondent does not have to his credit, the requisite marks under the API. Still there is an alternative on account of which the 4th respondent can be treated as eligible. It is for the concerned agency to satisfy itself as to whether the 4th respondent has fulfilled the alternative qualification. When the applicant is of the view that the qualification mentioned in clause 4 are indivisible and they constitute only one, the whole basis of his contention falls to ground.

13. The applicant himself has filed the copies of the proceedings of the selection committee of the UPSC for the present selection through MA No.1168/2017. The following is mentioned, in the proceedings:-

“13. PS for 1(one) Unreserved Post:

Following criteria has been adopted for shortlisting the candidates:-

EQ-A(i) + EQ-A(ii) + EQ-A(iv) or EQ-B

On the basis of the above criteria adopted, the following candidates are found suitable to be called for interview.”

14. This discloses that as regards 4th requirement, the qualification (A) or (B) were treated as alternatives and not dual requirements.

15. Reliance is placed upon a judgment of Madhya Pradesh High Court in WP(C) No.3331/2013, **Dr. Rajesh Gautam v. Dr. Hari Om Gour.** A clause which is akin to clause 2 of the advertisement therein was analyzed indicating as though the ten years of teaching experience shall be in addition to the experience of guiding candidates for research at doctoral level. We are of the considered view that such interpretation does not fit into the very language of the clause. At any rate, that ground was not pleaded in the O.A. nor was strongly urged in the arguments.

16. Once it is established that the three candidates were eligible, the scene shifts to the selection process. It is fairly well settled that the Court or Tribunal cannot peep into the mind of the selection committee and it cannot substitute its own opinion, howsoever tempting it may be.

17. Though it is brought to our notice that the Ph.D. degree awarded to the applicant by the Tilak

Maharashtra Vidyapeeth was cancelled and withdrawn through proceedings dated 10.05.2018 of that university, we do not take that into consideration at this stage.

18. We do not find any merit in the OA and accordingly the same is dismissed. There shall be no order as to costs.

(Aradhana Johri) (Justice L. Narasimha Reddy)
Member(A) Chairman

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