



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.N0.060/01094/2018
 (Reserved on: 9.9.2020)
 Pronounced on: 30.09.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Dr. Arun Kumar Baranwal, aged about 47 years, Professor, Department of Paediatrics, Post Graduate Institute of Medical Education & Research, Chandigarh (U.T) (Group 'A'), Sector-12, Chandigarh-160002.

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Applicant

(BY ADVOCATE: MR. S.S. PATHANIA)

VERSUS

1. Governing Body of the Post Graduate Institute of Medical Education & Research, Sector-12, Chandigarh (U.T), through its Chairman-160012.
2. Standing Selection Committee of the Post Graduate Institute of Medical Education & Research, Sector-12, Chandigarh (U.T), through its Chairman-160012.
3. Post Graduate Institute of Medical Education & Research, Sector-12, Chandigarh (U.T), through its Director-160012.
4. Prof Y.K. Chawla (Retd.), Ex-Director, PGIMER, Sector-12, Chandigarh (UT), presently at SCO 385, Sector 44-D, Chandigarh-160047.

(BY ADVOCATE: MR. AMIT JHANJI)

5. Prof. Sunit Singhi (Retd), Ex-HOD Department of Paediatrics, Flat No. 5-B, Building No.6, The Hibiscus, Sector 50, Gurugram (Haryana)-122018.
6. Prof. Pritibha Singhi (Retd.), Ex-HOD Department of Paediatrics, Flat No. 5-B, Building No. 6, The Hibiscus, Sector 50, Gurugram (Haryana)-122018. (Both Ex-parте)

Respondents



ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has approached this Tribunal seeking quashing of his non-selection to the post of Professor of Paediatrics (OBC) and Professor of Paediatrics (Emergency and Intensive Care) by direct recruitment during the selection held in the year 2015 as per proceedings dated 15.9.2015 (Annexure A-9 and A-15). Though he has mentioned about order dated 8.12.2017 (Annexure A-18) in para 1 of the O.A. vide which his representations against non-promotion were rejected but quashing thereof has not been sought in para 8 "Relief Clause" of the O.A.
2. The applicant having joined as Senior Resident in the respondent PGIMER, Chandigarh on 16.7.1997 and during the course of employment was promoted as a Professor w.e.f. 12.1.2017. The pleading would show that two advertisements were issued for selection to the post of Professor in Paediatrics (OBC category) firstly in 2012 and then on 20.10.2014. The interview was conducted on 15.9.2015 in which the applicant participated but declared fail. He submitted representations against the same on 23.2.2016, 3.3.2016 and 19.10.2016. Initially he approached this Tribunal by filing O.A.No.060/376/2017 against his indicated non-selection to the post of Professor in Paediatrics (OBC) and for issuance of direction to the respondents to consider and promote him as such from the date he is eligible and qualified for the same. O.A. was disposed of on 7.4.2017 by directing the respondents to



consider and decide the representations dated 23.2.2016 and 14.10.2016. The applicant again filed an O.A.No.060/00539/2017 against his non-selection to the post of Professor Paediatrics (Emergency and Intensive Care) (Unreserved). This O.A. was disposed of on 22.5.2017 by directing the official respondents to consider and decide the representations dated 23.2.2016 and 3.3.2016 (Annexure A-12 therein). The applicant then filed C.P.No.060/9/2018 in O.A.No.060/539/2017, which was disposed of on 2.7.2017 as representations of applicant stood rejected vide order dated 27.3.2018 (Annexure R-1 therein).

3. The basic grievance of the applicant is that even though he has an outstanding academic and professional career including quality international exposure at Milan, London, Birmingham etc., yet he has been non-suited in Selection held in 2015 which is without any logic or reason and based on malafide intentions. He submits that post of Professor of Paediatrics (OBC) and Professor of Paediatrics (Emergency and Intensive Care) (Unreserved) to be filled up by way of direct recruitment were being advertisement since 2003 to 2012, when no eligible candidate was available. He was eligible during the period from 2012 to 2014. Despite issuance of advertisements in 2012 and 2013, interviews were not conducted. Ultimately, the posts were advertised on 20.10.2014. The interviews were conducted on 15.9.2015 but applicant was not selected based on marks allotted in interview by two Members (External Subject Experts). On receipt of information through RTI Act, 2005, he came to know that selection was to be done by evaluation of candidates on various aspects like qualification, experience, publications,



patents, awards/ honours, membership of professional bodies, special achievements such as starting of a unit/department and performance in interview etc. The cut off mark for selection was 55%.

4. It is submitted that as per instructions, a Liaison Officer (OBC) was to be co-opted during selection process which has not been done and as such proceedings are illegal. It is pleaded that applicant fulfils the eligibility criteria for both the posts in question. The post of Professor of Paediatrics (Emergency & Intensive Care) was kept reserved for OBC during 2019 and 2012 advertisements, was unreserved in 2014, in a suspicious manner. It is argued that his non-selection is due to malafide intentions of vested interests. His non-selection was due to recommendation of External Subject Experts, who were not actually Subject Experts in Paediatric Emergency & Intensive Care. Moreover, those marks were awarded in interview and not by considering other parameters as laid down by Standing Selection Committee (SSC). The SSC is under obligation to follow norms for assessing the merit of rival candidates.

5. The respondents No.1 to 4 have filed a reply, whereas Respondents No.5 and 6 stand proceeded ex-parte. It is submitted that cause of action rose to applicant in 2012, whereas O.A. has been filed in 2018 and as such it is barred by Section 21 of Administrative Tribunals Act, 1985. The order dated 8.12.2017 passed in compliance to orders of this Tribunal would not extend the period of limitation. Moreover, in this case no application for condonation of delay has been filed by the applicant. On merits, it is submitted that selection has been done



by the SSC constituted as per PGIMR Rules/Regulations. The SSC is an experienced body and the selection is to be done as per collective wisdom of Members of SSC and not as per wishes of any particular member. The Government Body also accepts and ratifies the recommendation of the SSC, which acts as second level check and balance. The capability of applicant was assessed by Specialist insider and outsider experts. A court of law cannot sit in appeal over the decision of expert body. The case of the applicant for promotion from Associate Professor to Additional Professor w.e.f. 1.7.2012 under Assessment Promotion Scheme (APS) was placed before SSC during February & march, 2014. The SSC, did not find him fit for promotion under APS. Thereafter, as per APS, his case for promotion w.e.f. 1.7.2014, after a gap of two years, was placed before SSC on 15.9.2015 but he was again declared unfit. The minutes were approved by the Governing Body on 13.10.2015. The applicant appeared before the SSC for appointment as Professor under direct recruitment against UR and OBC category in the year 2015 but SSC did not recommend his name. Subsequently upon direction of this Tribunal his case was considered by the Governing Body but it did not find any merit in claim of applicant for promotion from back date.

6. We have heard the learned counsel for both sides at considerable length and examined the material available on record.

7. The learned counsel for the applicant vehemently argued that the applicant has been prejudiced in this case as his non-selection is due to malafide intentions of the respondents.



He has intentionally been declared unfit for appointment despite the fact that he has outstanding academic and professional service career including his selection and appointment by a High Powered Committee at Patna. If he has been found fit for appointment in other offices, then respondents cannot declare him unfit more so when he has outstanding professional experience at his credit. This was resisted by learned counsel for the respondents stating that first of all, O.A. is barred by time and secondly the wisdom of SSC, which stands accepted by competent Governing Body, cannot be questioned by the applicant on untenable grounds.

8. As can be seen that the applicant himself claims in para 3 of the O.A. that cause of action arose to him in 2012 and then on 20.10.2014, when the Advertisements were issued for selection and appointment to two posts of Professor of Paediatrics (OBC) and (Emergency & Intensive Care) (UR) respectively. He claims that speaking order, pursuant to directions of this Tribunal, was passed on 8.12.2017 and O.A. was filed on 11.9.2018, so it has to be taken that it was filed within limitation period. Thus, O.A. is maintainable.

9. We find merit in the objection taken by the respondents that the O.A is barred by time. Admittedly, the cause of action arose to the applicant in 2012/2014 whereas the O.A. has been filed on 11.9.2019 and that too without application seeking condonation of delay. The order dated 8.12.2017, passed on directions of this Tribunal, rejecting the claim of applicant for promotion cannot extend the period of limitation as the period has to be counted from the date of cause



of action and cannot be extended on account of subsequent events like rejection of representation, even when the O.A. is barred by time as per original cause of action. This issue is not longer res-integra.

10. In the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

“14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in **C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115**

“The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to



any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

11. Again in the case of **BHARAT SANCHAR NIGAM LIMITED VS. GHANSHYAM DASS ETC.** (2011) 4 SCC 374, a three Judge Bench reiterated the principle laid down in the case of **JAGDISH LAL VS. STATE OF HARYANA** (1977) 6 SCC 538, that time barred claim should not be entertained by the Tribunal. In view of this, it is held that the application filed by the applicant is hugely barred by time and secondly no application for condonation of delay has been filed and as such it is dismissed accordingly being barred by time. Our own High Court in Union of India Vs. C.A.T. Chandigarh, 2003 (2) SCT 863, has held that Tribunal cannot entertain time barred application unless it is accompanied by an application with satisfactory explanation on sufficient cause for the delay and the delay is condoned. Delay cannot be condoned unless a written application is made under section 21(3).

12. Not only this, the claim of applicant has been rejected by Governing Body vide order dated 8.12.2017. The said order is not even challenged in para 8 of the Original Application, though a brief mentioned is made in para 1 of the O.A. The applicant has challenged only Recommendations of the SSC dated 15.9.2015 (Annexure A-9) for the post of Professor of Paediatrics and 15.9.2015 (Annexure A-15) for the post of Professor of Paediatrics (Emg. & Intensive Care). Thus, the applicant cannot be granted any benefit.

13. The case is not maintainable from another angle. Admittedly, the applicant appeared before the SSC but did not file any representation immediately thereafter alleging wrong



inclusion of any member or malafide intentions on the part of any member. He submitted representation only on 23.2.2016 in which there is no allegation that there was any procedural irregularity or illegality in selection carried out by SSC. Only general assertions have been made by the applicant that selection was not fair and that he was qualified yet he was declared unfit for appointment.

14. In the case of **MARRIPATI NAGARAJA VS. THE GOVERNMENT OF ANDHRA PRADESH** (2007) 11 SCR 506, it has been held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the date before the appropriate authority. They are, therefore, stopped and precluded from questioning the selection process.

15. In the case of **DHANANJAY MALIK & ORS VS. STATE OF UTTARANCHAL & ORS**, (2008) 4 SCC 171 it was held as under:-

"7. It is not disputed that the respondents-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

16. In the case of **MADAN LAL V. STATE OF J & K**, this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance



to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

17. In the present case also, the applicant participated in the selection process without any demur and declared unsuccessful, therefore, now at this stage, when process of selection is complete the prayer for incorporating the moderation system in the rules cannot be accepted.

18. It is also not in dispute that the minimum marks for selection are 55% and the applicant has not achieved this Bench mark and as such one cannot find fault with the assessment carried out by the SSC based on input of Subject Experts unless the applicant is able to show that the SSC or its members have acted with malafide intentions. The material available on record does not show that there was any malafide intentions on the part of the officers in non-selection of the applicant.

19. It is now well settled principle of law that malafide is very easy to allege, but difficult to prove as the onus to prove mala fide lies on the person who alleges it. The Hon'ble Apex Court in the case of **STATE OF PUNJAB & ANOTHER VS.**



GURDIAL SINGH & OTHERS (1980) 2 SCC 471 has ruled as under :-

"The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction -is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legidical. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust-that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act."

20. The allegations levelled by the applicant against members of SSC do not inspire any confidence at all. Moreover, the Tribunal cannot interfere in the assessment of candidates carried out by the SSC on sweeping allegations made by a litigant. It has been held by the Apex Court in **UNION OF INDIA AND ANOTHER VS. S.K. GOEL AND OTHERS**, 2009 (1) SCC (L&S) 873 that judicial interference in DPC proceedings is permitted only if such proceedings are conducted illegally or in gross violation of standing Government instructions and rules or mis-grading of confidential reports. Further, in **M.V.**



THIMMIAH AND OTHERS VS. UNION PUBLIC SERVICE

COMMISSION AND OTHERS, (2008) 2 SCC 119, the Hon'ble Apex Court has held that normally the recommendations of the Selection Committee cannot be challenged except on the ground of mala fide or serious violation of statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the selection committee like the court of appeal. In the instant cases, as discussed above, the applicant has failed to prove that there exists any ground for this Tribunal to interfere with the recommendations of the DPC and as such the recommendations of the DPC cannot be faulted with. We do not find any material on file to come to the conclusion that the SSC has committed any illegality in carrying out the impugned selection.

21. In the wake of aforesaid discussion, this O.A. is found to be devoid of any merit and is dismissed, leaving the parties to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: 30.09.2020

HC*