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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO.210/00726/2015

Dated this Tuesday, the 17th of February, 2020

**CORAM: R.VIJAYKUMAR, MEMBER (A)
R.N.SINGH, MEMBER (J)**

1. Pranav Parashar (Son of Lt. Rama Nand Prasad Sinha) date of birth 25.12.1965, aged about 50 years, Working as: Assistant Director Gr. I (Group "A" post) in the organization of the Office of the Textile Commissioner, Government of India, Mumbai and presently posted in the Regional Office of the Textile Commissioner, Corporate Block, Readymade Garment Complex, Pardeshipura, Indore 452 011 and residing at: 07, Type IV, Officers Residential Campus, CPWD Colony, Navratan Bagh, A.B.Road, Indore 452 001 State : Madhya Pradesh.
2. Girish T. (son of Late T. Keshavan Nair), date of birth: 10.12.1972, age : 43 years, Working as Stenographer Grade I (Group "B" post) in the Office of Textile Commissioner, New CGO Building, 48, New Marine Lines, Mumbai 400 020 and residing at: Flat No.903, Building No.96, Sector I, CGS Colony, Antop Hill, Kane Nagar, Mumbai 400 037, State of Maharashtra.
3. Neelesh Trivedi, (Son of Nand Kishore Trivedi) Date of Birth: 07.08.1972, aged 43 years, working as Assistant Director (Chemical) (Group "B" Post) in the DCMSME, New Delhi, presently posted in the Office of the Director, MSME-DI, 10, Industrial Estate, Pologround, Indore, Madhya Pradesh 452 015 and residing at Flat No.53, 1st Floor, Boloriya Quarters, CPWD Colony, Indore 452 001, Madhya Pradesh.

- Applicants

(By Advocate Shri R.G.Walia)

VERSUS

1. Union of India, Through : The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi 110 069.

(By Advocate Shri V.B.Joshi)

2. Shri N.M. Mugadur,
 Ex. Additional Textile Commissioner,
 Residing at:42/2-B, Jayanagar End,
 Behind Rly. Workshop,
 Near Chhayadevi Anathashram,
 Chikka Haradanahalli, Mysore,
 Karnataka 570 014. - Respondents
(Served, No representation).

ORDER
Per : R.VIJAYKUMAR, MEMBER (A)

This application has been filed on 18.12.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8(a). This Hon'ble Tribunal will be pleased to call for the records which led to the impugned action of the Respondents of empanelling Shir N.M.Mugadur, Ex-Additional Textile Commissioner as one of the members of the Selection Committee for the interview held on 27.11.2015 for filling up the post of Deputy Director (Non-Technical) in the Office of the Textile Commissioner Government of India, Ministry of Textiles, Mumbai, wherein his close associates and relatives were present/competing for the post and after going through its propriety, legality and constitutional validity of his appointment as a Committee Member be pleased to quash and set aside the same with the consequential effect of declaring the entire selection conducted on 27.11.2015 as null and void.

8(b). This Hon'ble Tribunal will be pleased to hold and declare that the interview held on 27.11.2015 for selection of a candidate for filling up the post of Deputy Director (Non-Technical) in the Office of the Textile Commissioner, Mumbai by the Selection Committee, wherein Shri N.M.Mugadur, Ex-Additional Textile Commissioner was a member is void-ab-initio and accordingly quash and set aside the same with further orders and direction to the Respondents to conduct a fresh INTERVIEW of all the candidates, who are meeting the eligibility criteria set by the Respondents.

8(c). This Hon'ble Tribunal will be pleased to hold and declare that the relaxed eligibility criteria of 17 years experience for short-listing the candidates for interview is

wrong and arbitrary and consider 18 years or more experience for short-listing the candidate for interview, at par with the earlier occasions.

8(d). This Hon'ble Tribunal will be pleased to hold and declare that for appointment to a Group A post the respondents cannot solely fill the same on the basis of interview and there has to be a positive act of selection i.e. written test.

8(e). Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

8(f). Cost of this Original Application be provided for."

2. The facts of the case are that Respondents No.1, the UPSC, on behalf of the Ministry of Textiles advertised in the Employment News on 25th April - 01st May 2015 in Advertisement No.08/2015 for, interalia, the post of one Deputy Director (Non-Technical) (UR-1) in the post of Textiles Commissioner, Mumbai, Ministry of Textiles, which is a Group 'A' post requiring the following qualifications :

"5. (Vacancy No.15040805425)

One Deputy Director (Non-Technical) in the Office of the Textile Commissioner, Mumbai, Ministry of Textiles (UR-1). The post is suitable for Physically Challenged Persons with disability viz. Orthopaedically Handicapped/Locomotor Disability/Cerebral Palsy with One Leg Affected (Right or Left) (OL) or One Arm Affected (Right or Left)(OA) OR Hearing Impairment (Partially Deaf)(PD)). The post is permanent. Pay Scale: Rs. 15,600-39,100 (PB-3) + Rs.6,600 (Grade Pay) (T.E. Rs.45,954/- Approx.) + TA and HRA as admissible. General Central Service, Group 'A' Gazetted. Age : 45 yrs., QUALIFICATIONS : ESSENTIAL : (A) EDUCATIONAL : Degree of a recognized University or equivalent; (B) EXPERIENCE: About 10 years experience in a responsible capacity of work connected with Handloom or Textile Industry or Commerce or Industry in general together with Secretarial Organizational Administrative experience

(Note: About 10 years experience means that experience should not be less than 09 years and 06 months). DESIRABLE: i) Knowledge and experience in the field of Commerce/Transport/Marketing of Textile Handlooms. (ii) Degree in Law. DUTIES: Establishment, administration, HRD closed mills workers rehabilitation, textile consumer interest, Export & trade including development of textile Industry. Implementation of regulatory/welfare schemes and associate in organizing exhibition, conference, buyer-seller meets, etc. HQ: Mumbai.”

3. The respondent No.1 shortlisted the applications as stated in the instructions to candidate the respondent No.1 for adopting shortlisting and restricted candidates to those having a minimum of 17 years of experience by which, they invited 16 persons for interview on 27.11.2015. The applicant No.2 who had earlier served as a Stenographer was not shortlisted but was later interviewed consequent upon the interim directions of this Tribunal in OA No.671/2015 and subject to the decision in that OA. After attending the interview, the three applicants filed separate complaints by Speed Post/e-mail enclosed as Annexure A-4 colly and dated 02.12.2015 (Applicant No.1), 30.11.2015 (Applicant No.2) and 02.12.2015 (Applicant No.3) and prior to receiving any reply, they filed this OA. When this OA was first heard and after hearing the respondents on 14.01.2016, this Tribunal granted interim

relief which was accordingly notified to all candidates by the applicants (Annexure A-5). The applicants have urged that when they appeared for the interview before the Selection Committee, they found that one of the members of the committee was Shri Nagesh M. Mugadur, now cited as respondent No.2, who was earlier working as Additional Textiles Commissioner (PB-III, Grade Pay of Rs.8,900/-) and who had superannuated in 2013/2014 and was actively involved in interviewing the candidates. The primary charge is that the respondent No.2 while in service was very closely associated with some of the candidates, one of whom, Shri H.B.Galati, employed with the Textile Commissioner, Mumbai, was a close relative of respondent No.2 and further they have also named Shri Ismail Sharif who had been promoted as Assistant Director at Mumbai in 2005/2006 from the post of Clerk for the Synthetic and Rayon Textiles EPC, Surat. In these cases, they allege that Shri Sharif along with Shri H.B.Galati and Shri Paramasivam were very-very close to Respondent No.2 while he was in service, and

he would, therefore, exercise preference in their favour. Moreover, he was a relatively junior officer who had been promoted to Grade Pay Rs.8700/- six months prior to retirement. They also state that in contrast to the previous year for selection for the same post, when shortlisting criteria was adopted at 18 years experience, in the present selection, the shortlisting criteria had been reduced to 17 years only to accommodate Shri Ismail Sharif who had not held any responsible post in SRTEPC, Surat which was included in this computation of 17 years, and from where he had come in 2005-2006 to the Textiles Commissioner's Office. They also assert that while in service, the integrity of respondent No.2 had been assessed in ACR for 2001-2002 as doubtful by a senior IAS Officer, Shri B.C.Khatua (retired) when he was serving as Textiles Commissioner at Mumbai as Head of Office. Therefore, the appointment of a person with doubtful integrity was a matter of surprise, they submit. The applicants have not, however, impleaded any of the three interviewees, S/Shri Ismail Sharif, H.B.Galati and

Paramsivam in this O.A.

4. Respondent No.1 has filed reply on 24.02.2016 and after explaining that they restrict the number of candidates called for interview on the basis of reasonable classification and had devised objective shortlisting criteria, they have called persons for interview. Their methods for reasonable classification adopted for this purpose had also been upheld by the Hon'ble Apex Court. They state that in judicial review, this Tribunal and Courts can only review the decision-making process and not the decision itself. They also submit that Courts have held including the Hon'ble Apex Court in Civil Appeal No.9052/2012 [arising out of SLP (C) No.20217 of 2011] filed by **Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizvi and Another**, that disclosure of names and addresses of the Interview Board would not serve any public purpose and would endanger physical safety of such a Member. Therefore, they have also prayed that the Respondent No.2 in the present OA should be deleted. In addition to the factual elements already stated above,

they state that they had to restrict the number of candidates since they received 158 applications. They also submit that while inviting the subject expert, they have prescribed rules for selecting such persons from a panel of experts and they also ensure that no two advisers in the same panel belong to the same institution or cadre or service. They also obtain an undertaking from the Advisers after which, they also advise him that in case any person(s) to be interviewed falls in a category contrary to the scope of the undertaking comes to notice, the said Adviser is requested to recuse from the proceedings and also requested to recuse in case of circumstances like disciplinary case, criminal case etc ongoing against them. The undertaking obtained is as below:

"I have no relative or acquaintance or student appearing as a candidate in the interview board to the best of my knowledge. I have read the convention on the subject provided to me. I confirm that I shall bring to the notice of Board President before the commencement of the board or during the actual conduct of the interview/personality test as the case may be if it comes to my knowledge that the candidate being assessed was a relative or acquaintance or student in whom I may be, in any way, interested and further I may have to recuse during the interview/ personality test of that candidate. I am also not associated with any coaching institution."

5. Respondent No.1 submits that such undertaking was obtained from all the

Advisers including Respondent No.2. With specific regard to paragraphs No.4.11 and 4.13 on the allegation of applicants regarding the notation of doubtful integrity in the case of respondent No.2 recorded in his ACR for 2001-2002 and on the closeness of three interviewees (Shri Ismail Sharif, H.B.Galati and Shri Paramasivam) and further, that the shortlisting method had been altered to reduce number of years of experience to accommodate Shri Ismail Sharif in paragraph No.4.13, the respondents have relied upon their undertaking as a blanket response to these aspects raised by the applicants.

6. The applicants pressed their allegations in rejoinder without furnishing any additional information in support of the allegation of bias but have added that whereas 16 candidates were called for interview and experience requirement set at 17 years, on the previous occasions, the criterion was kept at 18 years experience and only 10-11 candidates were called for interview. This was in support of their allegation that the short-listing was done to enable the inclusion of Shri Ismail Sharif.

They have also urged that on receipt of their complaints, made soon after the interview, the respondent No.1 had a duty to investigate the matter of the involvement of respondent No.2 but they were not making any efforts in this direction.

7. Respondent No.2 has been served notice by dasti and the learned counsel for the respondents confirms that notice was served on two occasions including on 04.01.2016. However, he has never appeared for hearings nor has he filed any response. In these circumstances, the case has proceeded to final hearing of available counsels and by reference to pleadings.

8. During arguments, the learned counsel for the applicant reiterated their allegations on integrity with regard to the Committee Member and Respondent No.2 that they submit, should have been considered by Respondent No.1 before including him in the Selection Committee. He expresses the opinion that this Member has not make the required disclosure to the President of the Committee on persons known to him even though he has executed the undertaking. On inquiry, he

stated that he had no specific evidence that Shri H.B.Galati who was one of the candidates, was a relative nor he could describe the nature of the relationship and he could only state that he belonged to the same State to which the respondent No.2 belongs (Karnataka). He also argues that the Respondent No.2 had known Shri Ismail Sharif from 2005/2006 to 2015 and Shri Paramasivam was also working in the same office at Mumbai. In contrast, the two eligible applicants No.1 and 3 were not directly working in the Mumbai office.

9. In reply, when inquired the learned counsel for the respondents was not able to explain the instructions regarding constitution of the Selection Committee which included the Member of Commission as President and a technical expert and the nature of the other members. However, he argued that the persons against whom allegations were made namely Shri H.B.Galati, Shri Ismail Sharif and Shri Paramasivam had not been made parties and therefore, no statements or inferences adverse to their interest could be made without hearing them.

He also referred to the allegation that Shri H.B.Galati was a relative and that respondent No.2 as Member of the Committee was compromised by virtue of his previous working relationship in the Departments with various persons and that it could not, therefore, be concluded he has biased in their favour. He argued that the allegations were vague and not specific and not actionable therefor. With regard to the claim that there was a remark on integrity of respondent No.2 in the ACR for 2001-2002, he states that the Commission had no knowledge about the doubtful integrity of the expert namely the respondent No.2. He also affirms, as in the reply, that all the Advisers who attended the Board on 27.11.2015 had given the necessary undertaking. He further states across the bar that the respondent No.2 had never made any statement that any of the interview candidates were relative to him and worked with him in a manner that contravened the provisions of undertaking. In rebuttal, the learned counsel for the applicant highlights the importance of the undertaking and asserts that the expert namely the respondent No.2

who should have recused himself from the interview of persons known to him. In regard to the allegations against respondent No.2, he argued that no reply has been furnished by this respondent and therefore, the applicants' allegations were clearly standing without rebuttal. In this regard, he referred to the view taken by the Hon'ble Apex Court in **S. Partap Singh Vs. State of Punjab** reported in (1964) 4 SCR 733 at paragraph No.14 as below in support:

“We shall first take up for consideration, the several allegations that have been made and see whether they had been satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant could derive no benefit from the respondents not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant ; (2) If they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegation were made denying the same on oath. In the present case there were serious allegation made against the Chief Minister and there were several matters of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do

not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them."

10. We have gone through the OA and rejoinder along with Annexures filed on behalf of the applicant. We have also gone through the reply along with Annexures filed on behalf of the respondents and have examined the files and cognized all relevant facts of the case.

11. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstance, law points, case law and rival contentions in the case.

12. At the outset we agree that in judicial review, we would be reviewing the decision making process rather than the intricacies of the decision itself. However, if the decision making process suggests that the process had been vitiated by details of facts involved which went into the decision, such aspects would still be amenable to consideration in judicial review.

13. In the present case the applicants have

not made any allegations against the other members of the Selection Committee including the President. They have expressed doubts about the shortlisting process which, in their view, had led to increase in the number of persons called for interview to 16 for the usual 10-11. It cannot be gainsaid that increase in the number of candidates affects the chances of applicants getting selected but only provides a greater arena for the consideration by the Committee. The decision on the number of persons to be called in such matters would depend on the policy of the respondent No.1 and their past experience in dealing with such appointments and we cannot, in the absence of any useful evidence, question the respondent's action in seeking more candidates to be interviewed. The applicants makes a claim that the experience qualification was reduced to 17 years merely to include one candidate who also does not have the experience in the requisite responsible capacity but provides no evidence to suggest that only this candidate would be included nor can we make any intelligent assessment on how many candidates would have

been reduced if the experience requirement had also been reduced as in past years. When there is no evidence in support of such an allegation, we do not see any need to investigate and to look into these aspects of the decision making especially since the UPSC itself had been constituted as an independent body free of the Department and the competitive elements of the Department. The applicants have urged that the respondent No.2 had acted in violation of the undertaking that undisputedly was taken by the respondents. However, they provide no reliable facts such as whether the interviewee (Shri H.B. Galati) belongs to the State to which the respondent No.2 belongs. Moreover, such a broad categorisation does not suggest any bias at all especially when people are stratified in a variety of ways of caste, community, religion, language, sub-region, etc. Even on inquiry, the applicant provided no support in this direction. In any case, this interviewee has not been impleaded. It is, of course, a fact that two of the candidates and the respondent No.2 were working in the same office at Mumbai and

therefore, they would have had substantial interaction over their careers. However, the UPSC system comprises checks and balances and includes not only an independent President who is a Member of Commission but also technical Members drawn from a panel held by the UPSC and therefore, the Department cannot be said to have any or even a dominant say in the proceedings of the Selection Committee. The applicant has also not made any allegation of a personal nature against the rest of the Member but only questioned some of the aspects of shortlisted. It is also moot that none of these two interviewees have also been impleaded in this O.A.

14. The applicant has raised the question that the UPSC respondent No.1 did not take into consideration the comment about the doubtful integrity of the respondent No.2 recorded in 2001, 15 years prior to retirement of respondent No.2. The respondent No.1 has admitted that they have no information about this aspect of background of respondent No.2. However, the ability of single Member to sway the decision of the entire Committee in favour of the one

particular candidate becomes doubtful in the fact of the nature of the Committee and the checks and balances within the UPSC Selection system. While this may be an aspect of respondent No.1 to consider for the future, the applicants had the burden of proof to show how this aspect of doubtful integrity and the context from which the remark was made, has a bearing on the candidates in favour of whom they allege bias especially since Shri Ismail Sharif joined the Mumbai Office only in 2005-2006 whereas the problematic ACR was written in the year 2001-2002.

15. The applicant has urged that the Commission should investigate the matter based on their complaints and we have no doubt that after the rather prompt complaint of the applicants who sent letters within a few days after the interview was completed and especially after these proceedings, the Commission would take appropriate action to review its processes if at all they consider them in need of greater refinement or modification.

16. As regards the allegations against the respondent No.2 and the charge that he has, by default, admitted both the ACR of 2001-2002 and their allegation of bias, we have sufficiently discussed the contents, nature and the impacts of such allegations even if true and do not think that they have any bearing on the recruitment process that has taken place in the present instances.

17. In the circumstances, we are of the considered view that this OA is devoid of merits and deserves to be dismissed and is accordingly, dismissed without any order as to costs.

(R.N.Singh)
Member (Judicial)

(R.Vijaykumar)
Member (Administrative)

kmg*

30/02/2020
12

