



2025:DHC:6966-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision: 18.08.2025*

+ W.P.(C) 1915/2024  
VIVEK SHARMA

.....Petitioner

Through: Ms.Jasmine Damkewala,  
Mr.Aditya Jain and Mr.Vineet  
Sawhney, Advs. along with the  
petitioner in person

versus

UNION PUBLIC SERVICE COMMISSION & ORS.

.....Respondents

Through: Dr.B. Ramaswamy, CGSC with  
Mr.Tarveen Singh Nanda, GP  
for UOI  
Mr.Ravinder Agarwal,  
Mr.Manish Kumar Singh and  
Mr.Vasu Agarwal, Advs. for  
UPSC

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed by the petitioner, challenging the Order dated 12.01.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in O.A. No.3498/2023, titled *Vivek Sharma v. Union Public Service Commission & Anr.*, dismissing the O.A. filed by the petitioner herein.



2. By the above O.A., the petitioner had made the following prayers before the learned Tribunal:

*“(i) set aside the notice bearing No. F. 32/16/ 2023/ R (C&P)/ R.IV/T.II with the caption “Re-examined final scrutiny/shortlisting details” published by the Respondent No. 1 on its website on 11.10.2023 qua the applicant.*

*(ii) direct the Respondent No. 1 to accept the candidature of the applicant as fulfilling the income eligibility criteria and to permit the applicant to participate in the selection process by appearing before the Respondent for interview;”*

3. To give a brief background of the facts in which the present petition arises, the respondent no.1 had issued Advertisement No.52/2023 in June 2023, inviting applications, *inter alia*, for the post of Joint Secretary (Arbitration & Conciliation), Ministry of Law & Justice. The Advertisement mentioned the following essential qualifications for making an application for the said post:

**“ESSENTIAL QUALIFICATIONS:**

**(A) EDUCATIONAL:** Bachelor's Degree in Law.

**(B) EXPERIENCE:** At least fifteen years post qualification experience in legal Affairs including seven years experience in Arbitration & Conciliation.

**DESIRABLE:** Master's degree in Law with specialisation in Arbitration and Conciliation.

**JOB DESCRIPTION:** (i) To give advice on all matters referred by the various Ministries/Departments of the Government of India. (ii) To look after Government litigation work. (iii) To conduct court cases and to appear in courts on behalf of the Central Government, wherever required. (iv) To perform administrative work.”



4. The Advertisement further mentioned the following eligibility criteria to be met for making the application:

**“1. ELIGIBILITY:**

*The following with a minimum of experience of Fifteen years for Joint Secretary Level posts, experience of Ten years for Director Level posts and experience of seven years for Deputy Secretary Level posts are eligible to apply:*

*a. Officers of any State/UT Government who are already working at equivalent level or are eligible for appointment to equivalent level in their cadre, with relevant experience.*

*b. Individuals working at comparable levels in Public Sector Undertakings (PSUs), Autonomous Bodies, Statutory Organizations, Universities, Recognized Research Institutes.*

*c. Individuals working at comparable levels in Private Sector Companies, Consultancy Organisations, International/Multinational Organisations.*

**2. COMPARABLE LEVEL:**

*The comparable/equivalent level would be defined as under:*

*a) The candidate applying for Joint Secretary level post must have a minimum gross salary of Rs. 35 Lakh per year during any of the financial year 2021-22 or 2022-23 as per Form-16/ITR.*

*b) xxx”*

5. The petitioner applied for the above post, attaching therewith his Income Tax Return for the Financial Year 2022-23 (Assessment Year 2023-24) on 19.06.2023. The Income Tax Return showed that as the sole proprietor of a firm named ‘Quantum Legal’, he was having gross receipt of Rs.42 lacs, that is, much above the Comparative Level



prescribed under Clause 2 (a) of the Advertisement re-produced hereinabove.

6. The respondent no.1 published a Scrutiny Notice on 02.08.2023, wherein they rejected the candidature of 15 candidates, including the petitioner herein, out of a total of 20 candidates who had applied for the above post. The reason for rejecting the candidature of the petitioner was given as 'Lacking Income Criteria'.

7. The petitioner represented against the rejection, highlighting that he met the income criteria as his income was Rs.42 lacs as against the required Rs.35 lacs prescribed in the Advertisement. The respondent no.1, however, rejected his representation without any reasons, while uploading 'Re-Examined Final Scrutiny/Shortlisting Details' on 11.10.2023.

8. Aggrieved of the same, the petitioner first filed a Writ Petition, being W.P.(C) 13874/2023, before this Court, which was dismissed as withdrawn with liberty to approach the learned Tribunal, on 20.10.2023. The petitioner then filed the above O.A. before the learned Tribunal.

9. The learned Tribunal, as is noted hereinabove, dismissed the O.A. filed by the petitioner herein, *inter alia*, observing that though the ITR of the petitioner shows a gross receipt of Rs.42 lacs, the Advertisement required the 'Gross Salary' to be of Rs.35 lacs. The learned Tribunal held that 'income' and 'salary' are two distinct concepts. It further observed that while the Advertisement required the ITR to be submitted in Form-16, the petitioner's ITR was in Form-4, which again was not in terms of the Advertisement. The learned



Tribunal further held that the petitioner did not meet the eligibility requirements as set out in the Advertisement as he is not working at a Comparable Level in a Private Sector Company, Consultancy Organisation or International/Multinational Organisation.

10. Aggrieved of the above Order, the petitioner approached this Court by way of the present Writ Petition.

11. The learned counsel for the petitioner submits that the Advertisement itself, insofar as it excludes practicing advocates from being considered for the post of Joint Secretary (Arbitration & Conciliation) through lateral entry, is violative of Article 14 of the Constitution of India. He submits that a separate class of advocates who are working in a Private Sector Company has been created by the Impugned Advertisement, which has no nexus with the object sought to be achieved by offering such lateral recruitment.

12. He submits that the job description given in the Advertisement for the post itself indicates that the incumbent would have to give advice on all matters referred by various Ministries/Departments of the Government of India; look after government litigation work; conduct court cases and appear in courts on behalf of the Central Government, wherever required; and perform administrative work. A practicing advocate would meet all these job requirements and, therefore, there is no reason to exclude a practicing advocate from applying for the said post.

13. He further submits that in the eligibility criteria laid down by the Advertisement, individuals working at Comparable Level in Private Sector Companies, Consultancy Organisations and



International/Multinational Organisations were also made eligible provided they meet the income criteria as laid down in Clause 2 (a) thereof. He submits that merely because Clause 2 (a) required the ITR form to be Form 16, would not make eligible candidates ineligible. Similarly, only because the candidate is self-employed and a professional having his own firm, would not make him ineligible.

14. He submits that, therefore, the Advertisement, if given such an interpretation, would be violative of Article 14 of the Constitution of India.

15. On the other hand, the learned counsel for the respondents submits that the Advertisement was clear in its terms while stipulating the eligibility criteria as also the manner of determination of 'Comparative Level'. He submits that it is only persons who are working, *inter alia*, in a Private Sector Company or a Consultancy Organisation or an International/Multinational Organisation, who were made eligible for applying for the post. He submits that as the post in question also involves administrative work, the criteria laid down was rational and in any case, in the O.A. there was no challenge to the Advertisement. In fact, the petitioner participated in the Advertisement and having been found ineligible under the same, cannot now challenge the terms thereof.

16. In rejoinder, the learned counsel for the petitioner reiterates that the Advertisement did not exclude the persons like the petitioner from applying, and it is only when the petitioner was arbitrarily excluded from the selection process, that the O.A. was filed. He submits that the



challenge to the Advertisement has come because of the stand taken by the respondents before the learned Tribunal.

17. We have considered the submissions made by the learned counsels for the parties.

18. The limited question that arises for consideration before this Court is whether the petitioner was eligible for applying for the post of Joint Secretary (Arbitration & Conciliation) and if not, whether the petitioner and other like practicing advocates have been wrongfully excluded from being considered for the above post.

19. The selection process in question was for lateral entry at the level of Joint Secretary (Arbitration & Conciliation) initiated by the Government of India for including the benefit of experience in particular fields from persons in private sector into the government service.

20. The eligibility criteria prescribed in the Advertisement has already been reproduced hereinabove. It makes only the officers of any State/UT Government already working at an equivalent level or as are eligible for appointment to equivalent level in their cadre, individuals working at Comparable Levels in Public Sector Undertakings (PSUs), Autonomous Bodies/ Statutory Organizations, etc. and individuals working at Comparable Levels in Private Sector Companies, Consultancy Organisations and International/Multinational Organisations, eligible to apply for the post in question.

21. What is important is that the candidate must be '*working*' with one or the other organisation at a comparable level. The applications



were, therefore, invited from persons who were ‘*working*’ with the named organizations rather than being self-employed as professionals. The reason is not far to seek, as the post in question also involved discharge of administrative duties and functions as prescribed in the ‘*Job Description*’ by the Advertisement itself.

22. The petitioner was not working in any of the named organization, but was a proprietor of firm and was self-employed. In view of the above, the petitioner was clearly not eligible for applying for the post in question. The question before the learned Tribunal was not of the Form of ITR which has been submitted by the petitioner but the nature of work that the petitioner was doing and what was required in the Advertisement. The learned Tribunal therefore, emphasized that the ITR has to show the ‘salary’ income rather than the ‘receipts’.

23. The Advertisement was clear and specific and stipulated that it is only the persons who are already working for some other stipulated organization, who would be entitled to apply for the same. Therefore, the petitioner was not eligible and his candidature had been rightly rejected by the respondent.

24. Coming to the challenge to the advertisement insofar as it excludes the practicing advocates, we do not find any merit in this challenge.

25. As noted hereinabove, the Advertisement was not a normal process of recruitment into government service, but a special drive initiated by the Government of India. The Government clearly wanted someone who has practical experience of practice of law as also of administration. There is therefore, clear nexus between the eligibility

