

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.63/125/2016

Date of decision: 04.12.2018

M.A. No.63/1798/2018

(Reserved on: 26.11.2018)

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

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Dr. Vivek Ahluwalia son of Sh. Ved Parkash Ahluwalia, age 37 years resident of Town and PO-Dehra Gopipur, District Kangra, Himachal Pradesh-177101 (Group A).

... APPLICANT

VERSUS

1. Union of India through Secretary, Department of Agriculture & Cooperation, Ministry of Agriculture (now know as Ministry of Agriculture and Farmers Welfare), Krishi Bhawan, Rajendra Prasad Road, New Delhi-110001.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110069.
3. Directorate of Plant Protection, Quarantine & Storage, Ministry of Agriculture & Farmers Welfare, N.H.IV, Faridabad-121001, Haryana through its Plant Protection Advisor.
4. Dr. Nidhi Debey, working as Assistant Director (Chemistry) in the Office of Directorate of Plant Protection, Quarantine & Storage (DPPQS), Ministry of Agriculture & Farmers Welfare, N.H.IV, Faridabad-121001, Haryana.
5. Dr. Avnish Tomar working as Assistant Director (Chemistry), Directorate of Plant Protection, Quarantine & Storage, Ministry of Agriculture & Farmers Welfare, N. H.IV, Faridabad-121001, Haryana.
6. Dr. Brijesh Tripathi, working as Assistant Director (Chemistry), Directorate of Plant Protection, Quarantine & Storage, Ministry of Agriculture & Farmers Welfare, N.H.IV, Faridabad-121001, Haryana.

... RESPONDENTS

PRESENT: Sh. Sandeep Siwatch, counsel for the applicant.
Sh. Sanjay Goyal, counsel for respondents no.1 & 3.
Sh. B.B. Sharma, counsel for respondent no.2.
Sh. Rohit Sharma, counsel for respondents no.4 to 6/Ms.
Ranjana Sahi, counsel for respondents no.5 and 6.

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. By means of the present O.A., the applicant assails selection and appointment of private respondents no.4 to 6 pursuant to advertisement no.13/2014 being illegal arbitrary and against the advertisement. He has further sought issuance of a direction to direct the respondents to offer him appointment with all consequential benefits arising thereon.
2. Facts which led to filing of the O.A. are that respondent no.2 UPSC issued an advertisement No.13/2014 in the Employment News 9-15 August, 2014 notifying various vacancies including three unreserved posts of Assistant Director (Chemistry) in Directorate of Plant Protection, Quarantine and Storage, Faridabad, Department of Agriculture (Respondent No.3) in the pay scale of Rs.15,600-39,100 (PB 3)+Rs.5400 (Grade Pay) (T.E. Rs.42,000)+ TA and HRA as admissible. The applicant being eligible applied online as indicated in the advertisement. He was subjected to selection process which consisted of interview and documents verification. It is alleged in the O.A. that without declaring result, the respondents have issued appointment letters to private respondents despite the fact that they are not eligible and not having qualification prescribed in the advertisement. This fact came to notice of the applicant for the first time in the Month of March, 2016, from his friend that all the three vacancies have been filled up. Thereafter, he sought information on 12.04.2016, which was supplied to him vide letter dated 29.04.2016, whereby he was informed that private respondents have already been

selected and offered appointment and he has been kept in reserved/waiting list at serial no.1. Even after receiving information under RTI Act on 29.04.2016, applicant submitted various applications seeking information under RTI Act about eligibility of the private respondents and publication of result and thereafter he approached this Court by impugning select list dated 29.04.2016, where private respondents no.4 to 6 have been selected and offered appointment.

3. The applicant has taken various grounds for invalidation of selection of private respondents firstly, that they do not fulfill prescribed qualification mentioned in the advertisement, therefore, their selection and appointment is to be set aside. It has been submitted that the selected persons do not possess the qualification of specialization as stipulated in the advertisement and they are simply having M.Sc. (Chemistry) whereas the applicant who is M.Sc. Agriculture with Analytical Chemistry has been denied appointment. Thus, it is prayed that selection be quashed. Other grounds which the applicant has taken is that without declaring the result, private respondents have been offered appointment which is also in violation of guidelines issued by UPSC which smells of favourism.
4. The respondents while resisting the claim of the applicant have filed separate written statements. Govt. of India while filing reply has completely denied allegations made therein and has submitted that as per procedure prescribed by UPSC all the candidates were subjected to interview and on the basis of recommendations dated 27.04.2015, the candidates in order of merit have been offered appointment.

Applicant being first in waiting list cannot agitate the matter that others do not possess the prescribed qualification.

5. UPSC has filed its separate reply wherein, on similar lines, defence has been taken. It has been submitted that in response to advertisement, 284 applications were received online and out of 284 applications, 21 candidates including the applicant, were short listed to be called for interview for the said post. Specialization category was not mentioned in M.Sc. degree certificate of any candidate. So, while doing the scrutiny of the applications their M.Sc. Mark-sheets were also verified to check their subjects in M.Sc. and the candidates who have studies Analytical Chemistry or Organic Chemistry etc. as their subjects in M.Sc. were also short listed to be called for interview. Accordingly, M.Sc. certificate along with mark-sheets of all the three recommended candidates have also been perused and their subjects in M.Sc. mark-sheets along with their M.Sc. degree certificate were checked to ensure that they fulfill essential qualification as the same has been challenged in the O.A. Following details have been found from the Transcript of Academic Record:-

Ms. Nidhi Dubey (Roll No.135) (Respondent No.4)	She has Degree of Master of Science in Chemistry, having Organic Chemistry and Analytical Chemistry, as subjects in her M.Sc. Mark Sheets (Copy of Master Degree Certificate along with mark sheet are enclosed as Annexure R-5)
Sh. Avnish Tomar (Roll No.40) (Respondent No.5)Sh. Bijesh Tripathi (Roll No.51) (Roll No.6)	He has degree of Master of Science in Chemistry (Industrial Applications), having Modern Analytical Techniques I, Modern Analytical Techniques II, Modern Analytical Techniques III, Modern

	Analytical Techniques IV and Agro-chemicals as subjects in his M.Sc. Mark Sheets (Copy of his Master Degree Certificate along with mark sheet are enclosed as Annexure R-6).
Sh. Bijesh Tripathi (Roll No.51) (Respondent No.6)	He has Degree of Master of Science in Agrochemical and Pest Management, having Paper I, II, III and IX as subjects in his M.Sc. Mark sheets which can be transcribed to Separation and Analytical Techniques, Basic Organic Chemistry or (IIB) Cell Biology, Genetics, Biochemistry, Synthetic Organic Chemistry and Chemistry of Synthetic Pesticides (Copy of His Master Degree Certificate along with Mark sheet are enclosed as Annexure R-7).

6. Perusal of the above tabulation would show that the private respondents are having educational qualifications as per the Recruitment Rules. Further, it is also mentioned in the Note-1 of the Recruitment Rules that the Qualifications are relaxable at the discretion of the UPSC for the reasons to be recorded in writing, in case of candidates are otherwise well qualified. No specialization category has been mentioned in the M.Sc. degree certificate of the applicant. He possess degree of Master of Science in Chemistry, having Organic Chemistry as one of the subjects. Accordingly, he was also short listed for interview and got placed at serial no.1 in the reserve list. They have also taken a plea that applicant cannot be permitted to challenge selection after he has participated in the

selection process but could not succeed. In this regard, they have placed reliance on the following judgments:-

- (i) Union of India vs. N. Chandra Shekharan and others (1998) 3 SCC 694.
- (ii) University of Cochin vs. N.S. Kanjoonjamma & Ors. (1997 (4) SCC 426.
- (iii) Om Prakash vs. Akhilesh Kumar, AIR 1986, SC 1043.
- (iv) Sardara Singh vs. State of Punjab, AIR 1991 SC 2248.
- (v) Dhananjay Malik vs. St. of Uttanchal, (2008 (4) SCC 171).

It has also been submitted therein that once validity of select list has already expired, then applicant cannot challenge selection made by UPSC after expiry of that. In this regard, they have placed reliance on judgment in the case of **J. Ashok Kumar vs. State of Andhra Pradesh & Ors.** (1996 3 SCC 225), **State of Bihar etc. Ors. vs. Md. Kalimuddin & Ors.** (AIR 1996 SC 1145), **State of U.P. & Ors. vs. Harish Chandra & Ors.** (AIR 1996 SC 2173) and **Sushma Suri vs. Government of National Capital Territory of Delhi & Anr.** (1999 (1) SCC 330 etc.

7. Private respondents have filed separate written statement wherein apart from plea raised by official respondents as noticed above, they have taken preliminary objection with regard to delay and latches. Since present O.A. has been filed after delay of 553 days of declaration of result on website on 27.05.2015, therefore, they have prayed that petition be dismissed on this ground also. On merit it has also been submitted therein that even perusal of M.Sc. degree submitted by applicant suggests that he also does not possess degree in specialized field as indicated in the advertisement. Similar degree, which the applicant is having, has also been issued to private respondents by the university. Thus the mechanism adopted by UPSC

after finding that nobody is having degree in specialized field, to look into the merit of the candidates, and finding that private respondents were meritorious than the applicant and have studied this subject in the Msc., hence were offered appointments.

8. We have heard learned counsel for the parties.
9. Learned counsel for the applicant vehemently argued that the impugned selection and appointment of private respondents is liable to be set aside on the grounds taken in the O.A.
10. Per contra other respondents have also taken pleas which have already been narrated in the preceding paras. Apart from this, it has been submitted by Ms. Ranjana Sahi, counsel for respondents no.5 and 6 that this petition deserves to be dismissed on ground of delay because at the first instance when applicant approached this Tribunal, he moved application for condonation of delay i.e. M.A. No.63/143/2016, which was considered by this Court on the first date. Then this Court vide order dated 20.12.2016 dismissed M.A. for condonation of delay as well as O.A. being barred by limitation. Aggrieved against that order, present applicant approached jurisdictional High Court by filing Writ Petition No.3692 of 2017 and a statement was made by petitioner therein that he has received information under RTI on 18.04.2018 that result was never declared due to which he had no knowledge hence there was no delay on his part. Considering his statement, the Hon'ble High Court allowed him to withdraw writ petition enabling him to file review applicant. Thereafter, the applicant filed review petition where he submitted that result was declared on 12.09.2015 whereas appointment letter to private respondents had already been issued on 28.07.2015 i.e. prior

to declaration of result. The review application was allowed by this Court and O.A. was restored to its original number. Learned counsel submitted that the fact remains that there is delay in approaching the Court of law but till date applicant has not moved any application for condonation of delay and has also not argued on how delay be condoned. Therefore, she prayed that O.A. be dismissed being devoid of merit.

11. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
12. Perusal of pleadings, as noticed above, makes it clear that essential qualification for the post of Assistant Director (Chemistry) was M.Sc. with Agriculture Chemistry or M.Sc. in Chemistry with specialization either in Organic Chemistry or Analytical Chemistry from a recognized University or Institute. Perusal of degree annexed by the applicant vis. a vis. private respondents makes it clear that all of them were issued degree of Msc. in Chemistry likewise. It has not been stated therein that they are specialized in any particular field for which applications were invited. A perusal of written statement filed by the UPSC makes it clear that when they found that specialized category was not mentioned in degree certificates of any of the candidates, they decided to scrutinize applications of the candidates who had applied. Their mark-sheets were verified to check their subjects in MSc. and after analyzing that they had studied in specialized fields as indicated in the advertisement, the persons as per merit have been offered appointment. This argument is not available to the applicant that his degree of M.Sc has indication of having specialized field in

M.Sc. Chemistry being not supported by certificate. Once the applicant is sailing in the same boat with private respondents, they were picked up by UPSC on the basis of their assessment in the interview and applicant having been placed at serial no.1 in reserve list as per his merit, then he cannot allege that private respondents do not possess qualifications because applicant also has similar degree certificate in his favour. Moreover, his candidature was also considered along with other candidates but he could not make out a mark against notified vacancies, therefore, he was placed at serial no.1 in waiting list. Also, thought the applicant has filed M.A. No.63/1798/2018 on 17.11.2018 to place on record letter dated 14.11.2018 issued by Department of Chemistry, Himachal Pradesh University to the effect that he has obtained masters with specialization in organic chemistry but this letter was not available when he was interviewed and at the time of document verification also so this does not help him. It is not disputed by the applicant that selected candidates have studied specialized field during their M.Sc. Thus, the impugned selection cannot be set aside. Once a specialized body like UPSC which has been established under Articles 315-325 Chapter 1 Para 14 of Constitution of India has evaluated degree and eligibility of the selected candidates vis.a.vis. applicant then no doubt can be raised unless there is malice that too has to be proved by documents that the respondents have acted contrary to rules. Since there is no malice leveled against UPSC there is no question to doubt its integrity. There is another reason for not accepting present O.A. that once the applicant has participated in selection process knowing that he does not possess qualification indicated in the advertisement

as his degree does not mention specialized filed mentioned therein and he was not having certificate to that effect by the competent authority at that time and having failed to make a mark, he cannot be allowed to turn around and challenge appointment of private respondents at this stage, on the principle that once he has participated without protest then, he cannot be allowed to challenge the selection of successful candidates on estoppel. Lastly the petition also deserves to be dismissed on the ground of delay because initially applicant had moved application for condonation of delay of 596 days in filing the O.A. but at the time of arguments, counsel for the applicant did not argue on his application for condonation of delay. Rightly a plea was raised by private respondents that since he has not argued application for condonation of delay, therefore, petition be dismissed on the ground of delay and laches. We have examined the matter on merit as noticed above, but O.A. is also barred by limitation because the applicant was having knowledge in the year 2016 that selection has already been finalized but kept mum to agitate the matter before Court of law. Merely the fact that he has received an information on 18.04.2016, as noticed by the Hon'ble jurisdictional High Court, will not extend the limitation because submission was recorded by the Hon'ble High Court that result of selection was never declared whereas respondent UPSC has categorically stated in its written statement that result was indeed uploaded on the website on 27.05.2015 along with result of other examination conducted by UPSC. Thus the plea which the applicant had raised before High court was also false. Despite categorical stand by UPSC about declaration of result and uploading that on website prior to issuance of appointment

letters, the applicant did not bother to argue on his application for condonation of delay, or rebut the factual accuracy. Once result has already been declared and uploaded on website, thus plea raised by the applicant that it was never declared and appointment has been offered in an arbitrary manner is apparently false plea and cannot be appreciated by a Court of law.

13. Accordingly, the O.A. is dismissed being devoid of merits, as well as barred by law of limitation, delay and latches. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date:
Place: Chandigarh.

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