

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A./100/799/2020

New Delhi, this 1<sup>st</sup> day of October, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Ms. Aradhana Johri, Member (A)**

Dr. Binay Kumar Biswas  
Aged about 53 years  
S/o Late Binodbehari Biswas,  
R/o CB 119, Salt Lake Sector-1  
Kolkata - 700064

....Applicant

(Through Shri Rajeev Kumar Yadav, Advocate)

Versus



1. Union of India through Secretary,  
The Chairman,  
Ministry of Health & Family Welfare,  
(PMSSY Division), Room No.318,  
Indian Red Cross Society Building,  
Red Cross Road,  
New Delhi-110001
2. Union of India,  
Through Secretary,  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training,  
Secretariat of the Appointments Committee of  
the Cabinet, North Block,  
New Delhi-110001
3. All India Institute of Medical Science  
Kalyani, Through Executive Director,  
Camp Office : AIIMS Kalyani,  
JNM & College of Medical Campus,  
Post & PS : Kalyani  
PIN – 741235, Nadia – WB

(Through Shri Gyanendra Singh, and Shri Asheem Mehrotra, Advocates)

## **ORDER (Oral)**

## **Justice L. Narasimha Reddy, Chairman**

The Ministry of Health initiated steps for selection and appointment of Executive Director to the All India Institutes of Medical Sciences (AIIMS) at Raebareli (UP), Gorakhpur (UP), Bathinda (Punjab), Bibinagar (Telangana), Deoghar (Jharkhand) and Kalyani (West Bengal). A notification was published in the Employment News of 06-12 April, 2019, and it was uploaded in the website. The applicant herein, the 4<sup>th</sup> respondent and several others applied for the posts. The selection was to be made by the Search-cum-Selection Committee (Committee), constituted for this purpose. After examining the applications received by it, the Committee recommended two names for each of the Institutes referred to above. The name of the applicant was recommended for the Institute at Kalyani and that of the 4<sup>th</sup> respondent for the Institute at Raebareli. This was followed by invitation and willingness and no objection from the selected candidates. The

recommendations of the committee were placed before the Appointments Committee of the Cabinet (ACC). For the post of Executive Director, the Institute at Kalyani, ACC has chosen the 4<sup>th</sup> respondent. Through an order dated 03.03.2020, the 4<sup>th</sup> respondent was appointed as Executive Director for the Institute at Kalyani, and certain others, for the remaining Institutes.

2. This OA is filed challenging the order dated 03.03.2020, in so far as it appointed the 4<sup>th</sup> respondent as Executive Director of AIIMS, Kalyani, and to direct the respondents to act as per the selection list prepared by the Committee on 20.09.2019, and thereafter appoint the applicant as Executive Director for AIIMS, Kalyani.

3. The applicant contends that the committee selected the candidates for respective Institutes duly taking into account, various factors and there was absolutely no basis for the respondents in ignoring the recommendations of the committee in respect of the AIIMS at Kalyani. He contends that in case the respondents wanted to ignore the recommendations of the committee, they were under obligation to record reasons and no such exercise was undertaken. Another plea of the applicant

is that under no circumstances, the appointing authority can travel beyond the recommendations of the selection committee.

4. Various other grounds are also urged.

5. Separate counter affidavits are filed by the respondents 1 to 3 on the one hand, and respondent no.4, on the other. According to them, it is always in the discretion of the appointing authority, to take a decision as regards appointment and the recommendations of the selection committee are not binding. It is also stated that the discretion of the appointing authority cannot be confined to the candidates, who are recommended by the selection committee. Various grounds urged by the applicant are contradicted.

6. We heard Mr.Rajeev Kumar Yadav, learned counsel for the Applicant, and Mr.Gyanendra Singh and Mr.Asheem Mehrotra, learned counsel for the respondents.

7. The basic facts are not in dispute. The first respondent initiated steps for appointment of Executive Directors for the AIIMS in different parts of the country. The selection process was entrusted to the Committee. The appointing procedure comprises of approval of the panel recommended by the

Committee by the ACC, and issuance of the order of the concerned Ministry. The Committee recommended two names each, for the Institutes. The name of the applicant was one of the two persons recommended for the Institute at Kalyani. Similarly, the name of the 4<sup>th</sup> respondent was one of the two recommended for the Institute at Raebareli. It is stated that the ACC did not accept or approve any of the names recommended for the Institute at Kalyani. On the other hand, it has proposed the name of the 4<sup>th</sup> respondent for that Institute. The result was that out of the two candidates recommended for the Institute at Raebareli, one was appointed for that very Institute and another for Kalyani, whereas none of the candidates recommended for Institute at Kalyani were approved for appointment.

8. The short question that arises for consideration in this OA is as to whether it was open to the appointing authority to ignore the recommendations of the Committee, in respect of the Institute at Kalyani. Another facet of the very question is whether it was competent for the authority, to approve the name of the person for the Institute at Kalyani, which was not recommended by the Committee.

9. Depending upon the importance of posts, the selection process is entrusted to specialized agencies. While in some cases, it is to the UPSC, in other cases, specialized committees, constituted for that purpose. The post of Executive Director is not in the purview of the UPSC and the Committee was specially constituted with experts for this purpose.

10. As observed earlier, two names were recommended for each of the Institutes. It is fairly well settled that an appointing authority has the discretion, whether or not, to accept the recommendations of the selection committee. It has the discretion to ignore all or some of the names recommended by the selection committee. However, it is under obligation to assign reasons for taking such a decision. Similarly, it cannot alter the order of merit assigned by the selection committee. Even where the appointing authority does not agree with the recommendations of the committee in its totality, it cannot pick up a candidate, who is not recommended by the selection committee. In such an event, the very process of selection becomes redundant.

11. In case, the appointing authority does not agree with the recommendations of the selection committee, it has to return the panel with its own observations and reasons. The exercise

may be repeated once or twice till the appointing authority finds a person up to its expectations or liking. Under no circumstances, it can make an appointment of a person unless he is recommended by the selection committee.

12. This issue was discussed in detail by the Hon'ble Supreme Court in **Union of India v. N.P.Dhamania** (1995 Supp (1) SCC 1). The UPSC recommended the name of the respondents therein for the post of Commissioner of Income-tax. The ACC, however, did not accept the recommendation and thereby did not approve for appointment. The others in the panel were offered appointment. To be precise, out of 59 officers recommended, the ACC approved the names of 54. The action of the respondent-Government was challenged before the Tribunal. It was held that the ACC ought not to have ignored the recommendations of the UPSC without assigning any reasons. It was found that no reasons were furnished therein. The matter was carried to the Hon'ble Supreme Court by the Union of India. Their Lordships observed as under:

*“18. It will be clear from the above that the recommendations of the DPC are advisory in nature. Such recommendations are not binding on the appointing authority. It is open to the appointing authority to differ from the recommendations in public interest. That is beyond doubt.*

*19. Notwithstanding the fact that it is open to the ACC which alone is the appointing authority and not the Minister concerned, as urged by the respondent to differ from the recommendations of the DPC, it must give reasons for so differing to ward off any attack of arbitrariness. Those reasons will have to be recorded in the file. It requires to be stated at this stage that we have perused the file in the instant case. We find no reasons have been recorded for differing from the recommendations of the DPC. “*

13. As regards the follow up action, the Hon'ble Supreme Court directed as under:

*“25. The Appointing Authority shall consult the UPSC once again by making reference back to them indicating the reasons for making a departure from the panel recommended by the Commission and also forward the material on which it has reached the conclusion not to appoint the respondent and obtain their views before taking final decision in the matter. In case after consultation with the UPSC, in the manner indicated above, the name of the respondent is restored to its original position as recommended by the UPSC, the case of the respondent for promotion to the post of Commissioner of Income Tax, shall be considered on merit and necessary orders be passed within 3 months from the date of the receipt of the file from the UPSC.*

*CA Nos. 784 and 2176 of 1988 and CA No. 6894 of 1994 (arising out of SLP (C) No. 7356 of 1988)*

*26. The Appointing Authority shall make a reference back to the UPSC indicating the reasons for making a departure from the panel recommended by the Commission and obtain their views before taking a final decision in the matter. In case after consultation with the UPSC in the manner indicated above, the name of the respondent is restored to its original position as recommended by the UPSC the case of the respondent for promotion to the post of Commissioner of Income Tax (Level 11), shall be considered on merit and necessary orders be passed within 3 months from the date of receipt of the file from the UPSC.”*

14. Similar situation obtains in this case. Another factor is that apart from ignoring the recommendations of the Committee for Institute at Kalyani, the ACC proceeded further and appointed the 4<sup>th</sup> respondent whose name was not recommended at all. No reasons are recorded for not accepting the recommendations in respect of the applicant.

15. It may be true that the 4<sup>th</sup> respondent was also a candidate selected by the Committee. However, when the selection is made separately for each Institute, operating the panel in respect of one Institute, for appointing in another Institute becomes impermissible.

16. In view of the law laid down by the Hon'ble Supreme Court, the appointment of the 4<sup>th</sup> respondent becomes untenable.

17. As the case stands now, the applicant cannot be appointed unless it is cleared by the ACC. The matter has to go back to the ACC for considering the names of the applicant and another person recommended for the Institute at Kalyani. If it is decided not to accept the names, reasons need to be stated as per the extant procedure. Depending upon the nature of the decision, further steps need to be taken.

18. We, therefore, allow the OA as under:



- (a) The appointment of the 4<sup>th</sup> respondent is set aside.
- (b) The matter shall be placed before the ACC, for consideration. If it is decided not to accept the recommendations of the Committee made for AIIMS Institute at Kalyani, the reasons need to be stated.
- (c) It shall also be open to the ACC to send the matter back to the Committee or the concerned authority, for necessary steps.

The exercise indicated in paras (a), (b), and (c) shall be completed as early as possible, preferably within three months from the date of receipt of a copy of this order.

19. To ensure that the work in the administration of AIIMS Institute at Kalyani does not suffer, we direct that the respondent no.4 shall be continued as an ad hoc or a stop gap arrangement till the exercise indicated above is completed.

20. There shall be no order as to costs.



**(Aradhana Johri)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

/Mbt/sd/dkm/ dsn