
(2009) 07 DEL CK 0515

In the Delhi High Court

Case No : Writ Petition (C) No. 7740 of 2007 and CM No's. 831-32 of 2009

Dr. Sridhar Srivastava

APPELLANT

Vs

Dr. V.P. Singh and Others

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Constitution of India, 1950 — Article 309

National Council of Educational Research and Training Regulation — Regulation 52, 53, 54, 57

Citation : (2009) 07 DEL CK 0515

Hon'ble Judges : Suresh Kait, J;A.K. Sikri, J

Bench : Division Bench

Advocate : K.K. Rai and Manish Kumar Saran, in WP C No. 7740/2007 and R.K. Singh, Rumi Chandra and Deepa Rai, in WP C No. 8138/200, for the Appellant; Sudhir Nandrajog and Virendra Rawat and Alok Singh for resp. No. 1. in WP (C) Nos. 7740 and 8138/2007, R.K. Singh, Rumi Chandra and Deepa Rai for NCERT and Amitesh Kumar, for UGC in WP (C) Nos. 7740 and 8138/2007 and K.K. Rai and Manish Kumar Saran, in WP (C) No. 8138/2007, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Dr. V.P. Singh had filed OA u/s 19 of the Administrative Tribunals Act, 1985 challenging the appointment of Dr. Sridhar Srivastava to the post of Professor in the department of Educational Surveys and Data Processing in National Council of Educational Research and Training ("NCERT" for short). The applicant Dr. Singh had arrayed NCERT as respondent No. 2 and Dr. Sridhar Srivastava, the selected candidate, as respondent No. 3. Union of India (UOI) and University Grants Commission (UGC) were impleaded as respondent Nos. 1 & 4 respectively. Appointment of Dr. Sridhar Srivastava was challenged on various grounds, which included the ground that the applicant was wrongly excluded from consideration and that the Selection Committee was not properly constituted.

2. The Tribunal has accepted the plea of Dr. Singh and, thus, allowed his OA partly vide judgment dated 27.8.2007 setting aside the selection process and appointment of Dr. Srivastava and holding fresh selection in which both Dr. Singh and Dr. Srivastava should also be considered. Both Dr. Srivastava as well as NCERT have come up to this Court by means of these two writ petitions challenging the same judgment.

3. For the sake of clarity, we shall refer the parties by their names, i.e., Dr. Singh, Dr. Srivastava, NCERT and so on.

4. Dr. Singh is working as Reader with NCERT. Before his appointment with NCERT, he worked as Research Associate in U.P. State Government with effect from 26.2.1998, which appointment he got by selection through Union Public Service Commission (UPSC). NCERT issued advertisement on 22.4.2006 inviting applications for the post of Professor in the Department of Educational Surveys and Data Processing. Following eligibility requirements were prescribed therein:

The incumbents must have in-depth knowledge of survey methodology and statistical techniques necessary for large-scale research in social sciences, which have a bearing on education.

5. It is also not in dispute that NCERT has adopted the qualification norms for the posts of Reader and Professor as prescribed by the UGC in its Regulations, known as the University Grants Commission Regulations, 2000. Qualifications for the post of Professor and Reader as per these UGC norms are as under:

1.3.0. HUMANITIES, SOCIAL SCIENCES, COMMERCE, EDUCATION, PHYSICAL EDUCATION, FOREIGN LANGUAGES AND LAW

1.3.1 Professor An eminent scholar with published work of high quality, actively engaged in research, with 10 years of experience in postgraduate teaching and/or experience in research at the University/national Level institutions, including experience of guiding research at doctoral level.

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.

1.3.2 Reader

Good academic record with a doctoral degree or equivalent published work. In addition to these, candidates who join from outside the University system shall also possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F at the Master's degree level.

Five years. of experience of teaching and/or research excluding the period spent for obtaining the research degrees and has made some marks in the areas of scholarship as evidenced by quality of publications, contribution to education innovation, design of new courses and curricula.

6. A total number of 20 applications were received by the NCERT. Dr. Singh and Dr. Srivastava also applied. These 20 applications were scrutinized by the Screening Committee constituted by the Director, NCERT. This Committee, after scrutiny, shortlisted the candidates and decided to call only six candidates for interview. For the purpose of short-listing, higher standards, as compared to what is laid down in the norms and advertisement, were prescribed, namely:

(a) First Class Master's Degree with PHD;

(b) 10 years PG Teaching/Research experience as Lecturer/Reader or as an official in the Research Institute in the identical pay-scale against regular vacancy; and

(c) minimum five publications in a journal of repute. On the application of the aforesaid criteria, name of Dr. Singh was eliminated from consideration. After interviewing all the six candidates, Dr. Srivastava was recommended for appointment and was appointed to the post of Professor vide orders dated 7.9.2006. Even before the interviews were held on 23.8.2006, Dr. Singh on coming to know that he was not called for interview, made the representation dated 8.8.2006 to reconsider his candidature. It was, however, turned down on 11.8.2006 on the ground that he did not fulfil the eligibility criteria as laid down while short-listing the candidates. Within few days of the appointment of Dr. Srivastava, Dr. Singh approached the Central Administrative Tribunal and filed OA No. 2064/2006 on 27.9.2006. His challenge to the selection of Dr. Srivastava was predicated on the following:

(a) The Selection Committee constituted by the Director, NCERT, which took the interviews, was not properly constituted and was contrary to the provisions of Regulation 57 of the NCERT Regulations.

(b) The Screening Committee constituted for short-listing candidates had no jurisdiction to lay down any criteria contrary to what was provided in the UGC norms or in the advertisement and thereby derecognises the qualification of Dr. Singh.

(c) In any case, the criteria prescribed by the Screening Committee, namely, 10 years of experience in post-graduate teaching and teaching experience as Reader or Lecturer was alien to the UGC norms.

(d) Even Dr. Srivastava was not eligible as per the criteria laid down as he lacked teaching experience of 10 years in Educational Surveys, Data Processing or Statistics.

7. All these contentions have found favour with the learned Tribunal. Both the petitioners in this writ petitions, namely, NCERT and Dr. Srivastava, contend that the reasoning and conclusions of the learned Tribunal on the aforesaid aspects are not valid, legal or justified. In such circumstances, we deem it proper to take up the aforesaid issues one by one and in the process we would be referring to the respective contentions of the parties as well as the discussion of the Tribunal

on those issues.

8. Constitution OF THE SELECTION COMMITTEE:

Dr. Singh had challenged the constitution of the Selection Committee on the ground that it was not constituted as per Regulation 57 of the NCERT Regulations. This provision provides that Selection Committee shall consist of Director or his nominee, a person nominated by the President and three persons to be selected from a panel of names prepared by the Establishment Committee, of whom two shall be the specialists and the Secretary as Member/Convener. The objection of Dr. Singh was in respect of those two members who had been taken as specialists in the subject. His contention in this behalf was that none of the Members taken from the said panel had any specialization in the area of Statistics or Educational Surveys and even Data Processing. The two specialist Members in the Selection Committee were Dr. C.P.S. Chauhan and Professor Dr. R.M. Mehrotra. In the opinion of the Tribunal, since the discipline in question was Educational Surveys and Data Processing and as per the job requirement it was necessary for the incumbent to have in depth knowledge and statistical techniques, it was necessary for specialist member to have expertise in the field of Statistics. However, held the Tribunal, on going through the bio-data of the experts, it was found that Dr. Mehrotra did not have specialization in Statistics. The observations of the Tribunal, on this aspect, read as under:

27. ...We have seen the area of specialization of Dr. Mehrotra, who is a specialist in Research Methods, Educational Measurement and Evaluation as well as Teacher Education. Dr. C.P.S. Chauhan is also a Specialist in Research Methods and Statistics. Dr. R. Govinda has specialization as a Well Known Educational Researcher.

28. In the above view of the matter, admittedly two of the Specialists are Dr. R.N. Mehrotra and Dr. C.P.S. Chauhan. Dr. Chauhan has specialization in Research Methods and Statistics but Dr. Mehrotra is lacking in experience or expertise in Data Processing. It is to be borne in mind that the very purpose of inducting specialists in selection committee is to ensure that an expert who has to evaluate the comparative merits of the candidates should be an expert with a well know-how of the subject and a sound knowledge to adjudge the candidates. More particularly in the present case when the post of Professor through in the NCERT which deals with Education, yet the stress has been made on candidates having in-depth knowledge of survey methodology and techniques required for educational research in social science having a bearing on education. Accordingly, specialists should have vast experience on the aforesaid subject. From the perusal of the bio data of specialists we do not find that Dr. Mehrotra, who was inducted as a specialist has any experience in this regard and accordingly Regulation 57, which mandates inclusion of two specialists has been violated. A specialist for requirement of regulation and nature of selection should not be a specialist in education or research methods but he should be a specialist like Dr. Chauhan having some specialization in Research Method and statistics. We have

no hesitation to rule that the constitution of the selection committee was not in accordance with Regulation 57 of the Council.

9. The submission of Mr. R.K. Singh, learned Counsel who appeared for the NCERT as well as Mr. K.K. Rai, Senior Advocate, who appeared for Dr. Srivastava, was that the approach of the Tribunal in this behalf was clearly erroneous. According to them, the Tribunal failed to appreciate that the post of Professor was in the field of Educational Evaluation and Measurement and Survey. List of experts in this field had been prepared, which was approved by the Establishment Committee in its meeting held on 4.4.2005 and 28.4.2006. Therefore, while Constituting the Committee, names were to be taken from this list. Both Dr. Chauhan and Professor Mehrotra were included in the list of experts which had been approved by the Establishment Committee. It was the Establishment Committee/employer, which was competent to decide as to which persons have expertise in the field. This list was never under challenge. Names drawn from such a panel of experts/specialists constituted by the Establishment Committee, therefore, could not have been questioned by the Tribunal. It was also submitted that the Educational Survey is a very expert field and interdisciplinary in nature. It cannot be simply likened to Static as the subject is understood in academic parlance. Dr. R.N. Mehrotra is a renowned educationist and is considered as an expert in the field of Education and Educational Measurement and Survey not only in this country but worldwide. He has to his credit more than four decades of research experience in the field and his expertise and stature as an expert-academician has no parallel in this country. Therefore, the Tribunal committed a grave error of fact to say that he is not an expert in the concerned field and hence not qualified/competent to be a member of the Selection Committee.

10. Learned Counsel appearing for Dr. Srivastava, in addition, also argued that the courts avoid sitting over judgment as to who should be the expert. Dr. Mehrotra is a well-known academician on the panel of specialists of NCERT and even otherwise, Regulation 53 read with Regulation 57, the quorum of Selection Committee is complete even with one expert, viz. Dr. Chauhan, being the other expert.

11. Mr. Sudhir Nandrajog, learned senior counsel appearing for Dr. Singh, on the other hand, highlighted the discussion contained in the impugned judgment on this aspect, which has already been extracted above, and reiterated that Dr. Mehrotra had expertise only in Teacher Education and not in Statistics. His submission was that teaching was not even the exercise undertaken by the NCERT and, therefore, a person having expertise in Teacher Education could not be treated as an expert. He referred to the additional affidavit dated 11.2.2009 filed by Dr. Singh containing the information obtained by him under the Right to Information Act. These papers include minutes of 11th meeting of the Departmental Advisory Board of the NCERT held on 31.3.2006. Under Agenda Item No. 2, role and function of the Department was discussed, as per which the

main function of the NCERT was only research and no teaching. He also referred to the list of experts approved by the Establishment Committee, as per which the area of specialization shown against the name of Professor Mehrotra was "Teacher Education" and the discipline was also "Teacher Education". He submitted that UGC in its letter dated 13.1.2009 addressed to Dr. Singh (enclosed as Annexure R-5 to the additional affidavit) has categorically opined that Dr. Mehrotra and Dr. Chauhan were not eligible to become the Specialist/Special Expert Members in Statistics.

12. After considering the respective submissions, we find it difficult to agree with the opinion of the Tribunal on this aspect. The Tribunal has proceeded on the basis that only that person can be treated as expert for this particular post who has specialization in Statistics. This is too narrow an approach. Post of Professor is in the Department of Educational Surveys and Data Processing. The bio-data of Dr. Mehrotra, which is produced on record and which has not been discussed by the Tribunal at all, would manifest that he is a specialist in research methods, educational measurement and evaluation as well as teacher education. The post is in the NCERT, primary function of which is Educational Research and Training. That apart, if the contention of Dr. Singh is accepted that there is no educational activity in NCERT and one has to proceed on that basis alone, it would mean that no person who is expert in research methods, educational evaluation or teacher education would be treated as an expert. That cannot be the case having regard to the activities of the NCERT itself. Moreover, what cannot be disputed is that Dr. Mehrotra is included in the list of experts prepared by NCERT and duly approved by the Establishment Committee. While including the names of experts in the list of a particular discipline, it is for the educational body like NCERT to go through the credentials of such persons and decide as to whether they would be expert in particular field or not. The purpose of preparing such a list is not only to identify as to who are the experts in a particular discipline. It also serves as a guide for the competent authority while Constituting a Selection Committee, inasmuch as, from such prepared list of experts, particular Member(s) can be picked and included in the Selection List. These academic issues are normally to be left to the educational institutions and courts are slow and reluctant to interfere with such exercises.

13. As noted above, the NCERT has explained that "Educational Survey" is a very expert field and inter-disciplinary in nature. It cannot be simply likened to Statistics, as the subject is understood in academic parlance. We feel that the Tribunal not only exceeded its jurisdiction in undertaking the exercise itself to define as to what would be the field of experts for the post in question, but also took myopic view by confining it to Statistics alone.

14. We also find force in the arguments of learned Counsel appearing for Dr. Srivastava that when there is no dispute that Dr. Chauhan, other expert was duly qualified, even as per the Tribunal, the quorum of Selection Committee would be complete with one expert, as provided under Regulation 53. Therefore, we do not

subscribe to the view taken by the Tribunal that the Selection Committee was not duly constituted.

15. Power of the Screening Committee to enlist higher criteria and shortlist the candidates on that basis:

The ground of attack placated by learned Counsel appearing for Dr. Singh was that the Screening Committee was not empowered to change the criteria and fix higher criteria than specified in the UGC norms. According to him, if at all, this could be done only by the appointing authority. Mr. Nandrajog referred to the averments made by the NCERT itself in the counter affidavit filed in the OA before the Tribunal wherein it was conceded that the scope of the Screening Committee was limited to the role of scrutinizing the candidates, documents/certificates relating to their educational qualifications and whether the candidates fulfil the eligibility criteria set by the Council for the post of Professor (in Educational Survey) or not. He pointed out that it was also admitted that at this stage the applicants' qualifications, criteria are scrutinized and those possessing the eligibility criteria are short-listed. He referred to the provisions of Regulations 52, 53, 54 and 57 of the NCERT regulations and on that basis argued that the Screening Committee was not of the same level as the Selection Committee and the only mandate for the Screening Committee was to discharge the ministerial function of scrutinizing the applications to see as to whether the candidates fulfil the eligibility conditions, as stipulated in the advertisement/UGC norms. This contention of learned Counsel appearing for Dr. Singh has been accepted by the Tribunal by observing that it is the prerogative of the NCERT, namely, the Council, to alter the criteria and eligibility conditions attached to the post of Professor.

16. Countering the aforesaid submission of Dr. Singh and the reasoning of the Tribunal, learned Counsel for the NCERT submitted that the Screening Committee itself is constituted by the Director, NCERT, acting as the appointing authority and the Chairman of the Selection Committee. The process of scrutiny is an integral part of the selection proceedings. Further, the proceedings conducted by the Screening Committee, including the criteria adopted by it, is subject to approval by the Director. On file, the entire proceedings, from constitution of the Committee to its minutes have been approved by the Director. It has been a long established administrative practice in the NCERT to have an independent Screening Committee of experts and academicians from the relevant field to scrutinize the applications of candidates as a prelude to their cases being considered for Selection Committee. The purpose is to enable the Selection Committee to focus on merits and choose the best talent from amongst the applicants. As a matter of practice and expediency, the Joint Director (C) had always been chairing the Screening Committee. In November 2000, the then Director, NCERT, proposed that "JD(C) may constitute all such (Screening) Committees". This proposal has been consistently followed in all subsequent recruitment proceedings.

17. We have gone through the entire file comprising of minutes of the Screening Committee and find that the practice, as narrated by the counsel for the NCERT, which is followed by the NCERT while Constituting the Screening Committee stands established from the records. In the instant case, after applications were received in response to the advertisement for the post of Professor, the file noting indicates that the matter was referred to the Screening Committee in the following words:

We may, now, request JD (C) {that is, Joint Director (C)}, as Chairman of Screening Committee, to constitute the Screening Committee for short-listing the candidates.

Learned Counsel has produced other file which shows that for appointment against all such posts, general orders were passed for making JD as Chairman of the Screening Committee and other senior officials/professors who could be members of such Screening Committee depending upon the discipline for which the post is advertised. Orders to this effect have been passed by the Director. It is not in dispute that the Director is the appointing authority.

18. Significantly, after receipt of 20 applications, these were scrutinized at the office level as well, before even the matter was referred to the Screening Committee, and it was found that 11 candidates were eligible and 9 ineligible on applying the UGC norms as well. Thereafter, request was made for Constituting the Screening Committee for "short-listing the candidates". The Committee, under these circumstances, prescribed the conditions of eligibility by raising the standards and the minutes of the Screening Committee were sent and signed by the Selection Committee.

19. When the matter is viewed in this backdrop, it would be clear that the appointing authority had given the authorization/mandate for raising the bar in the eligibility criteria. To demonstrate this, learned Counsel appearing for the NCERT had produced before us similar and identical exercise done by the Screening Committee in all selections for the last number of years. We may state at the cost of repetition that we are dealing with an educational institution. Though it would have been better to give specific delegation to the Screening Committee for raising the bar insofar as eligibility conditions are concerned, however, in the manner in which the function is being discharged by the Screening Committee for the last number of years, it is clear that the appointing authority intended that the Screening Committee is constituted for the aforesaid purpose. No doubt, at certain places of the counter affidavit of the NCERT, on which reliance is placed by learned Counsel appearing for Dr. Singh, it is indicated that the scope of the Screening Committee was limited to the role of scrutinizing the candidates' documents/certificates and to see whether they fulfil the eligibility criteria for the post or not. However, when those portions are read along with other conditions in the context, it would become abundantly clear that the NCERT is explaining the role of the Screening Committee vis-à-vis that of the Selection Committee. It is nowhere admitted that the Screening Committee could

not raise the bar of the eligibility conditions. On the contrary, it is specifically mentioned that the Screening Committee of eminent and highly qualified academicians and experts is constituted to scrutinize the case of each and every candidate and shortlist the candidates for interview and consideration by the Selection Committee. What is highlighted is that after this short-listing is done, it is the Selection Committee to which the matter is referred and the Selection Committee enjoys full powers to devise its own methods and procedure for objective assessment and suitability of candidates who are to be considered by them.

20. Therefore, we cannot read those portions of the counter affidavit, as emphasized by the learned Counsel for the respondent, out of context and de hors the established practice prevailing in the NCERT, as demonstrated through the production of records. Exercise done by the Screening Committee had the approval of the appointing authority, namely, the Director, which would put a seal of validity to such an exercise.

21. Permissibility of the change in criteria:

Submission of learned Counsel for Dr. Singh, on this score, was that as per the UGC norms, one of the eligibility conditions for the post in question is "10 years of experience in the Post Graduate Teaching and/or experience in Research at the University/National level institutions, including experience and guiding research at doctoral level". He pointed out that the Screening Committee changed it to "10 years post graduate teaching research experience as Lecturer/Reader or an official in Research Institute in the identical pay-scale against regular vacancy". His submission was that this 10 years of experience was introduced as Lecturer/Reader and further insofar as the Research Institute is concerned, the scope was limited to those who are in "identical pay-scale", namely, only those officials who were enjoying the same pay-scale as Lecturer/Reader. According to him, it amounted to change in criteria and not raising the bar, as contended by the NCERT. His submission was that for the purpose of short-listing, when large number of applications are received, one could raise the bar in respect of qualifications already stipulated in the UGC norms, but under the garb thereof, could not substitute some other qualifications not specified in the UGC norms, which would mean to offending the very Rule itself prescribing the eligibility conditions. He submitted that insofar as Dr. Singh is concerned, he had requisite 10 years of experience of teaching and research taken together. However, he was ousted by stipulating the condition that such an experience should be in identical pay-scales as enjoyed by the Lecturer/Reader. Thus, even though Dr. Singh had the Post Graduate Teaching/Research experience of 10 years, he did not enjoy the same pay-scale which are available to Lecturer/Reader and his name was eliminated while short-listing the candidates.

22. The Tribunal, while accepting this submission of Dr. Singh, seems to have been influenced by the principle that when statutory rules are framed under Article 309 of the Constitution or else norms prescribed for selection, those rules

and norms govern the selection process, as held by the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Extracting the passages from the judgments of the Supreme Court in Yogesh Kumar and Ors. v. Govt. of NCT of Delhi and Ors. 2003 SCC (L&S) 346, G.N. Nayak v. Goa University 2002 SCC (L&S) 350, K. Shekar v. Indiramma and Ors. 2002 SCC (L&S) 429, State of Punjab and Ors. v. Manjit Singh and Ors. 2004 (2) ATJ SC 182, the Tribunal summed up the discussion in its own words as under:

22. Having regard to the above, though short-listing is the prerogative of the Government, yet it has to conform to the provisions of law and also to be in consonance with the rules and regulations on the subject. It is not at the ipse dixit of the selection committee to impose its own policy de hors the rules.

23. While there cannot be any quarrel regarding the aforesaid proposition of law, the relevant issue in the present case did not pertain to laying down the criteria by the Selection Committee de hors the Rules. On the contrary, question was as to whether the NCERT could adopt higher qualifications/norms than those prescribed in the Rules. In this behalf, the Tribunal noted that though Dr. Singh had the requisite 10 years of experience in Post Graduate classes as per the UGC norms, however, he was excluded by improper short-listing criteria adopted by the NCERT. According to the Tribunal, the process of short-listing would not permit the NCERT to alter or substitute the eligibility criteria prescribed in the statutory rules. Detailed discussion in this behalf, which is relevant for us, can be found in para 34 of the Tribunal's judgment and we would like to reproduce the same in its entirety, which reflects the mind of the Tribunal:

34. However in the light of above, the justification for adopting short-listing is when there are large number of candidates to be interviewed with a constraint of time and infrastructure and with an underlined object of picking the most suitable one, the short-listing would not amount to alter or substitute the eligibility criteria prescribed in the statutory rules but has been treated as part of process of selection. Irrationality and unreasonableness are not beyond judicial review. What we find from the record that the number of candidates for one post were only 20 and the situation was not as such to adopt such a criterion, which had no bearing on the rules and the advertisement and instead of adopting the criteria with higher standards, the very eligibility condition has been altered against the UGC norms to bring by way of short- listing a criterion which is alien to the process and was not forming part of either advertisement or the UGC norms. If such a criterion is to be introduced, it has to be the inception of the selection process but this selection criterion cannot be altered in the guise of short-listing, for which the candidates had no notice. It may be that the zone of consideration would have reduced if such criteria were advertised with due public notice to the concerned in the advertisement itself. However, the selection committee is not the administrative body to prescribe the eligibility criteria for the post of Professor. It is the prerogative of the NCERT viz. Council to have

altered the criterion and the eligibility conditions attached to the post of Professor. What is permissible to the selection committee is to act within the four corners of the criteria laid down under the norms adopted by the NCERT but not to alter it in a manner which is suggestive of favouring a particular person to its convenience, which will not be a judicious exercise of the discretion vested in the administrative authority and the entire process would not only be vitiated by bias but also for lack of fairness and arbitrariness as well. We have also seen the decision in T. Sundararaman (supra) wherein the Apex Court approved of introduction of higher qualifications as short-listing criteria but it is not an authority on the subject that if one has the minimum criterion under the rules in the guise of short-listing candidates they are to be treated as ineligible, which is contrary and de hors the statutory rules or the norms to govern the selection. If application has 10 years. experience then the selection committee's short-listing criterion to introduce teaching requirement of 10 years. experience, as a Lecturer/Reader is not a criterion prescribed under paragraph 1.351 of the UGC norms of 2000. As such, acting de hors the criteria adopted by the Council for appointment to the post of Professor, the criteria of working in a Research Institute in the identical pay scale against a regular vacancy is neither mentioned in the advertisement nor in UGC norms amounts to supplementing the educational qualification of eligibility criteria not by the rule-making authority not only amounts to exceeding the jurisdiction by the selection committee but also acting contrary to the rules, which cannot be approved of when a public post is filled up. This would be an unconstitutional act.

(emphasis supplied)

24. Contesting this approach of the Tribunal, Mr. Singh, learned Counsel for the NCERT, submitted that for the purpose of short-listing, only bar in the eligibility criteria had been raised. The requirement of "10 years experience" in teaching and/or research has been read and applied by the Committee as teaching/research experience in any research institute in the identical pay-scale of Lecturer/Reader against the regular vacancy and not in any other capacity as Project or other contractual appointee on a consolidated salary, since the level of responsibilities discharged and experience gained by one working against a regular vacancy in an identical pay-scale would be higher and greater than another working on a consolidated salary against a project or contractual post. Admittedly, as regards teaching experience, Dr. Singh had "NIL".

25. Mr. Rai, learned senior counsel appearing for Dr. Srivastava, additionally submitted that the NCERT had merely upgraded the requirement and had not introduced any new criteria, which was clear from the criteria adopted when seen in juxtaposition with UGC norms, as under:

-----	As per
UGC Regulation	The Criteria adopted by Screening Committee for Short listing
(Please refer Page 63,	Minutes of Screening Committee)
-----	1.3.1

Professor

An eminent Scholar with published 1. First Class Masters Degree with work of high quality actively Ph.D. engaged in research, with 10 years of experience in post-graduate 2. 10 years PG Teaching/Research teaching and/or experience in experience as Lecturer/Reader or research at the University/National an official in research institute level institution, including in the identical pay scale experience of guiding research against regular vacancy. at doctoral level 3. Minimum 5 publication in journal OR of repute.

An outstanding scholar with established reputation who has made significant contribution to knowledge.

26. He submitted that even the Tribunal accepted that short-listing is permissible in case of large number of candidates and such short- listing could be done only by raising the qualification prescribed in the rules. He referred to the judgment of the Supreme Court in the case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, . He also submitted that the record produced by the NCERT would indicate existence of laying standard practice and adopting higher criteria for short-listing the candidates and keeping in view these aspects, the Tribunal should not have interfered with the academic appointment. He referred to and relied upon the following judgment of the Apex Court in this behalf:

(i) Neelima Misra v. Harinder Kaur : [1990]2SCR84

(ii) Osmania University represented by its Registrar, Hyderabad, A.P. Vs. Abdul Rayees Khan and Another,

27. His last submission was that when Dr. Singh was not qualified even as per the UGC norms, he had no right to challenge the selection of Dr. Srivastava. In this behalf, he submitted that as per UGC norms one of the essential requirements/qualifications for the post of Professor is that candidate must have experience of guiding research at doctoral level. Admittedly as per the bio-data annexed by Dr. Singh, he does not have any experience of guiding research at doctoral level. Admittedly, Dr. Srivastava who was selected for the post of Professor has experience of guiding research at doctoral level. Dr. Singh was working as Research associate on consolidated pay till 4.5.1997 as per his own bio-data. As per UGC's letter, research experience gained as Research Associate cannot be counted.

28. He, therefore, pleaded that having regard to the dicta of the Supreme Court in the following judgments, no relief should have been granted by the Tribunal and OA filed by Dr. Singh should have been dismissed:

(i) Sudarshan Singh v. Harinder Mohan Sharma (2003) 12 SCC 47

(ii) Dr. Umakant Saran Vs. State of Bihar and Others,

29. The issue that arises for consideration is as to whether only eligibility bar is raised or the Selection Committee changed the criteria itself by providing different criteria than the one mentioned in the Rules. As per the UGC Regulations, the criteria which is laid down for the post of Professor is as under:

(i) an eminent scholar with published work of high quality, actively engaged in research;

(ii) 10 years of experience in postgraduate teaching; and/or

(iii) experience in research at the University/national Level institutions;

(iv) experience of guiding research at doctoral level

OR

(i) an outstanding scholar;

(ii) with established reputation; and

(iii) who has made significant contribution to knowledge.

30. We are not concerned with the alternate qualifications in the present case and the issue revolves around the eligibility conditions mentioned in the first part. As per this, a person with 10 years of experience in postgraduate teaching or who has experience in research at the University/National Level Institutions becomes eligible for the post if he fulfils other qualifications, namely, he is an eminent scholar with published work of high quality and his research includes experience at guiding research at doctoral level.

31. The criterion adopted by the Screening Committee is that it added First Class Masters. Degree with PHD. In this manner, educational qualification has been raised and there cannot be a quarrel about it as such a qualification could be raised for the purpose of short-listing.

32. Insofar as condition of published work of high quality is concerned, the Committee has fixed the criteria stipulating minimum five publications in a journal of repute. This was also permissible for raising the standard for the purpose of short-listing. Entire dispute is about 10 years of experience in postgraduate teaching or research. Insofar as postgraduate teaching is concerned, it is mentioned that such an experience has to be as Lecturer/Reader, which commensurate with the requirements of postgraduate teaching. Further, what is added is that those who fulfil alternate eligibility conditions, namely, experience in research, for them it is stipulated that such research experience has to be "in the identical pay-scales against regular vacancy", namely, the official should have research experience in the pay-scale which is equivalent to that of Lecturer/ Reader. It would not amount to either changing the norm or altering eligibility condition against the UGC norms. When UGC norms specifically mention that 10 years of experience in teaching has to be in postgraduate teaching, which would mean that this experience has to be as Lecturer/Reader,

as only Lecturers/Readers can have the experience of teaching postgraduate students, and experience in research is made the alternate eligibility condition, such experience in research has to be at par with the teaching experience. When we view the matter from this angle, specifically providing that the candidate claiming experience of research should have gained that experience while working in a post which carries identical pay-scale as that of Lecturer/Reader would be perfectly justified. This is more so when this research experience has to be at University/National level institutions. A person can have research experience at University/National level in the capacity of Lecturer/ Reader. Matter becomes more clear when this experience has to include experience of guiding research at "doctoral level".

33. We, thus, are unable to subscribe to the view of the learned Tribunal that by introducing the aforesaid short-listing norm, the Selection Committee altered the eligibility condition as stipulated in the UGC norms.

34. Learned Counsel for the petitioners are right in their submission that in such academic exercises, it is better to leave the matter to the discretion/wisdom of the Expert Committee. Unless it is found that the exercise done by the Screening Committee is impermissible or contrary to the law, courts should desist to interfere with the same, as held by the Apex Court in *Neelima Misra* (supra) and *Abdul Rais* (supra).

35. We are also of the opinion that against one post when 20 applications were received and the perception of the Selection Committee was that these are large enough for one post, it could adopt to the methodology of short-listing. No doubt, as a proportion 20 numbers of applications may not appear to be large. However, while considering the same as a proportion of the advertised vacancies, it may be large. Moreover, the post being that of Professor, it is expected that interviews are to be incisive and time consuming. In such matters, it is the perception of the employer or for that matter the Selection Committee which is important and if that is not unreasonable, scope for judicial interference is minimal. Above all, we find that Dr. V.P. Singh was not even eligible for the post.

36. For all these reasons, we are of the view that the judgment of the Tribunal is liable to be interfered with as unsustainable in law. We, accordingly, set aside the impugned judgment and as a necessary corollary, OA filed by Dr. Singh, being devoid of any merits, is dismissed. These writ petitions are allowed in the aforesaid terms. There shall, however, be no order as to costs.