

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1388/2017

Reserved on : 15.10.2018
Pronounced on : 02.11.2018

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

1. B. Naveen Kumar S/o late T. V. Balakrishna Pisharody,
Presently working as Deputy Director (Law)
(on deputation),
Competition Commission of India,
HT Building, K.G. Marg, New Delhi.
2. Siva Bharath Kumar Dabbeeru,
Assistant Legal Advisor,
Directorate of Enforcement,
House No.20, By Lane No.1,
Rajgarh Road, Zonal Office,
Guwahati-781003.
3. S. K. Batra,
Assistant Legal Advisor,
Directorate of Enforcement,
1st Floor, U.T. Government Press Building,
Madhya Marg,
Sector 18, Zonal Office,
Chandigarh-160018.
4. Gautam Narayan Ghosh S/o late N. C. Ghosh,
Presently working as Deputy Director General
(on deputation) at the
office of Director General,
Competition Commission of India,
Bhikaji Cama Place,
New Delhi. Applicants

(By Mr. Robin Mazumdar, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110001.
2. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
3. Director,
Directorate of Enforcement,
6th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.
4. Mr. G. Suresh Babu,
Assistant Legal Adviser,
Directorate of Enforcement,
Presently on deputation to MEPZ,
Special Economic Zone,
GST Road, Tambaram,
Chennai-600045.
5. Mr. Satya Prakash,
Assistant Legal Adviser,
Directorate of Enforcement,
101, Janmabhoomi Chambers,
Welchand Hirachand Marg,
Mumbai-400001.
6. Aswini Kumar Panda,
Assistant Legal Adviser,
Directorate of Enforcement,
CGO Complex, 3rd MSO Building,
6th Floor, C&D Wing, DF Block,
Salt Lake, Sector-1, Kolkata-700064.
7. Mr. A. B. Ravvi,
Assistant Legal Adviser,
Directorate of Enforcement,
3rd Floor, Murugesa Naicker Office Complex,
Greams Road, Thousand Lights,
Chennai-600006. ... Respondents

(By Mr. A. K. Behera, Mr. Rajeev Kumar and Mr. Hanu Bhaskar, Advocates)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicants are working as Assistant Legal Advisors (ALAs) in the Directorate of Enforcement, New Delhi, the 3rd respondent herein. Appointment to that post under the relevant rules is 50% by deputation/transfer, failing which by direct recruitment, and 50% by direct recruitment. The applicants were appointed through the process of direct recruitment.

2. For the purpose of filling vacancies earmarked for deputation/transfer, the 1st respondent issued an advertisement through office memorandum dated 20.01.2009. The qualifications to be held by the candidates and the method of submitting applications were indicated. Respondents 4 to 7, and various others applied. The selection process was entrusted to the UPSC, the 2nd respondent herein. Respondents 4 to 7 were selected and were appointed as ALAs in the office of the 3rd respondent. Their appointment is challenged in this OA.

3. The applicants contend that respondents 4 to 7 do not fulfill the qualifications stipulated under the rules, and that though the advertisement was issued for appointment of ALAs only for deputation, respondents 4 to 7 were permanently absorbed. Several other contentions are also urged.

4. Separate counter affidavits are filed by respondents 1 and 3, respondent No.2, and individually by respondents 4 to 7. The various contentions urged by the applicant are dealt with elaborately in the counter affidavit filed by respondent No.2. It is stated that the applicants do not have *locus standi* to challenge the selection of respondents 4 to 7, since they were not contenders to those posts at all. It is also stated that the selection and appointment of ALAs in the category of deputation/transfer was undertaken strictly in accordance with the relevant rules and prescribed procedure, and that there are no merits in the OA.

5. We heard Shri Robin Mazumdar, learned counsel for the applicants, and Shri A. K. Behera, Shri Rajeev Kumar and Shri Hanu Bhaskar, learned counsel for the respondents.

6. Appointment to the post of ALA is through deputation/transfer to the extent of 50%, and by direct recruitment in the remaining 50%. The applicants herein were appointed as ALAs through direct recruitment at different points of time. Respondents 1 to 3 initiated the process of appointment through deputation/transfer. Since the applicants were holding those very posts, having been recruited directly, there was no question of their responding to the advertisement issued through office memorandum dated 20.01.2009. Strictly speaking, they do not have *locus standi* to challenge the appointments of respondents 4 to 7. Assuming that their grievance was that respondents 4 to 7, on being appointed as ALAs, would be contenders in the promotions to higher posts in the future, it needs to be verified whether the selection and appointment of respondents 4 to 7 is vitiated in any manner.

7. The qualifications for the post of ALA are stipulated not only in the rules, but also mentioned in the office memorandum dated 20.01.2009. They read as under:

“2. In terms of the Recruitment Rules, the following categories of officers are eligible:

Officers under the Central or the State Governments -

a)(i) holding analogous posts or posts of Public Prosecutor with 8 years regular service in the grade; or

(ii) with 5 years regular service in the posts in the scale of Rs.8,000-13,500 or equivalent; or

(iii) with 8 years regular service in the posts in the scale of Rs.6500-10,500 (pre-revised) or equivalent; and

b) Possessing the following qualifications and experience:-

(I)(i) Degree in Law of a recognized University or equivalent.

(ii) 7 years experience as member of a State Judicial Service or in a superior post in the legal Department of a State Govt.

Or

7 years experience in legal affairs in a Central Government organization.

Or

7 years experience as a qualified legal practitioner or a teacher of law.

Or

Master's degree in law of a recognized University or equivalent and with 5 years experience as a qualified legal practitioner or in teaching or research in law, in the law faculty of a University."

8. Though the applicants have drawn different inferences about the qualifications held by the respondents 4 to 7, the UPSC, in its counter affidavit has furnished the relevant particulars as under:

“19. That from the above, it is evident that for a candidate to be eligible for consideration under criteria for Qualification and Experience, he must fulfill the eligibility criteria under (a)(i) and (a)(ii) or (b). As against above criteria, the Educational Qualification and experience possessed by the Respondent No.4-7 is as under:

- (a) Respondent No.4 i.e. Shri G. Suresh Babu - As per Bio-data, he is Bachelor of Law from the University of Madras and possessed more than 10 years of experience in legal affairs of the Directorate of Enforcement.
- (b) Respondent No.5 i.e. Shri Satya Prakash - As per Bio-data, he is LLB and possessed 20 years experience in dealing with legal matters in the office of Central Govt.
- (c) Respondent No.6 i.e. Shri Aswini Kumar Panda - As per Bio-data, he is LLB and possessed more than seven years of experience as Assistant Enforcement Officer dealing with court matters in Metropolitan, Session & High Courts, COFEPOSA Advisory Board, Appellate Tribunal for Foreign Exchange since 19.12.1988.
- (d) Respondent No.7 i.e. Shri A. B. Ravvi - As per Bio-data, he is LLB and LLM and had possessed more than seven years of experience as Gazetted officer dealing with legal matters in various capacities in RBI; in Govt. of India since 1997.”

From this, it is evident that the selecting agency, i.e., the UPSC,

was satisfied about the qualifications held by respondents 4 to

7. Though the applicants filed a rejoinder, this aspect is not

dealt with nor it is demonstrated that respondents 4 to 7 are not qualified.

9. The emphasis of the applicants is mostly on the "absorption" of the respondents 4 to 7 into the service. Here again, there is a fallacy in their approach. The advertisement was issued inviting candidates for deputation as well as transfer. Appointment by transfer, by its very nature is permanent feature, and on being appointed through such means, the candidate becomes a permanent member of the establishment in which he is appointed by transfer. Deputation, on the other hand, stands on a different footing. If a candidate who is appointed on deputation continues for some time and makes a request for absorption into the borrowing department, he can be absorbed in case the borrowing department is satisfied with his services, and the lending department has no objection. The question of absorption does not arise in case of appointment by transfer. Without maintaining this subtle distinction, the applicants went on making one allegation or the other on account of their firm dislike of the appointment of respondents 4 to 7 as ALAs.

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

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/