

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on -24.07.2018.

Date of Decision-09.08.2018.

+ W.P.(C) 8311/2017 & C.M. No.24185/2017 (for stay)

TRIBHUWAN KIRTI BHARDWAJ Petitioner

Through: Ms.Harvinder Oberoi, Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Kirtiman Singh, CGSC with
Mr.Vikramditya Singh, Adv.
for UOI.
Mr.Naresh Kaushik, Adv. for
UPSC.

+ W.P.(C) 10443/2017 & C.M. Nos.22929/2018 (by respondent
No.1 for directions), 42659/2017 (for stay)

UNION PUBLIC SERVICE COMMISSION..... Petitioner

Through: Mr.Naresh Kaushik, Adv.

versus

DEEPTI BHARDWAJ AND ORS. Respondents

Through: Mr.Rupinder Singh, Sr. Adv.
with Mr.Varun Khanna &
Mr.Anant Singh, Adv. for R-1.

+ W.P.(C) 1490/2018 & C.M. No.6126/2018 (for stay)

UNION PUBLIC SERVICE COMMISSION..... Petitioner

Through: Mr.Naresh Kaushik, Adv.

versus

JITENDRA KUMAR AND ORS. Respondents
Through: Mr.Harpreet Singh, Advs. for
R-1.
Mr.Ravi Prakash, CGSC with
Mr.Farman Ali & Mr.Nitish
Gupta, Advs. for R-2 & 3.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The present batch of writ petitions impugn a common order dated 08.09.2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA Nos.2101/2014 and 2084/2014. While WP (C) No.8311/2017 has been preferred by the applicant who was unsuccessful before the Tribunal, the other two petitions, being WP (C) No.10443/2017 & 1409/2018, have been preferred by Union Public Service Commission, the respondent before the Tribunal being aggrieved by the grant of relief to two applicants by the Tribunal who have been arrayed as respondent Nos.1 and 2 in W.P.(C) No.10443/2017. For the sake of convenience, the parties are being referred to as per their original position in W.P.(C) No.10443/2017.
2. Vide the common impugned order, the Tribunal has directed the petitioner /UPSC to include the name of the respondent Nos.1 and 2 in the list of candidates shortlisted for appointment to the post of Senior Administrative Officer Grade-I (hereinafter referred to as 'SAO Gr.-I') and declare their results. The Tribunal has further directed that in

case the respondent Nos.1 & 2 are found to be in the merit position, consequential orders for their selection be passed by the petitioner/UPSC and the requisite recommendations be forwarded to the appointing authority, i.e., Defence Research and Development Organization for their appointment to the said post. However, while allowing the claim of the respondent Nos.1 and 2, the Tribunal has declined relief to the respondent No.3, who claims to be similarly placed as the respondent No.2.

3. The brief facts of the case, as noted by the Tribunal are that the petitioner/UPSC issued an advertisement inviting applications for the post of SAO Gr.-I and SAO Gr.-II in the Defence Research & Development Organisation (hereinafter referred to as 'DRDO'). Pursuant to the said advertisement, while respondent No.1 applied for both the aforesaid posts, respondent Nos.2 and 3 applied only for the post of SAO Gr.-I. Based on a combined computer based recruitment test for both the posts as held on 05.01.2014, the petitioner/UPSC on 17.02.2014, issued a list of 36 candidates shortlisted for the interview. The names of the respondent Nos.1 and 2 were included in the said list and they were required to furnish self attested documents/certificates along with an online application form, which they duly furnished. Thereafter, the petitioner/UPSC issued another notice dated 25.04.2014, shortlisting 49 more candidates for the interview.

4. While the respondent Nos.1 & 2 were waiting to be called for the interview, which was the final stage of the selection process, the scrutiny of the documents submitted by the shortlisted candidates was completed and the petitioner/UPSC issued the final list of candidates

selected for the interview on 06.06.2014. Though the respondent Nos.1 & 2 were earlier shortlisted, their names were not included in the final list and vide letter dated 09.06.2014, they were both informed that their candidature for the post of SAO Gr.-I had been cancelled as they were found to be lacking the essential educational qualifications/experience required for the post.

5. Being aggrieved by the rejection of her candidature, respondent No.1 preferred OA No.2101/2014 before the Tribunal, while respondent Nos.2 and 3 preferred a joint OA No.2084/2014. Vide orders dated 20.06.2014 and 24.06.2014, the Tribunal, by way of interim relief, permitted all the three respondents to provisionally appear in the interview which was held on 25.06.2014.

6. The common plea of all the three respondents before the Tribunal was that even though they fulfilled the educational qualifications and had over six years of administrative work experience in a government/semi government organization of repute, as was required under the advertisement, the petitioner/UPSC had arbitrarily rejected their candidature and that too without assigning any specific reason, by merely stating that they were found to be lacking the essential qualifications/experience.

7. On the other hand, counsel for the petitioner/UPSC while opposing the OA, had argued before the Tribunal that being a specialized Commission, it was vested with the power to devise its own just and equitable modes of functioning and procedures and was therefore, entitled to make reasonable classifications of various applicants on the basis of their qualifications and experience, the same

being an integral part of its internal recruitment process. The petitioner/UPSC contended that the candidature of the respondents had been rightly rejected since all of them fell short of the requisite experience, as per the criteria adopted by it. It was also stated that the relevance of prior work experience of the candidates was to be seen in the context of the duties attached to the post of SAO Gr.-I. Counsel for the petitioner/UPSC had thus urged before the Tribunal that once it had come to a conclusion that the respondents were falling short of the requisite administrative work experience of 6 years, as required under the recruitment rules, the Tribunal should not interfere with the said finding.

8. Upon consideration of the rival contentions of the parties, after opining that the only issue that needed to be decided was whether the respondents (applicants before Tribunal) possessed the requisite experience for the post of SAO Gr.- I, the Tribunal went on to record the experience of each of the three respondents in a tabulation being reproduced hereinbelow for the sake of convenience:-

A. Deepti Bhardwaj (Respondent No.1 in W.P.(C) No.10443/2017)

General Experience

1. Job Capacity/ Post Held- Executive Assistant
2. Kind of Experience – Parliament Standing Committee work
3. Experience date from 05.06.2007 to 22.05.2010.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organization/ Institute	Employment Type/Nature of Appointment	Nature of duties Performed
All works related to Standing Committee of			Lok Sabha Secretariat		Drafting of Questionnaire, list of Points for

Lok Sabha Secretariat			Lok Sabha Secretariat Parliament Street, New Delhi-110001		Discussion, Reports and Action Taken Reports, Laying of reports and Final Action Taken Statements in the House and all works related to working of the Parliamentary Standing Committee.
-----------------------	--	--	---	--	--

Kind of Experience- Administration

Experience date: From 23.05.2010 to 30.06.2012

Worked at Supervisor level/Management level/

Head of Branch: Supervisory Level

Field of Experience (Major)/ Specialisation	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Training	(Central Government) Govt.		International Centre for Information Systems and Audit		Training Coordinator for International and National Trainings. Administration and Liaisoning for the management of Courses and Facilities
Administration			ICISA, O/o the CAG of India, A-52 Sec-62, Noida, UP-201307		

Note: Work Experience till 30.06.2012 is inadmissible as qualifying work experience on account of not being in consonance with the duties to be performed by the post of Senior Administrative Officer Grade- I.

Job Capacity/ Post Held- Executive Assistant

Kind of Experience – Administration

Experience date from 01.07.2012 to 05.08.2012

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Personnel and Establishment matters Representations	Autonomous		Lok Sabha Secretariat, Parliament Street, New Delhi-110001		To deal with work relating to administration, personnel, establishment and other service related matters of the gazette officers of Lok Sabha Sect. to deal with representation and RTI related matters

Job Capacity/ Post Held- Senior Executive Assistant

Kind of Experience – Administration

Experience date from 06.08.2012 to 13.06.2013

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organization/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Personnel and Establishment matters	Autonomous		Lok Sabha Secretariat Lok Sabha Secretariat, Parliament Street, New Delhi-110001		To deal with work relating to administration, personnel, establishment and other service related matters of the gazette officers of Lok Sabha Sect. to deal with representation and RTI related matters

Total Experience: 6 years 0 Months 9 days

B. Jitendra Kumar (Respondent No.1 in W.P.(C) No.1490/2018)

General Experience

1. Job Capacity/ Post Held- Assistant Audit Officer
2. Kind of Experience – Administration
3. Experience date: From 03.01.2003 to 13.06.2013

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Administration and Audit	(Central Government) Govt.				Selection and deployment of personnel. Formation of teams. Preparation and detailed execution of Plan. held meetings, Marketing profiles, database of autitees. Administrative and Technical inspection. Establishment audit of various organizations. Audit of contracts. General supervision of staff. Returns, training and staff welfare

Total Experience: 10 years 5 months 11 days.

C. Tribhuwan Kirti Bhardwaj (respondent No.3 in W.P.(C) No.10443/2017) and Petitioner in WP (C) No.8311/2017

- General Experience
- Job Capacity/ Post Held- Executive Officer P.
Kind of Experience – Administration
Experience date from 30.10.1998 to 05.09.2002.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Audit and Accounts	(Central Government) Govt.				Audit of Administrative functions and certification of

					accounts of the auditee offices
--	--	--	--	--	---------------------------------

2. Job Capacity/ Post Held- Auditor
Kind of Experience – Administration
Experience date from 06.09.2002 to 27.01.2005.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Audit and Accounts	(Central Government) Govt.				Audit of Administrative functions and certification of accounts of the auditee offices

3. Job Capacity/ Post Held- Section Officer
Kind of Experience – Administration
Experience date from 28.01.2005 to 31.12.2005.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Audit and Accounts	(Central Government) Govt.				Audit of Administrative functions and certification of accounts of the auditee offices

4. Job Capacity/ Post Held- Assistant Audit Officer
Kind of Experience – Administration
Experience date from 01.01.2006 to 24.04.2012.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Audit and Accounts	(Central Government)				Audit of Administrative

	Govt.				functions and certification of accounts of the auditee offices
--	-------	--	--	--	--

5. Job Capacity/ Post Held- Accounts Officer
Kind of Experience – Administration
Experience date from 25.04.2012 to 05.09.2012.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Audit and Accounts	(Central Government) Govt.				Administrative and Accounts functions of TDSAT

6. Job Capacity/ Post Held- Assistant Audit Officer
Kind of Experience – Appraisal
Experience date from 06.09.2012 to 13.06.2013.

Field of Experience (Major)/ Specialization	Organization/ Institute Type	Pay Scale	Organisation/ Institute Name	Employment Type/ Nature of Appointment	Nature of Duties Performed
Audit and Accounts	(Central Government) Govt.				Audit of Administrative functions and certification of accounts of the auditee offices

Total experience: 14 years 7 months 15 days

9. After noticing the experience of each of the three respondents as recorded in the table above, the Tribunal referred to the Recruitment Rules as also the conditions prescribed in the advertisement for deciding as to whether they had the requisite administrative work experience and came to a conclusion that the petitioner/UPSC had acted in an arbitrary manner thereby vitiating the very process of consideration for shortlisting candidates for the

interview. The Tribunal opined that the petitioner/UPSC had erroneously ignored the work experience of the respondent No.1 for the period between 05.06.2007 and 30.06.2012 as also the respondent no.2's entire work experience, which was not only administrative in nature, but was also in-tune with the nature of duties attached to the post of SAO Gr.-I. The Tribunal thus came to a conclusion that the respondent Nos.1 & 2 possessed the requisite administrative experience of six years and allowed their OAs, while dismissing the O.A. of the respondent No.3 by holding that the experience possessed by him did not conform to the nature of duties attached to the post of SAO Gr.-I.

10. Mr. Naresh Kaushik, learned counsel appearing for the petitioner/UPSC before us, besides reiterating the pleas taken before the Tribunal, contended that the impugned order has erroneously directed the UPSC to consider the entire work experience of the respondent Nos.1 and 2 as being valid administrative experience for the post of SAO Gr.-I, by ignoring the vital fact that the experience of the candidates has to be seen in consonance with the duties attached to the post of SAO Gr.-I, which none of the respondents possessed and therefore, they were rightly found to be lacking in the requisite experience by the petitioner/UPSC. He submitted that the work experience possessed by the respondent No. 1 from 05.06.2005 to 22.05.2010 as an Executive Assistant in the Lok Sabha Secretariat, could not be classified as an administrative experience qua the post of SAO Gr.-I. Similarly, the work done by her from 23.05.2010 to 30.06. 2012, when the respondent no.3 was

on deputation with the 'International Centre For Information System and Audit', did not have any connection with administrative duties and was rightly excluded by the petitioner/UPSC.

11. Mr. Kaushik further stated that the work experience of the respondent no.2 was primarily concerned with audit of accounts in the Indian Audit & Accounts Department (IA&A) and could not at all be treated as an administrative experience, as required for the post of SAO Gr.-I. He thus, urged that the Tribunal has erroneously held that the work experience possessed by the respondent nos.1 & 2 ought to be considered as an administrative experience, even though the nature of the duties performed by them clearly suggests otherwise.

12. On the other hand, Mr.Suri, learned Senior Counsel appearing for the respondent no.1/Deepti Bhardwaj, while supporting the impugned judgment, contended that the petitioner/UPSC had ignored the fact that from the very day of the respondent no.1's joining the Lok Sabha Secretariat as a Senior Executive Assistant, she had been discharging several administrative functions and, therefore, there was no reason for the petitioner/UPSC to have ignored her administrative experience for five long years from 05.6.2007 to 30.6.2012, in the Lok Sabha Secretariat and in the International Centre for Information System & Audit. Learned Senior Counsel thus argued that the Tribunal was fully justified in holding that the respondent no.1 possessed the requisite administrative experience for the post of SAO Gr.-I.

13. Similarly, Mr.Harpreet Singh, learned counsel appearing on

behalf of the respondent no.2/Jitender Kumar, submitted that the vast experience gained by the respondent no.2 while discharging administrative functions in the IA&AD had been erroneously ignored by the petitioner/UPSC under the mistaken notion that he was carrying out only audit duties in the IA&AD. He clarified that at IA&AD, the respondent no.2 was engaged in the task of planning, coordinating and supervisory duties and had also been nominated to conduct administrative and technical inspections of various offices and therefore, canvassed that he possessed valid administrative experience as required, for being appointed as an SAO Gr.-I.

14. On the other hand, Ms. Harvinder Oberoi, appearing on behalf of the respondent no.3/Tribhuvan Kirti Bhardwaj, while impugning the Tribunal's order rejecting the respondent no.3's claim, argued that the Tribunal has erred in holding that the respondent no.3 does not have the requisite administrative work experience for the post of SAO Gr.-I, on an erroneous assumption that his work experience in the IA&AD was only in the field of accounts and audit. She submitted that while coming to the aforesaid conclusion, the Tribunal failed to appreciate a vital fact that the experience certificates of the respondent nos.1 and 2 were identical and the respondent no.3 had also undertaken administrative duties while being posted in the IA&AD. She submitted that IA&AD does not have a separate set of employees for discharging administrative functions and it is for this reason that the respondent no.3, just like respondent no.2 was performing

administrative duties while posted in IA&AD. She thus, prayed that the impugned order of the Tribunal, be quashed to the extent that it has held that the respondent no.3 does not have the requisite administrative work experience for the post of SAO Gr.-I.

15. Before we deal with the rival contentions of the parties, it may be appropriate to refer to the experience required for the post of SAO Gr.-I & SAO Gr.-II, as prescribed in the advertisement. For the sake of convenience, the relevant extracts of the said advertisement are reproduced herein below:-

“

- **Qualification:**

Essential : Educational - Degree of a recognized University

Experience : Six years' administrative experience in a Government or Semi Government Organisation or Commercial Organisation of repute.

- **Desirable** : (i) Diploma in Personnel Management from a recognized Institution.

(ii) Working Experience in Scientific or Industrial or Technical organization or Departments

- **Qualification:**

Essential : Educational - Degree of a recognized University

Experience : Three years' experience of Administration, Establishment and Accounts work.

Desirable: (i) Diploma in Personnel Management or Industrial Relation from a recognized Institution.

(ii) Working Experience in Scientific or Industrial or Technical organization or Departments”

16. A perusal of the eligibility criteria prescribed for the post of SAO Gr.-I shows that, while the kind of organisation was clearly specified by the petitioner/UPSC in its advertisement, the same is

conspicuously silent in respect of the nature of administrative experience required for the post of SAO Gr.-I. Once nothing was specified qua the nature of the administrative experience that was required, there was absolutely no reason for the petitioner/UPSC to have excluded the respondent no.1's administrative experience in the Lok Sabha Secretariat, when she was posted with the Parliamentary Standing Committee and was entrusted with several administrative duties, including coordinating with senior officers of various ministries of the Government of India as also planning and coordinating with various officers of State Governments and Public Sector Undertakings. Hence, excluding the respondent no.1's administrative experience in the Lok Sabha Secretariat was wholly unjustified and cannot be sustained. In our considered view, there is no infirmity in the Tribunal's finding that the respondent no.1's experience from 05.06.2007 to 30.06.2012 at the Lok Sabha Secretariat and in the International Centre for Information Systems & Audit was in fact an administrative experience and ought to have been taken into consideration by the petitioner/UPSC while examining her eligibility for the post of SAO Gr.-I.

17. Similarly, when we examine the experience of the respondent no.2, we find no reason to differ with the view of the Tribunal that besides carrying out audit activities in IA&AD, he was also performing administrative duties. Even otherwise, once there is no denial by the petitioner/UPSC to the fact that IA&AD does not have any separate administrative staff, there was no justification for discarding the experience certificate issued by the IA&AD

certifying that respondent no.2 was discharging administrative duties at the IA&AD. In our view, there was no reason for the petitioner/UPSC to have ignored the respondent no.2's administrative experience in the IA&AD.

18. We also do not find any merit in Mr.Kaushik's plea that the Tribunal, in exercise of its powers of judicial review, ought not to have interfered with the Petitioner/UPSC's finding that the work experience of the respondent no.1, as also of the respondent no.2, was not administrative in nature. We are of the opinion that merely because UPSC is a specialised body, an arbitrary and wholly whimsical decision taken by it cannot be scrutinized and corrected in judicial review.

19. Now coming to the claim of the respondent no.3, who has been denied relief by the Tribunal, having carefully examined the experience certificate of the respondent no.3 relating to his work experience in the IA&AD, we find merit in Ms.Oberoi's submission that respondent no.3's administrative experience in the IA&AD was identical to that of respondent no.2 in IA&AD. It is interesting to note that the experience certificates of the respondent nos.2 and 3 describe the duties performed by them while working in IA&AD, in exactly identical terms as extracted hereinbelow:-

“Selection and deployment of personnel. Formation of teams. Preparation and detailed execution of annual plan. Administrative and technical inspection of officers under control of Director General. Vetting of reports. Held meetings, maintained profiles, data base etc. of audited entities. Establishment audit of various organisations. Audit of contracts. General

supervision of staff. Returns, trainings and staff welfare activities.”

20. In the light of the aforesaid description of duties performed by both, respondent no.2 & respondent no.3, while working on the same post (i.e., Assistant Audit Officer), in the same office (i.e. Delhi Branch Office), under the Director General of Audit, in the IA&AD and keeping in mind that respondent no.3 was senior to the respondent no.2, we are unable to fathom as to why the experience of the respondent no.3 has not been held to be valid administrative work experience for the post of SAO Gr.-I. Thus, in our view, the administrative experience of the respondent no.3 in IA&AD, who is similarly placed as the respondent no.2, could not have been ignored by the petitioner/UPSC and ought to have been treated as a valid administrative experience for the post of SAO Gr.-I.

21. For the aforesaid reasons, we find no infirmity in the order passed by the Tribunal insofar as it relates to the respondent nos.1 and 2. However, the impugned order of the Tribunal insofar as it relates to respondent no.3, cannot be sustained and is accordingly set aside. As a result, WP(C) No.10443/2017 and WP(C) No.1490/2018 filed by the petitioner/UPSC are dismissed with directions to the UPSC to comply with the directions of the Tribunal in respect of Deepti Bhardwaj and Jitender Kumar within two weeks.

22. For the reasons stated above, W.P.(C) No.8311/2017 filed by the respondent no.3, Tribhuwan Kirti Bhardwaj is allowed and the petitioner/UPSC is directed to include his name in the list of short-

listed candidates for the interview. It is further directed that the result of the respondent no.3 also be declared and notified within a period of two weeks. In case respondent no.3 falls within the merit, consequential orders for his selection shall be passed by the petitioner/UPSC and the requisite recommendation be forwarded for his appointment.

23. All the three petitions along with the pending applications are disposed of on the above terms with no orders as to costs.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 09, 2018/gm/aa/sr