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CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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**19.10.2011**

OA No. 134/2011 with MA No. 236/2011

Mr. S.K. Saxena, counsel for applicant.  
None present for respondent nos. 1 & 2.  
Mr. S. Shrivastava, proxy counsel for  
Mr. Amit Mathur, counsel for respondent nos. 3 & 4.

At the request of learned counsel appearing for the parties, put  
up the matter on 21.10.2011 for hearing.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*K. S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

*[Signature]*

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21/10/2011 [OA No. 134/2011 with MA No. 236/2011]

Mr. S.K. Saxena, Counsel for applicant.  
Mr. Kapil Mathur, Counsel for respondent nos. 1 & 2.  
Mr. Amit Mathur, Counsel for respondent nos. 3 & 4.

Heard.

The O.A. and M.A. are disposed  
of by a separate order on the separate  
sheets for the reasons recorded therein.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

*K. S. Rathore*  
[Justice K. S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 21<sup>st</sup> day of October, 2011

**ORIGINAL APPLICATION No. 134/2011**

CORAM :

HON'LE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER  
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Krishna Charan Sharma son of Shri Bhuvaneshwar Lal Sharma, aged 61 years, Associate Professor (Reader), Regional Institute of Education, Ajmer and resident of 423, Haribhau Upadhyaya Extension, Ajmer.

... Applicant

(By Advocate: Mr. S.K. Saksena)

Versus

1. Union of India through its Secretary, Ministry of Human Resources Development, Shastri Bhawan, New Delhi.
2. National Council for Educational Research and Training, Sri Aurobindo Marg, New Delhi through its Secretary.
3. Prof. B.K. Parida, Professor of Physics, Regional Institute of Education, Bhubaneswar, Orissa.
4. Prof. V.P. Shrivastava, Professor of Physics, DESM, NCERT, Sri Aurobindo Marg, New Delhi.

... Respondents

(By Advocates: Mr. Kapil Mathur – Respondent nos. 1 & 2  
Mr. Amit Mathur – Respondent nos. 3 & 4)

**ORDER (ORAL)**

This is the second round of litigation between the parties. Earlier the applicant had filed OA No. 444/2010 in which this Tribunal in Para No. 3 had passed the following order:-

"3. In view of what has been stated above and without going into merit of the case, we are of the view that the present OA can be disposed of with the direction to Respondent no. 1 to decide the appeal/representation of the applicant dated 12.10.2009 (Annexure A/9) within a period of two months from the date of receipt of a copy of this

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order. In case the applicant is aggrieved by the order to passed by Respondent no. 1 on the said appeal/representation, it will be permissible for him to file substantive OA. It is made clear that we have not gone into merit of the case and the present OA is being disposed of only on the basis of contention raised by the learned counsel for the applicant that the appeal/representation of the applicant dated 12.10.2009 (Annexure A/9) may be decided by the appropriate authority."

2. In compliance of this order, official respondents had considered the representation of the applicant and passed a detailed order 10.01.2011 (Annexure A/1). Vide this order dated 10.01.2011 (Annexure A/1), the respondents have decided the representation of the applicant.

3. Now the applicant has filed this OA thereby praying for the following relief:-

"In conspectus of above state of facts and chronicle account of applicant's consistent harassment for long, it is prayed to Hon'ble Tribunal that this Hon'ble Tribunal may very graciously be pleased to call for and examine the entire record of the case, accept and allow this OA and allow promotion of the applicant to Professor of Physics w.e.f. his eligibility date 01.01.2000 as per the UGC criterion of eligibility of 8 years of service as Reader as there is no other date of eligibility defined under the UGC regulations and also quashed & set aside the impugned order dated 10.01.2011 (Annexure A/1)

(a) By an appropriate order and direction in the nature thereof the respondents may be directed to promote the applicant to the post of Professor of Physics w.e.f. the date of eligibility (01.01.2000) in the interest of law and justice.

**In alternative**

(b) By an appropriate order and direction your honour may be pleased to declare the interview on 21.12.2009 null and void and direct the respondents to hold interview afresh and allow the applicant promotion as Professor of Physics w.e.f. 01.01.2000 i.e. the date of eligibility as per UGC defined norms on

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completion of 8 years service as Reader with all consequential benefits. Since the applicant is very close to his retirement this may be done within a reasonable time frame of one or two months.

(c) Cost of the Original Application may kindly be awarded to the applicant.

(d) Any other order or direction this Hon'ble Tribunal may deem fit and proper be also passed in favour of the applicant."

4. The brief facts of the case, as stated by the applicant, are that he was appointed as Lecturer against the substantive permanent post in 1976. In 1992, the applicant was promoted the post of Reader and since then, he has been discharging the duties as Reader. He is M.Sc, Ph.D in Physics from a recognized University. In March, 2000, UGC floated Career Advancement Scheme (CAS) in order to promote Reader to the post of Professors in the Universities and Institutions affiliated to it. NCERT adopted the scheme. A minimum of 8 years' experience as Reader was accepted as eligibility criteria for promotion to the post of Professor besides three research publications and other terms and conditions. On 21.02.2002, revised CGC-CAS Scheme was adopted by the NCERT wherein there must be five research publications out of which two could be the books before the date of eligibility which were to be submitted for assessment/evaluation before the interview. UGC guidelines were adopted by the NCERT vide notification dated 09.11.2005 (Annexure A/6) with some modifications. That the erstwhile Director of the NCERT, Prof. Krishna Kumar, organised interview of the Readers for promotion to the post

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of Professor on 21 & 22 December, 2009 during the second and last leg of his three months extension. This was done to favour and benefit his few favourites.

5. The applicant was also interviewed on 21.12.2009 but he was not considered despite having better qualification and better publications.

6. The interview of the applicant was held in violation to the regulations which requires the "interviews be conducted inviting three experts of the concerned subject making sure that these experts be different than those who had assessed and evaluated the research publications." But the erstwhile Director, Prof. Krishna Kumar, did not invite three subject experts of Physics for the interview instead included Prof. M.S. Yadav as a convenient alternative of his choice in all the selection committees on that date and only two subject experts were invited other than him for each subject. Prof. M.S. Yadav was not subject expert of Physics for which the interview of the applicant was held. Thus the interviews were ab-initio motivated. The Regulations 52 for the decision of the Selection Committee for interview reads as under:-

"Regulation 52 - The Chairman of all Selection Committee shall be nominated by the President."

7. In the interview held on 21.12.2009, Prof. Krishna Kumar was not nominated by the President as Chairman of the Selection Committee. Therefore his presiding over the

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Selection committee was against the Regulation 52. **While** the decision of the Executive Committee nominating Director as Ex-officio Chairman was dated 20.04.1970. Thus the regulations of 12.05.1971 superseded the decision of the Executive Committee held on 20.04.1970. The violation of these regulations is illegal and malafide.

8 Further the president nominee was also not appointed by the present President of the NCERT under his signature for this selection committee violating statutory NCERT regulation 57 (b).

9. That the applicant was called for interview for fulfilling the necessary eligibility criteria as per the UGC letter dated 21.02.2002. The applicant possessed all the qualifications under the UGC criteria, the selection committee was only to peruse, confirm and clear query, if any, regarding the published work and original record etc. The papers were already published in referred journals and vetted by first core committee consisting of three eminent Professors, had three positive reports from the subject experts of the first (core/screening) committee which recommended the applicant on finding them upto the mark and suitable. Therefore, how can the next selection committee reject the same applicant in the interview without reason? No transparent and credible criteria of interview, as required under the UGC Scheme, were framed for the promotion of candidates in the interview and no reasons have been

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assigned for not promoting the applicant ignoring his eligibility.

10. The applicant has stated that he has not been selected on account of malafide and harassment attitude and to his support his case, he has stated that was not selected for the post of Professor (Physics) in 2001 but he was not even called for interview in 2006 for promotion. The next interview for promotion under CAS was held in 2008 but again the applicant was not called for interview. It was ~~also~~ because of malafide and with intention to harass the applicant. Though the applicant made representations to the competent authority from time to time in this regard but no action was taken on his representations. Thus there is some malafide with the applicant as he has not been given the chance and his candidature has not been considered for promotion since 2001 to 2009 in the right perspective while he was eligible for promotion to Professor right from 01.01.2000 on completion of 8 years of service as Reader. Under these circumstances, the applicant has no other alternative option except to file this OA.

11. The official respondents as well as private respondents nos. 3 & 4 have filed their reply. The respondents have raised the preliminary objection that the present OA is barred by limitation. The applicant in the present OA has prayed that he may be given promotion to the post of Professor of Physics w.e.f. 01.01.2000. That the applicant

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cannot claim relief from the year 2000 in the year 2011 as per Section 21 of the Administrative Tribunal Act, 1985. An application can be filed within one year period from the date of cause of action. For promotion in the year 2000; interviews were conducted in 2001 and applicant failed to qualify the same. The applicant did not challenge his non selection at the relevant time and for that reason the present OA is barred by limitation. Therefore, the same is liable to be dismissed.

12. That in the present OA, the applicant has levelled serious allegations over Shri Krishna Kumar, erstwhile Director of NCERT. The contention of the applicant in the OA are that Shri Krishna Kumar favoured other person and was having malafide intent towards the applicant but Shri Krishna Kumar is not a party respondent in the OA, in view of the aforesaid the OA is liable to be dismissed on the ground of non-joinder of necessary parties.

13. That the present OA is further liable to be dismissed on the ground of mis-joinder of parties. The applicant has impleaded Shri B.K. Parida and Shri V.P. Srivastava as party respondent. The promotion under the Career Advance Scheme is personal in nature. The promotion of Shri Parida and Shri Srivastava in no manner affects the promotion of the applicant. The applicant has not claimed any relief against Shri Parida and Shri Srivastava and as such the

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present OA is liable to be dismissed on the ground of mis-joinder of parties..

14. In reply to Para NO. 1 of the OA, it has been stated by the respondents that the applicant in this para has stated that he is aggrieved from the order dated 10.01.2011, though in the relief clause of the OA he has not prayed that the order dated 10.01.2011 may kindly be quashed and set aside, it clearly suggest that the applicant is not aggrieved by the order dated 10.01.2011 and for that purpose this OA is liable to be dismissed. The respondents have submitted that no irregularity has been committed by conducting interview for the post of Professor. That the applicant had appeared in the interview and, therefore, he is not entitled to raise grievance against that interview and they have denied that Shri Krishna Kumar had favoured to any person. The applicant has not stated that which person has been benefited by the act of Shri Krishna Kumar. That the applicant has levelled false allegations as he could not state that how he has been deprived the benefit and how in his place other persons have been given preference. That the respondents have duly replied to all his contentions raised by the applicant in his representations.

15. Under the ACS Scheme, it is a long process to which interview is a last stage. In the present case, the procedure for selection initiated much earlier as per UGC resolution dated 21.02.2002. The procedure prescribed in the scheme

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was followed but the applicant was not found fit and, therefore, left out. That the constitution of the selection committee for the interview was legal and per the regulation 57 of the NCERT. As per Regulation 57 of NCERT, two out of three members will be from the subject areas of the candidate concerned. Prof. M.S. Yadav, who was from the subject area of the Education, was invited as a common expert member in the selection committee. Shri Yadav is on NCERT Panel as an expert in the subject area of education approved by the establishment committee. Further they have stated that NCERT is a society registered under the Societies Registration Act, 1860 and the provisions of the same give over-riding effect in constitution of selection committee. That as per Para 52 of the Regulations of NCERT, the chairman of the selection committee shall be nominated by the President of the NCERT. However, as per the decision of its Executive committee in its meeting held on 20.04.1970, it was decided that the Director shall be ex-officio Chairman of the Selection committee. Further as per the recommendations of the government dated 21.06.1985, the Director, NCERT has been made the executive head of the council and has been given all administrative power to perform the said role. The copy of the communication dated 20.04.1970 and 21.06.1985 are annexed and marked as Annexure R/1 and R/2 respectively. Further on 24.10.1986, a notification was issued in this regard and the Director, NCERT was made appointing authority of all staff under the NCERT (Annexure R/3). The practice of the NCERT of

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Director being Chairman of the Selection Committee has been followed since long and, therefore, it was not necessary to obtain nomination of the Chairman of the Selection Committee afresh in each case and, therefore, the grievance of the applicant is not sustainable.

16. That the applicant was called for interview on 19.04.2001 for the post of Professor under the Scheme but his case was rejected by the duly constituted selection committee on the basis of his overall performance. He again applied for promotion under CAS in response to NCERT circular dated 21.11.2003 but his evaluators did not recommend his case and he was not called for interview. All the three evaluators submitted negative report. On the basis of the negative evaluation report, his candidature was not considered by the Core Committee in its meeting held on March, 2006. The copy of the minutes of are annexed and marked as Annexure R/4.

17. As per the UGC guidelines, after one year of debarment, employee can again apply and as such, the applicant again applied in response to the NCERT circular dated 14.03.2007 and after due process, he was called for interview held on 21.12.2009 but his case was again rejected by the then duly constituted Selection Committee on the basis of his overall performance. The applicant has, therefore, been considered but not found fit for the

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selection; therefore, he is not entitled to any relief from the Tribunal.

18. The respondents have further stated that when the applicant failed to qualify the selection, he has challenged the constitution of the Selection committee, procedure adopted for selection and also the selection of other persons. The aforesaid action of the applicant is illegal as once an employee participated in the process of selection, he cannot challenge the same. Based on the facts & circumstances of the case, the OA has no merit and needs to be dismissed.

19. The applicant has filed rejoinder.

20. Heard the rival submissions of the parties and perused the documents on record. Learned counsel for the applicant reiterated the facts which he has taken in the OA. He argued that as per Regulation 52 of the NCERT, Chairman of all Selection Committee should have been nominated by the President. The resolution referred to by the respondents is dated 20.04.1970, according to which the Director shall ex-officio be the Chairman of all Selection Committee but subsequent to that NCERT adopted regulation in 1971 and therefore, Executive Committee resolution held on 20.04.1970 has been superseded by the regulation. Similarly as per the guidelines of the UGC, there should be 3 experts of the subject of the selection committee. But there

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were only two experts of Physics on the Selection Committee. Shri M.S. Yadav was from the field of Education hence the constitution of the selection committee itself is bad in law and the Director of NCERT was on extension of regular term and, therefore, he could not have held interview for selection to the post of Professor. That the Director of NCERT, Prof. Krishna Kumar, had malice towards the applicant and, therefore, non selection of the applicant is bad and he should be promoted to the post of Professor.

21. As regards limitation, he argued that he claimed his promotion from the year 2000 when he became eligible but now he is restricting his claim from the date of interview held on 21.12.2009 under CAS. As regards non-joinder of necessary parties, particularly with regard to Shri Krishna Kumar is concerned, he argued that he has since retired, therefore, he has not been made party in the present OA. Since the constitution of Selection Committee is itself against the regulations and UGC guidelines, therefore, any interview conducted by that Committee be declared null & void and this OA may be allowed.

22. Regarding mis-joinder of respondents nos. 3 & 4, he argued that they have been impleaded on the ground that they were junior to the applicant and their promotion has been challenged and thus they were necessary and affected parties to the OA.

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23. Learned counsel for the respondents reiterated their stand which they have taken in the reply. They have stated that the applicant was considered for promotion in the year 2001 but was not found fit for promotion. That the applicant has never challenged that order. That in the year 2006, he was not found fit for promotion and applicant has not challenged his non selection in the year 2006. As regards malafide is concerned, the applicant has failed to prove as to what malafide, Director of the NCERT had against him. He has also not been able to prove as to in what manner any person selected by the Selection Committee has been favoured by the Director of the NCERT. Therefore, the ground of malafide taken by the applicant is not sustainable.

24. Learned counsel for the respondents argued that Director of the NCERT has been the Chairman of all Selection Committee since long. That NCERT as per decision of its executive held on 20.04.1970 has nominated Director of the NCERT as ex-officio chairman of all selection committee and therefore, there is no need for specific order for appointment of Chairman of the Selection Committee by the President of NCERT on each occasion.

25. With regard to the subject mater expert, learned counsel for the respondents argued that as per regulation 57 of the NCERT, as quoted by the applicant, there should be three persons selected from a panel prepared by the Establishment committee, of whom two shall be specialist.

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In this particular case, there were two subject experts and 3<sup>rd</sup> Professor M.S. Yadav was an expert on all selection committee for that date. He was also approved as an expert by the Establishment Committee. Thus the Selection Committee was constituted as per the regulation and as per the decision taken by the Executive Committee of the NCERT. That NCERT is an autonomous body and, therefore, they can adopt their own regulations. That the applicant's representation has been considered at length by the respondents and have been duly replied as per Annexure A/1. There is no irregularity/illegality in the action of the respondents and, therefore the OA may be dismissed. He also argued that once an employee participated in the selection process, he cannot challenge the same. In this regard, he has referred to the judgment of the Hon'ble Supreme Court in the case of **Vijendra Kumar Verma vs. Public Service Commission, Uttarakhan & Others**, JT 2010 (11) SC 111. In Para No. 28 of the judgment, the Hon'ble Supreme Court has held as under:-

"28. In **Union of India and others v. S. Vinodh Kumar and Others** reported in [2007 (8) SCC 100] at paragraph 18 it was held that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. Besides, in **K.H. Siraj v. High Court of Kerala and Others** reported in [JT 2006(11) SC 424 : 2006 (6) SCC 395] in paragraph 72 and 74 it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel."

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25. Having heard the rival submissions of the parties and perusal of the documents on record, we are of the view that the applicant has not been able to make out a case for our interference. It is not disputed that the applicant was called for interview for the post of Professor in the year 2001 but he was not found fit to be promoted. That the applicant did not challenge his non selection at that point of time. The applicant was considered in 2006 but he was not found fit and he again did not challenge his non selection at the relevant point of time. Now the respondents have again considered the candidature of the applicant and called him for interview but the Selection Committee did not find him suitable for promotion. That the Executive Committee of the NCERT in its meeting held on 20.04.1970 nominated the Director of the NCERT as ex-officio chairman of all Selection Committee. That the Regulation came in force in 1971 but nomination by the executive committee that the Director shall be the ex-officio chairman was not withdrawn and, therefore, as stated by the respondents, the Director continued to be the chairman of the selection committee from time to time and in view of nomination of the Director of the NCERT as Chairman of the Selection Committee by the Executive Committee, it was not necessary to obtain specific order of appointment of the Chairman of the Selection Committee by the President of the NCERT in each occasion and, therefore, we do not find any irregularity on this count.

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26. As regards three experts of the subject are concerned, the regulation 57 which has been quoted by the applicant reads as follows:-

57 (c) Three persons selection from a Member  
Panel of names prepared by the  
Establishment committee, of  
Whom two shall be specialists.

Further in February, 2002 UGC issued guidelines Annexure A/5 in which it has been mentioned that after the interview be conducted inviting three experts of the concerned subject making sure that these experts be different than those who had assessed and evaluated the research publications. These guidelines of the UGC have been adopted by the respondents vide notification dated 09.11.2005 but in this case, the respondents have followed the regulations. Further it is not disputed that there were two experts on the subject and third expert, Shri M.S. Yadav, was expert in the subject of education approved by the Establishment Committee. In our opinion, even there were three experts from the Physics on selection committee, that could not materially made out any difference in the result. Therefore, only on this ground that there were not three experts on the subject, the constitution/recommendation of the committee cannot be faulted. In our opinion, the applicant has not been able to prove any malice/malafide against the erstwhile Director of the NCERT, Shri Krishan Kumar. He has not given a single instance where he has favoured a particular person and that he was having malice towards the applicant. Therefore, on

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this ground also, the OA has no force. Besides this, the Hon'ble Supreme Court in the case of **Vijendra Kumar Verma vs. Public Service Commission, Uttarakhan & Others**, (supra) has held that the employee once participated in the selection process cannot challenge the selection process. In our opinion the ratio laid down by the Hon'ble Supreme Court in this case is squarely applicable in the facts & circumstances of this OA. Therefore, there is no ground for our interference in the decision taken by the respondents. We find no merit in this OA and it is dismissed with no order as to costs.

27. In view of the order passed in the OA, the MA No. 236/2011 for early hearing of the OA is also disposed of accordingly.

*Anil Kumar*

(Anil Kumar)  
Member (A)

*AHQ*

*K.S. Rathore*

(Justice K.S.Rathore)  
Member (J)