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

+ **W.P.(C) 3003/2016, CM Nos. 12596/2016 and 2359/2017**

Date of Decision: **1st February, 2017**

UNION PUBLIC SERVICE COMMISSION Petitioner
Through Mr. Naresh Kaushik, Advocate

versus

TARUN ARORA Respondent
Through Ms. Satya Siddique, Mr. Dalip Singh and
Ms. Nukul Baisoya, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The petitioner- Union Public Service Commission (UPSC) impugns the order dated 27th January, 2016 whereby OA No. 1051/2014 filed by Dr. Tarun Arora, the respondent before us, has been allowed. The impugned order directs that the respondent should be considered for the post of Assistant Professor (Pharmacology).

2. The respondent had approached the Principal Bench of the Central Administrative Tribunal (Tribunal) by way of aforesaid OA after his representations dated 17th February, 2014 and 20th February, 2014 were considered and rejected by the UPSC by the order dated 24th March, 2014. The said order dated 24th March, 2014 was passed by the UPSC pursuant to the directions given by the Tribunal in OA No. 925/2014 titled Dr. Tarun Arora vs.

UPSC & Ors.

3. The present controversy pertains to the online application form filled by the respondent for the post of Assistant Professor (Pharmacology). The relevant portion of the details pertaining to the educational qualifications filled by the respondent in the online application form read as under:-

Educational Qualification (s):

Qualification Type	Degree	Subject	Qualification Level	Specialization/ Mandatory Subject	University/ College	Duration From-To	Date of Notification of Result/Issue Of Final Marksheet	Division /Class	Result Type/ Result Score	Date of Degree
Essential	MBBS	-MBBS-	Graduation-Medical/ Dental/Vet/ AYUSH		Delhi University Delhi/ University College of Medical Sciences	Jul 1997-Dec2001	28-12-2001	IInd	Percentage/ 56	22-02-2003

4. The respondent, as per the aforesaid declaration, had stated that he had obtained MBBS Graduation- Medical/Dental/Vet/AYUSH from the College of Medical Sciences, University of Delhi. The date of the degree was 22nd February, 2003 and the final mark sheet was issued on 28th December, 2001. The respondent had not disclosed or stated any particulars of his post graduate qualification.

5. The essential qualifications as specified in the advertisement had stipulated:-

“QUALIFICATIONS : ESSENTIAL :

A. EDUCATIONAL:

(i) Same as in item No.10 above.

(ii) Post Graduate degree in the concerned specialty i.e. M.D.(Pharmacology), MD (Pharmacology & 5 OA No.1051/2014 Therapeutics), Ph D (Pharmacology), D Sc (Pharmacology) or equivalent . (For equivalence of DNB qualifications with MD/MS or DM/M.Ch. the candidates holding DNB qualifications would

need to get their qualification verified by NBE as to whether it is as per the requirement of the Gazette notification No.MCI-12(2)/2010-Med. Misc. Dated 11.6.2012 and produce such verification certificate at the time of interview.

B. EXPERIENCE : *Three years' Teaching experience in the concerned specialty (i.e. Pharmacology) as Lecturer/ Tutor/Registrar / Demonstrator/ Sr. Resident after the requisite post graduate degree qualification. (The teaching experience in any other post like the post of DGMO/MO shall not be considered for eligibility purpose for recruitment to the Teaching posts).*

6. The respondent's candidature was rejected as the minimum qualification prescribed for the post as per the advertisement, was an MBBS degree along with a Post Graduate Degree in the concerned speciality i.e. MD (Pharmacology), MD (Pharmacology & Therapeutics), Ph.D. (Pharmacology), DSc.(Pharmacology) or equivalent. Accordingly, the respondent was not shortlisted and called for the interview for selection.

7. The respondent had thereupon filed OA No. 925/2014 and by an interim order, he was permitted to appear in the interview, subject to the outcome of the said OA.

8. The Tribunal, in the impugned order, has noted that the respondent had produced his Post Graduation Certificate which is in the form of a degree, certifying that he was a Doctor of Medicine having qualified in the examination held in 2007. For the sake of clarity, we would like to reproduce the findings and reasoning of the Tribunal for allowing the prayer made by the respondent, which reads:-

“8. This leaves us in no doubt that the applicant is indeed qualified for the post and it was on account of inadvertent mistake and deficient proficiency in computer application that

he failed to mention the qualification in his application form. So there is not a least doubt that the rejection of his candidature was just and proper and there is no other way that the respondents could have acted. However, we cannot overlook the fact that in the present day Indian Government job holds a huge allurement to the prospective candidates. We have also taken a note of the fact that this advertisement has been made after a period of 14 years. It is not in dispute that this Tribunal is often beseeched by applicants who are otherwise qualified for different jobs but on account of one technical error or other in filling up the application form has been excluded from the same. In the judgment dated 30.10.2015 in OA No.4583/2014, this Tribunal was faced with large number of applicants who had the existing qualification but had failed to bubble the columns correctly in the online application form. This being an admitted position, this Tribunal after taking into account the decisions in the previous cases observed as under :-

“20. In view of the above legal position and in view of the fact that the applicants were already permitted to take the examination provisionally by virtue of the interim orders dated 23.12.2014 and results of the same are yet to be declared by the respondents, we are of the considered view that the ends of justice would be met if the respondents are directed to consider the cases of the applicants, along with others as per their merit.

21. In the circumstances and for the aforesaid reasons, the aforesaid OAs are disposed of with a direction to the respondents to consider the candidature of the applicants and further process their cases in accordance with rules with regard to the selection and appointment by declaring their results within eight weeks from the date of receipt of a copy of this order. However, this order shall not preclude the respondents from verifying the qualifications and suitability of the applicants, as per rules. No costs.”

9. The Tribunal has referred to another order passed by it dated 30th

October, 2015 in OA No. 4583/2014, wherein a large number of applicants who had the required qualifications but had failed to correctly mark the columns in the online application form, were granted relief with the direction to consider their candidature after examining the documents.

10. The issue in question, according to us, is covered by the decision of the Division Bench of this Court dated 31st May, 2016 passed in Writ Petition (C) No. 5224/2016 titled **Anju Bharti vs. GNCT of Delhi**. In the said case, the petitioner therein had also failed to fill up details relating to her educational qualifications and experience. This failure had proved costly and she was not shortlisted. The Division Bench had held:-

11. We would not accept the argument that the application form was confusing. This submission is a cover up for the lapse and error made. The petitioner had failed to carefully read the form and in the facts of the present case, the error which have (sic. has) been inadvertent, would deny her any relief.

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13. Similar plea was raised and rejected in W.P.(C) No. 9949/2009, Union Public Service Commission vs. Government of NCT of Delhi decided on 25.01.2010, with the following observations:-

“25. With such a large number of DAFs having been received by the UPSC, it is impracticable to expect the UPSC to give a go by to the instructions that have categorically and specifically been mentioned in the advertisements issued by it. It is one thing to say that procedure is a handmaid of justice but it is another thing, in practical life, to give procedure a complete go by for the sake of accommodating a few people. If this is done, then there would be no obligation on anybody to follow any procedure resulting in a completely unmanageable situation.

26. *If the submission made by learned counsel for the Respondents is placed on a larger canvas (since the UPSC conducts dozens of such examination annually), one can well imagine the resultant chaos. For example, it is well known that the UPSC receives lakhs of applications for the Central Civil Services Examination. If every such applicant submits an incomplete application, that is to say that the relevant information is not submitted along with the application, the processing time for the UPSC would take several months and would, in the long run, be completely counterproductive. Consequently, in our opinion while it is true that procedure is the handmaid of justice, it is not possible to ignore practical difficulties that may arise in a given case.*

27. *The present case is such a case where, because of a very large number of applications received by the UPSC, if it is compelled to accept procedurally incomplete applications, there would be serious practical difficulties that it would have to encounter and this may very well lead to a break (sic. break) down in the system. We also cannot overlook the fact that the applicants/Respondents are all highly educated persons claiming to have an LLB degree and three years experience at the Bar. Therefore, it must be assumed that they fully understood the contents of the advertisements and the DAF. There was a duty cast on them to correctly fill up the DAF and they cannot be allowed to contend that despite this, their application should be accepted even if it is incomplete only because procedure is the handmaid of justice.*

28. *The matter may be looked at from another point of view. The UPSC has rejected the candidature of 45 persons due to non-submission of the required documents and/or submission of documents in the wrong format. If any relief is granted to the*

Respondents before us, surely it would be appropriate to grant a similar relief to other similarly placed candidates, some of whom may not have approached the Tribunal for relief. If this exercise were to be undertaken, perhaps the entire examination would require to be cancelled. In our opinion this is neither in the interest of the candidates who have qualified nor is it in the public interest to cancel the entire examination for the sake of accommodating a few persons, such as the Respondents.

29. The facts of this case are singular and we are of the opinion that given the very large number of applications received and the number of candidates involved, we must give the benefit of the necessity of sticking to procedural requirements to the UPSC.”

14. In Dr. Vineet Relhan vs. Union Public Service Commission and another, W.P.(C) 13451/2009 decided on 13.01.2010 it was held that the petitioner would not succeed as she has not submitted the relevant documents. Dismissing the petition the High Court had observed :-

“10. In so far as the present case is concerned, there is nothing on record to suggest that the Petitioner submitted the requisite documents at the appropriate time. That apart, it is not as if the Petitioner is uneducated or could not have filled the form intelligibly. He claims to hold a degree of M.D. (Dermatology) and he ought to have been clear about the fact that the requisite certificates must be furnished alongwith the application form. For his failure to do so, the Petitioner has only himself to blame.

11. From the counter affidavit filed before us, it appears that the candidature of some other candidates were also rejected on the ground that they failed to submit the requisite certificate of educational qualifications, experience, community, etc. It has also been mentioned in the counter

affidavit that the UPSC had clearly mentioned in the advertisement that no provisional claim would be accepted and the requisite certificates must be filed along with the application form. Given these facts, we are not inclined to re-open the selection process or interfere with the impugned order.”

15. In Union Public Service Commission vs. Dheerender Singh Paliwal, W.P.(C) No. 2734/2010 decided on 30.09.2010, the judgment of the Tribunal was reversed and set aside, for the following reasons:

“11. The reasoning of the Tribunal is that the respondent had a Master’s degree in Zoology, photocopy whereof was submitted by him after attesting the same and since the prerequisite to undertake the Master’s course was a graduation degree, it could safely be inferred that the petitioner had Zoology as a subject at the graduation level.

12. UPSC has questioned the logic and the reasoning of the Tribunal by urging that today it is possible to switch disciplines at the graduation level and due to inter-disciplinary relationship it is possible to obtain a Master’s degree in a discipline having no direct relationship with the same discipline at the graduation level. In any case, urges UPSC, it conducts thousands of entrance tests in which lakhs of candidates apply and that UPSC is not to conduct inquisitorial or deductive exercises; the candidates have to strictly comply with the letter of the advertisement. With reference to the advertisement in question, UPSC highlights that what more could it do other than to repeatedly highlight to the candidates the requirement of submitting the necessary attested copies of the certificates establishing the eligibility of the candidate. If the candidate chose to remain negligent, he had to suffer.

13. A similar issue had arisen before the Tribunal

when various Original Applications filed by Lawyers were allowed. Pertaining to the post of Assistant Public Prosecutor the advertisement concerned clearly stipulated that minimum educational qualification was a Degree in Law from a recognized University. Three years experience at the Bar was also stipulated as an eligibility condition. The applicants before the Tribunal had furnished selfattested photocopies of enrolment certificates issued by the State Bar Council. They did not submit self-attested photocopies of L.LB degree which they claimed to possess and urged before the Tribunal that it was known to one and all that the prerequisite of enrolment with the State Bar Council was a Degree in Law. The Tribunal held in their favour. By and under judgment and order dated 25.1.2010 WP(C) No.10058/2009 and connected writ petitions were allowed by a Division Bench of this Court holding that the letter of the advertisement had to be complied with and since UPSC conducts a large number of exams, it is impracticable to expect UPSC to give a go by the instructions that have been categorically and specifically mentioned in the advertisement. The plea that procedure is the hand made of justice was repelled by holding that in practical life, to give procedure a complete go by would mean that nobody would be obliged to follow the procedure resulting in unmanageable situations. It was observed that if UPSC was compelled to accept procedurally incomplete applications there would be serious practical difficulties that it would have to encounter and this may well lead to a break down in the system.

14. We respectfully concur.

15. We have highlighted herein above the repeated emphasis at different places in the advertisement repeatedly cautioning the candidates to strictly

comply with each and every requirement of the advertisement. The respondent must suffer for being negligent.

16. As regards the plea of discrimination, Shri Naresh Kaushik learned counsel for UPSC informs us that applications were invited for 37 disciplines, as detailed in the advertisement, and the same were processed disciplinewise by different Under Secretaries at UPSC and that one Under Secretary wrongly accepted applications of two persons, but not in the discipline in which the respondent had applied, but this would not entitle the respondent to any relief.

17. We concur. Equality in the negative is not recognized by law. There cannot be equality in a wrong.”

11. In the case of **Anju Bharti** (supra), like in the present case, the applicant had pleaded extra ordinary and peculiar case for she was allowed to participate in the interview and had secured 7th rank in the order of merit. The respondent herein similarly pleads that he was allowed to appear in the interview and being a deserving candidate, should be appointed. He has also stated that the post of Assistant Professor (Pharmacology) was advertised after about 14 years and some posts of Assistant Professor (Pharmacology) are still vacant.

12. We are not in a position to accept the said argument in view of the ratio as expounded in the decision of **Anju Bharti** (supra) and other judgments mentioned therein.

13. The advertisement in question had clearly stated and warned that the candidates would be shortlisted for interview on the basis of the information provided in the online application form. Under the head ‘WARNING’, the advertisement, in bold letters had stipulated as under:-

“6(B). Candidates shortlisted for interview on the basis of the information provided in the online applications submitted by them will be required to send self attested copies of documents/relevant certificates in support of the claims made in the application as and when demanded by the Commission.

“ WARNING”:

CANDIDATES WILL BE SHORT-LISTED FOR INTERVIEW ON THE BASIS OF THE INFORMATION PROVIDED BY THEM IN THEIR ONLINE APPLICATIONS, THEY MUST ENSURE THAT SUCH INFORMATION IS TRUE. IF AT ANY SUBSEQUENT STAGE OR AT THE TIME OF INTERVIEW ANY INFORMATION GIVEN BY THEM OR ANY CLAIM MADE BY THEM IN THEIR ONLINE APPLICATIONS IS FOUND TO BE FALSE, THEIR CANDIDATURE WILL BE LIABLE TO BE REJECTED AND THEY MAY ALSO BE DEBARRED EITHER PERMANENTLY OR FOR A SPECIFIED PERIOD BY THE:

- *COMMISSION FROM ANY EXAMINATION OR SLECTION HELD BY THEM.*
- *CENTRAL GOVERNMENT FROM ANY EMPLOYMENT UNDER THEM.*

Anyone filling up the application form was required and ought to have taken notice of the said warning. The instructions had specifically enjoined and mandated that the applicant was required to give full details of their educational qualifications in the online application form. Further, the applicants were advised to satisfy themselves before applying that they did possess at least the essential qualifications laid down for the post. No query asking for advice as to eligibility was to be entertained. A printout of the online application form, along with the documents, were to be produced subsequently if the candidate was called for interview. Thus, there was no procedure or methodology to check and verify the certificates of the applicants before short listing the

applicants for interviews.

14. We appreciate and can understand the frustration of the respondent as he has the requisite qualifications, yet would suffer for the lapse and error on his part in filling the online application form. At the same time, to accept the plea of the respondent in the present case would lay down the wrong precedent, which would lay the foundation for administrative confusion and chaos. The selection process would halt, get stalled, and would possibly collapse.

15. The Courts, while examining such issues have to maintain a right balance between the mistake and chance to rectify the lapse, and the administrative difficulties and consequences. Administrative difficulties, thus, should be balanced with the adverse impact befalling the candidate. A strait jacket precept may not be universally applicable. The nature of the selection process, the terms stipulated, whether the rectification and amendment would make the selection process unyielding and unmanageable, are different facets which must be considered. Where the application forms are vague and unclear, the benefit must and should be given to the applicant.

16. In the present case, the administrative difficulties which are compelling must be given primacy, for otherwise the selection process would be impede, become disorderly and crumble. The present case does not warrant indulgence and concession to the respondent.

17. Pursuant to the advertisement in question, 109 applications were received. The respondent had applied in the General Category for which 77 applications were received. On scrutiny, 48 out of 77 general category candidates were found eligible and called for the interview. Candidates had been able to correctly fill up the application form. In these circumstances, the respondent's feeble attempt to urge that the online registration portal was

defective and, therefore, the respondent was unable to correctly fill up the form and provide complete details of the essential educational qualifications, fails and should be rejected.

18. The respondent has submitted that he having furnished and given details of his experience under the column 'General Experience', the scrutinizer should have inferred that the respondent had the requisite post graduate qualification. The said contention again has to be rejected. The UPSC cannot work on the basis of supposition and inferences of such nature and any such attempt would be undesirable. The educational qualification column was specific. The UPSC, while scrutinising the applications, would first examine the essential qualifications, and if a candidate does not possess the essential qualifications other columns need not be examined.

19. In view of the aforesaid, the impugned order dated 27th January, 2016 is set aside and quashed. The writ petition is allowed. The OA No. 1051/2014 filed by the respondent would be treated as dismissed. There will be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 01, 2017

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