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

+ **W.P.(C) 6281/2015**

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Judgment dated 3rd July, 2015

SATISH KUMAR SINGH

..... Petitioner

Through : Mr.Ruchir Mishra and Mr.Mukesh Kumar
Tiwari, Advs.

versus

**UNION PUBLIC SERVICE
COMMISSION AND ANR**

..... Respondents

Through : Mr.Vardhman Malik, Adv. for Mr.Naresh
Kaushik, Adv. for respondent no.1.
Ms.Archana Gaur, Adv. for Ms.Mansi
Gupta, Adv. for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. NOS.11421-22/2015.

1. Exemption allowed subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 6281/2015 & CM APPL. 11420/2015.

3. OA No.1985/2015 filed before the Central Administrative Tribunal was dismissed *in limine* on 29.5.2015, which has led to the filing of the present writ petition.

4. As per the petition, in the month of July, 2013, an advertisement bearing no.10/2013 was published by the Union Public Service Commission, inviting online recruitment application for the posts mentioned in the

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By:AMULYA

advertisement including 14 vacancies (Vacancy no.13071008227) for the post of Assistant Legal Adviser (ALA) in the Department of Legal Affairs, Ministry of Law and Justice. The petitioner, who was eligible and fulfilled the required criteria for the post of ALA, submitted his application online bearing no.11905090241. However, the advertisement bearing no.10/2013 was withdrawn vide subsequent advertisement bearing no.12/2014, which was re-advertised vide advertisement no.15/2014. By the time advertisement no.15/2014 was published, the petitioner herein became ineligible on account of the age criteria.

5. It is the case of the petitioner that respondent no.1 had re-advertised for the said fourteen vacancies without any change either in the number of vacancies or the method of recruitment, however, on account of cancellation of the advertisement no.10/2013, re-advertisement of the said posts and age limit, the petitioner became ineligible.
6. As per the petitioner, the petitioner made a representation to the respondents stating that online application submitted by him at the time of advertisement no.10/2013 be considered and he be permitted to participate in the recruitment process for the post of ALA with regard to the advertisement no.15/2014. Having considered the representations, the Department of Legal Affairs vide its letter dated 10.10.2014 forwarded representations of three officers including the petitioner herein to the UPSC, *inter alia*, pointing out that the said three officers were eligible at the time when fourteen vacancies for the post of Assistant Legal Adviser were advertised in July, 2013, but the same was withdrawn and the said fourteen vacancies have been re-advertised in September, 2014, but in the meantime said three officers became over aged. Having pointed as above, the department of legal affairs requested UPSC to consider the representation of the said three officers including petitioner herein

sympathetically and consider them for the post of Assistant Legal Adviser, advertised vide advertisement issued in September, 2014. In response to the aforesaid communication dated 10.10.2014 of respondent no.2, UPSC vide its communication dated 17.4.2015 intimated to respondent no.2/Department of Legal Affairs that its request for considering the three officers including petitioner herein could not be acceded to as making exception in case of three candidates may invite court cases/representation from other similarly placed candidates. Being aggrieved with the UPSC's communication dated 17.4.2015, the petitioner, *inter alia*, challenging the UPSC/s communication No.F.1/161(11)/2014-R-11 (part) dated 17.4.2015 and, *inter alia*, praying that his earlier application against advertisement no.10/2013 for the post of ALA be treated as application against advertisement no.15/2014 and that his printed application form for the post of ALA in the office of department of legal affairs in response to advertisement no.15/2014 be accepted, filed OA No.1985/2015 before the Central Administrative Tribunal, Principal Bench, New Delhi.

7. Learned counsel for the petitioner submits that the interview for the post of ALA is scheduled to be held on Monday i.e. 6.7.2015 and in case the petitioner and two other similarly situated persons are not permitted to appear for the interview, serious prejudice would be caused to their rights and the present writ petition would become infructuous. It is further contended that the grounds raised in OA require consideration as when the earlier advertisement (No.10/2013) was published the petitioner was eligible but the said advertisement was withdrawn and the subsequent advertisement (No.15/2014) was in fact in continuation of the earlier advertisement.

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8. Learned counsel for the petitioner has relied upon *Malik Mazhar Sultan and Another v. U.P. Public Service Commission*, reported at (2006) 9 SCC 507 in support of his submission wherein it has been held by the Apex court that where a candidate was eligible to appear in the examination in any year of recruitment in which no examination was held, he shall be deemed to be eligible in age to appear in the next following examination.

9. We have heard learned counsel for the parties and also examined the communication dated 10.10.2014 and response thereto. Paras 3 and 4 of the communication dated 10.10.2014 read as under:

“3. Due to change in the categories of person with disabilities as suitable for the posts of Assistant Legal Adviser, the UPSC advertised the vacancies afresh in the Employment News dated 13-19 September 2014 after withdrawing the earlier advertisement issued in July, 2013.

4. The above mentioned applicants were eligible at the time the vacancies were advertised by the UPSC in July, 2013. These officers have become age-barred as per the revised advertisement issued by the UPSC in the Employment News dated 13-19 September 2014. Since the vacancies for which the advertisement was issued in July, 2013 and has been re-issued in September 2014 are the same and since the revision was only with reference to the categories of persons with disabilities. It is requested that the Commission may consider the requests of these officers sympathetically and they may be considered for the post of Assistant Legal Adviser by granting special dispensation in their favours.”

10. Reply of the communication by UPSC reads as under:

“ F.1/161(11)/2014-R.II (Part)
UNION PUBLIC SERVICE COMMISSION

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DHOLPUR HOUSE, SHAHJAHAN ROAD
NEW DELHI-110069

DATED – 1/4/2015

To

The Secretary to the Govt. of India
Ministry of Law & Justice
Department of Legal Affairs,
Shastri Bhawan
New Delhi.

(Kind Attention : Shri Ravindra Kumar, Deputy Secretary)

Subject : Representation from 3 officers for consideration of their applications for the post of Assistant Legal Adviser in the Ministry of Law and Justice advertised by UPSC.

Sir,

I am directed to refer to Ministry of Law & Justice, Department of Legal Affairs' Letter No.12025/2/2012. Admn. I (ILA) dated 10.10.2014 on the subject mentioned above and to say that the request of the Ministry of Law and Justice can not be accepted to by the Commission as making exception in case of these 3 candidates may invite court cases/representation from other similarly placed candidates.

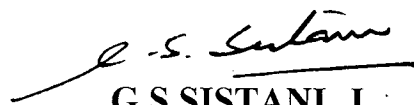
Yours faithfully
(Smt.Neera Sharma)
Under Secretary,
Union Public Service Commission"

11. Having heard counsel for the parties, we are of the view that the grounds raised in the Original Application filed before the Central Administrative

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Tribunal would require consideration. Accordingly, present writ petition is allowed. The order dated 29.5.2015 passed by the Central Administrative Tribunal is set aside. Parties shall appear before the Central Administrative Tribunal on 27.7.2015. Meanwhile, the petitioner and similarly situated persons, who had applied for the post of Assistant Legal Adviser pursuant to the advertisement bearing no.10/2013 published in July, 2013, would be permitted to appear in the interview to be held on 6.7.2015 with regard to advertisement no.15/2014. However, it is made clear that this arrangement would be subject to final outcome of the Original Application.

12. Accordingly, present writ petition and CM APPL.No.11420/2015 stand disposed of in view of above.
13. Let a copy of this order be given DASTI to counsel for the parties under the signature of Court Master.


G.S.SISTANI, J


SANGITA BHINGRA SEHGAL, J

JULY 03, 2015

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