

(2002) 04 DEL CK 0185
In the Delhi High Court
Case No : CW. 3868 of 1995

Shri Dharam Chand Vashisht

APPELLANT

Vs

Delhi Electric Supply Undertaking and Others

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Citation : (2002) 5 AD 95 : (2002) 97 DLT 821

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : G.D. Gupta and Pankaj Kumar, for the Appellant; Avnish Ahlawat, Sanjay Jain and Amit Sethi, for the Respondent

Judgement

Vijender Jain, J.—Rule.

2. The petition has been filed by the petitioner being aggrieved on account of his professional experience for direct recruitment as laid in the R & P Regulations for the post of Asstt. Engineer/Asstt. Executive Engineer not taken into consideration by the Union Public Service Commission/UPSC by not calling him for interview, for the aforesaid post.

3. On 19.10.95 this Court directed the UPSC that the petitioner be interviewed and result be kept in a sealed cover and would be subject to further order of this Court. Pursuant to that order petitioner appeared before the UPSC.

4. Records of the Union Public Service Commission pertaining to the recruitment to the post of Assistant Engineer/Assistant Executive has been brought under a sealed cover. Let sealed cover be opened by the Court Master.

5. The sealed cover which was ordered to be opened in Court have been perused and the petitioner has been recommended by the UPSC as selected.

6. The compass of controversy relates to the interpretation of the recruitment rules. The relevant recruitment rule at page 43 of the paper book is as under:

7. Educational & other 1) Degree in qualifications required Electrical/Mechanical for direct recruits. Engineering from a recognised university or equivalent.

ii) Two years professional experience preferably in a large electric supply Undertaking.

7. The petitioner was initially appointed as Technical Apprentice in DESU and remained there till 10.7.84. Thereafter, the petitioner was appointed as Engineering Assistant on 20.12.84 in All India Radio on the basis of direct recruitment and remained there up to 19th July, 1989. He was again appointed on 20.7.89 as Inspector in DESU on the basis of open competition by direct recruitment. It seems that on 4th October, 1989 the petitioner obtained a degree in electrical Engineering AMIE. According to the petitioner, the petitioner was entitled for the post of Asstt. Engineer/Asstt. Executive Engineer in terms of the recruitment rules as he had obtained a degree in Electrical Engineering from recognised university and he had two years professional experience when the post was advertised in the year 1994. It has been contended by Mr. Gupta counsel for the petitioner that as a matter of fact, the experience of the petitioner was much more than what was required as per the recruitment rules.

8. In paragraph 9 to 11, 16 & 7 of the counter affidavit (which is at page 72 of the paper book) the stand of the respondent/UPSC was that the UPSC received 1022 applications against 22 unreserved posts and short listing was resorted to by raising the experience from 2 to 5 years. It was further stated in the counter affidavit which is to the following effect:-

"The Union Public Service Commission is a Constitutional Authority, within its right to evolve suitable criteria and procedure for selection of the best candidates from those fulfilling the minimum qualifications prescribed for a post.....

.....The criteria adopted for shortlisting in the present case was as follows:

"To call all those candidates who possess 5 years professional experience in a large electric supply undertaking or a comparable organisation after the candidates have acquired essential qualification (i) i.e. degree in electrical Engineering from a recognised University or equivalent."

9. Mr. Gupta has vehemently contended that the word "after" which has been used by the UPSC in shortlisting the candidates alters the recruitment rules and the essential features of the requirement of the said rule. In support of his contention counsel for the petitioner has cited the decisions of Supreme Court in Anil Kumar Gupta and Ors. v. Municipal Corporation of Delhi and Ors. (2001) 1 SCC 128, A. K. Raghurani Singh and Others Vs. Gopal Chandra Nath and Others, and Subhash v. State of Maharashtra and Ors. .

10. On the other hand counsel for the respondent/UPSC has contended that in view of the large number of applications having been received by the UPSC, the UPSC has to resort to short listing in order to get best candidates and five years experience was put in as a reasonable criterion from those fulfilling the minimum

qualification and the petitioner in no way as been discriminated as the criterion as been uniformly applied to all te candidates. Counsel for respondent No. 3 hs relied upon te decision in Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, . On the bass of Madhya Pradesh Public Service Commission's case (Supra), counsel for respondent No. 3 has contended that the Commission was within its competence to decide what procedure ws to be followed for selecting the best candidates amongst the applicants.

11. Respondent No. 1 DESU, as a matter of fact supported the case of the petitioner by writing a letter to the UPSC which is at page 62 of the paper book. By the said letter dated 26th September, 1995, the then General Manager of the DESU had requested the UPSC that the degree holders who were already working in DESU for more than 3 years, may also be considered and called for interview as it will help DESU in getting experienced hands and will also go along way in tackling under employment in DESU.

12. I have give my careful consideration to the arguments advanced by the counsel for the parties. navnit Kumar Potdar's case (Supra) was a case for appointment for the post of Presiding Officer, Labour Court. The minimum requirement was five years's practice as advocate as required u/s 8(3)(c) of M.P. Industrial Relations Act, whereas the Madhya Pradesh Public Service Commission raised the period up to seven and half ears practice fr those who were short listed and called for interview. it is int his background hat Supreme Court took the view that for the purpose of holding interview ad to select te candidate among the applications if he UPSc as fixed a ratio for calling the candidates for interview with reference to number of available vacancies tat will not amount to altering or changing the criterion prescribed in the rule, as it was only a part of the selection process.

13. In the instant case before hand the recruitment rules postulate degree in electrical Engineering from recognised university or equivalent .There is neither a word "or" nor "and" and the second essential criterion is two years professional experience preferably in a large electric supply Undertaking. If that is the requirement of rule UPSC in its wisdom to select the best could have adopted any method or manner inconsonance with the recruitment rules. How they have put the word "after", for the purpose of taking into consideration experience, which is reflected in te counter affidavit filed y them at page 72 of the paper book, when the experience after obtaining the degree ws not prescribed in the recruitment rules? The same would be without justification by the UPSC.

14. UPSC as a premier authority created under the Constitution is versed with te obligations of securing the best talent for the services. But for the services where the recruitment rules govern the field, UPSC has no justification to amen or taker wit the rules by administrative instructions. When the experience, of two years whether "after" or "before" or" cumulatively" not defined in the recruitment rules taking the same and substituting it by "after "for the purpose of eliminating candidates would be an act which would be without justification.

15. The Supreme Court in Anil Kumar Gupta's case (Supra) after considering the decision in M.B. Joshi and Others Vs. Satish Kumar Pandey and Others, , N. Suresh Nathan and another Vs. Union of India and others, , and D. Stephen Joseph Vs. Union of India and others, held as under:

Therefore, on the language of the notification dated 30-6-89, we are of the view tat the 2 years''s professional experience need not entirely be experience gained after obtaining the degree.

16. Relevant provision of the recruitment rules before the Supreme Court in Anil Kumar's case (Supra) was para materia with the recruitment rules in the case before hand. In Anil Kumar's case (Supra) Supreme Court was also considering the relevant provisions applicable in the notification dated 30.6..89 inviting applications referred to essential qualifications as (i) degree (ii) 2 years'' "professional" experience. The Full Bench of this Court in S.P. Dubey v. Municipal Corporation of Delhi and Ors. C.W. 4696/93 decided on January 25th, 2002 also followed the law laid down in Anil Kumar Gupta's case (Supra). Moreover, the UPSC itself had construed the rule by not taing the expiree after obtaining te degree as is evident from its later dated 13th September, 1985 (at paper book 60 of the paper book) which is reproduced below:-

"I am directed to refer to your letter No. 16969/CES (A)/UD(7)/85 dated 4-9-85 on the above subject and to say that as already clarified in this office letter of even number dated 19.8.85 the entire service rendered by an officer in the feeder grade shall be taken into account for purpose of counting qualifying service prescribed in the recruitment regulations for promotion. In other words, entire servie rendered by an officer possessing a diploma but who had subsequently acquired a degree will be counted for promotion."

17. The criterion laid down by the UPSC for shortlisting of five years service after obtaining degree in Electrical Engineering is illegal and without justification. As on opening of te sealed envelop the petitioner has already ben found to be eligible for promotion but for te wrong interpretation given by the UPSC to the recruitment rules vis-a-vis its scope and power to be exercised for short listing, I set aside the same. The respondent are directed to appoint the petitioner as Asstt. Engineer/Assistant Executive Engineer in view of the selection made by the UPSC, with all consequential benefits within four weeks.

18. Rule is made absolute.

19. Petition stands disposed of accordingly.