

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.238 OF 2017

Dated this Wednesday, the 14th day of February, 2018

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

*Amrita Chowdhury, Age 30 years,
Working as Examiner of Trade Marks
and Geographical Indications
(on Contract basis)
R/at M-11, C wing, Flat No.502,
Sundar Vihar, Pratiksha Nagar,
Mumbai 22. .. Applicant.
(By Advocate Shri Vicky Nagrani)*

Versus

1. *Union of India, Through the Secretary,
Ministry of Commerce and Industry,
Department of Industrial Policy
and Promotion, Udyog Bhawan,
New Delhi 110 107.*
2. *The Chairman / Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110 069. .. Respondents.
(By Advocate Shri A.M.Sethna for respondent No.1
and Shri N.K.Rajpurohit for respondent No.2)*

OA filed on 10.04.2017

Order reserved on 29.01.2018

Order delivered on 14.02.2018

O R D E R

PER : SHRI ARVIND J. ROHEE, MEMBER (JUDICIAL)

The applicant who is presently working as Examiner of Trade Marks and Geographical Indications on contract basis with Government of India has filed

the present OA under Section 19 of the Administrative Tribunals Act, 1985 with the grievance that her candidature for the post of Examiner of Trade Mark in the office of Controller of Patents, Designs and Trade Marks Mumbai has been illegally rejected and the following reliefs are sought :-

“8(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, hold and declare that the Applicant has completed more than 3 years of experience and is therefore eligible to be considered for the post of Examiner.

(b). Costs of the application be provided for.

(c). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

2. The applicant qualified LL.M (Masters of Law) in Intellectual Property Law sometimes in the year 2015. In pursuance of the Advertisement No.05/2016 issued by the respondent No.2 to fill up 58 posts of Examiner (SC-07, ST-05, OBC-14 and UR-32), the applicant applied for the said post since she was eligible both on educational qualification and required experience of

two years in handling Court cases and other legal matters or in handling matters of Trade Marks or Geographical Indication. The desirable qualification as per Advertisement was Masters Degree in Intellectual Property from a recognized University. The applicant submitted online application in prescribed format well before the closing date. The respondents then published a list of candidates, who have applied for the said post and applicant was allotted Roll No.26.

3. It is stated that since large number of candidates applied for the said post, the respondent No.2 adopted short listing criteria to restrict the number of candidates to be called for personal interview to a reasonable number. For doing so, the respondent No.2 raised prescribed period of experience of two years to that of three years in handling Court cases and other legal matters or in handling matters relating to Trade Marks or Geographical

Indication and sought desirable qualification of LL.M only. However, in a list published on 14.02.2017 of the candidates who were called for personal interview, applicant's name is excluded although according to her since she prosecuted LL.M Course of two years duration, that period should have been included as a period of practice in Court and as such, she has in fact experience of more than four years, when on shortlisting three years experience only required.

4. The applicant then came to know that personal interview is scheduled on 17.04.2017 to 25.04.2017. She, therefore, immediately approached this Tribunal by filing the present OA on 10.04.2017 challenging the decision of respondent No.2 in not calling her for personal interview on the ground that it was arbitrary, illegal or improper, since the period of two years for which she prescribed LL.M Course has not been counted or taken into consideration as

experience of handling Court cases.

5. In the OA, the following interim relief is also sought :-

“9(a). Pending the hearing and final disposal of this Original Application, the Respondents be directed to issue provisional call letter to the Applicant and allow her to undergo selection process i.e. allow her to appear for the interview scheduled to be held from 17.04.2017 to 25.04.2017 subject to outcome of the present Original Application.

(b). Ad-interim orders in term of prayer clause (a) above may be granted.”

6. The reliefs sought in OA are based on the following grounds as mentioned in Paragraph No.5 of the OA. The same are reproduced here for ready reference:-

“5(a). The impugned inaction of the Respondents is absolutely illegal and ab-initio void.

(b). The first and foremost reason for challenging the inaction of the Respondents is that the despite the Applicant fulfilling all the eligibility criteria and the Applicant has been allotted Roll No.26, the Applicant's name is neither reflected in the list of rejected candidates nor name her name is reflected in the list of candidates who are called for interview. The Respondents cannot keep the Applicant in dark and allow others to undergo the selection process. The action of the Respondents is absolutely in violation of Article 14 and 16 of the constitution of India and also in violation of principle of Natural Justice. Thus on this sole ground the original Application deserves to be

allowed.

(c) The Applicant further submits that the another reason for challenging the illegal action is that the Respondents the Respondents have not at all disclosed the reason for not calling the Applicant for interview and have maintained silence on the candidature of the Applicant. The respondents in the case of all other candidates have disclosed reason for rejecting the candidature. However, in the case of the Applicant no reason whatsoever is disclosed. It is not clear whether the respondents are considering the case of the Applicant or not would since the respondents have neither rejected the application nor and allowed the Applicant to undergo the selection process i.e. the interview scheduled to be held from 17.04.2017 to 25.04.2017.

(d). The Applicant further submits that the modalities adopted for shortlisting the candidates is also illegal and void. The Respondents have received total 619 Applications for the total post of 58 Examiner. The Respondents ought to have first rejected the incomplete application without applying the shortlisting criteria due to large number of candidates. After rejecting the incomplete application then the Respondents ought to have decided depending on the complete applications to have decided depending on the complete applications whether there is any necessity for adopting the shortlisting criteria and to raise the 2 years minimum criteria to 3 years. The Respondents have illegally first applied the shortlisting criteria and raised the experience from 2 to 3 years and then scrutinized the Applications and the rejected the application on various reason. Thus the modalities adopted for shortlisting criteria itself are illegal and void.

(e). The Applicant further submits that even assuming for the sake of the argument that the Respondents have rightly

adopted the criteria then to this the Applicant submits that as per the advertisement note in the event of number of applications being large, commission will adopt shortlisting 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 field 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 Applicant submits that the Respondents instead of adopting desirable qualification i.e. LLM in Intellectual Property Law being the first criteria for the said post the Examiner, the Respondents have opted for the 3rd option i.e. on the basis of higher experience in the relevant field than the minimum prescribed in the advertisement. After adopting the said criteria only 7 candidates from General category are rejected on the ground of less relevant experience or experience is not relevant thus the purpose of adopting shortlisting criteria is not at all successful. If the Respondents would have adopted the desirable qualification for shortlisting than the Real purpose would have been served and the most deserving candidates would have been available for the said selection. Thus on this ground also the original Application deserved to be allowed.

(f). The Applicant further submits that she is the one of the most deserving candidate for the said post of examiner

since she has fulfilled all the eligible qualification as well as desirable qualification as she is in possession of LLM in the Intellectual Property and top of it she is also working on the same post to which she has applied on contract basis from last more than 1 and half years and her contract has been renewed recently for one more year. Not only this she has actually completed the 3 years of experience in the same association and on the basis of which she has been offered appointment on contract basis. The Applicant has already submitted experience certificate for more than 3 years in the year 2015 itself and on the basis of which she was offered appointment on contract basis. Copies of experience is annexed hereto and marked as Annexure A-7. The Applicant had not shown the experience of LLM as the experience fearing that is she does than her application might be rejected on the basis of suppression of fact and clashes of dates. Thus from date to date the Applicant has given her details while filing the Application. The error committed by the Respondents is that they have not considered 2 years of LLM as experience for considering her candidature. The law down by the Hon'ble High Court at Kerela is clear that the perusing of LLM is to be treated as experience. The other candidates have mentioned that the same period of LLM in practice and are also eligible for undergoing selection. The Applicant has not mentioned the said period only with fear of rejection of application once it is found that there are clashes in the dates. The Applicant also submits that the present attempt would be the last chance to undergo the selection process since now she has crossed the age limit and after this she won't be eligible for the post of Examiner since she being UR category and the age limit is 30 years. Thus considering the said aspect as well as merit of the case the Applicant deserves to undergo selection process.

(g). *The Applicant further submits that even assuming for the sake of argument that the Respondents have rightly opted for 3rd option than to this the Applicant respectfully submits that she has completed 3 years of experience the Applicant has already completed more than 3 years of experience tough the Applicant has mentioned experience of 2 years 10 months and 1 days as experience the LLM certificate is also annexed and as per the law laid down in the case S.Preetha Vs. KPSC where the short question arose for consideration is whether the appellant has three years bar experience, which includes periods of Post Graduate Study in Law (LLM) underwent by the appellant for being considered for selection. In the said case, the Hon'ble High Court at Kerela has categorically held that LLM, is reckoned as Bar practice and has to be counted as experience. Copy of judgment in the case of S. Preetha Vs.KPSC is annexed hereto and marked as Annexure A-8.*

(h). *The Applicant further submits that the said criteria is also in violation of their own Recruitment Rules where there is no mention about the experience at all in the rules. Copy of Recruitment Rules is annexed hereto and marked as Annexure A-9. Thus on the said ground also the original Application deserved to be allowed.”*

7. On 11.04.2017 while issuing notice, the respondents were directed to issue call letter to the applicant and allow her to appear for the personal interview for the post of Examiner whenever the interview takes place. Accordingly, the applicant appeared for the interview. It is also made clear

that permission granted to appear is provisional and if she is selected the final decision on recruitment will await the outcome of this OA.

8. In pursuance of the notice, the respondents appeared and by a common reply dated 04.09.2017 resisted the OA, in which all the adverse averments, contentions and grounds raised therein are denied. Along with reply, copy of online application submitted by the applicant (Annexure R-2) and copy of Recruitment Rules (Annexure R-3) is also produced.

9. It is stated that respondent No.2 UPSC is constitutional body established under Constitution of India and it is vested with solemn duty of making recruitment to All India Services of Posts under the Government of India. In discharge of the said constitutional obligations, the respondent No.2 is vested with the powers to devise autonomous mode of functioning and procedure objectively in just and

equitable manner, in which reasonable classification of various applicant's on the basis of their qualification and experience is done as an integral part of recruitment process. The Commission sets on motion a recruitment process by advertising the post strictly in conformity with the identified recruitment rules framed under Article 309 of the Constitution of India for inviting applications from the eligible candidates. It is stated that when number of eligible candidates is substantially large than number of posts advertised, the Commission restricts the number of candidates to be called for interview, on the basis of a reasonable classification, based on consciously devised objective by adopting shortlisting criteria or by holding screening test. This power of reasonable classification vested in the commission has been upheld by various judicial pronouncements including the decision rendered by the Hon'ble Supreme

Court in **MP Public Service Commission Vs. Navneet**

Kumar Poddar, 1994 (6) SCC 302.

10. It is stated that the UPSC discharges sovereign function while undertaking recruitment process and strictly follow the provisions of Recruitment Rules for the post advertised. It is also stated that while exercising the power of judicial review, it is not permissible to review the decision taken by the Administrative Authorities / UPSC, but it is to be considered if necessary procedure has been followed. In other words, it is the review of decision making process. The same is, therefore, liable to be set aside or quashed only if it is established that it is vitiated by arbitrariness, bias or *mala fides* or is contrary to the express provisions of Recruitment Rules. In this behalf, reference is made to the decision of Hon'ble Supreme Court in **Union of India Vs. A.K.Narula (2007) 11 SCC 10.** Since the action taken by the answering

respondents is not arbitrary nor it suffers from any bias or *mala fides*, there is no question of interference with it.

11. It is also stated that it is the settled law that finding or decision taken by the Expert Body like UPSC is not to be ordinarily interfered by the Courts or Tribunals in exercise of the power of judicial review vested in it. In this respect, reliance is placed on the decision rendered by the Hon'ble Supreme Court in ***UPSC Vs. Jagannath Mishra, (2003) 9 SCC 237.***

12. It is stated that 58 posts of Examiner of Trade Marks and Geographical Indications in the office of Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry were advertised and it was published in the Employment News dated 12th-18th March, 2016. The provisions of roster is also followed by earmarking the reserved post. The post

carried Grade Pay of Rs.4,600/- in Pay Band II of Rs.9,300-34,800/-.

13. As per the provisions of Recruitment Rules for the post of Examiner of Trade Marks and Geographical Indications, the essential qualification prescribed is Degree in Law from a recognized University. Further, experience of two years in handling Court cases and other legal matters or in handling matters relating to Trade Marks or Geographical Indication is stated with a note that experience in practicing Advocate is acceptable. Further, Masters Degree in Intellectual Property Law from a recognized University is prescribed as desirable qualification.

14. It is also stipulated in the Advertisement itself under note-I in paragraph No.3 that the prescribed essential qualification is the minimum and the mere possessing the same does not entitle candidates to be called for interview. It is also stipulated in the

instructions that in the event number of applications being large, Commission will adopt shortlisting criteria to restrict the number of candidates to be called for interview to a reasonable number, by any or more of the following methods :-

"4.1(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 filed 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."

15. It is stated that in response to the Advertisement 619 online applications were received, out of which on scrutiny 446 applications were found to come under zone of consideration as per the criteria of shortlisting adopted by UPSC. The candidature of many other persons like the applicant, who do not fulfill the

enhanced criteria of experience of three years was rejected. Hence, it is not that the candidature of applicant alone was rejected rendering the decision taken by the respondents arbitrary or illegal. Considering the large number of applications, the Commission adopted the following criteria to shortlist the General Category candidates to be called for interview, who were 270 in number as against 32 out of total 58 posts. Hence, for shortlisting the General Category candidates, the essential qualification was considered to be higher qualification of LL.M and period of experience is raised to three years.

16. As per the Online Application submitted by the applicant, although she possessed LL.M Degree, which is desirable and was made essential qualification on shortlisting, it is stated that she has experience of two years ten months and one day only in dealing with the matter pertaining to Trade Marks. Since it is less than

three years, which is the criteria fixed by the UPSC, she was not called for interview. As such, there are no *mala fide* or arbitrariness in shortlisting the General Category candidates so as to cope up with the situation. Her candidature was rejected in the category of BCA - Better Candidates Available, although she was fulfilling the criteria prescribed in the advertisement. However, on shortlisting, her candidature was rightly rejected.

17. It is stated that in pursuance of the order passed by this Tribunal in this OA, the applicant was interviewed provisionally on 26.04.2017 and her result was kept in a sealed cover. It is also stated that out of 58 posts advertised two posts reserved for Physically Handicapped Category have become infructuous at interview stage as no candidate from the said category was found eligible. Hence, result in respect of 55 posts were declared, keeping the result of applicant in a

sealed cover in respect of one unreserved post. In other words, 31 posts of unreserved category were filled up and the remaining one post, which is kept vacant shall be filled up on decision of this OA.

18. It is stated that in her application, the experience of two years from June, 2012 to April, 2014 while the applicant was prosecuting her LL.M Degree Course was not taken into consideration as the same was not specifically claimed by her in the application.

19. As stated earlier, the applicant acquired actual experience of two years ten months and one day only in handling matters relating to Trade Marks and not four years as claimed by her in the OA. The OA is, therefore, liable to be dismissed.

20. All the grounds raised by the applicant in the OA are denied. As such, no relief can be granted to the applicant, since on shortlisting her

candidature is rightly rejected for failing to have three years experience as indicated above. As such, it cannot be said that the provisions of Article 14 and 16 of the Constitution of India are violated or principles of natural justice not observed as alleged by the applicant. Simply because Roll numbers were allotted to the applicant and all other candidates who have applied, it did not vest any right in them to be called for interview, subsequently on scrutiny of all applications received by last date notified, since a valid shortlisting criteria was adopted. It is also stated that the UPSC does not make any correspondence with the candidates about the reasons for their non selection for interview. Since the applicant does not fulfill enhanced criteria of experience, her name is deleted during shortlisting from being called for interview.

21. It is stated that UPSC has restricted number of candidates to be

called for interview on the basis of a reasonable classification based on consciously devised objective shortlisting criteria, which is permissible under law and all the candidates were made aware about it in the advertisement itself. However, the applicant has not challenged the shortlisting criteria adopted by the respondents thereby raising the minimum experience of two years to three years. As such, the applicant has no case and the OA is liable to be dismissed.

22. It is stated that the contention of the applicant that she actually accrued experience of three years in the field, where she was working and further that the Experience Certificate submitted by her is for more than three years is misleading, no such documentary proof is produced on record, especially when she claims that she had two years ten months and one day experience only. The OA is, therefore, liable to be dismissed with costs.

23. The applicant has not filed any rejoinder to the reply and hence, pleadings were treated as complete.

24. On 29.01.2018 when the matter was called out for final hearing, we have heard Shri Vicky Nagrani, learned Advocate for the applicant and the reply arguments of Shri A.M.Sethna, learned Advocate for the respondent No.1 and that of Shri N.K.Rajpurohit, learned Advocate for the respondent No.2.

25. We have carefully perused the pleadings of the parties and the documents produced and relied upon by them in support of their rival contentions.

26. We have also given our thoughtful considerations to the submissions advanced before us by the learned Advocates for the parties.

FINDINGS

27. The only controversy involved for resolution of this Tribunal in this OA is whether the decision taken by the respondent No.2 of rejecting the

candidature of the applicant for failing to have three years experience on shortlisting is liable to be set aside as illegal, improper or incorrect on the grounds raised in the OA and hence, she is entitled to the reliefs sought.

28. As stated earlier, the applicant has not challenged the decision of the respondent No.2, the Recruiting Agency to adopt the shortlisting criteria, since large number of applications were received from General Category candidates. As stated earlier, instead of minimum qualification of LL.B i.e. Bachelor Degree in Law, higher qualification of LL.M i.e. Masters Degree in Law, which was stated to be desirable in the advertisement itself was considered as shortlisting criteria. It is not disputed that the applicant qualified Masters Degree in Law (LL.M) in Intellectual Property Law, although she has not produced on record the Certificate to this effect. However, since during shortlisting, her

application was considered treating higher qualification of Masters Degree in Law, she must have annexed the LL.M Degree Certificate with her Online Application form submitted to the respondent No.2.

29. So far as this aspect of the case is concerned, the applicant in the OA pleaded that she did her LL.M during the period from June 2012 to April 2014. However, in the application under caption "*kind of experience - law practice*" in paragraph No.3, she has not stated anything. Further, she has quoted correspondence from 13.11.2015 to 31.03.2016 i.e. four months. However, she has further stated total experience as two years ten months and one day, which period experience to the one mentioned by her in the application. It is also nowhere stated in the application form during the period from June, 2012 and April, 2014 i.e. for about two years she practice simultaneously in Courts. In this

behalf, she has also not given any particulars as to in which Courts of Law and on which field i.e. Civil, Criminal, Labour Law, Cooperative Law, Service Law, Taxation etc, she has actually practiced. Perhaps, she did not mention about this in the OA, since as per the advertisement, two years experience in handling Court cases and other legal matters is required. There is option to this since it is also mentioned in the Advertisement "*or in handling matters relating to Trade Marks or Geographical Indications*".

30. The record further shows that on the strength that the applicant was a Law Graduate (LL.B) she applied to Auromma Associates for the post of Associated Attorney and she was appointed vide letter dated 01.06.2011 issued by the said firm, which is placed on record at page No.42 as Annexure A-2. The Experience Certificate, Annexure A-7 dated 13.10.2015 produced by the applicant in the OA. It is stated that she was working as Attorney Associate

since more than three years, however, in paragraph No.4.1 of the OA, the applicant stated that she worked with Auromaa Associates for the period from 01.07.2011 to 01.06.2012 i.e. from 11 months and, thereafter, she joined the full time LL.M Course. It is also stated that after completing her LL.M Course, she again joined Auromaa Associates from 01.05.2014 till 11.11.2015 i.e. for one year six months. It appears that applicant was thereafter appointed as Examiner of Trade Marks and Geographical Indications on contract basis in the office of Government of India, Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Trade Marks Registry, Mumbai – 37 as per the appointment order dated 07.04.2017. However, this is for subsequent period after submission of application form and hence, it is not relevant.

31. Thus, the applicant has working experience of 11 months with Auromaa Associates in first spell and thereafter for one year six months on completion of LL.M Course in second spell, in all two years five months only. As stated earlier, the applicant was then appointed on contract basis as Examiner of Trade Marks in Government of India where she worked from 13.11.2015 to 25.03.2016, the date of submission of application form i.e. for a total period of four months twelve days. As stated earlier, experience on contract basis after submission of the application till the date of filing of the OA is irrelevant since it cannot be considered. Thus, the total experience while working in Auromaa Associates and on contract basis in Government of India basis comes to two years nine months and twelve days. As such, according to the applicant, as stated in the OA, she has actual experience of handling the Trade Marks matters while working with Auromaa

Associates as Associate Attorney and, thereafter, as Examiner of Trade Marks on contract basis in Central Government office for a total period of two years nine months and five days only till filing of online application by her. However, in the application form photocopy of which is produced on record, under the caption job capacity / post held she has specifically stated total experience acquired by her two years ten months and one day only, obviously which is less than three years by one month twenty nine days. Thus, on her own total experience is stated by her is two years ten months and one day only which is less by one months 29 days on shortlisting by the respondents, by which the experience of three years is required either in handling the Court cases, by appearing in the Court or by handling the Trade Marks matters while working in Law Firm or Institution dealing with Trade Marks.

32. During the course of the

arguments, the learned Advocate for the applicant strongly placed reliance on the certificate of experience dated 13.10.2015 (Annexure A-7) issued by the Senior Partner for Auromma Associates in favour of the applicant, which states that she was appointed as Associated Attorney in the year 2011 in Auromaa Associates and that she has been working for the past three years in the field of Trade Marks and Designs. Bare reading of the said certificate would reveal as if the applicant was continuously working with the said firm for three years. However, it is not so as stated earlier, since the applicant joined the said firm on 01.07.2011 and worked there for eleven months only till 01.06.2012 and thereafter, she joined LL.M course as regular student and after qualifying the said examination from Symbiosis International University in April, 2014, she was again reappointed as Associated Attorney in the same firm, where she worked from 01.05.2014 to 11.11.2015,

before joining the Government of India office on contract basis from 13.11.2015 onwards as stated earlier. It is, thus, obvious that the combine period she worked with Auromaa Associates is two years five months only. This being so, the experience certificate produced by her cannot be relied upon to held that she have three years of experience in dealing with matters pertaining to Trade Marks while working with Auromma Associates since she failed to mention in the application that she was continuously working with Auromaa Associates without break from 01.07.2011 although she joined LL.M course in June, 2012. It is, thus, obvious from the record that the applicant has correctly mentioned the period of experience while serving as Associated Attorney with Auromaa Associates and, thereafter, on contract basis with Government of India as Examiner of Trade Marks till submission of application form, which is two years ten months and one day as

stated by her in her application form.

33. It is, thus, obvious from the above discussion that although the applicant has crossed the minimum experience of two years in handling matters of Trade Marks or Geographical Indications, she has not acquired experience of three years, which was required on shortlisting as stated earlier. It is also obvious that the applicant did not make any mention about the experience of practice in Court in handling the cases or other legal matters and she fully rely on the experience acquired in handling the matters of Trade Marks or Geographical Indications as stated in the advertisement. A candidate cannot have the combined experience of handling the cases by appearing in Court as Advocate and at the same time working with the private firm as Associate to deal with the Trade Mark matters. Hence, in the Recruitment Rules as well as in the Advertisement, two different options of

experience of two years is prescribed and the applicant has opted for second option since there is nothing in the application form that after qualifying LL.B (Bachelor of Law) and getting herself enrolled with the Bar Council of India vide certificate dated 29.03.2012, she has actually commenced practice in law in any Court.

34. However, on the basis of the Post Graduate Degree in Law, the learned Advocate for the applicant submitted that while shortlisting, the respondent No.2, this should have *suo moto* considered it as if she had actually practiced in Court from the date of obtaining the certificate from Bar Council of India and adding that period to the experience of two years five months with Auromaa Associates, she has more than three years of experience.

35. In support of above submission, the learned Advocate for the applicant placed reliance on the decision dated 07.09.2017 rendered by the ***Hon'ble High***

**Court of Jammu and Kashmir in SWP No.1127/2016,
Tahir Ahmad Dar Vs. State of Jammu and Kashmir and
others** and submitted that the applicant
should have been called for interview
treating that she has presumed to have
practiced in Court while prosecuting her
LL.M course. We have carefully perused
the said decision. In that case,
applications were invited from the
present resident of Jammu and Kashmir
State for various Divisional and
District Cadre posts, which include the
Divisional Cadre posts of Legal
Assistants for Kashmir Division
available in Law Department. The
qualification prescribed as per the
Advertisement was Bachelor's Degree in
law (Provincial) with two years actual
practice in Bar. In that case, the
candidature of applicant was rejected on
the ground that he fall short of
experience of two years actual practice
at Bar. However, since he has done Post
Graduation in Law, considering this
aspect and relying on the decision

rendered by the Hon'ble High Court of Andhra Pradesh in ***Tirumala Devi Eada Vs. State of Andhra Pradesh, Law (LA & JSC.F) Department (Andhra Pradesh)*** in which it has been held that the Law Graduate on completion of Law Graduation, if gets admission for LL.M Course, he is not required to surrender the license and pursuing LL.M Course would also mean that he has been practicing in law.

36. In the aforesaid case, the Hon'ble High Court of Jammu and Kashmir again referred the decision rendered in case of ***Madan Lal and others Vs. State of Jammu and Kashmir and others, (1995) 3 SCC***, in which the term actual practice has been interpreted and it is held that Member of Bar can be said to be in actual practice of two years or more than if he is enrolled as an Advocate by the Bar Council, since two years or more and has attended Law Course during that period. After considering the material on record, Writ Petition was dismissed and in the operative para while parting the

following directions were issued :-

"23(I). Whenever an actual practice certificate or a certificate regarding standing at Bar is to be issued, High Court of J&K (Grant of Actual Bar Practice Certificate) Procedure Order, 1995 issued vide order No.352 dated 26.08.1995 shall be strictly followed.

(II). A law graduate when enrolled on the rolls of Bar Council has to be treated in actual practice or treated to have standing at Bar as long as he remains connected with legal profession only which include higher studies in law i.e. LL.M or LL.D, drafting of petitions, consultation which, in effect, would mean that he is practicing law.

(III). Appearance in the courts in connection with cases is not the only factor for grant of practice certificate.

(IV). A law graduate who though enrolled as an advocate but is not connected with the profession of law or is in regular service of the Government of any other establishment, institution, unconnected with profession of law, in short pursuing any other full time avocation unrelated with the profession of law, shall not be treated to have standing at Bar or to be in actual practice at Bar.

(V). Copy of this judgment shall be circulated to all the Principal District & Sessions Judges of the State for information."

37. The law laid down by the Hon'ble High Court of Jammu and Kashmir in the aforesaid matter cannot be disputed. However, the same is not relevant in the present case since it is not the applicant's case that she has the

experience of handling the cases by appearing in Court i.e. she actually practiced profession in law for a period of more than two years after getting herself enrolled with the Bar Council of India and hence, the period of two years spent by her for prosecuting Post Graduation course in Law (LL.M) should also be treated as the period of practice or experience in handling the cases in Court of Law. Further, it cannot be forgotten that the case relied upon by the applicant relates to the appointment of Legal Assistant in State Secretariat, whereas the present case is for appointment of Examiner of Trade Marks and Geographical Indications, with Government of India, although, knowledge of law is must for both the posts. For this reason also, the decision relied upon by the applicant is not helpful to her to hold that the respondents were wrong in not calling the applicant for interview by holding that she has less than three years of experience. From the

above discussion, we do not find any force in this contentions for the simple reason that as stated earlier, the applicant has not stated anything in the application form regarding her experience of practice in the profession of law in any Court in India or in specialized field as indicated above. This being so, we are of the considered view that the learned Advocate for the applicant is not justified in submitting that the respondents while shortlisting should have considered this aspect that she prosecuted her LL.M Course for a period of two years and hence, she is deemed to have practiced in law during the said period on the strength of certificate issued by Bar Council of India.

38. During the course of arguments, the learned Advocate for the applicant also placed reliance on the decision rendered by ***the Hon'ble High Court of Kerela in S.Preetha Vs. The Secretary Kerela Public Service Commission and another, WA No.947 of 2011 decided on***

19.01.2012 and stated that since the period spent in prosecuting the research post for PH.D is counted as experience for the post of Lecturer in Law, the same analogy should be adopted here in the present case to hold that the applicant has experience of three years of actual practice by counting her period of two years spent by her in prosecuting Post Graduation studies in law. It is obvious that in the peculiar facts of that case, the said view was taken.

39. In the present case, since the applicant failed to mention in the application that she has experience of handling the Court cases i.e. the actual experience of practicing profession of law, there is no question of counting the period of two years spent by her for prosecuting Post Graduation course in Law. Hence, no relief can be granted to the applicant purely on the strength of the decision rendered by the Hon'ble High Court of Kerela.

40. During the course of the

arguments, it is submitted by the learned Advocate for the applicant that since the applicant was selected for the post of Examiner on contract basis by counting her experience of three years, the same analogy be adopted here to hold that she has experience of three years in handling matters of Trade Marks and Geographical Indications. However, as stated earlier, the actual experience in handling the cases of Trade Marks and Geographical Indications as stated by the applicant is two years ten months and one day only including her experience of working with Auromaa Associates and few months with Government of India on contract basis from 13.11.2015 till submission of application form as per the advertisement in question. Total experience comes to two years nine months and twelve days as correctly stated by her in the application form although it is stated to be two years ten days and one day in the application

forum.

41. For the above reasons, we do not find any force in the contentions of the learned Advocate for the applicant and to hold that since the applicant is continuously working on contract basis with Government of India from 13.11.2015, it should be held that she had more than three years of experience and hence she was entitled to be called for interview.

42. During the course of the arguments, the learned Advocate for the applicant submitted that in the Recruitment Rules, the photocopy of which is produced on record by him at Annexure A-9, the post of Examiner can be filled up 20% by promotion failing which 80% by direct recruitment for which Degree in Law from a University / Institution approved by the Bar Council of India is stated to be an essential qualification and desirable Masters Degree in Law from a recognized University. According to him, no

experience is prescribed in the Recruitment Rules and hence, the respondents were wrong in prescribing the experience of two years in the advertisement and since the applicant possessed LL.M Degree, she should have been called for personal interview.

43. However, in this respect, the learned Advocate for the respondents has produced on record copy of the notification dated 17.02.2011 issued by the Ministry of Commerce and Industry (Department of Industry Policy and Promotion) vide CSR 97(E) namely Trade Marks and Geographical Indication Registry (Registrar of Examiner) Recruitment Rules, 2011 (Annexure R-3), in which it is specifically prescribed in Column No.8 thereof after essential qualification of Degree in Law of a recognized University and before desirable qualification, two years experience in handling Court cases and other legal matters or in handling matters of Trade Marks and Geographical

Indications. He has also pointed out that by the subsequent GR dated 21.12.2015 in the form of Corrigendum in Column No.8 of the Schedule prescribing experience, it is notified that two years experience in handling Court cases and other legal matters or in handling matters of Trade Marks or Geographical Indications is required. It is obvious from perusal of the advertisement that the same is fully in consonance with the Recruitment Rules dated 17.02.2011 and the corrigendum dated 21.12.2015. This being so, it is not open to the applicant to say that the respondents were wrong in prescribing experience of two years in the advertisement or by raising it to three years on shortlisting.

44. During the course of the arguments, it is submitted by learned Advocate for the applicant that on the basis of the letter issued by the respondent No.2 on scrutiny of the applications received vide Annexure A-5,

it is stated that the applicant's Roll No.26 does not find place either in the list of applications which are rejected as incomplete or in the list of the candidates called for interview and hence, adverse inference should be drawn against respondents that applicant meets the eligibility on shortlisting.

Perhaps for this reason, this Tribunal by way of interim order, directed the respondents to allow the applicant to appear for personal interview and to keep its result in a sealed cover.

Annexure A-5 clearly shows the criteria adopted for shortlisting General category candidates by which essential qualification is raised to LL.M Degree and experience of three years. As stated earlier, the respondents in the reply have given cogent and convincing reason for adopting the shortlisting criteria since substantial number of applications were received. The Recruitment Rules do not prescribe holding of any screening / written test

and considering total number of applications received, it can safely be said that the respondents were justified in adopting the aforesaid criteria for shortlisting by calling the candidates who qualified LL.M and have three years or experience in either of the two options as prescribed in the advertisement. Obviously, the applicant is having less than three years of experience as correctly stated by her in the application form and hence, it cannot be said that the respondents were wrong in declining to call her for personal interview. It appears to be an inadvertent lapse on the part of the respondents to mention the applicant's roll number in either of the lists published vide Annexure A-5 by including it either in the list of rejected applications for not fulfilling the prescribed eligibility criteria or in the list of the candidates to be called for interview. In any case, it cannot be said from the written statement

submitted by the respondents that the applicant's application has not been scrutinized.

45. In such circumstances of the case, the inadvertent lapse on the part of the respondents in not including her roll number in either of the lists published vide Annexure A-5 cannot be said to be fatal so as to draw any adverse inference against the respondents or to show any favour to the applicant and to hold that the decision taken by the respondents in not calling her for personal interview is in any manner illegal, improper or incorrect. The record further shows that even after submitting the application form, the applicant continued to work with the Government of India on the contract basis. However, for failing to adopt the first option of experience as mentioned in the advertisement regarding experience of handling cases by actual practice of profession of Law, no relief can be granted to the applicant.

46. From the above discussion, it is obvious that none of the grounds raised by the applicant in the OA can be said to be sufficient to hold that the respondents were wrong in not calling the applicant for personal interview and to hold that she has in fact more than three years of experience especially when she has mentioned in application form total experience of two years ten months and one day only. Hence, no relief can be granted to the applicant.

47. The OA is, therefore, liable to be dismissed. It is accordingly dismissed. The parties are, however, directed to bear their respective costs of this OA.

48. Registry is directed to send certified copy of this order to both the parties, at the earliest.

(R. Vijaykumar)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

*kmg**