

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/01063/2014 Date of order: ---- /0.2.2016

**Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A).**

Dr. Rajasri Bhattacharyya w/o Dr. D.Banerjee, Teacher, Flat 13, Postgraduate Institute of Medical Education & Research (PGIMER), Chandigarh-160012.

.....Applicant.

(By: -Dr. Rajasri Bhattacharyya, applicant in person).

Versus

1. Union of India through Secretary, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi-110 016.
2. Council of Scientific & Industrial Research (CSIR), Library Avenue, Pusa, New Delhi-110012 through its Director General.
3. Director General, Council of Scientific & Industrial Research (CSIR), Library Avenue, Pusa, New Delhi-110012.
4. Recruitment & Assessment Board (RAB), Council of Scientific & Industrial Research (CSIR), Library Avenue, Pusa, New Delhi-110012 through its Chairman.
5. Prof. Sandip K.Basu, Chairman Recruitment & Assessment Board (RAB), Council of Scientific and Industrial Research (CSIR), Library Avenue, Pusa, New Delhi-110012.
6. Institute of Microbial Technology (IMT), Sector 39-A, Chandigarh-160036 through its Director.
7. Director, Institute of Microbial Technology (IMT) Sector 39A, Chandigarh-160036.
8. Selection Committee for recommendation for the post of Senior Scientist pursuant to Adv. 10/2011, Institute of Microbial Technology, Sector 39-A, Chandigarh, through its Chairman.
9. Selection Committee for recommendation for the post of Scientist 'C' Gr. IV (2) - (Protein Science and Engineering) pursuant to Adv 01/2010, Institute of Microbial Technology, Sector 39-A, Chandigarh, through its Chairman.
10. Prof. Sandip K.Basu, Chairman, Selection Committee for recommendation, for the post of Scientist 'C' Gr. IV(2) - (Protein

Science and Engineering) pursuant to Adv 01/2010 and for the post of Senior Scientist pursuant to Adv 10/2011, through Director, Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.

11. Mr. Chherring Tobden, Controller of Admn. & CPIO, Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.
12. Dr. Dipaki Dutta, Senior Scientist Gr. IV- (3), Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.
13. Dr. Beena Krishnan, Senior Scientist, Gr.IV- (3), Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.
14. Dr. Amit Tuli, Senior Scientist, Gr.IV- (3), Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.
15. Dr. Deepak Kumar Sharma, Senior Scientist, Gr.IV- (3), Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.
16. Dr. Vijayender Kumar Bhalla, Senior Scientist, Gr.IV- (3), Institute of Microbial Technology, Sector 39-A, Chandigarh-160036.

...Respondents

(By Advocate: Mr. I.S.Sidhu, for respondents no.1 to 11
Respondents no.12, 13, 14 & 16 in person.
None for respondent no.15).

ORDER

Hon'ble Mr.Uday Kumar Varma, Member (A):

Applicant Dr. Rajasri Bhattacharyya has filed the present Original Application praying for the following relief: -

- "i) To set aside the recommendation of the selection committee (Annexure A1) and to quash the appointment orders of respondent no.12-16 at respondent no.6 institute;
- ii) Official respondents may kindly be directed to re-advertise the post after framing appropriate selection parameters which may be circulated to public at large;
- iii) The official respondents may kindly directed to relax any age bar for the applicant that is imbibed in the existing recruitment rule for consideration for the Senior Scientist post at respondent no.6 Institute so that the applicant can apply for such post".

2. Facts of the case as contained in the OA are that the applicant passed M.Sc. (Bio-chemistry) from Calcutta University in the year 1999 and in the year 2005, she was also awarded with Ph.D degree by Jadavpur University. The applicant worked as Research Associate at Bose Institute, Kolkata from 2005 to 2008 and thereafter she worked as Senior Demonstrator at PGIMER, Chandigarh from 2008 to 2011. Respondent no.6 issued an advertisement for filling various posts of Scientists in the year 2010 and the applicant being fully eligible for the same also applied for the same through proper channel. The applicant was issued call letter in July 2010. The applicant participated in the interview on 31.8.2010, but the result of the selection was not published. In the year 2011, respondent no.6 again advertised various scientific posts vide advertisement no.101/2011 and the applicant also applied for one such post. The applicant was again issued an interview letter on 7.10.2013 and again no result of such selection was formally published till date. In December 2013, respondent IMTECH issued appointment orders to some of the candidates without formally publishing the merit/select list.

3. The applicant has stated that she made an application under RTI Act, 2005 and secured all the vital documents which clearly goes to prove that the said selection process is devoid of formal publication of merit/select list, without appropriate selection parameter to judge the inter-se merit of the rival candidates and various other irregularities which are against the law laid down by the Hon'ble Apex Court and jurisdictional High Court.

4. The applicant has alleged in her OA that against five advertised posts, 37 candidates were short-listed for interview, which

exceeds the maximum permitted upper limit for short-listing. The applicant has further alleged that marking is provided by all the members of the Selection Committee in a single page and no separate sheet of paper is provided to individual experts for awarding marks under different heads. The applicant has further pointed out the procedural infirmities and issues which concern mala fide acts of the respondent Selection Committee as the applicant feels that she is a victim of unfair selection process. Hence the present OA.

5. Pursuant to notice, respondents no.1 to 11 have contested the claim of the applicant by filing written statement jointly wherein they have stated that as regards the first advertisement of 2010, none of the candidates was recommended for appointment by the Selection Committee which conducted the selection process in accordance with the CSIR Scientists Recruitment & Assessment Promotion Rules, 2001 (for short Rules, 2001). The applicant has not challenged the said selection process. They have further stated that once the applicant having participated in the selection process conducted by the Selection Committee pursuant to advertisement no.1/2010 acquiesced to the criteria followed by the Selection Committee and knowing full well the same, applied pursuant to the advertisement no.10/2011 which resulted into the selection which has now been impugned by the applicant in the instant OA. As such, the applicant is stopped from challenging the selection process impugned in the present OA. The applicant has resorted to abuse of process of the Tribunal by incorporating the averments regarding criteria followed by the Selection Committee pursuant to advertisement no.1/2010. The respondents have further averred that it is an intentional endeavour of the applicant to raise issues which have become time-

barred by not challenging the selection process in which the applicant had admittedly appeared pursuant to advertisement no.1/2010 and rake up the pleas of vitiation of the selection process of which she has no right on principles of estoppels.

6. On merits, the respondents have stated that the applicant along with other candidates appeared before the Selection Committee against advertisement no.1/2010 and none of the candidates including the present applicant was found suitable by the Selection Committee. The applicant secured 22 marks out of maximum of 70 and the result of the selection process was displayed on the website of the respondent Institute. They have further stated that the applicant along with 36 other candidates participated in the selection process in pursuance of advertisement no.10/2011 and the name of the applicant was not recommended for appointment. The selection process was displayed on the website of the respondent Institute and other notice boards for information of all concerned even though there is no specific provision in Rules, 2001 for publication of select list/merit list. Even the mark-sheets finalized by the Selection Committee have already been made available to the applicant. The respondents have further averred that the Director of the respondent Institute is competent authority for constituting the Screening Committee for the posts upto Senior Principal Scientists (Group-IV(5) in pay-band 4 with grade pay of Rs.8900/- as per Rule 6.5.2. Even under the provisions of Rules, 2001, there is no criteria prescribed for any Selection Committee for the purposes of evaluation of inter-se-merit of candidates for awarding marks. It has been left to the wisdom of the Selection Committee to deciding the criteria. The merit was drawn by the Selection Committee on the basis of average marks awarded by each member,

which was made available to the applicant under RTI Act. The Selection Committee also decided that the candidates securing 75% marks and above will be considered for selection based on their qualification, experience, performance in the interview, recommendation letters and research papers etc. It is a co-incidence that the selected candidates for the posts of Senior Scientists were five i.e. equal to the number of posts advertised and all of them are already working in the respondent Institute for whom there was no bar to apply for selection and appointment to the post of Senior Scientists.

7. Respondent no.12 has filed his separate reply by stating therein that he had no role in the selection procedure adopted by the official respondents and his strong academic and research track records as compared to the present applicant led him to participate in the selection process and was appointed thereafter as per the wisdom of the Selection Committee.

8. On similar lines, respondents no.13, 14, 15 & 16 have also filed their separate reply.

9. Applicant has filed a rejoinder by generally reiterating the averments made in the OA. However, she has relied upon the following judgments passed by the jurisdictional High Court as well as Hon'ble Apex Court: -

- i) Geeta Sharma vs. Dav College Managing Committee (CWP No.2609 of 2013) decided on July 16, 2013;
- ii) State of A.P. & Ors. Vs. D.Dastagirri & Ors. (A.I.R. 2003 S.C. Page 2475);
- iii) Naresh Kumar s/o Nanak Chand vs. Chaudhary Charan Singh, Haryana (CWP No. 1404 of 2012) decided on 24.1.2012;
- iv) D.V.Bakshi & Ors. Vs. Union of India & Ors. (A.I.R. 1993 S.C. Page 2374);

- v) Dr. Parikshit Bansal & Another vs. Union of India & Ors. (CWP No.6458 of 2012) decided on 30.11.2012;
- vi) Atul Khullar & Ors. Vs. State of J & K & Ors. (1986 A.I.R. S.C. Page 1224);
- vii) Krushna Chandra Sahu (Dr.) & Ors. Vs. State of Orissa & Ors. (1995 Supp. (3) S.C.R. Page 419);
- viii) The Secretary, Punjab State Power Corporation Limited, The Mall Road, Patiala (Punjab) vs. Varinder Kumar & Ors. (LPA No.300 of 2012) decided on 31.8.2012;
- ix) Dr. (Mrs.) Meera Massey Dr. Abha vs. Dr. S.R. Mehrotra & Ors. (1998(1) S.C.R. Page 470) and
- x) Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors. (1987 A.I.R. S.C. Page 454).

10. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

11. The applicant during her arguments that she made in person, has raised the following grounds that according to her have vitiated the selection process. These are also more or less, the substance of her O.A. and rejoinder.

- i) Constitution of the Selection Committee is illegal;
- ii) Selection Committee evolved cut-off marks at interview stage without having any explicit jurisdiction to do so without following the mandatory provision imbibed in Rules, 2001;
- iii) Selection Committee evolved other selection parameters without having any explicit jurisdiction to do so;
- iv) Screening Committee evolved screening parameters without having any explicit jurisdiction to do so;
- v) It appears that the Screening Committee has not considered mandatory provision of short-listing;
- vi) Against 5 posts, 37 candidates were short-listed for interview and interview happened in two days;
- vii) Merit list is not formally published;
- viii) Marks are not assigned under different heads;

ix) It appears that the esteemed members of the Selection Committee are not provided with separate marks award sheet; and

x) It appears that the complete selection parameters is not known to the decision making process.

It will be appropriate to deal with each of these grounds serially.

12. As regards ground (i), it is the contention of the applicant that under 2001 Rules for Recruitment and Assessment promotion of Scientists Gr.IV in CSIR, clause 6.4 reads as under: -

"6.4 The Constitution of the Selection Committee for making direct recruitment to the posts covered under the Rules shall be as under:

- (i) The Chairperson of the Board shall be the Chairperson of the Selection Committee. However, the Chairperson of the Board can nominate one of the persons from the panel of Co-Chairpersons, prepared by the Chairperson of the Board and approved by the VP, CSIR, to act as Chairperson of the Selection Committee in his place.
- (ii) Two External Expert Members. To be nominated by the Expert Members Chairperson of the Board, from Members the panel of experts approved by RC of the Labs/CSIR Hqrs.
- (iii) One Departmental Member. To be nominated by Member the Director General.
- (iv) Director of the Lab. Or his nominee (in the case of CSIR Hqrs., DG or his nominee) shall be a member.

The quorum for the meeting of a Selection Committee shall be three member-including the Chairman".

Further, it is the contention of the applicant that the Selection Committee constituted for selection in the present context has been notified by the Head, Recruitment & Assessment Board (RAB) of CSIR that mentions the names of Dr. K.C.Gupta, Director, IITR, Lucknow and Dr. Yogendra Singh, Chief Scientist, IGIB, Delhi. According to the applicant, these two names have not been approved by DG, CSIR, which is the requirement under clause 6.4(iii) of the Rules of 2001.

Therefore, the constitution of Selection Committee itself is vitiated being not in accordance with rules in this regard and, therefore, deserves to be quashed.

13. In response to this, the respondents have asserted that these two names reflected in the letter of RAB dated February 12, 2013 have indeed been approved by the DG, CSIR. In support of their assertion they have placed before us a communication No. 1-1(1)/2011-RAB dated November 11, 2011. This communication reads as under: -

"Sub: Nomination of Departmental Members by DG CSIR in Selection Committees of CSIR.

As per the constitution of Selection Committee for direct recruitment as indicated at Para 6.4 of the CSRAP Rules 2001, one Departmental Member at appropriate level as nominated by DG, CSIR is to be included in the Committee. Accordingly a panel of Scientists has been prepared identifying Scientists at the level of Scientists H and G including a few Directors of CSIR laboratories. Selection of names has been made very stringently keeping in view the need for wide range of expertise required for recruitment in CSIR.

The panel if approved by DG is proposed to be used for constitution of Selection Committees by the Director-in-Charge, CSIR-RAB."

It is seen from this communication (the word 'if' in the last Para has apparently been wrongly used) that the names of Dr. Yogendra Singh and Dr. K.C.Gupta finds mention in the enclosed list, therefore, the applicant's contention that the nomination of the departmental member in the Selection Committee is without the approval of DG, CSIR does seem to be substantiated. After perusing the rule position and communication dated November 11, 2011, we find that the Departmental Core Member, who has been part of the Selection Committee enjoys the approval of DG, CSIR and there is no violation of rules as far as the constitution of the Selection Committee is

concerned. Thus, it cannot be said that the constitution of the Selection Committee is in violation of rules that govern the process.

14. The 2nd, 3rd & 4th contentions of the applicant are that the Selection Committee evolved cut-off marks as other parameters for selection at the interview stage without having any explicit jurisdiction to do so. Such jurisdiction lies with RAB as per clause 5.3, which is quoted below: -

" Except for the provisions specified under these rules, the Board shall be free to devise its own procedures in respect of recruitment and assessments to be conducted by it".

There are two problems with this contention. First, a conjunctive reading of this clause clarify that the RAB shall be free to devise its own procedure where it is conducting the recruitment or assessment, meaning thereby that a selection committee which is set up on its approval but is different from it, does not attract the provision. In other words, since the selection committee that carried out this selection is different from RAB, it is not covered under clause 5.3. The other problem with the applicant's contention that in fact arises out of the first problem, is that if her interpretation of clause 5.3 is accepted, it implies that the Selection Committee ought to have first sought from RAB the procedure to be followed by them before conducting the selection. Further, if there does not exist a standard laid down procedure for such selections, can the Selection Committee be faulted to devise its own procedure? The question here to be considered is whether in the absence of any explicit procedure devised and communicated by RAB, the Selection Committee could have gone ahead and decided the criteria for effecting an appropriate selection? And can they be faulted because this would have been in violation of rules? It is our clear and unequivocal conclusion that the fact that the

Selection Committee devised its own procedure to carry out does not violate clause 5.3 of Rules, 2001. All Selection Committees of this nature in order to carry out their responsibilities fairly and transparently have to frame some parameters to judge the merit or otherwise of the candidates to be able to reach a decision to select the most meritorious candidates. The Rules of 2001, which are general in nature, cannot possibly envisage all situations when such selection takes place. Therefore, it stands to logic that the Selection Committee comprising of eminent people in the relevant field duly constituted for the purposes of selection, has to lay down some norms to select the best candidates. In our considered view, the Selection Committee's decision to lay down some parameters for effecting a fair selection cannot be taken as a violation of clause 5.3 of the Rules. Further, laying down certain minimum percentage of marks under laid down criteria to qualify for selection for the said post does not become either illegal or arbitrary. We cannot but observe that the applicant has nowhere in her application or arguments levelled the allegations of incompetence, mala fide or biasness against the members of the Selection Committee. Therefore, to conclude that the Selection Committee has erred in law and violated the procedure while laying down certain minimum percentage of marks to qualify for the post cannot be accepted as a valid argument.

15. The 5th & 6th contentions raised by the applicant are regarding short-listing excessive candidates for interview, in contravention of mandatory provisions and judicial pronouncements on this issue. The argument advanced by the applicant is that the mandatory provision for short-listing is three candidates for one post. As there were five posts, therefore, the short-listing should have been

confined to fifteen candidates, but the respondents have short-listed 37 candidates. The applicant have also argued that the rationale behind keeping such ratio i.e. three candidates for one post is essentially to ensure that each candidate gets reasonably long time before the Committee for the Committee to make appropriate assessment. In this regard, the applicant has relied upon the following judgments: -

- " i) Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors. (1987 A.I.R. S.C. Page 454);
- ii) Girish Nath Singh & Ors vs. NHPC Limited (CWP No. 8244 of 2008) decided on 29.5.2014 by PB & Hr. High Court;
- iii) M.P. Public Service Commission vs. Navnit Kumar Potdar (1995 A.I.R. S.C. Page 77).

We have gone through these rulings. As long as the principle of short-listing of three candidates against one post is concerned, this stipulation has been laid down where interview has been followed by a written test. In such cases, it would be appropriate that the number of short-listed candidates should at-least be thrice the actual number of vacancies. It is to be noted that the word used is at-least or minimum which naturally implies that the numbers could not have been less than three against one post, but they could be more. From strictly technical point of view, the applicant's argument does not hold water. Firstly, it fulfills the requirement of calling more than thrice the candidates against the vacant posts. Then, this was a selection process where there was no written examination as has been the case in the judicial pronouncements referred to above. The criticism is why 37 candidates have been called? But how does it become illegal is not clear to us. We do not find any malice or biasness in the respondents as far as their conduct in short-listing candidates on transparent and uniform parameters is concerned. These short-listed candidates faced

the interview. Such a malafide or malice has not been alleged by applicant even. Quite often, a few of the short listed candidates do not turn up for the interview, which in deed was the case in this interview as well. It is not thus, very uncommon in such selections to short-list larger number of candidates than actually three candidates per post. Therefore, we are not convinced that merely because more than three times the number of candidates have been called for interview and keeping in mind that it is only a one step process of selection without a written test, the process of selection stand vitiated as is being claimed by the applicant.

16. The next issue i.e. 7th ground raised by the applicant is that the merit list was not published. During the course of arguments, it was not denied that the list was indeed published on the website and placed on the notice board. However, the applicant's argument is that the published list did not carry the electronic signature of the competent authority to make it a valid publication. She has tried to invoke Section 5 of the Information Technology Act, 2000 which deals with the legal recognition of electronic signature. Such an argument, we find, amounts to stretching the law a little too far, apart from being incorrect. Section 5 of the IT Act clearly does not apply here. Ordinarily, in most of such selection, the selection lists are published on the website and sometimes even on the Notice Board without any electronic signature and i.e. accepted by everybody as authentic and accurate. In large number of cases, unsuccessful candidates do challenge such lists, however, such a challenge is never on the ground that the list did not carry the electronic signature of the competent authority. There is no allegation from the applicant that the merit list is wrong or people who did not appear in the interview have been

included in the merit list or any other irregularity. Therefore, to question the authenticity of the merit list only on the ground that the merit list put on website did not carry electronic signature of the competent authority, deserves outright rejection.

17. The applicant's next set of issues relates to the marks assigned by the Selection Committee Members. It is the contention of the applicant that the marks obtained by each of the candidates do not indicate sub-divisions under which the candidature of each candidate was considered. It is the contention of the applicant that in the absence of indicating separate marks under each criterion namely qualification, experience and performance in the interview, recommendation letter and research paper etc., the transparency in the evaluation process is not visible. Therefore, the argument that the decision making process does not reflect the selection parameters.

18. We have gone through the proceedings as well as the sheets enclosed with the proceedings showing the marks allocated by the Selection Committee to the candidates. We find from these sheets that individual members of the Selection Committee had evaluated each candidate as a whole. These individual marks have then been averaged and according to the average marks, the merit list has been prepared. The Selection Committee in its own proceedings, records as under: -

"The Committee in its meeting held today interviewed all the candidates who appeared before it and also considered candidature of candidates who are abroad in absentia. The Committee, on the basis of their qualification, experience and performance in the interview, recommendation letters and research papers etc. awarded the marks as indicated in Annexure-1, the Committee unanimously decided that the candidates scoring at least 75% or above marks will be considered for selection based upon which the following candidates for appointment to the Senior Scientist (Rs.15600-39100, Grade pay: Rs.7600/-) in order of merit".

This recording made in the proceedings by the Selection Committee makes it abundantly clear that the Committee had decided to holistically evaluate each candidate and that is what has been done in this case. It is true that it was possible for the Committee to perhaps award marks separately for each of these criteria viz. qualification, experience, performance in the interview, recommendation letters and research papers etc. However, if the eminent members of the Committee decided to evaluate the candidates holistically, it cannot be said that the process of evaluation was arbitrary, wrong or mala fide. There is no allegation as to why a particular candidate has been evaluated and awarded a particular set of marks. The allegation is that each Member of the Selection Committee should have awarded marks under each head i.e. qualification, experience, performance in interview, recommendation letters and research papers etc. and the result sheet then should have been prepared accordingly. We wonder whether even if such a procedure were adopted, it would have resulted in any different outcome. What is missing technically is merely the elaboration of the evaluation. We also have to consider whether the Selection Committee under any provision of law required such a procedure. Having constituted the Selection Committee of eminent people, it will be unfair to question the procedure, which has been uniformly followed for each candidate. The noteworthy point here is that the eminence of the Selection Committee has not been challenged nor have there been any observations or remarks or allegations about their fairness and transparency. As such, the applicant's argument on this count deserves to be denied after consideration as discussed above.

19. We have dealt with each of the issues and the arguments advanced in their favour in detail so that it is clear as to why we do not find them acceptable and why they deserve rejection?

20. In passing we will also like to observe that not only the applicant was not recommended for selection as her name did not figure among the top five candidates but it is also evident from the marks sheet of the Selection Committee which is before us that she is far behind in the merit list and does not figure even close to people who have been selected. She has been awarded 62.5% marks, which are almost 15% behind the marks obtained by the last selected candidate. Therefore, the quashing of the selection process, which is the relief that she is claiming, is not going to benefit her at all.

21. An important and significant issue for consideration in this case is whether the applicant after having participated in the selection process and being fully aware of the selection procedure because she herself appeared in the interview, can subsequently challenge the selection process? The law in this regard is almost well settled and a number of citations can be quoted in this regard. However, we will like to confine ourselves to the latest judgment of the jurisdictional High Court in the case of Sangeeta Supehia versus Union of India & Ors. (CWP No.1350/CH/2012) decided on 26.8.2015.

22. Notwithstanding the applicant's argument that she was not aware about the merit list, which was not formally published, or that the number of short-listed candidates against the number of vacancies is excessive, the fact remains that as a highly educated and intelligent person, the applicant was aware of the rules much before the selection process took place. The purported ignorance of facts about the process of selection, about rules and regulations governing the

selection before she faced the interview cannot be made the basis to challenge the selection and its process after she could not succeed in the selection process. She cannot make a distinction between her ignorance of process before the interview and knowledge of the process after having failed in the interview and thus challenge the selection. We also wonder if she would have accepted these technical objections had the Selection Committee recommendations gone in her favour ?

23. We have also gone through the advertisement brought out by the respondent Institute for the selection of the said post. While it is reasonably detailed, Para 9 of the General Conditions of the advertisement further elaborates and lays down that inter alia, the mode of selection and the conduct of interview will be final. In the absence of any apparent deficiency in the process of interview, this clause of the advertisement offers additional protection to the respondents in discharge of their responsibilities.

24. It will now be appropriate to deal with the several citations that the applicant has placed before us in favour of her arguments. First of all, she has relied on a judgment passed by the Hon'ble Apex Court in the case of **Durgacharan Misra versus State of Orissa & Ors.** (1987(3) S.C.R. Page 1097), which inter-alia, ruled as under: -

"The Commission which has been constituted under the rules must, therefore, faithfully follow the rules. It must select candidates in accordance with the rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva-voce test would, therefore, be illegal and without authority".

This judgment refers to a judgment to a previous judgment of the Hon'ble Apex Court in case of **Umesh Chandra Shukla etc. versus Union of India** (1985 Supp. (2) S.C.R. Page 367), which inter-alia, observes as under: -

"We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix".

The applicant further argues that Durgacharan Misra (supra) was followed by the Hon'ble Apex Court again in **Krushna Chandra Sahu(Dr.) & Ors versus State of Orissa & Ors**(1995 Suppl (3) S.C.R. Page 419) and the Court had observed as under: -

" The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication.

Similarly, in Umesh Chandra Shukla etc. vs. Union of India & Ors. (1985(2) S.C.R. Page 367), it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the rules. Both these decisions were followed in Durgacharan Mishra v. State of Orissa & Ors and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva-voce".

There are two further references one of which in the case of **Ramesh Kumar versus High Court of Delhi & Another** (Writ Petition (Civil) No.57 of 2008 decided on 1.2.2010) in which the Hon'ble Apex Court had observed as under:-

" 11. In Shri Durgacharan Misra v. State of Orissa & Ors. (A.I.R. 1987 S.C. Page 2267), this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in B.S.Yadav & Ors v. State of Haryana & Ors. AIR 1981 SC 561; P.K.Ramachandra Iyer & Ors. V. Union of India & Ors AIR 1984 SC 541; and Umesh Chandra Shukla v. Union of India & Ors. AIR 1985 SC 1351, wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. " inherent jurisdiction " is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

12. Similarly, in K. Kanjusree Vs. State of Andhra Pradesh & Another AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process".

Lastly, the applicant has relied on a judgment passed by the jurisdictional High Court in the case of **Sanam Kumar & Another** versus **State of Punjab** (CWP No.11566 of 2014) decided on 25.5.2015(wrongly mentioned by the applicant as 28.5.2015), which observed as under :-

" No provision of any Rule or Statute has been pointed out as per which the Selection Committee could prescribe any additional qualification. So quite apart from the earlier reasons, the public notice is liable to be quashed also on the ground that the action of the Selection Committee in prescribing the additional condition is without jurisdiction. In this regard, reference may be made to P.K.Ramachandra Iyer versus Union of India (1984(2) SCC 141), Umesh Chandra Shukla vs. Union of India (1985(3) SCC 721) and Dr. Krushn Chandra Sahu and others vs. State of Orissa (1995(6) SCC Page 1".

The applicant has also placed before us some legal citations on the issue of short-listing. She has relied on a judgment passed by the Hon'ble Apex Court in the case of **Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors.** (1987 A.I.R. S.C. Page 454) and a judgment passed by the jurisdictional High Court in the case of **Girish Nath Singh & Ors. Vs. NHPC Limited (previously known as National Hydro Electric Power Corporation Limited & Ors.)** (CWP No.8244 of 2008) decided on 29.5.2014, which inter-alia observed as under: -

"In Union of India and another v. T.Sundararaman and others, JT 1997(5) SC 48, the Hon'ble Supreme Court held as follows: -

" A careful analysis of the above referred decisions shows that for making recruitment to public services by interview the Public Service Commission and other recruiting agencies should interview 3 to 4 candidates against one vacancy / post and if the number of persons who apply in pursuance of the advertisement is large and it is not possible for the Commission etc. to interview all of them, a reasonable and rational method consistent with constitutional and statutory provisions can

be devised with a view to short-list the number of candidates or to determine a reasonable zone of consideration".

Further, a reference has been made to the judgment passed by the Hon'ble Apex Court in the case of **M.P. Public Service Commission** versus **Navnit Kumar Potdar**(1994 S.C.C. (6) Page 293), which, inter-alia, ruled as under: -

"9. In Kothari Committee's Report on the Recruitment Policy and Selection Methods for the Civil Services Examination", it has also been pointed out in respect of interview where a written test is also held as follows:

" The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled.

In this back ground, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences".

25. As regards the publication of the select list, the applicant has quoted the citation passed by the Hon'ble Apex Court in the case of **State of Andhra Pradesh & Ors. Versus D.Dastagiri & Ors.**(A.I.R. 2003 S.C. Page 2475), which observes as under: -

"In the absence of publication of select list, we are inclined to think that the selection process was not complete".

26. On the issue of Selection Committee not disclosing the allocation of marks to under various parameters of selection, the

applicant has cited the judgments passed by the Hon'ble Apex Court namely **Atul Khullar & Ors.** Versus **State of J & K & Ors.**(A.I.R. 1986 S.C. Page 1224); **D.V.Bakshi & Ors.** Versus **Union of India & Ors.**(A.I.R. 1993 S.C. Page 2374); and a judgment passed by the jurisdictional High Court in the case of **Dr. Parikshit Bansal & Another** versus **Union of India & Ors.**(CWP No.6458 of 2012) decided on 30.11.2012.

27. The applicant has also raised the issue of inbreeding within academic institutions and has argued that generally candidates coming from the same institution should not be appointed on the post in the same institution. In this connection, she has cited a judgment passed by the Hon'ble Apex Court in the case of **Dr. (Mrs.) Meera Massey Dr. Abha** versus **Dr.S.R.Mehrotra & Ors.**(1998(1)S.C.R. Page 470). Lastly, on the issue of estoppels, on account of the fact that she had participated in the interview process, the applicant has cited the case passed in the case of **Geeta Sharma** versus **D.A.V. College Managing Committee** (CWP No.2609 of 2013) decided on 16.7.2013.

28. We have gone through these judgments. Major reliance has been placed by the applicant on the case of Durgacharan Misra(supra). The facts of this case are briefly noted hereunder:-

" 1. The decision of the Orissa Public Service Commission to prescribe the minimum marks to be secured at the viva-voce test for the post of Probationary Munsifs in the State Judicial Service was illegal and without authority.
2.1 The Orissa Judicial Service Rules, 1964 framed under the proviso to Article 309 read with Article 234 of the Constitution, have been made by the Governor of the State after consultation with the State Public Service Commission and the State High Court. The Commission, which has been constituted under the Rules must, therefore, faithfully follow the Rules. It must select candidates in accordance

with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability.

2.2 Rule 16 of the Rules requires a candidate to secure a minimum of 30 per cent marks in the written examination to qualify. The candidates who have secured more than that minimum would alone be called for viva-voce test. The Rules do not prescribe any such minimum marks to be secured at the viva-voce test. Rule 18 mandates the Commission to add the marks obtained at the written examination and the viva-voce test together, no matter what the marks at the viva-voce test. On the basis of the aggregate marks in both the tests, the names of candidates will have to be arranged in order of merit. The list so prepared is then to be forwarded to the Government under Rule 19.

The Commission, therefore, had no power to exclude the name of any candidate from the select list merely because he had secured less marks at the viva-voce test.

P.K.Ramchandra Iyer & Ors. V. Union of India & Ors., [1984] 2 SCR 200; p and Umesh Chandra Shukla etc. etcd. V. Union of India, [1985] Supp. 2 SCR 367, referred to.

3. Even if the minimum qualifying marks were fixed for the viva-voce test by the Commission on the advice of the High Court Judge, present at the viva-voce test in accordance with r.17 of the Rules, that cannot validate the action of the Commission, for he had no power to add anything to the Rules of recruitment. Rule 17 itself proceeds to state that such a Judge shall not be responsible for selection of candidates. He may advise the Commission as to the special qualities required for judicial appointments. His advice may be in regard to the range of subjects in respect of which the viva-voce shall be conducted. It may also cover the type and standard of questions to be put to candidates or the acceptance of the answers given thereof. But his advice cannot run counter to the statutory rules.

Ashok Kumar Yadav and Ors. Etc. etc. v. State of Haryana and Ors. Etc. etc. [1985] Supp. 1 SCR 657, referred to.

4. The Orissa Public Service Commission is directed to redo the select list on the basis of the aggregate marks obtained by the candidates in the written examination and at the viva-voce test. The list so prepared to be forwarded to the Government as required under r.19 of the Rules for appointments as Munsifs. The persons who fall within the revised list, if already in service need not be disturbed. Their inter-se seniority to be regulated as per the rankings in the revised list".

A reading of this judgment makes it abundantly clear that the facts of the instant case are entirely different. First of all, unlike the facts in Durgacharan Misra's case, the instant selection was not through two stage process i.e. a written test followed by viva-voce. In Durgacharan Misra case, as the rules did not prescribe any minimum

marks in the viva-voce, the Orissa Public Service Commission decided to impose a condition that the candidate to be suitable for the post of Munsif should secure at least 30 per cent marks in viva voce, the candidate despite securing very high marks in the written test was not selected. In the instant case, there is no such issue. Not only that, it is a one stage process, the Selection Committee has followed transparent criteria for judging the suitability of individual candidate. The decision of the Selection Committee to consider the appointment of only those candidates who secured more than 75% marks is only taking recourse to a fair process of elimination by weeding out all those candidates, who in the opinion of the Selection Committee, were not fit to be appointed as Senior Scientists. In the instant case, no prejudice is caused to any of the candidates because they were not facing the Selection Committee after a pre-qualification by way of written test. As such, we do not find this ruling applicable to the case at hand in view of above discussion.

29. The rulings in Krushna Chandra Sahu as well as other rulings which have been relied on Durgacharan Misra case, automatically become in-applicable. As regards, the ruling passed by the jurisdictional High Court in case of Sanam Kumar (supra), the fact remains that no additional qualification was prescribed by the Selection Committee. It was merely a criterion which the Selection Committee in its wisdom decided to adopt and, therefore, this ruling is also not applicable in the present case.

30. As regards the other judicial pronouncements on short-listing the candidates is concerned, again the ruling is applicable to a selection where written test has been followed by interview and the

Courts have indicated that number of people selected for interview should not be disproportionately high so that reasonable zone of consideration is considered. In the present case, as has been mentioned earlier, there has been no written test. The rules do not prescribe that candidates numbering more than thrice the number of vacancies cannot be called. In view of these facts, the rulings on this issue become inappropriate. Even in the case of M.P. Public Service Commission(supra), the Hon'ble Apex Court has cited Herman Finer from his book 'Theory & Practice of Modern Government' only to elaborate a point. Here Herman Finer suggests that the interview should be at least half an hour on each of two separate occasions. The contention of the applicant is that 37 candidates were interviewed in two days and, therefore, the candidates did not get enough time to interact with the Selection Committee.

31. From the result-sheet, we find that out of 34 candidates listed for interview, ten candidates were absent. So only 24 candidates were interviewed in two days which means roughly 12 candidates in a day. By no stretch of imagination, interviewing 12 candidates in a day could be dubbed as a faulty process of interview on the ground that the Selection Committee did not spare sufficient time for each candidate.

32. On the issue of publication of select-list in the present case, it is admitted by the applicant and the counsel for the respondents that the list of selected persons was published on website as well as on the Notice Board. As a consequence, it cannot be claimed that the names of selected candidates were not published.

33. As regards the ruling on Selection Committee assigning marks separately under each head while evaluating each candidate, the relevant portion as pointed out by the applicant reads as under:-

"If an oral test is, therefore, a 'must' as in this case, a heavy responsibility is cast on the examiners to maintain a proper record of the oral test in respect of each candidate and marks must preferably be assigned under each head considered relevant to evaluate the candidate".

We have noted that the word used is 'preferably' and it does not make mandatory for the Selection Committee to show the assigning of marks under each head while evaluating each candidate. Further, the judgment passed by the jurisdictional High Court in the case of Dr. Parikshit Bansal (supra) has observed as under:-

"As far as the marks awarded by the Selection Committee in the interview are concerned, as the same are in terms of satisfaction of the Interview Committee, this Court is not in a position to opine thereon. But the fact remains that there were four members of the Selection Committee, if they had interviewed the candidates they must have been given separate sheets for the assessment of each candidate".

In the case before us, each member of the Selection Committee had assigned marks to each candidate independently, as such, the Selection Committee has kept proper record and, therefore, the ruling in the case of **Atul Khullar & Ors. Vs. State of J & K** (1986 A.I.R. S.C. Page 1224) is clearly inapplicable to the present case.

34. On the issue of inbreeding, the applicant has quoted the portion of Report of the University Education Commission (December 1948 -August 1949) which has been quoted by the Hon'ble Apex Court in the case of **Dr.(Mrs.) Meera Massey Dr. Abha versus Dr. S.R.Mehrotra & Ors.** (1998(1) S.C.R. Page 470) which dealt with appointing Research Associates of H.P.University, Shimla, who were working as such for about nine years and by resolution of the University, were designated as Lecturers. Subsequently, they also

appeared before the Selection Committee and on the recommendations of the Selection Committee, they were appointed as Lecturers. The Apex Court has up-held this decision. Therefore, the argument of inbreeding does not get strengthened by this judgment. In any case, private respondents who have been appointed were working on ad hoc basis not for a long period, but only for about two years. The argument of inbreeding, therefore, deserves summary rejection.

35. On the estoppel issue, the applicant has referred the judgments of the jurisdictional High Court passed in the case of Geeta Sharma versus DAV College Managing Committee & Ors. (CWP No.2609 of 2013) decided on July 16, 2013 and in the case of Nikhil Kumar versus **State of Haryana & Ors.** (LPA No.1034 of 2015) decided on 15.7.2015. It is argued that if the provisions in the rules are violated, then there cannot be any estoppels against any statute. However, we find that the violation in the rules here is not established. As a matter of fact, the selection has taken place as per the rules as has been discussed earlier in the judgment.

36. Lastly, before we finally conclude, we must deal with the issue raised about the co-incidence that each one of the selected candidates was working in an ad hoc capacity in the respondent Institute. This co-incidence does attract attention. The fact that only these five candidates could secure more than 75% marks does appear somewhat unusual. However, we cannot but observe that even if the criterion of 75% were not laid down by the Committee, on the basis of evaluation of candidates, these five candidates only could have occupied the first five positions in the merit list. In other words laying

down this criterion would have had relevance only if less than 5 candidates were recommended because some of them could not cross the 75% benchmark. However, the same would not have made any difference to the ultimate selection, which was strictly as per the merit and as per the evaluation of each candidate. Therefore, unusual as it may seem, in the absence of credible evidence or palpable irregularity apparent on the face of record, such a coincidence has to be disregarded keeping in mind the overwhelming evidence of the process being fair, proper and transparent, specially given the fact that no one has alleged any mala fide or malice against any members of the Selection Committee.

37. Notwithstanding the belaboured effort on the part of the applicant to cite a large number of judicial pronouncements to strengthen and bolster her arguments, regrettably, none of the rulings turned out, as discussed in preceding paragraphs, to be relevant and applicable to the facts and circumstances of the instant case.

38. Our understanding of the case law on the subject of judicial interference in the selection of academics/researchers/ scientists for sensitive and professional positions in scientific organisations, where selections are made by eminent people of high repute and professionalism, strongly suggests that an interference is generally best avoided. However, when and where this interference must be made, it is justified only where there has been a miscarriage of justice, or gross violation of prescribed and laid down procedures, or where the principles of natural justice have been given a complete go by. We are unable to bring us round to accepting that any such casualty of a

just process can be ascribed to the facts and circumstances of this case.

39. The OA resultantly fails to convince us about the need and/or basis to interfere in the matter as there does not appear any legal infirmity or impropriety in the selection committee's recommendation, which is based on laid down process. There is no infringement or violation of rules existing in this regard. The O.A. therefore, deserves to be disallowed and is accordingly dismissed.

There shall be no orders as to costs.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A).



(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 10.2.2016.

Kks