

CASE NO.:
Appeal (civil) 2387 of 2007

PETITIONER:
Union Public Service Commission

RESPONDENT:
Sukanta Kar & Anr

DATE OF JUDGMENT: 08/05/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2387 OF 2007
(Arising out of S.L.P. (C) No.17977 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

The appellant-Union Public Service Commission (hereinafter referred to as the 'UPSC') calls in question legality of the judgment rendered by a Division Bench of the Delhi High Court dismissing the writ petition filed by the appellant-UPSC questioning correctness of the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short the 'Tribunal').

The controversy lies within a very narrow compass. It relates to the eligibility of respondent No.1 for the post of Deputy Advisor (Training) in Central Public Health and Environmental Organisation of Urban Development Ministry.

According to the appellant he is ineligible, but the Tribunal and the High Court have held that he was eligible, on interpretation of the Ministry of Works and Housing Deputy Advisory (Training) Recruitment Rules, 1985 (in short the 'Recruitment Rules').

The factual background in a nutshell is as follows:

Respondent No.1 is a Departmental Scientific Officer. He took the stand that the appellant-UPSC had wrongly declared him ineligible for being considered for recruitment on promotion to the post of Deputy Advisor (Training). Appellant was of the view that he did not possess the requisite educational qualification prescribed in column 8 of the Schedule to the said 'Recruitment Rules'. Respondent No.1, on the other hand, took the stand that he was eligible. According to the appellant, column 11(2) of the Schedule would come into force only if the Departmental Scientific Officer possesses the requisite educational qualification i.e. a Degree in Civil Engineering from a recognized university or other equivalent qualification in the alternative. The Tribunal and the High Court did not consider the effect of columns 7, 8 and 10 which are required to be read together and provisions of column

11(2) of the Recruitment Rules have to be read as an exception to the provision, and not column 8 of the Schedule. The stand of respondent No.1 was that he was holding the Degree of Master of Science and he could not be expected to hold Degree in Civil Engineering after rendering five years regular service as a Scientific Officer. This educational qualification was not required under the Recruitment Rules and that is why special provisions have been made in Column 11(2) providing for only requirement of five years regular service by Departmental Scientific Officer. It is further submitted that column 12 relating to the post of Deputy Advisor (Training) indicates the composition of Departmental Promotion Committee (in short the 'DPC') for the purpose of considering confirmation i.e. for confirmation of service of Deputy Advisor (Training). Therefore, the intention of the Recruitment Rules is clear that Departmental Scientific Officer is to be promoted to the post provided he had 5 years of regular service in the grade and was selected for the post. Therefore, a Departmental Scientific officer was not to fulfill the essential educational qualification of a Degree in Civil Engineering or equivalent as prescribed in columns 7, 8 and 10.

Respondent No.2-Union of India supported the view taken by the Tribunal before the High Court.

The High Court held that on a proper reading of the provisions and looking at the intention behind making special provision under Clause 11(2), it was clear that the same was intended to provide a promotional avenue to the Departmental Scientific Officer. Accordingly, the Tribunal's order was confirmed.

The stands taken before the Tribunal and the High Court by the parties were reiterated in this appeal.

In order to appreciate the rival submissions various columns of the Schedule need to be noted.

In Column 8 of the Recruitment Rules, it is provided that the educational qualifications prescribed for direct recruits will apply in the case of promotees but not age qualification. Column 9 deals with the probation period for promotee officers and direct recruits. The method of recruitment for the post is prescribed in Column 10 which reads as follows:

"By promotion/transfer on deputation including short-term contract failing which by direct recruitment".

Column 11 reads as follows:

"Promotion/Transfer on Deputation (including Short-term contract):

(1) Officers under the Central/State Governments/Public Sector Undertakings/Recognised Research Institution/Semi-Government Statutory or Autonomous Organisations:

(a) (i) holding analogous posts: or
(ii) with 5 years service in posts in the scale of Rs. 1100-1600 or equivalent; and

(b) possessing the educational qualifications and experience prescribed for direct recruits in Col. 7.

(2) The departmental Scientific Officer with 5 years' regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion".

So far as the question as to whether age and educational qualification prescribed for direct recruits will apply in the case of promotees is concerned, it has been clearly stipulated that in the case of age the answer is in the negative, while in the case of educational qualification it is in the affirmative.

As noted above, essential qualification required for the direct recruits, is specifically provided in Clause 7(i)(a) to be Degree in Civil Engineering of a recognized university or equivalent. The source of recruitment is to be indicated as promotion, transfer and deputation. The educational qualification provided under Clause 7(i)(a) is in no way diluted. Clause 11(2) only indicates the source i.e. Permanent Scientific Officer. In fact, in the letter of the Government of India, Ministry of Urban Development and Poverty Alleviation of October 2001 it speaks of relaxation. Interestingly, in the evaluation done by the Union of India in respect of all applicants where the remarks are indicated, the Union had clearly stated that respondent No.1 was not eligible as he did not possess the requisite educational qualification. In the letter dated 21.3.2002 the Union's stand was changed on the basis of the representation made by respondent No.1. The stand of the Union seems to be varying at different points of time. Initially in the application of respondent No.1 it was noted that he was ineligible. Its stand was changed before Tribunal. Rule 12 which speaks of confirmation provides that only those who have been promoted can be confirmed. Above being the position, the Tribunal and the High Court were not justified in holding that respondent No.1 was eligible. In view of the analysis made above, it is clear that he did not possess the educational qualification.

The appeal deserves to be allowed, which we direct but without any orders as to costs.