

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.020/00267/2017

Date of C.A.V. : 17.08.2018

Date of Order : 25.10.2018

Between :

Venkatramana Adusupalle,
S/o A.Veerabhadraiah,
Aged about 29 years,
Occ : Adhoc-Lecturer (Academic Assistant),
JNTU College of Engineering, Pulivendula,
YSR Kadapa District,
R/o Gargerya Puram Village, Patrapalli Post,
Somala Mandal, Chittoor District,
Andhra Pradesh, Pin : 517257.

... Applicant

And

1. The Union of India,
rep. by its Secretary to the Government of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi.

2. Union Public Service Commission,
rep. by The Secretary,
Dholpur House, Shahjahan Road,
New Delhi – 110069.

... Respondents

Counsel for the Applicant	...	Mr. B.Sreehari, Advocate
Counsel for the Respondents	...	Mrs.K.Rajitha, Sr.CGSC for R-1
		Mr.M.Nagaraju, S.C. for UPSC

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	...	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Naini Jayaseelan</i>	...	<i>Member (Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The brief facts of the case as per the applicant are as follows :

The applicant applied for the post of Lecturer (Civil Engineering) Government Polytechnic Daman, Technical Education Department, UT Administration of Daman & Diu through online as per the Advertisement No.07/2016 issued by the UPSC. The method of selection is based on the educational qualifications stipulated in the advertisement and also on the interview. The applicant attended the interview on 21.09.2016 for recruitment in respect of 05 posts of Lecturer (Civil Engineering). Among the 05 posts, 01 post is reserved for ST, 01-SC, 01-OBC and 02-UR. The applicant belongs to OBC. The specific case of the applicant is that nowhere in the advertisement, teaching experience is made as one of the qualifications for the selection and in the normal course he ought to have been selected in the open category, but Selection Board selected him under OBC category, which according to him is illegal, arbitrary and not in accordance with the judgements of the Hon'ble Supreme Court. The final selection list was published in the official website of UPSC and in the said

recommended list the applicant stood first among the selected candidates. He received a letter of recommendation dated 29.09.2016. He also received another letter for verification of character and antecedents, caste and medical examination from the Principal dated 10.11.2016. He was asked to attend the medical examination on 09.12.2016 by the Principal, Government Polytechnic, Daman. It is submitted by the applicant that on the said date the applicant had teaching experience certificates of two years issued by the Heads of the Institutions even before the issuance of the notification. The applicant also possessed higher educational qualification of B.Tech in Civil Engineering and M.Tech in Environmental Engineering. While he was hoping for appointment letter, to his utter shock and surprise he received a letter dated 14.03.2017 from the 3rd respondent stating that on re-examination of the documents it has been noticed that the applicant claimed experience of Engineering in field (Execution Planning Surveying, Quality Control) and not in teaching (the criteria adopted for shortlisting). Therefore the candidature of the applicant was cancelled on the ground that he did not submit teaching experience certificate along with his application and consequently a letter dated 29.09.2016 was sent to the applicant informing the said fact.

2. Therefore, he filed the present OA challenging the action of the 3rd respondent in issuing the impugned cancellation order dated 14.03.2017 after issuing the selection order in his favour as arbitrary, illegal, discriminatory, violative of principles of natural justice and also Article 14 and 21 of Constitution

of India. He sought a direction to the respondents to issue appointment order in his favour by setting aside the cancellation order dated 14.03.2017 and pass appropriate orders.

3. The contention of the respondents is that the Tribunal has no jurisdiction of judicial review in respect of the findings of the expert body which selected the candidates and the selection shall not ordinarily be interfered with. In discharging of their Constitutional obligations, the Union Public Service Commission is vested with the power to devise their autonomous modes of functioning and procedures objectively in just and equitable manner in which reasonable classification and experience, which are integral part. The powers of Commission for reasonable classification have been upheld by various judicial authorities including the Hon'ble Supreme Court of India. When the number of eligible applicants is substantially more than the number of posts, the Commission restricts the number of candidates to be called for interview, on the basis of a reasonable classification, based on consciously devised objective short listing criteria. The powers of the Commission in relation to reasonable classification shall not be interfered with. It is clearly mentioned in the advertisement that in the event of number of applications being large, the 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.

4. The present recruitment case is for the post of Lecturer in Civil Engineering. The duty of the Lecturer is to teach the students. Keeping this fact in view, the Commission added one year teaching experience in addition to essential qualification for the post as a shortlisting criteria. The application dossier of the applicant has been perused and it has been found from his experience certificate that he possess experience in field (Execution, Planning, Surveying, Quality Control). He does not meet the criteria adopted for shortlisting of the candidates of UR and OBC category. But the applicant was shortlisted mistakenly due to overlooking of this aspect during scrutiny of the applications of the candidates. Even while checking the certificates of the candidates at the time of interview, it did not come to the notice and he was allowed to appear for interview. In the interview the applicant , OBC (Roll No.960) was recommended and got top position (Sl.No.1). He has been recommended against the reserved vacancy of OBC (RARV).

5. One Ms.Poonam Sunil Sutar, OBC (Roll No.835) who was at Sl.No.1 in the reserve list represented that the applicant, OBC (Roll No.960) who is at Sl.No.1 in the recommended list has been Recommended Against Reserved Vacancy of OBC (RARV) whereas he should have been Recommended Against Unreserved Vacancy (RAUV). On receipt of representation from Ms.Poonam Sunil Sutar, the documents pertaining to the educational qualification, experience, date of birth and caste certificate, etc. of the applicant were rechecked. During the rechecking of the documents, it was found that he was not meeting the criteria for shortlisting the candidates for interview as he had only claimed in his online application the experience of Engineering in field (Execution Planning, Surveying, Quality Control) instead of teaching experience. Therefore, he should have been rejected under BCA (Better Candidates Available) category. After detailed examination, the Commission decided to cancel his candidature and to recommend one OBC category candidate from the reserve list. Accordingly the candidature of the applicant was cancelled vide letter dated 14.03.2017 and one candidate of OBC category i.e. Ms.Poonam Sunil Sutar has been recommended on 20.03.2017 from reserve list. The respondents therefore submitted that the applicant should not have been shortlisted for interview instead he has been recommended for the post in question. There is a mistake in shortlisting the applicant for interview and also recommending his name for selection. The candidature of the applicant was cancelled when the above lapse came to the notice and his name was also withdrawn from the recommended list vide letter dated 14.03.2017. Thereafter the letter dated 29.09.2016 was also withdrawn

intimating the same to the applicant. It is also mentioned by the respondents in their reply statement that as per the Tribunal's directions dated 07.04.2017 1-UR post of Lecturer (Civil Engineering) Government Polytechnic Daman has been kept vacant.

6. Contending as above the respondents sought to dismiss the OA.

7. We have heard Mr.B.Sreehari, learned counsel for the applicant, Mrs.K.Rajitha, Senior Central Government Standing Counsel for Respondent No.1 and Mr.M.Nagaraju, Standing Counsel for UPSC.

8. It is contended by the learned counsel appearing for the applicant that in the advertisement teaching experience was not stipulated as one of the requirements. Therefore, the applicant did not submit teaching experience certificate issued by the educational institutions, though he was in possession of them. However, at the time of interview he produced the teaching experience certificate and the same was perused by the Members of the Interview Board. Taking into consideration, the educational qualifications and his performance in the interview he was selected for the post and stood No.1 in the select list. In fact he ought to have been selected in the Un-Reserved (UR) category, but was illegally and arbitrarily selected under OBC category. On the other hand it is contended by the learned standing counsel for the respondents that the Commission has the discretion to short list the candidates basing on any reasonable criteria, as there

was mistake in the shortlisting, the applicant was wrongly selected for the post and therefore his selection was rightly cancelled subsequently on noticing the mistake.

9. Perusal of the notification does not indicate that teaching experience is required under the notification as one of the eligibility criteria. However, the applicant at the time of interview produced teaching experience certificate also which was perused by the Members of the Interview Board. Taking into consideration his educational qualifications, experience, etc., the applicant was selected for the post and stood No.1 in the select list. Since he secured highest marks, the respondents infact should have selected him in the open category (UR). The significant aspect in the instant case is only when Ms.Poonam Sunil Sutar-OBC candidate made a complaint that the applicant should have been selected in the open category as he secured highest marks, the applicant's selection was cancelled and Ms.Poonam Sunil Sutar has been selected in the OBC category. She is said to be No.1 candidate in the reserve list in OBC category.

10. It is true that the Commission has the discretion to shortlist the candidates basing on the criteria mentioned by them in their reply statement. Notification does not prescribe teaching experience as one of the criteria. Further it is not the case of the respondents that the applicant's candidature was rejected while shortlisting the candidates. He was called for the interview. His certificates including teaching experience certificates were perused by the Members of the Interview Board and considering all aspects relating to selection the applicant was

selected and he topped the list. After the complaint submitted by Ms. Poonam Sunil Sutar, OBC candidate, the respondents seem to have introduced the theory of non-desirability of the applicant for the post as he did not furnish the teaching experience certificate along with the application. When it is not one of the requirements for the selection under the notification, it is not obligatory on the part of the applicant to submit the teaching experience certificate along with the application. However, he produced the teaching experience certificate at the time of interview and the same was perused by the Members of the Interview Board and the said fact is not in dispute. If the selection is fair and is made according to the rules governing the selection, the Tribunal would not interfere with the discretion if any exercised by the Commission in selecting the candidates. But when the Commission cancels the selection basing on the complaint submitted by Ms. Poonam Sunil Sutar - OBC candidate on the ground that the applicant ought to have been selected in the open category without any justification, the Tribunal would certainly interfere to set aside the order cancelling the appointment of the applicant. If really there is any suppression of fact on the part of the applicant, the respondents can justify the cancellation on the ground of mistake. After the complaint received from the OBC candidate, the respondents invented the theory that the applicant did not submit the teaching experience certificate along with the application. In fact he possesses teaching experience and the said fact has not been denied by the respondents also. It is mentioned in the reply statement that the duty of the Lecturer is to teach the students. Keeping this fact in view, the Commission added one year teaching experience in addition to essential

qualification for the post in shortlisting criteria. From this it is clear that in the notification the teaching experience is not one of the essential qualifications for the post. The applicant has also produced the teaching experience certificate at the time of interview and the respondents are satisfied with the said certificate. If they were not satisfied, they ought to have rejected his candidature at the time of shortlisting the candidates for interview. The contention advanced by the respondents that the applicant's candidature should have been rejected under BCA (Better Candidates Available) category is unsustainable because it obviously appears as an after thought. From the facts of the case it would clearly appear that only to accommodate the OBC candidate the respondents have introduced the theory of BCA category and illegally and unjustly cancelled the candidature of the applicant. The respondents committed a fundamental wrong in selecting the applicant who stood No.1, in the OBC category without selecting him under UR category. From this fact it can be understood that the respondents have not adhered the basic rules of recruitment in the process of selecting the candidates.

11. For the aforementioned reasons, we are therefore of the considered view that the cancellation of the candidature of the applicant for the post of Lecturer (Civil Engineering) by the respondents is arbitrary and illegal. The theory put forth by the respondents according to us is invented for the purpose of covering the mistakes committed by them. The OA therefore deserves to be allowed.

12. Consequently the impugned order dated 14.03.2017 is set aside. The respondents are directed to appoint the applicant for the post of Lecturer (Civil Engineering), Government Polytechnic Daman, Technical Education Department, UT Administration of Daman & Diu in the UR category which was kept vacant by the order of this Tribunal dated 07.04.2017, within a period of three months from the date of receipt of a copy of this order. The applicant is however entitled for the pay and allowances from the date of his appointment.

13. The OA is allowed to the extent indicated above. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)