



**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA No. 171/2020**

New Delhi, this the 18<sup>th</sup> day of February, 2020

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)  
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)**

Kumar Gaurav  
Aged about 37 Years  
Group-B (Gazetted)  
S/o. Late Hari Nath Gupta  
R/o. House No. 116-D, Street No. 8  
Krishna Nagar, S.J. Enclave  
New Delhi-29  
Presently working as Assistant Director (Publicity)  
Ministry of Tourism, Transport Bhawan,  
Parliament Street, New Delhi-110001

... Applicant

(through Sh. Sudarshan Rajan with Sh. Ramesh Rawat)

**Versus**

1. Union of India,  
Through the Secretary  
Ministry of Tourism  
Government of India  
Transport Bhawan  
New Delhi.
2. Sh. R. K. Mishra,  
Presently working as Assistant Director  
Ministry of Tourism  
India Tourism, Indore, Madhya Pradesh

... Respondents

(By Advocate: Sh. K. K. Sharma for Respondent No. 1 and  
Sh. Sanjiv Joshi with Ms. Kiran Yadav for Resp. No. 2)

**ORDER (ORAL)**

**BY HON'BLE MR. PRADEEP KUMAR, MEMBER (A):**

The controversy relates to foreign posting of Indian Tourism Officers which is controlled by the Ministry of Tourism. The guidelines for selection of officials for such posting, was issued on 09.10.2018. This prescribes criteria for selection wherein marks are awarded under the three headings namely (a) for APAR's, Seniority, knowledge of foreign language and earlier overseas posting, 40 marks are allotted, (b) for written examination, 20 marks are allotted and (c) for interview by a duly constituted committee for which, 40 marks are allotted.

2. Accordingly, the Selection Committee conducted their proceedings and assessed the candidates in order of merit on the basis of total marks obtained out of maximum 100.

3. Total ten officers were considered in order of seniority. The applicant's name appears at Sl. No. 9 in this zone of consideration. Total there officers were recommended on the basis of out of 100, as under:-

Name	Seniority No.	Marks	Merit Position
Ms. Monika Jamwal	3	87.6	1
Sh. Kumar Gaurav	9	79.5	2
Ms. Monisha Satoeya	2	75.6	3



One Sh. R. K. Mishra who was at Seniority No. 1, secured 65.4 marks and was not recommended.

4. The Select Committee recommendations are to be approved by the Hon'ble Minister of Tourism. At this stage, the Hon'ble Minister of Tourism ordered on 14.08.2019 that the entire selection process is being held "in-house" wherein the written examination has only weightage of 20 percent out of total of 100 marks whereas interview is having total weightage of 40 percent. The Hon'ble Minister noted that there is need to have a selection process which is transparent and above board. Accordingly, the Hon'ble Minister cancelled the selection and directed for a review for existing process and also ordered the same to be completed within a period of one month.

5. In the meanwhile, the proposal was made for foreign posting in respect of the three candidates who were appearing at seniority no. 1, 2 and 3 out of the 10 candidates, interviewed by such Selection Committee as mentioned in Para 1 above. Thus, the senior most officer, namely Sh. R. K. Mishra was approved in place of Sh. Kumar Gaurav. The other two names are at seniority no. 2 & 3 and were also recommended at merit position no. 1 & 3 by the Selection Committee.

6. Sh. Kumar Gaurav, the applicant herein, was aggrieved with this decision that despite having been recommended at merit position No. 2 by the Selection Committee, his name has



been left out of foreign posting and Sh. R. K. Mishra was being posted instead. Feeling aggrieved, he approached the Tribunal by filing the instant OA. Sh. R. K. Mishra is arrayed as private respondent no. 2 in this OA.

7. When the matter was heard on 17.01.2020, an Interim Stay was ordered to the effect that ***“the posting in foreign countries, if any, of the second respondent, shall be subject to orders that may be passed by this Tribunal.”*** The applicant, however, felt that he has not been granted adequate relief. He approached the Hon’ble High Court of Delhi by filing Writ Petition (C) No.1065/2020, wherein orders were passed on 29.01.2020 with the following directions:-

*“9. Although we find that the Tribunal has granted limited protection to the petitioner, inasmuch as it has directed that the foreign posting of respondent No.2 shall be subject to orders that may be passed by the Tribunal, a stay of the posting has not been granted and the matter has been posted for 14.02.2020. We also find that the Tribunal's order is devoid of any reasons as to why the prayer sought has been declined, even if at the interim stage, especially when it appears that the name of respondent No. 2 was not in any of the lists of selected officers prepared on the basis of the guidelines.*

*10. While we do not wish to express any opinion on the merits of the matter, we deem it appropriate to request the Tribunal to hear the interim application on 14.02.2020 ; and we direct that the matter be shown high- up on the cause list, so that it can be taken-up for hearing.*

*11. The original file shall also be produced by the respondents before the Tribunal to facilitate the hearing.”*



8. Thus in compliance of these directives, that matter was listed before the Tribunal earlier on 14.02.2020. However, the official respondents sought time to argue the matter. Accordingly, it was heard on 18.02.2020, i.e. today.

9. The applicant relied upon a judgement by Hon'ble Apex Court in the matter of **K. Manjusree Vs. State of Andhra Pradesh and Another (2008) 3 Supreme Court Cases 512 in Civil Appeal No. 1313 of 2008 with WPs (C) Nos. 51 and 97 of 2007, SLP (C) No. (CC Nos. 7178-79 of 2007), decided on 15.02.2008**, where specific attention was drawn to Para 27 of the judgement, which is reproduced below:-

*“27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them- **P. K. Ramachandra Iyer v. Union of India, Umesh Chandra***

***Shukla v. Union of India and  
Durgacharan Misra v. State of Orissa***



10. The applicant also relied upon the judgment of the Hon'ble Apex Court in the matter of **Baidyanath Yadav Vs. Aditya Narayan Roy and Others 2019 SCC Online SC 1492 in Civil Appeal No. 8847 of 2019 (Arising out of SLP (Civil) No. 12370 of 2018) decided on 19.11.2019**, wherein specific attention was drawn to Para 5.2 of the said judgement, which is reproduced below:-

“5.2 This view has subsequently been affirmed by this Court in various decisions including the recent decision of a 2-Judge Bench of this Court in M. Sathiya Priya (supra), of which one of us was a member. In this decision, this Court, while setting aside the reassessment undertaken by the Tribunal and the High Court of the recommendations made by the Selection Committee to the UPSC for appointments to be made to the Indian Police Service by promotion, observed as follows:

*“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of*



*the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.*

(emphasis added)”

11. The applicant also relied upon another judgment by the Hon'ble Apex Court in the matter of **Union of India Vs. Mohan Lal Capoor (1973) 2 SCC 836 and Others in Civil Appeals Nos. 695, 614-617 of 1971 decided on 26.09.1973**, wherein specific attention was drawn to Para 22 of the judgment, which is reproduced below:-

*“22. Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant rules, is that the "entrance" or "inclusion" test, for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing\_ factor. A simple reading of the Regulation 5 (2) clearly indicates this to be the correct view. The required number has thus to be selected by a comparison of merits of all the eligible candidates of each year. But, in making this selection, seniority must play its due role. Seniority would, however, only be one of the several factors affecting assessment of merit as comparative experience in service, should be. There could be a certain number of in marks allotted, for purposes of facilitating evaluation, to each year of experience, gained in the, service. When the required number for the list is thus chosen, the respective roles of seniority and exceptional merit would be governed by Regulation 5(3). This seems to be the correct interpretation of rules as they stand.*



12. It was further pleaded that the instant OA needs to be allowed in view of selection having been already made by the Selection Committee. It was also pleaded that Sh. R. K. Mishra was not even recommended by the duly constituted committee and hence, he cannot steal a march over the applicant.

13. The applicant also drew attention to an office memorandum dated 12.12.2017, wherein certain warning was issued to Sh. R. K. Mishra for not complying with certain processes in relation to the scheme for Bed and Breakfast Scheme. In this context, attention was also drawn to ‘**Eligibility Criteria**’ prescribed in guidelines dated 09.10.2018, wherein following is specified:-

**“IV. Eligibility Criteria**

xxx            xxx            xxx

*(vii) Candidates against whom disciplinary/ vigilance proceedings are pending or being contemplated or whose overall service record is below “GOOD” will not be eligible.*

xxx            xxx            xxx”

14. Per contra, the official respondents opposed the OA and it was pleaded that the recommendations by the Select Committee is only recommendatory in nature and they are not final till such time, the competent authority has passed the order on the same. In this connection, attention was drawn to

the provision of guidelines dated 09.10.2018. The relevant para reads as under:-



**“II. Procedure for Selection**

xxx                      xxx                      xxx

*(vi) The Chairman of the Selection Committee will directly submit recommendations of the Committee to the next higher administrative authority for seeking the approval of Hon'ble Minister.*

xxx                      xxx                      xxx”

15. In the instant case, the competent authority was the Hon'ble Minister of Tourism who had noted that there is undue weightage given to the interview marks which had 40 percent weightage as compared to 20 percent weightage of the written examination.

16. It was brought out that certain court cases are also pending and accordingly the Hon'ble Minister cancelled the selection and directed to prepare a new selection process which should be transparent and above board, within a period of one month and pending the same, posting order was approved for three officers in order of seniority out of the ten officers who took part in the said selection process. Out of these three officer, Sh. R. K. Mishra, is the senior most and was not recommended by the Select Committee. The other two officers were those whose names were also recommended by the select committee.



17. The respondents, therefore, pleaded that the present OA needs to be dismissed and the respondents should be allowed to implement the order for Sh. R. K. Mishra also.

18. Sh. Sanjiv Joshi, learned counsel for the private respondents namely Sh. R. K. Mishra, pleaded that the said warning (Para 13 supra) has since not been issued as the case was actually closed without any punitive action.

Accordingly, the private respondents also pleaded that that foreign posting is an exigency of service and needs to be upheld as it is already approved by the Competent Authority.

19. Matter has been heard at length. Learned counsel Sh. Sudarshan Rajan with Sh. Ramesh Rawat represented the applicant and learned counsel Sh. K. K. Sharma represented the Respondent No. 1 & learned counsel Sh. Sanjiv Joshi with Ms. Kiran Yadav represented the Resp. No. 2

20. At this stage, it is noted that the selection process is having certain weightage assigned to different components as per guidelines of 09.10.2018, wherein the APARs, seniority, knowledge of foreign language and earlier overseas posting has been given weightage of 40 per cent in the final selection. The written examination has been given a weightage of 20 per cent while the interview has weightage of 40 per cent.



Thus, in the overall selection, the interview has 40 per cent weightage whereas other aspects have 60 per cent weightage. It is this undue weightage to interview which has been noted by the Hon'ble Minister, who was the Competent Authority to accept the recommendations and when he also noted that the process is required to be reviewed so as to become transparent and above board. A time period of one month was also specified for completion of this exercise.

21. In this context, the Tribunal relies upon the directions of the Hon'ble Supreme Court judgment in the matter of **Pradeep Kumar Rai and Others Vs. Dinesh Kumar Pandey and others (2015) 11 SCC 493**. The relevant part of this decision is as under:-

*“21. Further, it is a settled law that in cases like the present one, where an Executive action of the State is challenged, Court must tread with caution and not overstep its limits. The interference by Court is warranted only when there are oblique motives or there is miscarriage of justice. In the present case, there is no oblique motive or any miscarriage of justice warranting interference by this Court. Hence, the appeals and the writ petition are dismissed.”*

The recommendations by Selection Committee cannot be taken to have achieved finality, till they were approved by the Competent Authority who was the Hon'ble Minister of Tourism.

22. Keeping in view the above, this Tribunal is of the view that respondents need to review the guidelines dated

09.10.2018 to achieve the objective of process being transparent and above board, as noted by the competent authority.



23. Keeping in view the forgoing, the respondents are directed not to post the Private Respondent No. 2 for this foreign posting for the post in question and take up to review the guidelines dated 09.10.2018 and hold the selection thereafter giving chance to the eligible officers for this one post still vacant.

24. Accordingly, the instant OA is disposed of. No order as to costs.

**(Pradeep Kumar)**  
**Member (A)**

**(Justice Vijay Lakshmi)**  
**Member (J)**

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