

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

+ **WRIT PETITION (CIVIL) No. 7585/2014**

% **Reserved on:** 30th March, 2016
Date of Decision: 30th May, 2016

DR. RAJENDRA KUMAR SHARMAPetitioner
Through Ms. Jyoti Singh, Sr. Advocate with
Ms. Tinu Bajwa, Mr. Sameer
Sharma & Mr. Amandeep Joshi,
Advocates.

Versus

UNION OF INDIA AND OTHERSRespondents
Through Mr. Anurag Ahluwalia, CGSC &
Mr. Prashant Ghai & Ms. Sristi
Banerjee, Advocates for UOI.
Mr. Naresh Kaushik & Ms. Joymoti
Mize, Advocates for UPSC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

Dr. Rajendra Kumar Sharma in this writ petition assails the final judgment and order dated 21st August, 2014 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short), whereby his OA No. 138/2012 challenging the appointment of the fourth respondent-Dr. Sudhir Kumar to the post of Assistant Director (Weed Science), on the ground that he does not have the essential experience qualification, was rejected and the OA was dismissed.

2. This is the second round. Earlier, OA No. 138/2012 was dismissed vide order dated 31st January, 2012 without calling for counter/reply as the Tribunal was not satisfied or convinced that the challenge to the fourth respondent's appointment had merit. The Delhi High Court in Writ Petition (C) No. 2402/2012 by order dated 4th March, 2013 had set aside this order and the O.A. was restored to the Tribunal for fresh adjudication. The respondents were directed to file a reply to the O.A., consequent to which the O.A. would be adjudicated and decided on merits. The O.A. No. 138/2012 has accordingly been disposed of by the impugned order dated 21st August, 2014.

3. The short question and issue raised before us is whether the fourth respondent-Dr. Sudhir Kumar, has the requisite practical experience in the field of Weed Science/Weed Control, as stipulated and required by the advertisement published by the Union Public Service Commission (Commission for short) for the post of Assistant Director (Weed Science) in the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture. The essential and desirable requirements as advertised read:-

“2. (VACANCY No. 11061102511)

**ONE ASSISTANT DIRECTOR (WEED SCIENCE)
IN THE DIRECTORATE OF PLANT
PROTECTION, QUARANTINE AND STORAGE,
MINISTRY OF AGRICULTURE. The post
unreserved. QUALIFICATION: ESSENTIAL: A.**

EDUCATIONAL: M.Sc. Degree in Agriculture/Agronomy with Weed Science as a subject or M.Sc. Degree in Botany/Agricultural Botany with Weed Science as a subject from a recognized University or equivalent. **B. EXPERIENCE:** Three years' practical experience in the field of Weed Science/Weed Control. **DESIRABLE:** Doctorate degree in the field of specialization. Duties: Quarantine inspection/treatment of plants/plant materials for any contamination with weed seeds. Identification of exotic weed seeds. Adaptive research in evolving measures for weed control. Any other duties as may be assigned."

4. The requirements advertised were in terms of the Directorate of Plant Protection, Quarantine and Storage, Assistant Director (Weed Science) Recruitment Rules, 2008. The relevant recruitment rule reads:-

“Essential:

- (i) M.Sc. Degree in Agriculture/Agronomy with Weed Science as a subject or M.Sc. Degree in Botany/Agricultural Botany with Weed Science as a subject from a recognised University or equivalent.
- (ii) Three years practical experience in the field of Weed Science/Weed Control.

Note 1: Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note 2: Qualification(s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission in case of candidates belonging to Scheduled Castes or Scheduled Tribes. If at any stage of selection the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the posts reserved for them.

Desirable:

- (i) Doctorate degree in the field of specialization.”

5. It is not the case of the respondents that the essential qualifications were relaxed in the case of the fourth respondent. The respondents including the fourth respondent state that the fourth respondent fulfilled the requirement of three years practical experience in the field of Weed Science/Weed Control. Per contra, the petitioner submits that this aspect was not examined.

6. Refuting the aforesaid contention in favour of the fourth respondent apropos the prescribed minimum practical experience, the petitioner has drawn our attention to the certificates enclosed by the said respondent along with his application. The fourth respondent had filed several certificates as required, to show and establish that he has practical experience in the field of Weed Science/Weed Control. The first certificate issued in July 2012 by the Division of Agronomy, Indian Agriculture Research Institute records that Dr. Sudhir Kumar had worked in an ad hoc project on weed management as a Research Associate from 19th December, 1997 to 30th November, 1999. Besides helping in technical field experiments on food and cash crops, layout of experiments, sowing of crops, spraying of herbicides, collection of data, writing of reports etc. and lab work-chemical analysis of soil, crops etc., the fourth respondent had

provided assistance in computing/statistical analysis of data. This certificate, it is apparent, could be treated as a certificate indicating that the fourth respondent had relevant practical experience in the field of Weed Science/Weed Control of about two years. *Albeit*, the essential requirement was practical experience in the field of Weed Science/Weed Control of three years.

7. The other certificates are conspicuously silent and do not reflect or state that the fourth respondent was associated with and had experience in the field of weed science and weed control. Certificate issued by Vivekananda Parvatiya Krishi Anusandhan Sansthan, Almora, Uttar Pradesh dated 18th December, 1997 certifies that the fourth respondent had worked as a Research Associate (Agronomy) from July, 1997 to December, 1997 in the Pilot Project on Technology Assessment and Refinement through Institution- Village Linkage Programme. This certificate, in our opinion, does not even remotely reflect and show involvement of the fourth respondent in a field connected or associated with Weed Science or Weed Control. The certificate issued by Centre for Agricultural Technology Assessment and Transfer, Indian Agricultural Research Institute, New Delhi dated 16th June, 2000 certifies that the fourth respondent was working with them since 22nd December, 1999 as a Research Associate on Technology Assessment and Refinement under the

Institution Village Linkage Programme undertaken under the National Agricultural Technology Project. The said certificate records that the petitioner had good knowledge of crop production (food and cash crops), research and extension work. The fourth certificate relied by the fourth respondent dated 17th June, 2011 was issued by the Directorate of Arecanut and Spices Development, Department of Agriculture and Cooperation, Calicut, Kerala. The certificate records that the fourth respondent was holding the post of Senior Technical Assistant in the said Directorate and had attended duties related to formulation, implementation and monitoring of development programmes on spices, medicinal and aromatic plants. He had also carried out various production related programmes like production and distribution of quality seeds/planting materials, conduct of farmers training programmes, establishment and maintenance of herbal gardens etc. The certificate issued by Additional Commissioner (Horticulture), Ministry of Agriculture, Department of Agriculture and Cooperation dated 22nd June, 2011 states that the fourth respondent was working with them as Senior Technical Assistant (Crops) on deputation since 4th May, 2006 and was assisting senior officers in planning, coordination and implementation, including financial releases and monitoring of the Horticulture Mission, a centrally sponsored scheme of the Department of Agriculture and Cooperation, for the North-East and Himalayan States. This certificate

again does not mention any association or connection with the field of Weed Science/ Weed Control. Same is the position of the certificate dated 18th December, 1997 and another certificate dated 17th June, 2011 issued by Directorate of Arecanut and Spices Development, Calicut, Kerala. The last certificate has to be read along with the certificate dated 22nd June, 2011 issued by the Government of India, Ministry of Agriculture for the fourth respondent was on deputation with the aforesaid Directorate since 4th May, 2006 and engaged in assisting senior officers in planning, coordination and implementation, including financial releases and monitoring of the Horticulture Mission in North-East and Himalayan States.

8. We have also examined the Commission files, and the notings are revealing. With reference to the advertisement dated 11th February, 2011, as many as 42 applications were received, including 24 applications from general category candidates. These applications were subjected to scrutiny and verification to ascertain whether the candidates fulfilled the essential requirements. Eighteen applicants were found to be lacking essential educational qualifications. Some applications were rejected on the ground that applicants were overage or the applications were filed without fee or insufficient fee or they had been received late, i.e., beyond the time stipulated. The note dated 5th September, 2011 prepared by Deputy

Secretary (RV) records that only one applicant, at serial number 14, had met the requisite educational and experience qualification and was, therefore, the only candidate eligible to be called for interview. For the sake of completeness, we would like to reproduce the screenshot of the relevant portion of the file noting itself, which is as under:-

9. PS FOR ONE POST UNRESERVED POST

42 applications have been received against the 01 (one) unreserved post. The following criterion is proposed to be adopted for short-listing of candidates:

Short Listing Criterion

Candidates possessing **EQ (A) + EQ (B)**

If the above criterion is approved, the following candidates would become eligible to be called for interview:

To Call: GS/MD GS
Roll No. 14 02

(~~* NTP of proof of being Central Govt. servant as on closing date~~)
 (01 candidate)
 (02 Candidates)

10. The remaining candidates may not be called for interview in view of the reasons given below:

REJECTED UNDER NEW INSTRUCTIONS dated the 4th June, 2009
 (Incomplete Application)

Roll No.	Reason for Rejection
05 ✓	Application not in prescribed format. / <u>No Degree</u> / <u>No DOB att.</u>
20 ✓	Degree Certificate not submitted
22 ✓	Proof of DOB not submitted; Exp. Certificate not submitted
28 ✓	Degree Certificate not submitted / <u>No att. to PCC IV</u>
33 ✓	Nature of Duties not specified in Experience Certificate
35 ✓	Experience Certificate not submitted
40 ✓	Experience Certificate not submitted
42 ✓	No Annexures

(08 candidates)

Contd./.....

At another place the following noting was made:-

LEAD-B:
Roll Nos. 01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39

During:
Roll Nos. 11 12 13 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39

LATE:
Roll Nos. 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39

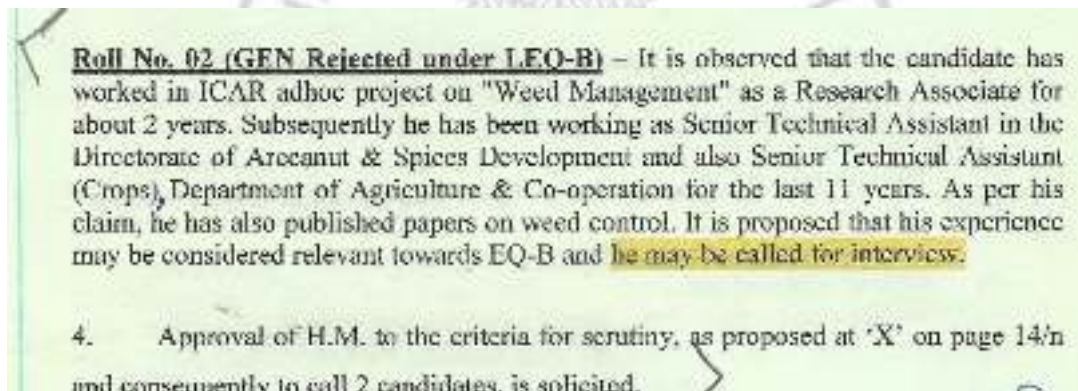
11. To sum up, 01 (One) candidate may be called for interview for 01 (one) unreserved post of Assistant Director (Weed Science) in the Directorate of Plant Protection, Quarantine and Storage, Department of Agriculture and Cooperation, Ministry of Agriculture.

12. Submitted for consideration and approval of the Commission

The words in bold “*STP of proof of being Central Govt. servant as on closing date” and "01 candidate" were first typed and have been thereafter scored off. The typed portion (01) candidate was scored off and the hand written note in pencil records (02) candidates. The aforesaid scanned copy/ screenshot reflects that subsequent corrections were made after the typed notes were recorded. The fourth respondent, candidate with roll No. 2, was found to be ineligible as he did not have the requisite experience. However, corrections were made by pencil and his roll number was added/included. Thereafter, the file was processed as if the two candidates, including the fourth respondent, were eligible. The second screen shot shows that roll No. 2 was also deleted from the list of 23 ineligible candidates. The numerical 23 representing the number of ineligible candidates was scored off and written in pencil as 22. We have

deliberately excluded the names of the officers who have written and signed the notes from the scanned copy/photoshot of the relevant file so as not to reveal their identity. This may require deeper scrutiny and ascertainment of true and correct facts as to why and who had made the said changes. The charges are not signed and why they were made in pencil and not in pen, is perplexing.

9. There is a noting by the Joint Secretary (R.II) at page No. 16, a page which has been attached with a staple and included as a part of the file. The screenshot of the same is as under:-



The aforesaid proposal of the Joint Secretary (R.II) dated 8th September, 2011 was approved by the Member and the file was processed. The file has yet another noting dated 8th September, 2011 at page No. 11, which has been scored off and written as page No. 17. The above quotation dated 8th September, 2011 relates to the fourth respondent. The

fourth respondent was included in the list of eligible candidates, without ascertaining whether the said respondent had requisite work experience in the field of Weed Science/Weed Control. On the other hand, it stands recorded that the fourth respondent had worked on an ad hoc project of Weed Science as a Research Associate for about two years. This work experience as recorded does not meet the requisite work experience of three years. It is also recorded that the fourth respondent had worked as a Senior Technical Assistant in the Directorate of Arecanut and Spices Development, Calicut, Kerala and as Senior Technical Assistant (Crops), Department of Agriculture and Cooperation. The note neither states nor records a finding that the said eleven years experience could be counted and was in the field or connected with Weed Science or Weed Control. The mandatory "work experience" of three years in the field of Weed Science/Weed Control was also not examined in the aforesaid note, in spite of the fact that as per earlier notings, on verification of documents, the fourth respondent was recorded and declared as ineligible. Clearly, the authorities did not take into account the requirement of the essential practical experience stipulation in the advertisement as well as in the recruitment rules. It was not examined whether the fourth respondent would meet and satisfy the said minimum condition. This lapse and non consideration would amount to and result in an error in the decision

making process. Relevant and requisite stipulations relating to essential and mandatory work experience were not examined.

10. In view of the above, we have no hesitation and doubt in holding that the fourth respondent did not satisfy the minimum requirement and was ineligible for being appointed to the said post. The consequence thereof would be that his appointment has to be set aside.

11. As we are reversing the judgment of the Tribunal, we must look into the reasoning and the grounds given by the Tribunal for dismissing the OA filed by the petitioner before us. We reiterate that it is a case of the respondents that the fourth respondent, i.e., Dr. Sudhir Kumar was rightly appointed as per the recruitment rules and had the requisite essential qualification prescribed in the advertisement and recruitment rules. It is not stated or pleaded that the essential requirements were relaxed for the fourth respondent as he was a deserving candidate. The Tribunal in the impugned order dated 21st August, 2014 has referred to the dictum that courts or tribunals do not function as appellate bodies and scrutinise the relative merit of the candidates for this is the job of the duly constituted selection committee, which has experts in the subject. Reference was made to ***Dalpat Abasaheb Solunke, etc. etc. versus Dr. B.S. Mahajan, etc. etc.***, AIR 1990 SC 434. In the present case, we are not examining the relative merit of the candidates. The question raised is narrower and restricted to

whether the authorities concerned had duly applied their mind and examined whether the fourth respondent was meeting and had satisfied the minimum practical experience requirement of three years in the field of Weed Science/Weed Control. The Tribunal failed to examine, whether this exercise and examination was conducted before the fourth respondent was selected. The interpolation and changes made in the file and recordings are revealing. Erroneous file notings can be rectified, but some justification or cogent reason for the correction should be stated or be palpable. The reasons could have been elucidated and explained at the stage of arguments or when the file was shown. The reasons recorded in the note of the Joint Secretary (R.II) have been commented upon. The fourth respondent as per the scrutiny was declared inelegible as he did not have practical experience of three years in the requisite field. This is apparent and was recorded. Subsequently, for no apparent reason it was held and observed that he was eligible and meeting the required eligibility experience. For this reason, the decision in the case of *Maheshwar Prasad Srivastava & Antoher versus Suresh Singh and Others*, AIR 1976 SC 1404 would not be applicable. In the said decision, it was held that in matters and questions relating to adequacy and sufficiency of training, opinion of the Commission would carry weight, for it has the benefit of expert opinion and they are better situated to judge whether a particular candidate is qualified for the

particular post and the Courts would hesitate to interfere. As noticed above, in the present case, while accepting the fourth respondent's candidature and selecting him, the essential requirement of practical experience of three years in the field of Weed Science/Weed Control as per the mandate of the advertisement and Recruitment Rules was not examined and gone into. The aforesaid notings do not record a finding or observe that while working in the Directorate of Arecanut and Spices Development, Calicut, Kerala and as Senior Technical Assistant (Crops), the fourth respondent was dealing with Weed Science/Weed Control. No expert or other officer had opined or held that the fourth respondent meets and has requisite work experience of three years in Weed Science/Weed Control. This relevant aspect has been ignored and not taken into consideration. For an identical reason, the decision in the case of ***Union Public Service Commission versus L.P. Tiwari and Others***, (2007) 1 SCC (L&S) 944 would not be applicable. We are not re-examining the evaluation made by the expert committee, but have only noted that the relevant examination was not done at the time of selection and the question whether the fourth respondent's certificate and experience of eleven years was the experience in the relevant field of Weed Science/Weed Control, was not duly examined and considered. Thus this is a case where there was an error in

the decision making process, as the core and relevant aspects have not been taken into consideration. Mandatory eligibility requirement was ignored.

12. The Tribunal in the impugned order has recorded:-

“14. Admittedly, the experience certificates submitted by the respondent no.4 were issued by the organizations where he had worked in different capacities. It is common knowledge that experience certificates are issued in favour of employees by their superior officers of organizations who have had direct knowledge about the performances of the employees during the relevant period, unless they are prevented by the Heads of Organizations/Departments from doing so, and that such experience certificates are also issued under the signatures of officers who are authorized by Heads of Organizations/Departments for the purpose. The applicant has not produced any material before this Tribunal showing that the officers who had issued the experience certificates in favour of the applicant were prevented by the Heads of Organizations/Departments from issuing such certificates and/or were not authorized for the purpose. The opinion received by the applicant's wife from the Directorate of Weed Science Research in the shape of a purported information under the R.T.I. Act that the applicant did not possess the required three years practical experience in the field of weed control/weed science cannot be said to carry much evidentiary value inasmuch as such opinion/information was obtained during the pendency of the O.A. from the said Directorate by the applicant's wife who is a person interested in the present proceedings. It is not the function of the Tribunal to determine whether or not, on the basis of the experience certificates submitted by him, respondent no.4 could be held to have possessed the three years practical experience in the field of weed science/weed control. In this case, the UPSC, an expert body, has found the respondent no.4 as possessing three years practical experience in the field of weed science/weed control on the basis of the experience certificates submitted by respondent no.4. In the above view of the matter, we do not find any fault with the UPSC in holding the respondent no.4 eligible for consideration for the post on the basis of the experience certificates submitted along with the application.”

The aforesaid reasoning would indicate that the Tribunal did not examine the certificates of the fourth respondent and has made general observations. These general observations do not meet the tests and parameters required to be fulfilled when Courts or tribunals examine an issue of this nature in exercise of the power of judicial review. Courts and Tribunals, while exercising the said power, do not act as appellate bodies, yet they do ascertain and verify, whether the authorities concerned had applied the relevant criteria and have not acted capriciously or in an arbitrary and discriminatory manner, to include ineligible or ignore eligible persons. Ineligible candidates not meeting the essential requirements have no right to either be appointed or to continue in the post. Suitability or comparative merit is normally not examined but eligibility can be examined. Even when examining eligibility, the opinion of the experts on the said determination carries weight and would be rarely interfered. This case falls under third category. The fourth respondent was found and included in the ineligible candidates list. He lacked and did not have requisite and mandated three years experience in the field of weed science/weed control. Notwithstanding the accepted position, the fourth respondent was selected contrary to the eligibility conditions prescribed in the recruitment rules.

13. When the appointment at the initial stage is illegal and contrary to the mandate of the recruitment rules, the illegality cannot be cured or condoned, nor can the illegality be regularised. (See *State of Orissa vs. Mamta Mohanty* (2011) 3 SCC 436 and *Khub Ram vs. Dalbir Singh* (2015) 8 SCC 368).

14. In the light of the aforesaid position, the writ petition has to be allowed and the appointment of Dr. Sudhir Kumar, the fourth respondent, to the post of Assistant Director (Weed Science) is held to be illegal and contrary to the recruitment rules. Writ is issued and appointment of Dr. Sudhir Kumar as Assistant Director (Weed Science) is set aside and quashed. However, we cannot grant the prayer and direct that the petitioner should be appointed by stepping in as the selecting and appointing authority. The petitioner, it is held, would be entitled to costs, which are assessed at Rs.20,000/-. The said cost will be payable by the official respondents.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 30th, 2016