

**HIMACHAL PRADESH
PUBLIC SERVICE
COMMISSION**

IN THE HIMACHAL PRADESH ADMINISTRATIVE TRIBUNAL, SHIMLA

O.A.NO.248/2004

D.D. 22.06.2004

THE HON'BLE MR. NARINDER THAKUR, VICE CHAIRMAN

AND

THE HON'BLE MR. S.S.NEGI, MEMBER (A)

Shri Kuldeep Singh Katoch ... **Applicant**

Vs.

H.P. Public Service Commission ... **Respondent**

Qualification:

The applicant was a candidate for recruitment to 4 posts of Assistant Public Relation Officer – The application of the applicant was rejected as he had not enclosed the proof of essential qualification i.e. 3 years experience in Journalism as on the last date of receipt of application along with his application – The applicant produced Diploma Certificate and Experience Certificate on 23.1.2003 after the last date for receipt of applications i.e., 30.12.2002 – The Tribunal dismissed the application.

Held:

The Commission will be within its right in rejecting the applications if the applications are not in strict compliance with the conditions and stipulation contained in the advertisement/notification.

Cases referred:

1. AIR 1970 SC 1099 – State of Rajasthan & Anr. V. Fateh Cand & Anr.
2. AIR 1997 SC 1693 – Mrs. Seema Kumari Sharma v. State of H.P.
3. 1999 Vol-I SLC. 246 – Gunjan Kapoor v. State of H.P.
4. 2000 (5) SCC 262 – Bhupinder Singh v. State of Punjab

JUDGMENT

The present Original Application has been filed by the applicant against the action of respondent H.P. Public Service Commission in not issuing the interview letter/roll number for appearing in the screening test for the post of Assistant Public Relation Officer in the department of Information and Public Relation.

2. In the reply the respondent Commission that the respondent advertised 4 posts of General category of Assistant Public Relation Officer in the department of information and Public Relation on 30.12.2002 in the leading News Paper. The last date of receipt of application fixed by the Commission was 30.12.2002 (13.1.2003 for hard area). In response to this advertisement in all 94 applications were received by the last date out of which 35 candidates were admitted provisionally and 59 candidates were rejected for want of different reasons. The candidature of the applicant was also rejected as the applicant had not enclosed the proof of essential qualification i.e. three years experience in Journalism with his application on the last date of receipt of application. Therefore, the application of the applicant for the post of APRO was rightly rejected by the respondents on this ground only. The applicant was on the direction of this Tribunal was admitted for screening test held on 30.1.2004 provisionally. It is admitted position that the last date of receipt of application was December 30.2002. It was clearly mentioned in the advertisement (Annexure-A/1) that attested copies of testimonials/documents in support of age, date of birth, category to which he/she belongs as applicable. Educational qualifications and experience must be enclosed with the application. Incomplete applications will be rejected straight way. Separate application will have to be sent for each category of post(s). In service candidate may apply to the Commission with requisite fee and documents as advanced copy, with information to his/her Head of the Department Office for issuing NOC. The decision of the Commission as to the eligibility or otherwise of a candidate for admission to interview or selection will be final and no correspondence/personal inquiries will be entertained. The Commission will not be responsible for any delay in receipt of application, due to any reason whatsoever.

3. In spite of the clear-cut instructions mentioned, the applicant has not cared to submit his complete application Form. It is, therefore, obvious that the application of the applicant suffered

deficiencies and irregularities and accordingly it was rejected. It is further submitted by the respondents that without document it was not possible for the Commission to judge the eligibility of the candidates for the post. It is mentioned in the reply by the Commission that the applicant represented on 23.1.2004 to admit him for the post but respondent commission rejected representation vide Annexure-R/1 dated 27.1.2004.

4. We have heard the learned counsel for the applicant and the learned counsel for respondent Commission Shri. D.K. Khanna. Original record was produced by the respondent Commission on 3.6.2004 and as per the application Form of the applicant he has attached Bank Draft, Matric Certificate, B. Sc detail marks certificate and MMC photocopy which has been perused by us today and as per the record no experience certificate has been attached by the applicant with the application Form as per the record. It is submitted by the learned counsel for the applicant that he has given Diploma Certificate and Experience on January 23.2003 but the cut off date of this document was December 30.2002.

5. In the advertisement a clear distinction has been made between the essential qualification (EQ) desired qualifications (DQ) and other requisite qualifications. It was specifically mentioned in the advertisement that the applicants must possess essential qualification and requisite qualifications on the last date of applications. It was further very specifically mentioned that the applicants must furnish the proof in support of requisite qualification by the last date of receipt of application i.e. 24.11.1999.

6. Therefore, the controversy hinges around the interpretation of word "QUALIFICATION" and whether the term qualification means only the educational qualification or the other eligibility condition like age. This question has been answered by Hon'ble Supreme Court in case titled as State of Rajasthan and another vs. Fatesh Chand and another reported in AIR 1970 SC 1099. In Para 5 of the judgment it has been specifically held that the qualification include other qualifications like Nationality and age and other qualifications as prescribed under the Rules. It has been further held that the High Court was wrong in construing the word qualification to mean only the Educational Qualification.

7. It is pertinent to mention here that in the aforesaid judgment a reference has been to some departmental rule that prescribed the requisite qualifications for the post.

8. In the present case also the maximum age that has been prescribed in the advertisement is 45 years as on 1.1.1999. Here it would worthwhile to mention that the maximum age is prescribed by the Public Service Commission on the basis of Recruitment and Promotion Rules for the post in question prescribed by the concerned department.

9. Further, the judgement of Apex Court in Seema Kumari's case is not applicable to the facts and circumstances the present case because the issue regarding complying with the terms of the advertisement issued by the Public Service Commission was not involved in that case.

10. In the similar case in O.A. No. 1362/2000 Dr. Vishwa Jyoti vs. H.P.P.S.C where the applicant applied for the post of Medical Officer in the department of Health and Family Welfare and had not attached compulsory rotary internship certificate, the original application was rejected vide order dated April 8.2003 by this Tribunal.

11. The Hon'ble High Court of H.P. in CWP No.453/2003 titled as Ashmi Ram vs. H.P.P.S.C decided on 24.6.2003 considered the judgment of this Tribunal dated May 2.2003 and it was held that the petitioner was justifiably, considered in General Category as he did not file Schedule Caste Certificate.

12. In CWP 507/2002 Dr. Anita Padam vs. State of H.P decided on 25.3.2003 it was held that as the petitioner did not possess the three years requisite teaching experience before the last date of the submission of the application, therefore, her application was rightly rejected by the Public Service Commission.

13. In case of Rahul Dube vs. H.P.P.S.C.(O.A.No.517/2001) the OBC certificate was submitted by the applicant after the cut off date, the Tribunal dismissed the Original Application observing that all the documents are to be submitted before the cut off date. The Writ Petition No. 779/

2001 against the order of this Tribunal was also dismissed by our own High Court of H.P. In case of *Dr. M.B. Nair vs. Union of India* reported in 1993 (2) SCC.429 the Apex Court observed that It is well settled that the suitability and eligibility have to be considered with reference to the last date of receiving the application unless of course, the notification calling for application itself specify such date.

14. In case of *Bhupinder Singh vs. State of Punjab* reported in 2000 (5) SCC 262 the Hon'ble Supreme Court observed:-

1. If cut off date is laid down in the relevant rule it has to-be followed otherwise it may be prescribed in the advertisement.
2. If no such date is prescribed eligibility has to be determined on the last date of receipt of application.

15. In case of *Gunjan Kapoor vs. State of H.P.* reported in 1999 vol-I SLC. 246 it was held by the Hon'ble High Court that the certificates can not be accepted after expiry of last date.

16. In case OA No.1089/2002 *Raj Kumar vs. H.P.Public Service Commission* when the application of the applicant for the post of Himachal Pradesh Administrative Service was rejected by the H.P.P.S.C on the ground that the applicant has not signed the application Form. The OA was rejected in view of the terms and condition mentioned in the advertisement. The facts and circumstances of the case of *Mrs. Seema Kumari Sharma vs. State of H.P.* reported in AIR 1997 SC 1693 are different, as there is no mention of last date of receipt of application.

17. It is argued by the learned counsel for respondent commission that the public Service Commission is bound by the conditions and stipulations contained in the notification/ advertisement inviting application. It will not be within the province of this Court to issue direction to the Commission whittle down the rigour of the condition and stipulation. The Commission will be within its right in rejecting the applications if the applications are not in strict compliance with the conditions and stipulation contained in the advertisement/notification. It is further argued by the learned counsel for the Commission that the Commission deals with

large number of applications. Its staff has to sort-out the applications submitted in proper form, process them and to take up follow up actions. No discretion is given to the Commission or freedom to the staff to relax the conditions in the Notification/Advertisement. Laxity in one case will leave open the floodgate of request to contain irregularities or omissions. Such cases cannot be decided on sympathies or by extending instructions. The Commission with its heavy workload has to adhere strictly to its norms and its work can be streamlined only by strict adherence to the norms settled by it. A case here or a case there may invoke sympathy or may deserve sympathy as in this case. But, it is not within the province of this Court to extend any sympathy in such cases. The Public Service Commission is a high Constitutional Authority. This Forum will normally loathe in interfering with the decision, unless strong grounds are made out like malafides.

18. In the instant case, there is no allegation of malafide against the respondent. Taking into consideration all these facts and circumstances of this case. We are of the considered view that the action of respondent Commission in rejecting the application of the applicant cannot be said to be illegal.

In view of the above discussion and the law laid down by the Hon'ble Apex Court and Hon'ble High Court of Himachal Pradesh and this Tribunal also, we do not find any merit in the Original Application and the same is dismissed with no order as to costs.

IN THE HIMACHAL PRADESH ADMINISTRATIVE TRIBUNAL, SHIMLA

O.A.NOS.2545/2004, 2657/2004 AND 2609/2004

D.D. 27.10.2004

HON'BLE MS. BAKHSHISH KAUR, J (RETD) CHAIRMAN

AND

HON'BLE MR. D.S.AMIST, MEMBER (A)

Hemant Kumar ... **Applicant**

Vs.

H.P. Public Service Commission & Anr. ... **Respondents**

Qualification:

The applicants were candidates for the post of Publicity Officer – Qualification prescribed as per the recruitment Rules – Post Graduate degree in Journalism with at least 2 years experience in creative working, journalism etc. – As the applicant did not have 2 years experience after acquiring the Post Graduate degree their applications were rejected – The applicants contended that the experience gained prior to obtaining educational qualification should be counted towards experience – The Tribunal rejected the said contention and dismissed the applications as the experience gained by the applicants after the essential qualification was less than 2 years.

Held:

When experience is required in addition to the educational qualification it only means experience gained after obtaining the essential qualification for the post.

Cases referred:

1. (1998)8 Supreme Court cases 345 – U.P. Public Service Commission v.Dr.Saad Usmani
2. (2000)1 Supreme Court Cases 128 – Anil Kumar Gupta & Ors. v. Municipal Corporation of Delhi & Ors.
3. 2001(2) All India Service Law Journal, 179 – Indian Airlines Ltd. & Ors. etc. v. S.Gopalakrishnan etc.

4. (2004)4 Supreme Court Cases 30 – A.K.Raghumani Singh & Ors. v. Gopal Chadra Nath & Ors.

JUDGMENT

This order disposes of three original applications (O.A. No.2545 of 2004, O.A.No.2609 of 2004 and O.A. No.2657 of 2004) as the question of law and facts involved therein are similar.

2. Before we proceed to deal with the rival contentions of the parties, it becomes necessary to note a few introductory facts.

O.A. 2545 OF 2004:

3. The applicant did B. Sc (Medical) in 1996. Obtained qualification of Bachelor in Journalism and Mass Communication from Himachal Pradesh University in 1997. He had also obtained degree in M.A. (Hindi) from Himachal Pradesh University in 1999 besides obtaining degree of MBA with Specialization in Marketing from IGNOU in 2002. He possesses qualification of Master in Journalism and Mass Communication (2003). He had worked as Sub Editor with Dainik Himalya Dev from January 1997 to April 2000 and worked as trainee reporter with Dainik Tribune Shimla from December 2001 to June 2002 and from June 2002 to June 2003 as a reporter with Dainik Jagran. He is working as casual Newsreader with Reporter and Announcer with Door Darshan Shimla and All India Radio respectively.

4. He has sought the following reliefs: -

O.A.2545/2004:

“Hemant Kumar Wats Vrs. Himachal Pradesh Public Service Commission and others.”

- i. That the impugned condition imposed in the advertisement at Annexure A-2 for the post of Publicity Officer to the effect that “the experience, if any will be counted after obtaining EQ for the post” may be quashed and set aside being not in consonance with the Recruitment and Promotion Rules at Annexure A-1.
- ii That the rejection of candidature of applicants by respondent No.1 vide letters dated 10.8.2004 Annexure A-3 the applicants for appointment the post in question with all consequential benefits.

- iii. That if during the pendency of Original application any interview /test is conducted by respondent commission for the post in question without considering for the post in question without considering the applicants, in such event, the test/interview so conducted by the respondent commission for the post Publicity Officer pursuant to Annexure A-2 may kindly be quashed and set aside and respondent No.1 may be directed to reconduct the test/interview without insisting upon the impugned condition of two years experience after essential qualification, with all consequential benefits.
- iv. That the respondent department may be directed to produce records pertaining to this case before this Hon'ble Tribunal.
- v. Any other relief deemed proper in the circumstances may also be granted.
- vi. Costs of the application may also be awarded.

O.A. 2657 of 2004 Bhajan Dass Kaith Vrs. Himachal Pradesh Public Service Commission and another.

5. The applicant did B.A in 1989 and postgraduate diploma in Journalism and Mass Communication from IGNOU in 1998. In 2002 he obtained the qualification of Master in Journalisms and Mass Communication. He has been working as Assistant Editor with Parvat Ki-Goonj w.e.f.15.10.1994, besides writing articles for the said paper. Thus, he has experience of creative working for all India as "Giri Raj."

O.A. 2609 of 2004: Durga Dutt Vrs. Himachal Pradesh Public Service Commission and others.

6. The applicant did B.A. in 1987 and Post Graduate Diploma in Journalism and Mass Communication from IGNOU in 2001 and in 2003 obtained qualification of Master in Journalism and Mass Communication. He is working as casual New reader cum – Announcer with All India Radio w.e.f. Nov. 1998.

7. Further facts, in brief, for the purpose of referring to certain documents are taken from O.A. 2545 of 2004, which are also somewhat similar in all these original applications.

8. The respondent No.1 i.e., Himachal Pradesh Public Service Commission (in short the Commission) by way of issuing advertisement Annexure A-2 dated 5.2.2002 and invited applications for the post of publicity officer. Though essential qualification was in consonance with Recruitment and Promotion Rules (Rules in short), but a note appended thereon required that the experience for the post in question have to be counted only after obtaining essential qualifications.

9. All the applicants herein had applied for the post on prescribed proformas within the prescribed limit but their candidatures were rejected on the ground that they do not possess requisite experience of two years after acquiring essential qualification. The impugned orders are Annexure A-3 dated 10.8.2004.

10. The respondents No.1 and 2 have filed replies to the original applications.

11. The consistent stand taken up by the respondent No.1 is that the counting of experience acquired after obtaining essential qualification has been rightly incorporated in the advertisement dated 5.5.2004 Annexure A-2. It is in accordance with the decision of the Commission taken as far back as in January 1988 and also the latest clarification renewed from the Government in similar provision of the Rules for the post of Publicity Officer in the department of Information and Public Relations. The applicants were not eligible as their experience, after acquiring post graduate degree in Journalism from a recognized University/Institution was less than two years.

12. The respondent No.2 has averred that to fill up the post of Publicity Officer there is a provision of essential qualification of post Graduate degree in Journalism from a recognized University/Institution or its equivalent with at least two years experience in creative working, editorial work and Journalism. This educational qualification is necessary.

13. We have heard Shri.Dilip Sharma learned counsel for the applicants. Sh. D. K .Khan learned counsel for the Commission and Sh. Chirag Bhanu Singh learned Deputy Advocate General for the respondent No.2.

14. In all these original applications commission common question of law arises for consideration, namely whether the requirement of two years experience after obtaining essential qualification as incorporated in the advertisement Annexure A-2 is in consonance with the Rules or not.

15. Mr. Dilip Sharma learned counsel for the applicant contended that the rules Annexure A-1 provide that experience in question of two years should be possessed with the essential qualification. They nowhere prescribe that the experience should be after obtaining essential qualification. The word “with” cannot be read to mean “subsequent”. The language of the Rules is clear and unambiguous which provides that the candidate should possess postgraduate degree in Journalism from recognized University with at least two years experience. Meaning thereby that if a candidate has essential qualification and also two years experience then fulfils the condition of eligibility to be considered for the post in question. Thus, the impugned letter dated August 10, 2004 and Annexure A-4 vide which the candidature of the applicant had been rejected is illegal, ultra-vires and is liable to be quashed.

16. Mr. Dilip Sharma, learned counsel for the applicant to support his argument has place reliance on “A.K. Raghmani Singh and others Vrs. Gopal Chandra Nath and others, (2000) 4 Supreme Court Cases 30”, Under Para 7 and 8 at page 32 it has been observed as under: -

“7. The word “with” has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But, when it is used to connect two nouns it means: “Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense ‘and’ – ‘as well’”

8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years’ experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word “subsequent” after the work “with”.

17. It was a case where the appellant/respondent No.1 in Public Health Engineering department of Government of Manipur had degree in Engineering. They joined service. Respondent No.1

obtained diploma in 1989 having duly qualified in both sections of the associate membership examination of the institution of Engineering (AMIE) diploma is recognized by the Central Government as being on par with Bachelor degree of Engineering for the purpose of recruitment to superior course under the Central Government. Thus, the question arose whether respondent No.1 was eligible to be considered for promotion to the post of Superintending Engineer in 1991. The answer to the aforesaid line of arguments advanced by Sh. Dilip Sharma, learned counsel for the applicant can be found from specific averments and the stands taken up by the respondent commission in its reply. It shows that the commission had already considered matter of experience as far back in January 1998 and it was decided as per Annexure R-1/1 that as the matter of general policy specified in the Recruitment and Promotion Rules of a particular post, experience gained prior to the attaining of essential educational qualification prescribed for the post shall not be counted towards experience qualification which may be required for such post.

18. Similar view was conveyed by the Principal Secretary (I and PR) to the Director Information and Public Relations vide letter dated December 27, 2003 Annexure R-1/2 conveying therein that the experience gained prior to attaining qualification cannot be counted as an experience for eligibility. It reads as under: -

“I am directed to refer to your letter No.5-87/82 Pub.6361 dated 2nd September, 2003 on the subject cited above and to say that the experience gained prior to attainment cannot be counted as an experience for eligibility. You are, therefore, requested to inform that H. P. Public Service Commission that the three years experience gained after obtaining Diploma/Degree of Journalism, mentioned as the essential qualification in the Recruitment and Promotion Rules, be counted for eligibility.”

19. The close scrutiny of the aforesaid would, therefore, convey that word “with” cannot be read to mean “subsequent” when the rules require the candidate should possess post graduate degree in Journalism, from recognized University with at least two years experience. Mr. D. K. Khanna, learned counsel for the respondent contended that if work “with” cannot be referred as “subsequent” it can also not be read as ‘prior’, the past practice,

decision of the commission Annexure-R1/1 and clarification received from the government Annexure R1/2 provided sufficient guidelines in the matter.

20. In U.P. Public Service Commission Vrs. Dr. Saad Usmani, (1998) 8 Supreme Court cases 345, which also related to Recruitment process and determination of eligibility, experience. The Public Service Commission decided that the experience as demonstrator could be accepted subject to two conditions, namely (i) a candidate should have worked as a Demonstrator on full time basis and (ii) the experience should have been after acquiring postgraduate qualification on the post of Clinical Registrar/Demonstrator. It was therefore, held that the Commission was right in rejecting the respondent candidature on the ground that the appellant and not have post graduate qualification and, therefore, his experience as a Demonstrator could not be treated as teaching experience.

21. Mr. Khanna learned counsel has also delied upon **“Anil Kumar Gupta and others vrs. Municipal Corporation of Delhi and others, (2000) 1 Supreme Court Cases 128”** and **“Indian Airlines Ltd. And others etc. vrs. S. Gopalakrishna etc.** Supreme Court 2001 (2) All India Services Law Journal, 179”. In Indian Airlines Limited and other etc. (supra) it has been held that when in addition to qualification, experience is required it only means experience after obtaining the qualification. The observations made by the Hon’ble Judges of the Apex Court in Para 4 at page 181 are as under: -

“When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. In the case of respondent, he obtained the ITI certificate in the year 1994 and, therefore, did not possess five years of experience as required under the relevant rule. If his qualification as a diploma holder in Mechanical Engineering is taken note of, he has not completed three years of experience as he got the same in ‘April, 1996 and on relevant date he did not possess such qualification. Indeed in prescribing qualification and experience, it is also made clear in the general information instruction at Item No.6 that “experience will be computed after the

date of acquiring the necessary qualification". Therefore, when this requirement was made very clear that he should have experience only after acquiring the qualification, the view taken by the High Court to the contrary either by the learned Single Judge on the Division Bench does not stand to reason.

22. Above being the position we are of the considered view that the candidature of the applicants has been rightly rejected by the respondents as the experience gained after acquiring, essential qualification for the post is to be counted for the eligibility. The applicants were not eligible as their experience after acquiring postgraduate degree in Journalism from recognized University was less than 2 years.

23. In view of the aforesaid, all the original applications i.e., 2545/2004, 2657/2004 and 2609/2004 are dismissed.

Copies of the judgment be placed on O.A. 2657/2004 and 2609/2004.
