

**Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI**

+WP(C) No. 1655/2007

Date of Hearing: 10.12.2007

Date of Decision: 11.01.2008

#Sanjeev Kumar

....Petitioner

!

Through: Mr.Rajinder Nischal with
Mr.Ashish Nischal

Versus

\$Union Public Service
Commission & Ors.

.....Respondents

^

Through Ms.Jyoti Singh with Mr.Ankur
Chhibber for respondent No.1/UPSC
Mr.Amitabh Marwah for respondent
No.2/Delhi Government.
Mr.C. Mohan Rao for respondent No.4

AND

WP(C) No.6769/2007

#Union Public Service
Commission

.....Petitioner

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Through Ms.Jyoti Singh with Mr.Ankur
Chhibber

Versus

\$Dr. Virender Singh & Ors.

.....Respondents

^

Through: Mr.C. Mohan Rao for
respondent No.1
Mr.Amitabh Marwah for respondent
No.2/Delhi Government.

Mr.Rajinder Nischal with
Mr.Ashish Nischal for respondent No.4

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE VIPIN SANGHI**

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

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1. In both these petitions, one filed by Sanjeev Kumar and other by Union Public Service Commission (in short 'UPSC'), challenge is to the same judgment of the Tribunal. The judgment in question is dated 19.2.2007 passed by the Tribunal on application filed by Dr. Virender Singh under Section 19 of the Administrative Tribunals Act (hereinafter called as the 'Respondent'). By means of said OA, the respondent had challenged the appointment of Sh. Sanjeev Kumar (hereinafter referred to as the 'Petitioner') to the post of Senior Scientific Officer (Documents) in the Forensic Science Laboratory, Government of NCT of Delhi, which appointment was made on the recommendation of the UPSC. According to the respondent, the petitioner did not possess the essential educational qualification and the experience

prescribed in the Recruitment Rules. This contention of the respondent is upheld leading to quashing of the petitioner's appointment to the said post. The petitioner is aggrieved as his appointment is quashed. Since UPSC had recommended the appointment treating the petitioner as qualified in terms of the Recruitment Rules, it has also filed the writ petition challenging the impugned judgment dated 19.2.2007. Before coming to the core issue, we may take note of some background material.

2. In August 2005, the UPSC advertised the post of Senior Scientific Officer (Documents) in the Forensic Science Laboratory, Government of NCT of Delhi. The petitioner applied for the same under the OBC quota. The respondent was also an aspirant for this post and, therefore, submitted his application. Both petitioner and the respondent were shortlisted and were interviewed and the UPSC selected the petitioner and recommended his appointment. The petitioner was accordingly appointed to the said post.

3. The advertisement, which was issued by the UPSC, discloses that there were three posts of Senior Scientific Officer (Documents) in Forensic Science Laboratory out of which one was reserved for OBC candidates. Following were the

essential qualifications:-

i) Educational: Master's Degree in Physics or Chemistry or Forensic Science with Physics as one of the subjects at B.Sc. Level from a recognised University or equivalent.

ii) Experience: Five Years experience in the field of identification of Handwriting, Typewriting, Printing Matters, Analysis of Ink and other allied problems in FSL's/CFSL's/GE'SQD.

4. Apart from the above, the advertisement mentioned the following 'Desirable Qualification': "Doctorate degree in the concerned discipline from a recognised University or equivalent." It also mentioned that the incumbent was to perform the following 'Duties': "Examination and reporting work of case exhibits, research work in the relevant field." In addition, the posts of Senior Scientific Officer (Documents), certain other posts were also advertised by the same advertisement. At the end of the advertisement, the UPSC specified certain "Instructions and additional information to candidates for recruitment by selection." This, *inter alia*, included the following:-

"3. MINIMUM EDUCATIONAL QUALIFICATION:

All applicants must fulfill the essential requirements of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least the essential qualifications laid down for various posts. No enquiry asking for advice as to eligibility will be entertained.

Note-1: The prescribed essential qualifications are in the minimum and the mere possession of the same does not entitle candidates to be called for interview.

XXXXX

7. CERTIFICATES TO BE ATTACHED:

XXXXX

(iii) If the qualification possessed by the candidate is equivalent, then the authority (with number and date) under which it has been so treated must be indicated;

(iv) Certificate(s) from the Head(s) of Organisation(s)/Department(s) for the entire experience claimed, clearly mentioning the duration of employment (date, month & year) indicating the basic pay and consolidated pay. The certificates should also mention the nature of duties performed/experience obtained in the post(s) with duration(s)."

5. It is clear from the above that the essential qualification required for the post is Master's Degree in Physics or Chemistry or Forensic Science with Physics or Chemistry as one of the subject at B.Sc. Level from a recognised University or **equivalent**. The petitioner herein is the holder of M.Sc. Degree in Applied Physics from Punjabi University, Patiala. Therefore, he is not having Master's Degree in Physics or

Chemistry or Forensic Science. The question was as to whether M.Sc. Degree in Applied Physics is equivalent to the aforesaid qualification.

6. Likewise, the advertisement stipulated five years' experience in the field of identification of writing etc. "in FSL's/CFSL's/GE'SQD." The petitioner has worked in FSL, Government of NCT of Delhi as a Laboratory Assistant from 4.11.1999 to 17.4.2002. Thereafter, he was appointed in LNJN National Institute of Criminology and Forensic Science, Ministry of Home Affairs, Government of India (hereinafter referred to as the 'LNJN Institute') as a Senior Scientific Assistant (Documents) from 18.4.2002 and was working in that position till the time he applied for the aforesaid post. The question, thus, was as to whether the experience in LNJN Institute would meet the requirement as per the Recruitment Rules. As mentioned in the beginning, on both counts the Tribunal held against the petitioner. In so far as the petitioner's Masters Degree in Applied Physics is concerned, the Tribunal observed that a Masters Degree in Applied Physics was not mentioned in the essential qualifications prescribed in the Recruitment Rules on the basis of which advertisement was issued and, therefore, it could not be said

with certainty that it would qualify as an 'equivalent degree.'

The Tribunal also observed that list of courses offered by the Punjabi University, Patiala, indicated M.Sc. (Physics) with a duration of two years and M.Sc. (Applied Physics), also with a duration of two years, separately from each other and, therefore, the two M.Sc. courses are different and qualify for distinct M.Sc. degrees. With regard to equivalence, the Tribunal held as under:-

"8. From the reply of the UPSC it appears that they accepted the MSc degree in Applied Physics to be equivalent to MSc in Physics as in their view the basic course structure was the same. However, details of the course structures are not discussed or enclosed. The UPSC have also relied upon the fact that private respondent No.4 was admitted to the LNJN Institute by accepting his MSc degree in Applied Physics to be similar to an MSc degree in Physics. It has been pointed out that in his additional affidavit dated 19.10.2006 the applicant has admitted that knowledge gained at the Master's level would be of assistance only in understanding the fundamental scientific principles and it makes no difference whether a candidate has a Master's degree in Physics or Applied Physics. But it is seen that the applicant has also submitted that since the recruitment rules and the advertisement specifically prescribe MSc degree in Physics as the essential educational qualification, other degrees would not be relevant and if such are accepted, it would encourage arbitrariness and discrimination. It stands to reason that those with MSc degree in Applied Physics may not apply for selection as they would have no way of knowing if it would be treated

as 'equivalent' or not. Other degrees could also be similarly accepted which may not be fair in the circumstances. The UPSC has informed that qualifications are relaxable at its discretion in case of candidates otherwise well qualified, but there is no material to show whether this provision was required to be invoked in the present case and if so, with what result."

7. Certain judgments are noted by the Tribunal on 'equivalence' to which we shall refer to at an appropriate stage.

8. In so far as requirement of five years' experience for the post is concerned, the Tribunal refused to accept the contention of the petitioner and UPSC that LNIN Institute was a premier centre of learning with outstanding training facility and faculty and, therefore, working in such an institute would meet the requirement of five years' experience. The Tribunal was of the opinion that working in such an institute would not give experience of examining actual forensic evidence, including documents in assistance of investigating agencies and courts, similar to that available in FSLs, as specified in the advertisement. Noticeably, there was no inclusion of the word "equivalent" in this part of the essential qualification relating to experience that could extend consideration to other institutions and also for the purpose of eligibility."

9. In view of the aforesaid, the Tribunal set aside the appointment of the petitioner. We may, at this stage, point

out that the appointment was also challenged on the ground that Director-Incharge, FSL (who was impleaded as the respondent No.3 in the OA and had taken part in the selection) was biased in favour of the petitioner, which had led to his selection. However, this contention of the respondent was not accepted. We have pointed out this aspect as the learned counsel for the respondent had before us pressed this contention again with great vehemence.

10. In so far as bias of Director-Incharge, FSL, is concerned, this contention of the respondent in his OA was based upon the allegations that there were repeated conversations on cellphone between the petitioner and the said Director-Incharge at the time the selection took place and also thereafter. The Tribunal doubted the reliability of the alleged personal knowledge of the respondent in this behalf. It further mentioned that the Director-Incharge, FSL, was not impleaded by name. However, he had filed affidavit dated 24.11.2006 denying that he was ever in touch with the petitioner before 4.7.2006. Subsequent calls were just conversations between them because of the past association when the petitioner was working as Lab Assistant under him during the period 1999-2002. The main reason brushing

aside this contention was that the Director-Incharge, FSL, was not even a member of the Interview Board and had not participated in the actual process of selection. He had merely represented the Ministry in the UPSC to apprise the Interview Board about the recruitment rules, promotion prospects, nature of duties, posts and left the room before the interview started. Thus, he had neither any control upon the Members of the Board nor he could influence them. We are in agreement with this view of the Tribunal on this aspect and, therefore, reject this contention of the respondent.

11. With this we now proceed to deal with the grounds on the basis of which the appointment is quashed.

Re. Essential Qualifications:

12. For the sake of convenience, "Essential qualifications", as per the advertisement, which corresponds to the recruitment rules, are reproduced below:-

"A) Educational: Master's degree in Physics or Chemistry or Forensic Science with Physics or Chemistry as one of the subjects at B.Sc. level from a recognized University or equivalent."

13. It is clear from the above that even if a candidate does not possess Master's degree in Physics or Chemistry or Forensic Science with Physics or Chemistry as one of the subjects at B.Sc. level, he will still be treated as possessing these

qualifications if he is having Master's degree in an "equivalent subject." Therefore, the question is as to whether Master's degree in Applied Physics is an equivalent degree. We are forced to make immediate remarks that the approach of the Tribunal was not correct in observing that merely because M.Sc. degree in Applied Physics is not mentioned specifically in the recruitment rules, it cannot be said with certainty that it shall qualify as an equivalent degree. The question of equivalence arises only when a particular degree is not mentioned specifically and, therefore, non-mentioning of such a degree cannot be the yardstick to adjudge equivalence. Again, the observations of the Tribunal that two M.Sc. courses are different and qualify for distinct M.Sc. degrees was not relevant for the purpose of treating as to whether the two degrees would be equivalent. The relevant question which the Tribunal should have posed to itself was as to whether degree in Applied Physics is "equivalent" degree to that of M.Sc. in Physics.

14. However, at this juncture it is pertinent to take note of judicial pronouncements in respect of determination of equivalence of degree. Recently, the Apex Court in ***Bihar Public Service Commission and Ors. v. Kamini and Ors.***

(2007) 5 SCC 519 referring to the judgment of **The University of Mysore and Anr. v. C.D. Govinda Rao and Anr.** AIR 1965 SC 491 observed as under:

“Again, it is well settled that in the field of education, a Court of Law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications should better be left to educational institutions.”

15. In **Medical Council of India v. Sarang and Others** (2001)

8 SCC 427 it had been observed by the Apex Court that "in matters of academic standard, Courts should not normally interfere or interrupt the rules and such matters should be left to the experts in field". The Hon'ble Supreme Court had relied on its previous judgments in *University of Mysore v. C.D. Govinda Rao*, AIR 1965 SC 491. *State of Kerala v. Kumari T.P. Roshana*, (1979) 1 SCC 572 and *Shirish Govind Prabhudesai v. State of Maharashtra*, AIR 1993 SC 1736.

16. The Apex Court in **Medical Council of India v. Silas Nelson and others** (1993) 3 SCC 185 it was observed as under:

“Equivalence has to be decided by only an expert body, that too, on technical and academic matters. It is not in the domain of assessment or evaluation by the Court. The High Court should not have embarked on the determination of equivalence on the basis of sketchy materials placed before it.”

17. Recently, in **Ms. Jainish Kumari v. Govt. of NCT of Delhi**

and Ors. 2007 (143) DLT 336 (DB), the Division Bench of this Court clearly laid down that the Court cannot assume the role of experts for determination of the equivalence of diploma held by the petitioner as it falls within the domain of experts and therefore it is for the appropriate expert body to determine the equivalence of a qualification.

18.The Division Bench of this Court In **Union of India & ors. v. Sambhu Saran Singh & anr.** 2001 (93) DLT 236 (DB) it was observed as under:

“It was neither for the Tribunal nor for this court to enter the academic thickets and to grant equivalence to university degrees on broader interpretation and that too in the absence of any assistance or material from the concerned degree awarding university. Such matters fell within the domain of concerned academic/expert bodies and were better left to them as repeatedly made clear by the Supreme Court in its various judgments.”

19.Thus, it is the function of the expert bodies, nay, the educational institutions to provide for equivalence. Therefore, the relevant consideration was to see as to whether M.Sc. in Applied Physics has been treated as equivalent to M.Sc. (Physics) by the Punjabi University, which undertakes the duties of deciding equivalence. The petitioner has produced the list of examination of other Indian Universities/Boards/Bodies, which are recognized by the Punjab University,

Chandigarh. In this list, equivalent examinations conducted by Punjabi University, Patiala, are mentioned. Entry No.13 thereof, which is directly in question, stipulates as under:-

"13. M.Sc. (Applied Physics) recognised, equivalent to M.Sc. (Physics)."

20. This entry eloquently discloses that M.Sc. (Applied Physics) is recognised as equivalent to M.Sc. (Physics). For our purpose, going by the settled legal principles, we need not go any further and have to treat the qualification of M.Sc. (Applied Physics) held by the petitioner as equivalent to M.Sc. (Physics), which is the qualification as per the recruitment rules for the post in question. Therefore, we are of the opinion that the petitioner fulfilled the educational qualification.

Re. Experience:

21. In fact, the learned counsel for the respondent herein did not make any serious challenge to the educational qualification possessed by the petitioner. His main argument was about the experience, which, according to the recruitment rules, was five years experience of the following nature:-

"B) Experience: Five years experience in the field of identification of Handwriting, Typewriting, Printing Matters, Analysis of Ink and other allied problems in FSL's/CFSL's/GE'sQD."

22. Arguments were advanced by both the sides on the question as to whether the petitioner's experience in LNJJN Institute

could be counted for computing five years experience. Learned counsel for the petitioner as well as UPSC were at pains to mention that even while working in the said Institute a person was performing the duties of Handwriting, Typewriting, Printing Matters, Analysis of Ink etc. and, therefore, the said experience should be included in computing five years. It was argued that LNJN National Institute of Criminology and Forensic Science is a premier centre of learning with outstanding training facilities and faculty, which works towards the advancement of the subjects of criminology and forensic science to meet the ground level requirements of criminal justice and provided facilities for research and in-service training for officers of police, judiciary etc. and also undertakes to promote international understanding. The counsel pointed out that the duties, which were attached to the post in question to which the petitioner was selected, were in consonance with such role of the institute and, therefore, the petitioner be treated as duly qualified.

23. Learned counsel for the respondent, on the other hand, submitted that LNJN Institute was only an educational institute and the persons working there were not required to handle

day-to-day practical crime related material, which was being handled by FSLs/CFSLs/GE'SQD.

24. We are of the opinion that it is not even necessary to deal with these contentions and to address ourselves as to whether, while working in LNjN Institute, a person would acquire necessary experience. Simple reason is the stipulation of experience contained in the recruitment rules. In no uncertain terms, the recruitment rules stipulate five years experience in the field of identification of handwriting etc. in FSL's or CFSL's or GE'SQD. Thus, the reading of the qualification of experience, as prescribed in the recruitment rules, clearly mentions the following attributes which a candidate is to satisfy before it is considered that he is having necessary experience as per those rules, namely, (i) experience of five years, which is the period specific; (ii) this experience has to be in the field of identification of handwriting, typewriting, printing matters, analysis of ink and other allied problems; (iii) the experience is to be in the institutions specified, namely, FSL's/CFSL's/GE'SQD. It is rightly pointed out by the Tribunal that while specifying particular laboratories, the word 'equivalent' in this part of essential qualification relating to experience is conspicuously

absent. Therefore, it is necessary that in order to meet the requirement of experience, not only a candidate should have experience of five years in the specified field but this experience has to be only in FSL or CFSL or GE'SQD. No other institute is specified. Therefore, the question as to whether a person working in LNIN Institute, which is the institution mentioned therein, would acquire necessary experience is out of question as we are not to go into the exercise as to whether this institute is equivalent to the Forensic Science Laboratory or Central Forensic Science Laboratory or GE'SQD.

25. Once the rule is made with particular emphasis in mind, namely, requirement of earning experience only in specified laboratories, 'equivalence' cannot be seen at all in the absence of such permissive stipulation. It can be presumed that while making this rule, the framers of the rules wanted experience in the required manner as prescribed, i.e. in FSL/ CFSL/GS'SQD, which are the institutions where only crime related matters are handled by the laboratories from a day-to-day practical point of view and the framers of the rule consciously omitted any other type of institute. It is to be kept in mind that this requirement is an 'Essential' qualification as per the recruitment rules, which a candidate is

bound to fulfill. No doubt, there is a provision for relaxation, but it is not the case of the UPSC that such a relaxation was ever given to the petitioner. On the contrary, the UPSC formed the opinion that the petitioner possessed the required experience as per the recruitment rules as he had produced the experience certificates showing that while working as Senior Scientific Assistant in LNJN Institute, he had undertaken the job of examination of documents as well. Such certificate could not have been acted upon as experience in the said institute was of no use having regard to the specific recruitment rules mentioning precise institutions where such an experience was to be acquired.

26. We, therefore, have no option but to hold that the petitioner did not have the experience of five years in particular field as specified in the recruitment rules from FSLs/CFSLs/GE'SQD and, therefore, the Tribunal rightly held, on this account, that he was not eligible for the post in question. We accordingly agree with the conclusion of the Tribunal, excepting with regard to the equivalence of the educational qualification of the petitioner and, therefore, find no reason to interfere with the said ultimate conclusion quashing the appointment of the petitioner. Both the petitions are accordingly dismissed.

(A.K. SIKRI)
JUDGE

January 11, 2008
HP.

(VIPIN SANGHI)
JUDGE

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For orders, see WP (C) No. 1655/2007.

(A.K. SIKRI)
JUDGE

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