

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

T.A.No.6/2000

Date of order: 1.11.2002

Virendra Singh Yadav, S/o late Sh.R.S.S.Yadav, R/o IHM
Staff Colony, Flat No.5-2, Banipark, Jaipur.

...Applicant.

Vs.

1. Secretary cum Office Chairman, Deptt. of Tourism, Govt. of Rajasthan, Secretariat, Jaipur.
2. Principal, Institution of Hotel Management, Catering Technology & Applied Nutrition, Banipark, Jaipur.
3. Ms.H.Behal, House No.4/446, Lane No.4, Rajapark, Jaipur.

...Respondents.

Mr.S.P.Sharma - Counsel for applicant.

Mr.Ajay Rastogi - Counsel for respondents No.1 & 2.

Mr.Man Singh, Counsel for respondent No.3

Mr.P.V.Calla, Counsel for intervener.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant is working as Sr.Lecturer, Front Office Operation, in the Institute of Hotel Management Catering Technology & Applied Nutrition, Jaipur, hereinafter referred to as 'the Institute'. It is an autonomous Institution sponsored by the Govt of Rajasthan till 1989 and thereafter it is being sponsored by Ministry of Tourism, Govtof India and Secretary, Deptt. of Tourism, Govt of Rajasthan is its ex-officio Chairman. In the year 1997, three posts of Head of the Department in different discipline fell vacant including the post of Head of the Department (Accommodation Operation) and the Institute decided to fill those posts by issuing

advertisement. Copy of such advertisement has been placed on record as Annx.A1 in which qualification and experience for the post of Head of the Department (Accommodation Operation) were specified. Pursuant to the advertisement Annx.A1, 7 candidates including the applicant and respondent No.3 applied for the post of Head of the Department (Accommodation Operation). Interview for the said post was held on 3.11.97. The selection committee recommended name of two candidates for the post in question in order of merit including respondent No.3. Since name of respondent No.3 was at Sl.No.1 of the select list, as such offer of appointment was given to respondent No.3 vide letter dated 6.11.97. Feeling aggrieved by the action of respondents in selecting and appointing respondent No.3, the applicant filed Writ Petition before the Rajasthan High Court at Jaipur which was registered as CWP No.6368 of 97 thereby praying that the order dated 6.11.97 (Annx.A2) may be set aside and quashed and to declare respondent No.3 as usurper of the post of Head of the Department (Accommodation Operation) as she is not entitled to occupy the post and direction be given to the respondents to issue order of appointment in favour of the petitioner.

2. The appointment of respondent No.3 were challenged by the applicant on the grounds that -

(i) respondent No.3 does not possess the essential educational qualification and also does not fall within the necessary age group for appointment to the post of Head of the Department (Addommodation Operation) thus, respondents Nos.1 & 2 had committed serious illegality in considering name of respondent No.3, for appointment to the said post. The respondents should have out-rightly rejected the candidature of respondent No.3 and her name should not have been placed before the interview

board,

(ii) to the knowledge of the petitioner, name of respondent No.3 was not placed before the Board of Directors before issuing the order of appointment,

(iii) there is no relaxation clause for granting relaxation in the essential qualification. Apart from it neither relaxation was granted nor it could have been granted in favour of respondent No.3 in as much as petitioner and other candidates were eligible,

(iv) in the year 1989 when respondent No.3 was redesignated as Senior Lecturer cum Sr.Instructor w.e.f. 1.4.89, an order was issued that respondent No.3 should improve her qualification failing which no promotion shall be given to her. In view of this order, no promotion could have been given to respondent No.3 as she did not improve her educational qualification.

3. The official respondents have contested the case by filing reply affidavit. Respondent No.3 has chosen not to file reply. In the reply, the stand taken by the respondents are that -

(i) respondent No.3 was considered to be eligible by the Board of Governors after examining her qualification for the post of Head of the Department (Accommodation Operation) and Catering technology has nothing to do with it. Examining her qualification and experience in the Institution she was considered to be eligible for appointment by the Board of Governors,

(ii) The selection committee itself was constituted ^{of} the Members of Board of Governors as such the matter was not required to be placed ^{before} ~~for~~ the Board of Directors and the recommendation made by the selection committee can be deemed to be a decision of the Board of Governors,

(iii) It was not a matter of relaxation but after considering



the job requirement it was considered that Catering Technology is not related with the selection made for Head of the Department (Accommodation Operation) and thus, respondent No.3 was rightly considered for the said post and no illegality has been committed by the answering respondents,

(iv) The letter/order issued in the year 1989 to the effect that respondent No.3 should improve her qualification failing which no promotion shall be given to her has nothing to do with selection to the post of Head of the Department (Accommodation Operation) as the post is required to be filled by direct recruitment through open selection and not by promotion.


4. By way of preliminary objection, it was submitted that the applicant has no locus standi to file the present petition as he himself is not eligible for appointment in terms of recruitment and promotion rules for the post of Head of the Department (Accommodation Operation) as he does not possess the Post-graduation or Diploma in the required subject with at least 2nd Division and this fact has been suppressed by the petitioner and also that once the petitioner availed the opportunity of appearing before the Selection Committee and the Committee found the petitioner unsuitable, he cannot question the selection or the recommendation made by the Committee especially when he does not fulfill the minimum eligibility required for the post of Head of the Department (Accommodation Operation) under the Rules of 1986.

5. The applicant has also filed rejoinder thereby reiterating the stand taken by him in the writ petition.

6. During the pendency of the writ petition, Govt of India issued notification dated 17.12.98 whereby the Institution was included in the schedule and jurisdiction was conferred on the Central Administrative Tribunal under Sec.14(2) of the

Administrative Tribunals Act, 1985, therefore, the writ petition was transferred and registered as T.A No.6/2000.

7. During the pendency of the proceeding before this Tribunal two different M.As were filed by the applicant as well as one by Sh.R.K.Kapil. M.A No.152/02 was filed by Sh.R.K.Kapil, thereby stating that he came to know from reliable source that his candidature was recommended for appointment by the Selection Committee but the appointment order has been issued in favour of respondent No.3, whose appointment is under challenge before this Tribunal. Therefore, applicant in the M.A is necessary party in the proceeding of the O.A and he may be allowed to intervene in the matter. After hearing the learned counsel for the parties this Tribunal allowed this M.A and applicant Shri R.K.Kapil was allowed to intervene in the matter. M.A No.141/02 was moved by the applicant by which he has stated that respondent No.3 has filed CWP No.4180/93, H.Behal Vs. Union of India, before the Rajasthan High Court at Jaipur wherein she herself has stated that the post of Head of the Department was advertised on 29.8.92 however, as she did not possess the qualifications, she could not be given appointment on account of the service rules and it was alleged that there is no promotion available for her and she will have to retire from the post on which she was appointed. It was specifically stated 'petitioner can never be considered for a promotion as she is not possessed the requisite qualification for promotion'. Thus, she has prayed that either relaxation should be given to her or rules be amended so as to make her eligible for the post of Head of the Department (Accommodation Operation)/Principal. While opposing the aforesaid petition of respondent No.3/petitioner therein the official respondents in para 9 of reply affidavit has stated that 'the petitioner does



not possess the academic qualification to become Head of the department'. The applicant has further stated that contrary to the reply filed before the High Court in the aforesaid writ petition filed by respondent No.3, the official respondent has now justifying the appointment of respondent No.3 as Head of the Department (Accommodation Operation). Under these circumstances the applicant has prayed that direction be given to the official respondents to produce the aforesaid documents. This M.A was allowed and the respondents were directed to produce a copy of the writ petition and related matters. The matter was adjourned from time to time and lastly, when the matter was listed on 3.10.02, this Tribunal passed the following order:

It appears from record that the applicant possesses Diploma in Third Division and, therefore, he could not be qualified since statutory rules provide for having a Diploma with Second Division. At the same time, the respondent No.3 also does not appear to be qualified for holding the post for the reason that the respondents have not specifically denied the averment of the applicant that she does not possess the requisite qualification. It is also seen from the order dated 14.5.02 that the respondents were directed to produce copy of the writ petition and related matter because it was argued that before the Hon'ble High Court, the respondents stated that the respondent No.3 is not qualified and here the averment is being made that she has been appointed as per rules. The learned counsel for the official respondents seeks two weeks time as a special case. Time granted. List it on 24.10.92."

On 24.10.02, the parties were heard and this Tribunal



passed the following order:

"The learned counsel for respondent No.3 submitted that his main contention is that the applicant who does not fulfil the eligibility criteria, has no locus standi to file this O.A. He also fairly conceded before this Tribunal that the respondent No.3 is not qualified as per rules. Mr.Calla, learned counsel for Intervener submitted that in case the Hon'ble Tribunal comes to the conclusion that respondent No.3 was not qualified to hold the post and his appointment is illegal, in that case, his client being No.2 in the merit, should be given appointment. The learned counsel for official respondents submitted that the Intervener has not filed the O.A and in such situation, no relief can be granted to the intervener. He also produced minutes of the Selection Committee alongwith interview sheets as also the copy of the reply filed before the Hon'ble High Court.

The learned counsel for the applicant in support of his contention has also submitted before the Tribunal the copy of the recruitment rules of 1986 and cited three case laws on which he has relied upon during the arguments.
Order reserved."

8. Now the ~~xxx~~ question which requires our consideration is whether respondent No.3 who has been selected and appointed as Head of the Department (Accommodation Operation) fulfills the requisite qualification as laid down in the Recruitment & Promotion Rules, 1986 (as also find mention in the advertisement Annx.A1) and she could have been legally selected and appointed to Head of the Department (Accommodation Operation).

9. It is not disputed that the appointment to the post of

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Head of the Department (Accommodation Operation) is governed by the rules called 'Institute of Hotel Management Catering Technology & Applied Nutrition (Recruitment & Promotion) Rules, 1986' (for short 'the rules of 1986') which were to come into force on 1.4.86. According to the provisions as contained in the rules of 1986 and also as per advertisement Annx.A1, the eligibility criteria for the post of Head of the Department (Accommodation Operation) is as follows:

"Qualification: Post Graduate Degree/Diploma in institutional management/Food & Nutrition/Hotel Management & Catering Technology/Food Service Management/Clothing & Textile (For Hotel House keeping only) at least 2nd Division or any equivalent qualification.

Experience: At least 7 years experience in the relevant field at Senior level.

Desirable: (In case of Diploma holders)

Graduate of a recognised University. Some administrative experience preferable in an educational institution of in Hotel & Catering industry."

It is admitted case between the parties that the applicant possesses the requisite experience and desirable qualification as stated above. Further, it is also not in dispute that the applicant possesses Diploma in Hotel Management, Catering Nutrition, which is one of the essential qualification but he has not secured 2nd Division. Thus the only infirmity which the applicant incurred is that though he had a requisite Diploma but he has not secured 2nd Division, as such he is not eligible for the post of Head of the Department (Accommodation Operation). Now, let us consider the qualification which respondent No.3 possesses. Respondent No.3 possesses PG Diploma in Tourism & Hotel Management. This is not one of the

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
qualification prescribed for the post of Head of the Department (Accommodation Operation) whereas the prescribed qualification for the post is Post Graduate Degree/ Diploma in (i) Institutional Management or (ii) Food & Nutrition or (iii) Hotel Management & Catering Technology or (iv) Food Service Management, at least 2nd Division or any equivalent qualification. Respondent No.3 has herself conceded before this Bench and also before the Hon'ble Rajasthan High Court, that she does not fulfill the requisite educational qualification for appointment to Head of the Department. Respondent No.3 in her CWP No.4180/93 has prayed that since she does not possess the requisite qualification for promotion, the respondents be directed either to relax or amend the Rules of 1986, so that she can be considered for promotion to the next higher post. In answer to the allegation of respondent No.3 in the said CWP No.4180/93, the respondents in para 15 & 16 have stated as under:

"15. The petitioner cannot make a claim for promotion to the next higher post till and until she possess the qualifications prescribed under the Rules for promotion to the next higher post. It is further submitted that the petitioner cannot seek relaxation or amendment of the rules on the ground that she will retire on the post on which she was appointed after attaining the age of superannuation. It may be recalled that at the time of upgradation into the present institute the petitioner had not possessed the exact educational qualifications prescribed for the post of Lecturer-cum-Instructor but the Screening Committee had recommended the relaxation to the petitioner as a special case and allowed for absorption of the petitioner on the post and pay scale of Lecturer cum

Instructor in the present Institute, but at the same time the petitioner was also informed that this relaxation given to the petitioner for absorption on the post would not make her eligible for next higher promotion if she did not fulfill the prescribed qualification for the higher post. The respondents seek indulgence of this Hon'ble High Court to refer to the letter dated 25.1.91.

16... the petitioner is very well aware that the petitioner had been absorbed in the present institute on the post of Lecturer cum Instructor inspite of the fact that she was not possessing the requisite qualification for the said post. At the same time the petitioner was also informed that the relaxation would not make her eligible for promotion to the next higher post if she does not fulfil the prescribed qualifications."

Thus, from the portion of reply affidavit as quoted above, two things have clearly emerged, (i) Respondent No.3 does not possesses the requisite qualification for the post of Head of the Department (Accommodation Operation) as per her own showing and also conceded by her in the present proceeding, (ii) she also does not possess the educational qualification prescribed for the post of Lecturer cum Instructor, which is admittedly lower post than Head of the Department but relaxation was given to her as a special case. It was made clear by letter dated 25.1.91 that this relaxation given to respondent No.3 would not make her eligible for next higher promotion if she did not fulfil the prescribed qualification for the higher post. At this stage, it may be relevant to mention here that it is not a case of either parties that respondent No.3 has improved her qualification so as to become eligible for the post of Head of the Department (Accommodation Operation).



10. Now, the official respondents in complete disregard to the stand taken earlier before court of law and as quoted above, have taken a complete 'U' turn in this proceedings by filing affidavit thereby justifying the appointment of respondent No.3 to the post of Head of the Department, by stating that the Members of Board of Governors constitute the Selection Committee and considered the candidature of all persons and found respondent No.3 to be eligible for the post of Head of the Department (Accommodation Operation) and qualification of Catering Technology has nothing to do with the post of Head of the Department (Accommodation Operation). This reply affidavit has been filed under the signature of Sh.K.V.S.Kameswara Rao, Administrative Officer and the earlier affidavit in CWP No.1480/93 has been filed under the signature of the Principal of the Institution. We are constrained to observe that the Institute has taken such stand subsequently to justify their apparent illegal action in appointing a person who is not qualified as per rules. Even respondent No.3 has also conceded that she does not possess the requisite qualification, thus, the action of the official respondents in placing such a version in this proceedings cannot be appreciated at all. It was expected of the authorities that they should have acted as an umpire instead of defending undefendable action, where the dispute relates between two employees. Thus to us, it appears that some one in the Institution was there to help respondent No.3 out of way even ignoring the affidavit filed by them in the High Court in CWP No.4180/93 and also ignoring the provision of the Rules of 1986 and ensuring that respondent No.3 be selected and appointed as Head of the Department



when the applicant was absorbed as Sr.Lecturer cum Sr. Instructor at that point of time also she did not possess the requisite qualification and she was absorbed by giving relaxation to her. If person is not qualified for lower post then how such person can be considered for appointment to higher post? We have also perused the minutes of the Selection Committee for the post of Head of the Department held on 3.11.97. A perusal of this minutes make it clear that 8 candidates were called for interview including the applicant and respondent No.3. The applicant was though interviewed but simultaneously remarks were given that he is ineligible. According to the recommendation of the Selection Committee, the following were found suitable for Head of the Department (Accommodation Operation) in order of merit; (i) Smt.H.Behal and (ii) Sh.R.K.Kapil (intervener). A reading of this minutes make it clear that the applicant and one more person, were found ineligible for the post of Head of the Department (Accommodation Operation) as they were not in possession of the minimum requisite qualification. The relevant portion of the Selection Committee reads as under:


"Following candidates were found ineligible for the post of HOD Accommodation Operation because they were not in possession of required minimum essential qualifications:

1. Sh.V.S.Yadav, S/o late Sh.R.S.S.Yadav

2. Shri Rakesh Mangal, S/o Mr.D.Mangal"

11. It is not understood, how the Selection Committee has

found respondent No.3 as eligible when she did not possess the requisite qualification whereas the applicant who did possess the requisite Diploma but has not secured 2nd Division was found ineligible. It cannot be disputed that fairness or fair procedure ought to be observed in the administrative action and the Selection Committee cannot be exempted from this principle. It must take decision reasonably without being guided by extraneous or irrelevant considerations. According to us, it was some what extra-ordinary for the Selection Committee to hold respondent No.3 as eligible, possessing requisite qualification but held the applicant as ineligible as he does not possess the requisite minimum qualification, when the applicant was better placed than respondent No.3. Such an action on the part of Selection Committee is arbitrary and against the Rules of 1986. Similarly, the stand taken by the official respondents that respondent No.3 was eligible for the post of Head of the Department (Accommodation Operation) are indeed centithetical and cannot coexist with the stand taken by them in the reply affidavit filed before the High Court. Thus, we are of the view that the Selection Committee acted arbitrarily while making selection to the post of Head of the Department (Accommodation Operation). It may be noticed here that though the official respondents have submitted that the requirement of essential qualification was not relaxed in the case of respondent No.3 but the action of the respondents amount to relaxation in qualification as without such relaxation, respondent No.3, who admittedly did not possess the requisite qualification, could not have been held eligible and considered for the post of Head of the Department (Accommodation Operation). Thus the action of the Selection Committee in holding respondent No.3 as eligible is arbitrary.



as she was given relaxation in the qualification whereas no such relaxation was given to the applicant who was admittedly better placed. Thus, the action of the Selection Committee/ respondents are arbitrary and the applicant is definitely an aggrieved person having locus standii to file the application. Further, according to us, such relaxation in essential qualification could not have ^{been} exercised in case of direct appointment, in the absence of any such provision in the Rules of 1986. The only provision which exist under para 13.5 is that departmental candidate shall also be eligible to apply for direct recruitment to a post if he possesses the requisite qualification except that in his case the age limit is relaxed.

12. Thus from what has been stated above, we are of the firm view that respondent No.3 did not possess the requisite qualification as advertised vide Annx.A1 which is in consonance with the Rules of 1986 and as such her candidature could not have been considered at all and she could not have been selected by the Selection Committee holding her to be eligible for the post of Head of the Department (Accommodation Operation) denors the Rules of 1986.

13. We may now deal with the contention raised by the learned counsel for the respondents regarding locus standii of the applicant to file the present T.A, as he also does not fulfil the eligibility criteria. It was further contended that the applicant having appeared before the Interview Board and found unsuitable and after availing chance of appearing before the Selection Committee, he cannot be permitted to question the Selection or recommendation made by the Committee. The contention raised by the counsel for the respondents though attractive, deserves outright rejection. As per the minutes of the Selection Committee as quoted above, the applicant

alongwith another person was found ineligible for the post as they were not in possession of the requisite minimum essential qualification. On the face of such finding of the Selection Committee, how it could be said that the applicant was considered but found unsuitable. Once a person is found to be ineligible on account of not fulfilling the requisite qualification, the question of his consideration does not arise at all. In that eventuality even if the applicant was interviewed such a course was not permissible under the law and thus does not amount to consideration at all. At this stage it may be relevant to quote the decision of the Apex Court in the case of District Collector & Chairman, Vizianagaram Social Welfare Residential School Society Vs. M. Tripura Sundari Devi, 1990(3) SCC 655, in that case the minimum essential qualification mentioned in the advertisement was second class Post-graduate. The respondent who had 3rd class post-graduate degree was appointed. Disapproving the said action the Apex Court held-

'It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.'

This decision was further approved by the Apex Court in the case of Hoshiar Singh Vs. State of Haryana & Ors, 1993(5) SLR 36, whereby it was held that it was not permissible for the Board to relax the physical qualifying test prescribed in the advertisement and treat the candidate who had passed 3 out of 5 items of physical qualifying test mentioned in the said advertisement as having qualified in the physical fitness test. Such selection was rightly quashed by the High Court.

14. In the instant case, keeping in view the ratio as laid down by the Apex Court in the aforesaid decision, the applicant was admittedly an aggrieved person who was better placed than respondent No.3 who was held ineligible by the Selection Committee whereas respondent No.3 who was not qualified was not only held as eligible but also selected to the post in question. Thus the action of the respondents in giving appointment to respondent No.3 on the basis of recommendation of the Selection Committee amounts to fraud on public to appoint person with inferior qualifications especially when candidates fulfilling the requisite qualifications were already available and one of such name was also recommended by the Selection Committee. Thus, we are of the view that the applicant has locus standi to file the present application, being an aggrieved person in terms of law laid down by the Apex Court as quoted above and action of the Selection Committee as well as the respondents giving appointment to respondent No.3 is arbitrary and hit by the provisions of Article 14 and 16 of the Constitution and thus violative of Articles 14 & 16 of the Constitution. The other submission made by the applicant that the application of respondent No.3 could not have been entertained for the post of Head of the Department (Accommodation Operation) as at the relevant time she was over-age as her age on the date of

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advertisement was 49 years 9 months whereas the age for appointment of the post was 35 to 45 years and no relaxation was given to respondent No.3 in terms of Rule 13(5) of the Rules of 1986 and her selection was not approved by Board of Directors, need not be considered as we have already held that respondent No.3 does not possess the requisite essential qualification meant for the post of Head of the Department (Accommodation Operation) and as such she could not have been considered.

14. The learned counsel for the applicant has also placed reliance on the decision of the Rajasthan High Court in CWP No.3245/91, Lalita Prasad Soni Vs. Rajasthan State Road Transport Corpn. & Ors, and also the decision of Apex Court in the case of Mir Ghulam Hussan & Ors Vs. Union of India & Ors, AIR 1973 SC 1138 whereby the Apex Court has observed that if there is a complaint about appointment or promotion of an officer who is not eligible under the rules to be promoted/appointed, the proper remedy is to make an application to issue a writ of quo warranto. He submits that since respondent No.3 is usurper of office, as such declaration may be made that respondent No.3 is an usurper of Head of the Department (Accommodation Operation) and she is not entitled to occupy the post. The counsel for the respondents contends that no such direction can be given in these proceedings. We have already held that the applicant is an aggrieved party and action of the respondents have been arbitrary as such the applicant has locus standi to file the present application even on this score alone, as per the provisions contained in Sec.19 of the Administrative Tribunals Act, 1985 as the dispute relates to matter relating to recruitment as such is a service matter as defined under Sec.3(q) of this Act. Notwithstanding what has


been stated above, at this stage, it may also be noticed that in the case of Union of India & Ors. Vs. S.L. Abbas, 1993(2) SLR 585, the Apex Court has observed that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. Even the Apex Court in the case of L. Chandra Kumar Vs. Union of India & Ors, 1997(2) SLR 1, has held that the Tribunal created under the Act were intended to perform a substitutonal role as opposed to - and this distinction is of crucial significance - a supplemental role with regard to the High Courts and the Tribunal created under Articles 323-A and 323-B of the Constitution are possessed of competence to test the constitutional validity of the statutory provisions and rules. All decisions of these Tribunals will, however, be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls and the Tribunal will act like Courts of first Instance in respect of the area of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except when that legislation which creates the particular Tribunal is challenged by overlooking the jurisdiction of the concerned Tribunal. Thus even this contention of the respondents cannot be accepted that where a person does not fulfil the requisite qualification, no direction can be given to quash the appointment of such candidate holding to be usurper of office. In such situation, the Court cannot remain silent spectator and allow to perpetuate the wrong done by the authorities as purity of administration is one of the cardinal principle which the Court must observe where the action of the authorities is ultra

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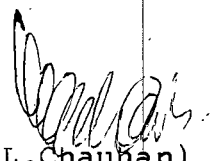
vires, arbitrary and contrary to rules.

15. We may now deal with the contention put forth by the counsel for the intervener. The counsel for the intervener argued that since respondent No.3 was not qualified and he is the only candidate left who has been recommended by the Selection Committee for Head of the Department (Accommodation Operation), therefore direction be given to the respondents to give him appointment on the basis of recommendation made by the Selection Committee. This prayer has been opposed by the learned counsel for the official respondents. We are of firm view that such a direction cannot be given in the facts and circumstances of this case. Dispute in this case is regarding selection made and appointment given to respondent No.3, who was not eligible for such appointment. Since the scope of dispute between the parties was, as to whether respondent No.3 is qualified or not for the post in question and her appointment is valid, we do not think it necessary to decide the point raised by the intervener as the intervener cannot expand the scope of dispute. It was open for the intervener to file substantive application thereby seeking his appointment to the post of Head of the Department (Accommodation Operation). Having not done so, it is not open for us to give any direction to the respondents to give appointment to the Intervener on the basis of the recommendation made by the Selection Committee, in the facts and circumstances of this case.

16. In view of what has been stated above, we are of the view that the action of the official respondents in giving appointment to respondent No.3 vide letter dated 6.11.97 (Annx.A2) is illegal and as such the impugned order is quashed and set aside. Respondent No.3 is held to be usurper of Head of the Department (Accommodation Operation) and as such she is not



qualified to occupy the post of Head of the Department (Accommodation Operation). It will be open for the respondents to fill the post of Head of the Department (Accommodation Operation) in accordance with the law. The O.A is disposed of with no order as to costs.



(M.L. Chauhan)

Member (J)



(H.O. Gupta)

Member (A).