

Ravinder Chauhan Vs. Uoi and ors.

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Court : Delhi

Decided On : Jul-23-2014

Judge : S.Ravindra Bhat

Appellant : Ravinder Chauhan

Respondent : Uoi and ors.

Advocate for Def. : Ms. Jyoti Singh, Ms. Aditi Gupta

Advocate for Pet/Ap. : Ms. Geeta Luthra, Ms. Suman Chauhan

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

17. 07.2014 Pronounced on:

23. 07.2014 + W.P.(C) 3663/2011, C.M. NO.13423/2011 & 14215/2013
RAVINDER CHAUHAN Petitioner Through : Ms. Geeta Luthra, Sr. Advocate
with Ms. Suman Chauhan and Sh. Jivesh Tiwari, Advocates. versus UOI AND
ORS. Respondents Through : Ms. Jyoti Singh, Sr. Advocate with Sh. Vijay Nair
and Sh. Rajat Joneja, Advocates. Sh. Ruchir Mishra, Advocate, for Resp. Nos. 1
and 2. Sh. Naresh Kaushik with Ms. Aditi Gupta and Sh. Vardhmaan Kaushik,
Advocates, for UPSC. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI MR. JUSTICE S. RAVINDRA BHAT % 1.
The Petitioner, an unsuccessful candidate for the post of Senior Scientific Officer

Grade II (Ballistic) (hereafter referred to as "the W.P.(C) 3663/2011 Page 1 post") is aggrieved by the decision of the Central Administrative Tribunal (CAT) dated 11.05.2011 in O.A. No.529/2011, repelling his challenge to the selection of the fourth respondent, Ms. Babita Gulia. He alleges that she does not fulfill the essential experience parameters advertised for the post.

2. The brief facts are that the Petitioner was recruited as Laboratory Assistant on 13.06.1996 under the second Respondent, the Director of the Central Forensic Science Laboratory (hereafter the CFSL). He was promoted to the post of Scientific Assistant on 23.08.1996. The third Respondent (the Union Public Service Commission, hereafter "UPSC") issued a public advertisement in June 2009 inviting applications for the post. The prescribed educational qualification for the post was a Masters degree in mathematics or physics or chemistry from a recognized University or equivalent. The essential experience was three years' in a laboratory in firearms and explosives. The Petitioner applied, and was called for the interview. After the selections were over, the UPSC issued letters to the fourth and fifth Respondents informing them that they had been recommended for selection to the post. These letters also stated that the offer of appointment would be made after Government had satisfied itself of their suitability for the posts in all respects.

3. The Petitioner applied for information under the Right to Information Act, 2005. On the basis of the material and information secured, he approached the CAT challenging his non-selection and the selection of the fourth and fifth respondents. It was alleged that the W.P.(C) 3663/2011 Page 2 Director of the CFSL, the second Respondent, had determined the ineligibility of the fourth and the fifth Respondents as they did not fulfill the requirements of either the educational qualification or eligibility criteria. The note recorded in this regard in the office of the second Respondent stated that the fourth respondent "is not having the required essential experience in the field of Explosive, as is evident by the Experience Certificate issued by her department i.e. FSL, Madhuban Haryana" Likewise, in the case of the fifth respondent, the comment was that he "is lacking in all respects as neither he is possessing the required essential academic qualification nor the requisite experience i.e. 3 Years experience in Fire arms &

Explosives."

It was argued that this note, and the further report of the committee constituted by the CFSL-CBI, the ultimate employer, categorically found these candidates to be ineligible and that their selection, therefore, was contrary to law. It was submitted that besides, the selection procedure was vitiated because Dr. Bhattacharya, who judged the qualifications and experience of the candidates, was biased in favour of the fifth respondent.

4. The CAT, after considering the submission of the parties and the materials made available to it, concluded that there was no cause for interference with the selection and dismissed the Petitioner's application. Its findings are as follows: "6. On careful consideration of the rival contentions and perusal of the documents placed before us, we are of the considered opinion that there is no need to interfere in the process of selection because (a) the selection has been made W.P.(C) 3663/2011 Page 3 by a committee comprising, among others, experts and (b) the two committees, one appointed by the CBI and the other by the MHA, have come to different conclusions and eventually the Director, CFSL has accepted the recommendation of the Union Public Service Commission. This Tribunal would not be competent to adjudicate on a matter, which is purely technical in nature. On considering all aspects of the case and balancing the various opposing arguments, it would seem that there has been no challenge to the integrity of the selection committee formed by the third Respondent, UPSC, and that the other two committees have held divergent opinions and further that the Director, CFSL, who had originally dissented, has accepted the selection made by the UPSC, there would be no reason to interfere with the selections."

5. The Petitioner submits and his Counsel, Ms. Geeta Luthra and Ms. Suman Chauhan, argue, that the impugned order of the CAT cannot be sustained. It was submitted that the deliberations of the selection committee of the UPSC show that the decision to treat the fourth respondent as eligible was based on an e-mail and some telephonic conversation. The responses obtained pursuant to RTI queries from the FSL, Madhuban clearly suggest that the fourth respondent never gained any experience in handling explosives. In this context, it was argued that the RTI

replies clearly showed that the fourth respondent was primarily in Ballistics; she did not possess any degree in Chemistry and had no experience in explosives. It was argued that the material made available clearly showed that as against an experience of handling 1500 ballistics cases, the fourth respondent was involved in only 40 cases concerning explosives in her entire career. These, coupled with the committee's determination, and the W.P.(C) 3663/2011 Page 4 recruiting organization's views, should have been given due weightage. In not doing so, the CAT erred in law. Counsel submitted that the norms of recruitment which prevails as on the date of commencement of the selection process should be strictly followed; for this proposition, counsel cited the decision reported as *Amalapuram Municipal Council v U.Simhadri* 1996 (1) SCC657. Learned counsel highlighted the conclusions of the expert committee which, they submit, was not followed. The committee, set up by the respondents, after the selection process, was tasked specifically to determine if the fourth and fifth respondents were eligible. It recommended that "all applications (selected/rejected) received by the commission may be re-examined on the basis of the experience in the field of Fire Arms and Explosives as per the recruitment rules and a fresh interview may be called by the commission. Ministry of home affairs was therefore requested to kindly consider the proposal in view of the above and accord necessary approval from the Hon'ble Minister as asked by the commission for taking up the issue further with the UPSC."

It was lastly stressed that the CAT erred in upholding the candidature of the fourth respondent and her selection, given the overriding public interest in the appointment of only those holding experience in the relevant field as experts in explosives.

6. The respondents, including the fourth respondent urge that this Court should desist from interfering with the CATs order. It was argued by Mr. Naresh Kaushik, on behalf of the UPSC that the Director, CFSL-CBI, the requisitioning body's departmental head, was W.P.(C) 3663/2011 Page 5 requested through a letter dated 22.03.2010 to send comments about the eligibility of the candidates by 31.03.2010. It was after receiving these comments that eligible candidates were called for interview. The interview panel involved a representative of the CBI-

CFSL, its Director, who had occasion to participate in the process, though not as a member. At no time was any reservation expressed about the contesting respondents. In these circumstances, having regard to the doubts raised about the eligibility of the fourth and fifth candidates, through notes and a CFSL committee report, of 19.07.2010, the views of the Ministry of Home Affairs were elicited. This led to formation of a committee by the Ministry which examined the entire matter and reported, on 23.09.2010, that the selected candidates possessed the requisite educational qualifications and experience. It was submitted that in the light of these facts, the CAT was justified in deciding not to interfere with the selection and the provisional appointment made during the pendency of proceedings before it.

7. Ms. Jyoti Singh, learned senior counsel for the fourth respondent supported the position of the UPSC; she argued that the Petitioner's submission with respect to lack of experience of the said respondent is baseless. She underlined that the fourth respondent had experience in explosives as the FSL Madhuban is a composite laboratory. She urged that the fourth respondent was a member of the team which investigated the Samjhauta Express bombing.

8. The qualifications for the post advertised by the UPSC are extracted below:
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"1. Master's degree in Mathematics or Physics or Chemistry from a recognized University or equivalent; (2) 03 year's experience in Laboratory in fire-arms and explosives. NOTE: The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified."

9. The UPSC had intimated in advance about the candidate's qualifications to the CFSL-CBI; the latter, however, contends that it did not have occasion to examine the applications in detail. It, however, does not dispute that its Director was present when the selection committee interviewed the candidates. In the wake of the selection committee's report, apparently the Petitioner represented against the candidature of the fourth and fifth respondents; this triggered a scrutiny by the CFSL-CBI. First, its Director wrote to the UPSC, on 18.05.2010, basing himself on the allegations in the representations about the lack of experience and qualifications of the fourth and fifth respondents. His letter stated that: "On

scrutinizing the recommendation folder, it has been learnt that both the candidates recommended are found to be unfit as both are lacking in fulfilling even the essential required academic qualification & experience advertised for as per the Recruitment Rules for appointment to the post of SSO.II (Ballistics) in one or the other way. The factual position is being laid before you for further final decision in the matter: 1. That the candidate having roll No.51/78 (Gen.) Ms. Babita Gulia is not having the required essential experience in the field of Explosive, as is evident by the Experience Certificate issued by her department i.e. FSL, Madhuban Haryana. This was W.P.(C) 3663/2011 Page 7 the basic requirement in addition to the Fire Arms as per the prevailing Recruitment Rules for appointment of SSO.II (Ballistics) in CFSL, CBI, New Delhi. (Copy of Advertisement is enclosed) 2. That the candidate having roll No.03 (OBC), Mr. Suresh is lacking in all respects as neither he is possessing the required essential academic qualification nor the requisite experience i.e. 3 Years experience in Fire arms & Explosives. It is worth mentioning that as per the RR of SSO-II (Ball) in CFSL/CBI, the essential qualifications are (i) Masters Degree in Mathematics or Physics or Chemistry from a recognized University or Equivalent (ii) 3 Years experience in laboratory in Fire Arms & Explosives but Mr. Suresh is Master Degree in Forensic Science. Anyhow, as per para 5 of UPSC letter under reference, it is learnt that a Reserve Panel has also been made and names of candidates have been kept in reserve."

10. The Director, CFSL CBI then constituted a committee, comprising five members, namely, Prem Prakash, OS/CFSL, S K Singla, HOD (Serology), N B Bardhan, PSO (Ballistic) and A Dey, PSO (Ballistic)/HOD was constituted. The committee inter alia, recorded in its minutes dated 16.07.2010 that: "The committee feels worth mentioning here that UPSC while sending the list of 17 candidates selected/shortlisted suitable for calling for interview has only forwarded/ enclosed the SUMMARY sheets of the shortlisted candidates, in which, there is No mention of Nature of Experience gained by them during the length of their previous service/employment. The Nature of experience is very much vital and essential factor in discharging the responsibility associated with the instant posts of highly technical in nature. In the instant case, the W.P.(C) 3663/2011 Page 8 candidates selected, suppose to have minimum 03 years experience in laboratory in Fire Arms and Explosives in addition to EQ(i). XXXXXX XXXXXX

XXXXX11 The committee felt that inexperienced persons had been called for interview and the candidates selected did not have the requisite experience as prescribed by the recruitment rules especially in the field of explosives. It observed that both the recommended candidates did not have technical working experience in the field of explosive, which was the major requirement for the post. It suggested that applications of all the candidates, who had applied for the post, including those who were selected, should be re-examined on the basis of their experience and the recruitment rules: ".The Committee members suggested that all the applications (selected/rejected) received by the commission may be re-examined on the basis of the experience in the field of Fire Arms and Explosives as per Recruitment Rules and a fresh interview may be called by the commission. Ministry of Home Affairs is therefore requested to kindly consider the proposal in view of the above and accord necessary approval from the Hon'ble Minister as asked by the commission for taking up the issue further with the UPSC."

12. The Director (CBI) sent a note agreeing with the suggestions of the committee. The Ministry of Home Affairs, accordingly decided to constitute a committee to look into the matter under the chairmanship of Dr. C N Bhattacharya, Chief Forensic Scientist, DFS and including J P Nigam, retired Senior Joint Director, FSL, MP and Dr. S K Jain, W.P.(C) 3663/2011 Page 9 CFSL, Chandigarh. The Committee observed that a clarification had been obtained from the Director of the Forensic Science Laboratory, Madhuban, about the experience of the fourth Respondent, Ms. Babita Gulia, and the former had clarified through an e-mail that in FSL, Madhuban, Haryana, all cases of explosive were received and examined in the Ballistic division. The Committee observed that the chemical part of the analysis/detection of the explosive material was carried out in the Chemistry Division of the laboratory. The Committee was of the opinion that there was no ambiguity about the essential qualifications as well as the experience of the fourth Respondent. In regard to the fifth Respondent, R Suresh, candidate selected against the reserved vacancies for OBC, it was observed that the following notes in the recruitment rules provided for relaxation of qualifications: "Note 1 : Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified. Note 2 : The qualification (s) regarding experience is/are relaxable at the discretion of the

UPSC in the case of candidates belonging to the Scheduled Caste and Scheduled Tribes if, at any stage of selection the UPSC is of the opinion that sufficient number of candidates from these communities possessing that requisite experience are not likely to be available to fill up the vacancies reserved for them."

It noted that the Department of Personnel and Training by its Office Memorandum dated 13.10.1994 had clarified that in order to fill up the quota earmarked for OBCs, relaxation of the standards may be W.P.(C) 3663/2011 Page 10 provided for OBC candidates as in case of SC/ST candidates. It was observed that the UPSC, while forwarding the list of shortlisted as well as the rejected candidates to the requisitioning Department, had clarified that since the sufficient number of eligible candidates in the OBC category were not available, experience had been counted even before acquiring essential educational qualification and also Masters Degree in Forensic Science had been treated as equivalent qualification in the case of the said candidate. The candidate also claimed in his application that he possessed M.Sc. in Forensic Science with specialization in Ballistics and he had experience in examining and identifying various types of fire arms and ammunitions. The committee concluded in its minutes of meeting dated 23.09.2010 as follows: "The Committee is of the opinion that in Ballistic Division the scientists involved are routinely conducting the examination and identification of firearms as well as ammunition involved in shooting cases. The ammunition also includes low explosives such as gun powder as well as high explosives like Nitro glycerine, Nitro cellulose, based powder etc. Therefore, the committee feels that recommendation of UPSC appears to be in order. Further the candidate recommended may also be suitably trained, if felt necessary."

13. The Director, CFSL, accepted the recommendations of the committee constituted by the MHA by recording the following note dated 12.01.2011: "The report of the Committee was examined at various levels in CBI/HO as well as CFSL(CBI) and it has finally been decided to accept the recommendations of the W.P.(C) 3663/2011 Page 11 Committee appointed by MHA as the matter is already badly delayed and to initiate process of appointment of the two candidates selected by the UPSC, as Senior Scientific Officers Grade-II (Ballistics) in CFSL (CBI) after Medical Examination. They will be given required training in the filed of

explosives after their appointment, if felt necessary."

14. The Petitioner's argument is that the Director, CFSL agreed to the selection made by the UPSC only because of delay, but the objections raised by him about the unsuitability of the selected candidates to hold the post had not been answered. It was contended that the information received regarding the fourth Respondent, Ms. Babita Gulia, established that she never worked in Chemistry Division. The fourth and the fifth Respondents had argued that the posts for which selection was made related to Ballistics, as evident from the advertisement and that the qualification prescribed was Masters degree in Physics or Mathematics or Chemistry, without any emphasis on Chemistry. It was argued that the Petitioner had Masters Degree in Mathematics. The fourth Respondent had Masters Degree in chemistry; and that there was no mention of experience in chemical laboratory in the recruitment rules. It only mentioned three years experience in firearms and explosives.

15. It can be seen from the above discussion that the bone of contention of the parties to this dispute is whether the fourth and fifth respondents were eligible and could have competed for the post. Now, the factual narration shows that initially CFSL-CBI was informed about the nature of qualifications held by the applicants who responded to the UPSC's advertisement. Its Director was present when W.P.(C) 3663/2011 Page 12 the candidates were interviewed. Despite this, later, that officer stated that sufficient time was not given to scrutinize the dossiers and determine who were eligible. He, therefore, exercised his discretion and sought for the views of a committee constituted by him, which felt that the candidates were ineligible; with respect to the fourth respondent, its view was that she did not possess the required experience. However, that committee (of the CFSL) itself recommended, on 19-07-2010 for a fresh look by the Ministry of Home Affairs. The Ministry, therefore, constituted a committee of three experts, who reported to it on 23-09-2010 stating that having regard to the eligibility conditions spelt out, the fourth respondent had the requisite experience. This committee had the records and materials before it. Its report was deliberated upon at length by the CFSL-CBI's Director; however, on 12-01-2011, he accepted the decision and cleared the appointments.

16. A line of authorities have categorically ruled that Courts exercising judicial review powers should be circumspect in undertaking a "merits review" of candidates for public employment and should defer to expert opinion. Thus, in *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University*, (2008) 9 SCC284 the Supreme Court stated as follows:

"9. It may be mentioned that on a clarification sought from UGC whether a candidate who possesses a Masters degree in Public Administration is eligible for the post of Lecturer in Political Science and vice versa, UGC wrote a letter dated 5-3- 1992 to the Registrar, M.D. University, Rohtak W.P.(C) 3663/2011 Page 13 stating that the subjects of Political Science and Public Administration are interchangeable and interrelated, and a candidate who possesses Masters degree in Public Administration is eligible as Lecturer in Political Science and vice versa. Thus, this is the view of UGC, which is an expert in academic matters, and the Court should not sit in appeal over this opinion and take a contrary view."

In *B.C. Mylarappa v. Dr. R. Venkatasubbaiah*, (2008) 14 SCC306 the importance of circumspection by the Courts, in the absence of proven mala fides, or illegality was underscored:

"6. Admittedly, there is nothing on record to show any mala fides attributed against the members of the expert body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made hereinabove, it would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction."

The position was stated even more emphatically in *Dalpat Abasaheh Solunke and others v. Dr. B. S. Mahajan & Ors.*, AIR 1990 SC SC434 as follows: "it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted

Selection Committee which has the expertise on the subject. The Court has no such expertise. W.P.(C) 3663/2011 Page 14 The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

17. In the present case, the rethinking about experience of the fourth respondent appears to have occurred after the Petitioner's representation. This triggered a process of intense scrutiny, by which the committee set up by the Director, CFSL, CBI recommended constitution of a panel by the Ministry of Home Affairs; this was done. That panel reviewed the entire matter; it apparently took into consideration the views of the Director and his reservations, and concluded that the selections were in order. This was ultimately accepted by the respondents; even the Director CFSL-CBI agreed to this, by his note of 12th January, 2011. There are no allegations of mala fides or that the selection committee favoured any selected candidate or was partisan. In these circumstances, any examination by the court under Article 226 of the Constitution of India would be a "merits review" and amount to sitting in judgment over decisions of expert bodies. This Court consequently holds that there is no infirmity in the decision of the Tribunal. W.P.(C) 3663/2011 Page 15 18. For the foregoing reasons, there is no merit in the petition; it is dismissed without any order as to costs. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) JULY23 2014 ajk W.P.(C) 3663/2011 Page 16