

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.7907 of 2017 (O&M)

Date of Decision.07.12.2017

Union Public Service Commission

.....Petitioner

Vs

Central Administrative Tribunal and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Ms. Alka Chatrath, Advocate
for the petitioner.

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AMIT RAWAL J.

The petitioner-Union Public Service Commission has preferred the present writ petition under Article 226/227 of the Constitution of India challenging the order dated 20.08.2016 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench (hereinafter called as “CAT”) whereby the original application preferred by respondent No.2 against the order dated 20.01.2016 passed by it has been allowed and direction had been issued to consider him as eligible for appointment to the post of Assistant Government Advocate.

Ms. Alka Chatrath, learned counsel appearing on behalf of the petitioner submitted that on 22.08.2015, the petitioner-Union Public Service Commission issued an advertisement for making recruitment against three posts of Assistant Government Advocate Grade IV of Government Service Cadre of Indian Legal Service (ILS) in the Department of Legal Affairs, Ministry of Law and Justice, out of which one was to be filled up from the Physically Handicapped category. The qualification for the post in question as per the statutory Rule was as under:-

“A person shall not be eligible for appointment by direct recruitment to a duty post in Grade IV, unless he holds a Degree in Law of a recognized University of LLB and should be a member of a State Judicial Service for a period of not less than seven years or has held a superior post in the Legal Department of a State for a period of not less than seven years or a Central Government servant who has had experience in Legal Affairs for not less than seven years or possesses a Master’s Degree in Law and has had teaching or research experience in Law for not less than five years or is a qualified legal practitioner of not less than 30 years of age.

Note 1: In making appointment by direct recruitment to any duty post in the Government Advocate Service cadre of the Department of Legal Affairs, the candidate should be eligible for enrollment as an advocate in the Supreme Court under the Supreme Court Rules, 1950 as amended from time to time and for registration an Advocate-on-Record of that court under the said rules.

Note 2: The ‘qualified legal practitioner’ in relation to appointment to a duty post in Grade IV by direct recruitment means that an advocate or a pleader who has practiced as such for at least seven years, or an attorney of the High Court of Bombay or Calcutta who has practiced as such for at least five years or has practiced as such attorney and an advocate for a total period of at least five years.

Note 3: A superior post in the Legal Department of a State means that he should have experience in the State Government in a post which is not clerical and which requires qualification of Degree in Law for appointment to it.”

On 08.09.2015, the respondent No.2-applicant applied for the said post under the Physically Handicapped category and enclosed the experience certificate dated 28.01.2015 (Annexure A-2). The application filed by him was rejected on the ground that he was “lacking education

qualification-B i.e. experience”. The respondent No.2 against the rejection order submitted a representation dated 29.12.2015 stating that he was eligible as while working as Assistant Director (P&A) and Deputy Director (P&A), he performed the duties as Nodal Officer (Law). The said representation was rejected by the petitioner. It is in this backdrop of the matter, the aforementioned order was challenged by filing OA No.060/00131/2016 before CAT.

The CAT vide interim order dated 29.02.2016 permitted the respondent No.2 to appear for interview provisionally scheduled for 02.03.2016. According to the learned counsel, the CAT erroneously allowed the OA holding that respondent No.2 fulfilled the qualification whereas he did not have the following requisite experience:-

“Member of a State Judicial Service for a period of not less than seven years or has held a superior post in the Legal Department of a State for a period of not less than seven years or a Central Government servant who has had experience in legal affairs for not less than seven years.

It was urged that the interpretation placed by the CAT is untenable as the experience of an official in the administrative department of the Central Government or the State Government cannot be considered/counted as relevant in the legal affairs. The Department of Legal Affairs, Ministry of Law and Justice vide letter dated 25.11.2016 defined the term “legal affairs” as under:-

1. To give legal advice on all matters.
2. To look after litigation work.
3. To conduct court cases and to appear in courts.

All the affairs related to law and appearing in litigation in Courts or quasi-judicial are amounted to be legal affairs.

It was also argued that the CAT failed to take into consideration that the post in question was of a Government Advocate and the essential qualification for the same was exclusive experience in the field of law, which cannot be equated to experience through legal affairs. There was no occasion for the CAT to lay emphasis to the notings made by the Chief Secretary and thus, the impugned order passed by the Tribunal is liable to be set aside being erroneous and perverse.

We have heard learned counsel for the petitioner, appraised the paper book and in our opinion, the reasoning of the CAT while allowing the OA cannot be faulted with. Before enumerating further, it would be apt to reproduce the experience certificate submitted by respondent No.2 along with the application.

“EXPERIENCE CERTIFICATE

This is to certify that Shri Kartikeya Verma, Deputy Director (Personal & Administration) son of Shri Ram Kumar Bhama; presently posted as SU-Punjab & H.P., Chandigarh, NR, GSI, has been recruited through UPSC in the post of Administrative Officer Grade I (Group A Gazetted) [now known as Assistant Director (Personnel & Administration)] and joined the service on 18th October 2006. The details of experience are as below:-

18.10.2006 to 12.06.2012 Administrative Officer Grade I Group A Gazetted) Junior Time Scale [PB-3, Pay Scale Rs.15600-39100 with GP Rs.5400/-]

13.06.2012 to till date Deputy Director (Personnel & Administration) (Group A Gazetted) Senior Time Scale (PB-3, pay scale Rs.15,600-39100 with GP Rs.6600/-]

The Officer has been performing the duty of Nodal Officer (Law) for defending the interest of the Department in different Courts, Preparation of para wise comments for filing the replies in the different courts of law. Besides he worked as Nodal Officer (RTI) & Central Public Information Officer under the provision of RTI Act. In addition to the said the officer has been conducting number of disciplinary inquiries under the CCS(CCA) Rules. The officer has been performing the duties of General Administration and recruitment.

It is also certified that the pre requisite qualification for induction to the post as per the Recruitment Rules through UPSC was Degree in Law.

This certificate is being issued to the officer on his request to be presented in the UPSC for recruitment to the post of Assistant Legal Adviser in the Department of Legal Affairs under Ministry of Law & Justice.”

On cumulative reading of the qualification and the experience, it could not be disputed that respondent No.2-applicant had been performing the duties of Nodal Officer (Law) for defending the interest of the Department in different Courts. He also prepared para wise comments for filing replies in different Courts and also conducted number of disciplinary proceedings under the Service Rules. For all intents and purposes, discharging of duties as Nodal Officer (Law) would depict that his experience in GSI i.e. Geological Survey of India was in legal affairs. The phrase 'legal affairs' as noticed above would also include giving the para wise comments and appearance in Courts. Therefore, in our view, CAT was right in considering experience of respondent No.2 to be an experience in

legal affairs for the purpose of post in question.

The contention of Ms. Chatrath that a person must have a designation of Law Officer and an Administrative officer performing the duties of Nodal Officer (Law) would not equate with the legal affairs experience, cannot be accepted. A person holding any post relating to legal affairs is also required to do some administrative duties. In the instant case, the respondent No.2-applicant was performing some administrative duties in the Department of GSI, which would not divest him of his experience in legal affairs, particularly when respondent No.2 possessed a degree in law.

For the reasons aforementioned, we do not find any illegality and perversity in the order passed by the CAT. No ground for interference is made out. The writ petition stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

December 07, 2017

Pankaj*

Whether speaking/reasoned

Yes

Whether reportable

Yes