

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

T.A. No.118/2013
M.A. No.1587/2014
M.A. No. 1588/2014

Order Reserved on 19.08.2015
Order Pronounced on: 23.02.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Dr. Monil Singhai
Flat 1/1, Type 4 Flats
AIIMS Rishikesh
PIN-249 201

-Applicant

(Applicant present in person)

Versus

1. Union of India,
Through its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 011.
2. The Director
All India Institute of Medical Sciences,
Rishikesh, Uttarakhand
3. The Director
All India Institute of Medical Sciences,
Bhopal, (Madhya Pradesh)
4. The Director
All India Institute of Medical Sciences,
Jodhpur (Rajasthan)
5. The Director
All India Institute of Medical Sciences,
Patna (Bihar)

6. The Director
All India Institute of Medical Sciences,
Raipur (Chattisgarh)
7. The Director
All India Institute of Medical Sciences,
Bhubaneshwar (Orissa)
8. Dr. Sushmita Das
Assistant Professor (Microbiology)
C/o Director,
All India Institute of Medical Sciences,
Patna, Phulwari Sharif Bihar-801505
9. Dr. A. Raj Kumar Patro
Assistant Professor (Microbiology)
C/o Director,
All India Institute of Medical Sciences,
Siju, Patrapada, Bhubaneswar-751019
10. Dr. Sanjay Singh Negi
Assistant Professor (Microbiology)
C/o Director,
All India Institute of Medical Sciences,
Tatibandh, G.E. Road, Raipur-492 099
11. Dr. Ravisekhar Gadepalli
Assistant Professor (Microbiology)
C/o Director,
All India Institute of Medical Sciences,
Basni Industrial Area Phase-2
Jodhpur-342005 Rajasthan
12. Dr. Tuhina Banerjee
A-4, Abhaya Apartments, Durga Mandir Road,
Hirapur, Dhanbad,
Jharkhand 826001
13. Dr. Bibhudutta Rautarya
MB-24, Baragada Brit Colony
City Bhubneswar
State Odisha Pin-751018

-Respondents

(By Advocate: Shri R.N. Singh for R-1
 Shri Manan Kumar Mishra. Sr. Counsel
 with Shri Arvind Mishra & Ms. Anjul
 Dwivedi R-8
 Ms. Rashmi Malhotra and Ms. Priyanka
 Bharihoke for R-6
 Shri S.C. Pandey, for R-10
 Shri Mukul Chandra for R-11)

O R D E R

Per Sudhir Kumar, Member (A):

This T.A. was earlier filed as Writ Petition (C) No. 5580/2013 along with Civil Miscellaneous Application No. 12372/2013 before the Hon'ble Delhi High Court on 03.09.2013 with the following prayers:-

- “a) Issue an appropriate writ order or direction to fill up the post of Assistant Professor in the subject of Microbiology from the Merit List of Candidates (Selection list as well as waiting list) dated 31.01.2013 and appoint the petitioner at AIIMS Rishikesh Assistant Professor in Microbiology;
- b) Quash the appointment of ineligible candidates who do not fulfil criteria of qualification and experience in terms of Advertisement dated 28.12.2011 issued by Government of India, Ministry of Health and Family Welfare/Respondent No.1 herein.
- c) Issue direction/s to Director AIIMS, Rishikesh to reserve one seat for the petitioner for the post of Assistant Professor in the subject of Microbiology till the disposal of present Writ Petition, and
- d) Pass any further or other order that this Hon'ble Court deems fit proper and necessary in the facts and circumstances of the present case”.

2. On 04.09.2013, when the case came up before the Single Bench of the High Court, the counsel for the petitioner prayed for adjournment in order to be able to amend the Writ Petition, by including and adding

persons, whom the applicant had claimed to have been illegally appointed, but who had not been added as respondents to the Writ Petition, and whose addition as respondents was stated to be necessary. Allowing the prayer, the Hon'ble High Court had fixed the case to be heard on 13.11.2013.

3. Thereafter a Civil Miscellaneous Petition No. 14356/2013 had been filed praying for advancement of the date of hearing, but that Civil Miscellaneous Petition came to be dismissed on 21.10.2013, as the Hon'ble High Court observed that neither have all the particular All India Institutes of Medical Sciences (AIIMS, in short) been made party-respondents, with whom the petitioner seeks employment, but also that other persons, whom the petitioner had claimed to have been illegally appointed, as stated in the Writ Petition, had also still not been made parties to the Writ Petition.

4. When the case came up before the Hon'ble High Court on 13.11.2013, the High Court noted that the petitioner seeks employment with the AIIMS at Rishikesh. The Hon'ble High Court further observed that since the issue raised in the Writ Petition concerned is of future recruitment, this case will have to be decided first by this Tribunal, and, therefore, instead of dismissing the Writ Petition, at the request of the Counsel for the Writ Petitioner, the petition was ordered to be transferred to this Principal Bench of this Tribunal, and it got registered as TA No.118/2013. However, at the same time, in its order the Hon'ble High Court had also observed that though AIIMS, New Delhi, is covered at Sl.

No. 155 in the list of Institutions notified for this Tribunal, but it was further observed that the object of inclusion of names of AIIMS in the list of Institutions coming under the jurisdiction of this Tribunal is that they would be governed by the Administrative Tribunals Act, 1985, and the jurisdiction would come under this Tribunal. In view of these observations of the Hon'ble Delhi High Court, made in the order dated 13.11.2013, even though the issue concerns the applicant/petitioner seeking employment with the six AIIMS which are being newly established at Rishikesh, and five other places, and which six new AIIMS Institutions have not yet been notified under the A.T. Act, this Principal Bench of this Tribunal became bound to hear the case, without dismissing the case on the ground of lack of jurisdiction, and also without transferring the case to Allahabad Bench of this Tribunal, under which, normally, the jurisdiction in respect of AIIMS, Rishikesh, would lie, once these six newly being established AIIMS are notified under the A.T. Act to fall under the jurisdiction of this Tribunal, which has not happened even so far.

5. Even though the Hon'ble Delhi High Court had observed that the present applicant/petitioner seeks employment only with the newly being established AIIMS at Rishikesh, when the case was listed before a Coordinate Bench, including one of us, on 19.12.2013, the following orders came to be passed:-

“Heard learned counsel for applicant.

Issue notice to the respondents.

Mr. Sahil S. Chauhan accepts notice on behalf of Mr. Mehmood Pracha, counsel for respondents no. 2 to 7 and seeks two weeks' time to file reply. The same is allowed.

Registry may issue notice to the other respondents.

Learned counsel for applicant presses for interim relief. As per Para 15 (a) of the interim relief in the OA and Para 8 (c) the decision regarding appointment to the post in issue i.e. Assistant Professor Microbiology in the concerned AIIMS, who are respondents in this OA would be subject to outcome of the OA.

List this case on 28.01.2014.

Issue Dasti."

6. However, since, in the meanwhile, all the six newly being established AIIMS had been made parties in the TA, and notices on their behalf had been accepted by the proxy counsel appearing for learned Standing Counsel Shri Mehmood Pracha, on 19.03.2014 Shri Mehmood Pracha himself appeared and submitted that he is the Standing Counsel only for AIIMS, New Delhi, and does not have the authority to represent AIIMS-Rishikesh, AIIMS-Bhopal, AIIMS-Jodhpur, AIIMS-Patna, AIIMS-Raipur & AIIMS-Bhubaneshwar, listed as Respondents R-2 to R-7, and prayed for being discharged from attending this case, which prayer was granted.

7. In the meanwhile, notices had also been served upon Private Respondents R-8 to R-14, and it was noticed that the counter reply on behalf of Private Respondent R-8 had already been filed, and brought on record, and the learned counsel appearing for Private Respondents R-10 & R-11 sought time to file their counter replies. Learned counsel for Private Respondent R-14 submitted that he does not wish to contest this case, and would be filing a short affidavit to this effect. Since none had

appeared for Private Respondents R-9, R-12&R-13, fresh notices had been permitted to be issued Dasti. On 26.05.2014, the name of the then Private Respondent R-14 was deleted from the array of parties, and is, therefore, not being reflected in the Memo of Parties of this final order.

8. In the meanwhile, the applicant had filed an MA No.2765/2014, praying for advancement of the date of hearing, which MA was allowed, and the date of hearing earlier fixed was advanced to 25.09.2014. Thereafter, on 07.01.2015, permission was granted to both the sides to file their written submissions, in advance, even before the case came to be heard and reserved for orders.

9. As seen from the contents of the Writ Petition (C) No.5580/2013, now converted to the present TA, the applicant had claimed that she holds a Post-Graduate Degree in Medicine (Microbiology), and is a qualified Medical Practitioner. She had filed the Writ Petition (now T.A.) challenging the illegal and arbitrary actions of the respondents in the manner in which they had carried out the process of selection and appointments to the posts of Asstt. Professors/Associate Professors/Additional Professors and Professors for the six newly being established AIIMS. She had claimed that such wrongful action of the Respondents had deprived of her rightful appointment to the post of Assistant Professor (Microbiology).

10. The facts of the case have to be noticed from the date 28.12.2011, when the Ministry of Health & Family Welfare, Govt. of India, released

the advertisement for recruitments for a total of 91 faculty positions in each of the six newly being established AIIMS at Rishikesh, Bhopal, Jodhpur, Patna, Raipur and Bhubneswar (Annexure P-1). After the applications had been received in the month of April, 2012, interviews for selection in five departments in these six new AIIMS, namely (1) Anatomy, (2) Physiology, (3) Biochemistry, (4) Community and Family Medicine, and (5) Trauma and Emergency Medicine, were conducted by the Selection Board constituted by the Govt. of India, and the results of those interviews were declared in July, 2012. In respect of the other departments, for which the selection process could not take place along with these five departments, another advertisement was issued through Annexure P-2.

11. The applicant, herein, had applied in response to the second Advertisement (Annexure P-2) dated 09.10.2012, for the permanent post of Assistant Professor (Microbiology), and had given her order of preferences in respect of the six new institutions. Accordingly, as has been recorded by the Hon'ble High Court in its order dated 13.11.2013, AIIMS Rishikesh was her first preference, and she had indicated other five AIIMS also as her preference Nos. 2 to 6, at the Column at Sl. No. 5 of her application. On 02.11.2012, the official respondents issued a Notification of the short listed candidates through Annexure P-4, subject-wise, also giving the dates of the interviews for the faculty positions of the remaining departments. The applicant has produced the list in respect of Microbiology subject, for which the interviews were to be held from 19 to 22/11/2012, as a part of Annexure P-4. However, through

Notification dated 26.11.2012, at Annexure P-5, the earlier notified short listing was ignored, and all the 275 candidates, who had applied for appointment as Assistant Professors in the subject of Microbiology had been called for interviews.

12. The applicant was called through letter dated 27.11.2012 (Annexure P-6), to appear for interview at 9.00 A.M. on 14.12.2012, which she attended, without any protest in regard to any procedure adopted by the official respondents. Thereafter, through the order dated 31.01.2013 (Annexure P-7), the result of the interviews was declared, which the applicant has impugned, stating that in this final Selection List, there were many candidates who had been included in the merit list, though they were not eligible for such appointment, because they either lacked the essential experience by 15.10.2012, or did not have the required essential qualification at all. The applicant has similarly impugned the waiting list issued thereafter, as having included similar candidates not possessing the requisite qualifications or experience, though she was placed below some such candidates in that waiting list.

13. Six months later, through Annexure P-8 dated 01.08.2013, the applicant represented to the Secretary, Ministry of Health and Family Welfare, Govt. of India, requesting for non-consideration of the candidates who were ineligible, according to her, for selection to the posts of Assistant Professors (Microbiology) in the six new AIIMS, and for filling up of the sanctioned posts only from the reserve waiting list panel, without assailing the candidature of any candidate placed above her in

that reserve (waiting list) panel, which she has now done through this WP/TA Petition. Not having received any reply to that representation of hers, the applicant had filed the said Writ Petition before the High Court on 03.09.2013, along with the Civil Miscellaneous Petition praying for interim directions u/s 151 CPC from the Hon'ble Delhi High Court, which had not been granted by the High Court, before that case came to be transferred to this Tribunal.

14. Official Respondent Ministry of Health & Family Welfare, R-1 had filed their counter reply on 20.03.2014, after the case stood transferred to this Tribunal. In this, it was submitted that when the recommendations of the Selection Committee were notified vide communication dated 31.01.2013 (Annexure P-7) (supra), the respective six new AIIMS institutions were required to mandatorily verify the original documents of each of the selected candidates, before issuance of offers of appointment to them. It was pointed out that applicant's name did not appear in the merit list in respect of any of the six new AIIMS. However, her name was included in the wait list dated 10.07.2013, at S1. No.9, which wait list was to remain in operation during its authorized currency period, as per the relevant Deptt. of Personnel and Training (DoP&T, in short) Guidelines in this regard, in which the terms of currency of such wait lists, and the manner of appointment of selected candidates from the wait lists has been prescribed.

15. It was further submitted that the Private Respondents R-8 to R-10 were placed in the merit list, and list of selected candidates, while Private

Respondents R-11 to R-14 had found their placement in the wait listed candidate, and all of them had been more meritorious than the applicant, who had secured 64 marks, while the Respondents No. 8 to 10 had secured 80, 79 and 73 marks respectively, and Respondents No. 11 to 14 had secured 66,68, 65 & 65 marks respectively.

16. It was further submitted that these merit lists, as well as preference given in respect of the concerned AIIMS, were the basic criterion for appointments being issued to each of the individual six AIIMS institutions, and no person who had secured 64, or lesser marks, had been appointed as an Assistant Professor (Microbiology) in any of the six new AIIMS, even till date, because of which the applicant could have had an objection. It was further submitted that as on date the said wait list panel had outlived its validity, since the DoP&T OM dated 29.03.2004 prescribes the period of validity for such wait lists to be one year, commencing from the date on which the Selection Committee makes its recommendations (Annexure R-1).

17. It was also submitted that another petitioner Bijayini Behera had filed Writ Petition (C) No. 1065/2013 before the Hon'ble Delhi High Court in respect of the same facts, and she had secured 68 marks and was placed at Sl. No. 2 in the wait list dated 10.07.2013. It may be noted here that the said candidate, Ms. Bijayani Behera, is neither an applicant nor a respondent in the present OA, and we are not concerned with the facts of her case in this TA.

18. In regard to the applicant's allegation/contention to the effect that Private Respondents R-8 to R-14 were ineligible for the post in question, because of alleged lack of prescribed essential educational qualification/criteria of experience, it was submitted that information had been sought from all the six Directors of the respective six new AIIMS, and it was conveyed to Respondent No.1 by all of them that no ineligible candidates had been appointed in any of the said six new AIIMS. However, on examination of records, it was noticed that Private Respondent R-13, who was placed at Sl. No.8 in the wait list, above the applicant, was ineligible for the post in question. It was further submitted that the said Private Respondent R-13 had not yet been appointed till date. It was further submitted that on examination, AIIMS-Bhubaneswar, had found that Private Respondent R-9 Dr. A.R.K. Patro, also did not possess the prescribed experience qualification, as per the communication dated 14.03.2014 received from Bhubaneshwar (Annexure R-2), and it was stated that further action would be taken against him as per law.

19. The respondents had thereafter taken a legal stand that as per the law laid down by the Hon'ble Supreme Court in **Sankarshan Das vs. Union of India (1991) 3 SCC 47**, even a selected candidate has no legal or indefeasible right of appointment, and, therefore, in the present case, the applicant of this TA, who was placed only in the wait list, had never acquired any legal right for her appointment. It was, therefore, submitted that the applicant has not come before this Tribunal with

clean hands, and she is not entitled to any relief whatsoever, and that the TA was liable to be dismissed *in limine*.

20. Private Respondent R-8 filed his separate counter reply on 08.03.2014. It was submitted by her that she had already joined as Assistant Professor (Microbiology) at AIIMS-Patna w.e.f. 01.03.2013. It was also submitted that she had submitted her thesis for Ph.D in Zoology (Immunology) for Doctorate/Ph.D in the University of Kolkata in the year 2012. It was also submitted that she has given sufficient details about her awards, distinctions, prizes, and research projects. It was further submitted that since she had done her M.Sc in Zoology specializing in Parasitology and Immunology, and for the advertised posts of Assistant Professor (Microbiology), the qualifications required were either MD in Microbiology, or MD in Disciplines/Subject or Masters Degree in Microbiology/Entomology/Zoology with Ph.D, she was fully qualified, being an M.Sc and Ph.D in Zoology, with specialization in Parasitology and Immunology.

21. It was further submitted by Private Respondent R-8 that even in the AIIMS, New Delhi, itself, with which institution we are not concerned with in this case, in the Department of Microbiology, there is one Additional Professor possessing the qualification of Entomology (which is a sub-specialization of Zoology).

22. It was also pointed out that at the time of making her application, she has already submitted her Ph. D. thesis, and she was granted her

provisional Ph. D. certificate from the University of Kolkata in the month of February, 2013, and she subsequently obtained the certificate during the convocation held on 29.11.2013.

23. It was further submitted by the Private Respondent R-8 that she had given only one preference, i.e., AIIMS-Patna only, while the applicant had given six preferences, the first being AIIMS-Rishikesh, and the last being AIIMS-Patna, and, therefore, the applicant of this TA cannot claim to have any grievance in so far as her appointment is concerned. It was, therefore, denied by the Private Respondent R-8 that her selection was in any manner illegal or arbitrary, or that she had been selected and her interview dated 13.12.2012 was fixed without following the relevant Rules or procedure.

24. It was further submitted that it is for the Selection Board to select the best candidates from the lot of all candidates, and it is important for any Institution of the repute of AIIMS for its faculty positions to be filled up by the best candidates, who are highly experienced, and more trained, since the welfare of patients was involved, and, therefore, no fault can be attributed to the official respondents for selecting the Private Respondent R-8, and not selecting the applicant of the TA. It was, therefore, prayed that the TA may be dismissed with cost against the applicant and in favour of the replying respondent R-8.

25. Counter reply on behalf of Private Respondent R-10 was filed on 22.07.2014. He had joined as Assistant Professor (Microbiology) at

AIIMS-Raipur, and it was submitted that the applicant has not approached this Tribunal with clean hands, and is trying to mislead the Tribunal by misrepresenting the facts, and as such she is not entitled to any relief as prayed for.

26. It was submitted by Private Respondent R-10 that the selections to the posts of Assistant Professors were made by a Committee consisting of experts, in their wisdom, and no *mala fide* intentions can be attributed to them. It was submitted that when the Selection Board had in its wisdom recommended the present applicant's name also to be placed on the panel, but in the waiting list, keeping in view her qualifications, experience and overall performance in the interview, she cannot be permitted to assail the decision of the Selection Board merely for the reason that her name figures out at a lower place than some other candidates in the selected candidates' list. It was further submitted that the power of judicial review is quite limited, as held by the Supreme Court in **S.R. Tewari vs. Union of India & Anr. (2013) 40 SCD 441: (2013) 6 SCC 602.** It was submitted that the applicant has not been able to make out any case whatsoever for a judicial review by, or interference by this Tribunal, because of which the TA is devoid of any merits, and is liable to be dismissed.

27. It was further submitted that he was rightly selected for the post of Assistant Professor (Microbiology) at AIIMS-Raipur, considering his immense experience of research in the field of infectious diseases, as is evident from his publications in National and International Scientific

Medical Microbiology Journals, which was one of the utmost important criteria for assessing the suitability of the candidates by the Selection Board.

28. It was further submitted that Private Respondent R-10 had not only joined AIIMS-Raipur after proper verification of his documents, but, after joining, he had been performing his duties diligently, scientifically and efficiently, and had even got a Research Project approved for AIIMS-Raipur by the Indian Council of Medical Research (ICMR, in short). He had strongly objected to the applicant having described him as only a Ph.D in Molecular characterization of M. Tuberculosis isolates, and stating that his M.Sc was not recognized by the Medical Council of India (MCI, in short). It was submitted that he fulfilled the qualifications required for Non-medical candidates for the posts of Assistant Professors, which had been prescribed in the Advertisement as follows:-

“Ph.D or Equivalent in the Anatomy, Physiology, Biochemistry, Pharmacology, Microbiology, Pathology recognized in India for Non medical candidates”.

29. It was also submitted that the applicant of the TA having objected to his Ph.D. degree awarded on the subject **“Molecular characterization of *Mycobacterium tuberculosis* isolates obtained from pulmonary and extra pulmonary cases of tuberculosis”**, and stating that it did not relate to medical background, was evidence of the applicant herself, having unrealistic and discriminating view of the Medical Sciences, and speaks volumes of the credibility of the applicant as a Medical Doctor.

30. It was further submitted that all leading Universities/Institutes award the Ph.D degrees in topics allotted to the candidate, and not in the subject, and it is the topic of the research which decides as to under which subject the Ph.D. is to be considered, as having been awarded, and Private Respondent R-10 had studied Tuberculosis in complete detail at genetic level, and, therefore, it cannot be said that the subject of his Ph.D. Thesis was not related to Microbiology, since Tuberculosis is one of the most pernicious infectious diseases responsible for around three million deaths worldwide each year. It was further submitted that the whole Ph.D. thesis work was done by the applicant in the Tuberculosis laboratory of the Microbiology Division of the National Centre of Diseases Control (NCDC, in short), formally known as National Institute of Communicable Diseases (NICD, in short), which is one of the top most/premier Government Institutes looking after the Management of Communicable Diseases at the National level. It was further submitted that the Thesis was completed under the guidance of Dr. Sunil Gupta, Joint Director, Microbiology Division, and Dr. S.T. Pasha, Joint Director & Head, NCDC.

31. It was further submitted that during the research towards his thesis, the Private Respondent R-10 had also published several research papers related to diagnosis, drug resistance and molecular epidemiology in Tuberculosis, which got published in reputed National and International Medical Microbiology Journals, and which go to vouch for the fact that his Ph.D. subject related to Tuberculosis belongs to Microbiology. It was, therefore, submitted that the answering Private

Respondent R-10 fulfils the requirement as expected from the Non-Medical candidates, and for this reason only he was selected for being called for interview. It was further submitted that the Selection Board had selected him even over many of the M.D. candidates on the basis of his performance and research publications, recognizing that his research would better serve the dual purpose of teaching about infectious diseases at the newly opened AIIMS, which he has so far proved right since the date of his joining, by publishing two more scientific papers, and submitting one research project to ICMR, as mentioned above, which has already been approved.

32. It was further submitted that Microbiology being a para clinical subject, as is evident from the advertisement issued itself, both M.D. and Ph.D are eligible to apply. It was further submitted that a Ph.D. candidate has much more experience of taking up the teaching and research projects in the subject, and the answering Respondent R-10 actually had 16 research papers published in that subject at the time of the closing date, namely 15.10.2012, much more than any M.D. candidate at the time of interview. It was, therefore, denied that he had been wrongly selected by the official respondents. He had, therefore, explained that M. Sc (Microbiology) was a proper degree of Post-Graduation, and had denied that the degree of his M.Sc. not being recognized by the MCI in any way disentitles him from being considered for appointment the post to which he was appointed.

33. It was further submitted that since the Selection Board had accorded rankings to each candidate in its own wisdom, based upon their education qualifications, experience, and performance of the candidates in the interview etc., no *mala fide* can be attributed to them in any manner. It was submitted that Private Respondent R-10 fulfils all the requirements laid down in the advertisement for Non-Medical candidates, and had six years of experience after his Ph. D. at the time of closing date i.e. 15.10.2012, which was just almost double than what was required, and, thus, he fulfilled both the criteria of qualification, and experience, for non-medical candidates for the posts of Assistant Professors. It was, therefore, prayed that the TA is devoid of any merit, and is solely based on frivolous misconception, hatred, and discrimination of the applicant of the TA against non-medical Ph. D. candidates, and, therefore, the T.A. was liable to be dismissed.

34. The Private Respondent R-11 filed his counter reply on 13.05.2014. It was submitted by him that the applicant of the TA has no cause of action at all against him, and that he had been unnecessarily dragged into the present litigation. He had denied the allegation of the applicant that in the final Selection List (result, as well as the waiting list, both) there are candidates, namely Private Respondents R-8 to R-14, who have been issued appointment letters in spite of the fact that they lack essential qualifications and experience as per the advertisement concerned. It was submitted that the only allegation made in the TA was that his M.Sc. was not in the concerned subject, nor recognized by the MCI, and, therefore, he did not fulfil the qualifications and eligibility

criteria, which allegation was denied by him as totally false, and devoid of substance. It was submitted that in order to be considered for the posts of Assistant Professors in Microbiology at the six new AIIMS, it was required that a candidate must fulfil either of the eligibility criteria, i.e. either he should possess a PG degree recognized by the MCI or equivalent in Microbiology, or for non-Medical candidates, a Ph.D. or equivalent degree in Microbiology, recognized in India.

35. It was submitted that he is a Post-Graduate with M.Sc. degree from Andhra University of the year 2002, in which he had specifically studied Microbiology, and thereafter completed his Ph.D. in Microbiology from AIIMS, New Delhi in January, 2009. It was further submitted that his Ph.D. in Microbiology is fully recognized by the MCI under Section 23 of the AIIMS Act, 1956, which provides that medical degrees and diplomas granted by the AIIMS-New Delhi shall be recognized medical qualifications for the purpose of Indian Medical Council Act, 1933. It was, therefore, submitted he fulfils the qualification eligibility criteria, and that the Respondent No.1 had acted in a perfectly legal manner in offering him an appointment to the post of Assistant Professor in Microbiology at AIIMS-Jodhpur. It was further submitted that his research interest had focussed on the medical aspects of Microbiology, especially molecular detection, characterisation, and pathogenesis of multidrug-resistant organisms, and that he was one of the few scientists who had endeavoured to do research to determine the clonality of *Staphylococcus aureus* strains in India. It was submitted that this work of his has important implications in patient management and hospital

infection control policies. It was further submitted that he had even received a Travel Scholarship from the Govt. of India, Department of Biotechnology, New Delhi, as his research work was accepted for presentation for 45th Interscience Conference on Antimicrobial Agents and Chemotherapy, and 20th European Society of Clinical Microbiology and Infectious Diseases, and he had received “Best Paper Awards” twice in 2004 & 2008 in the meetings of the Indian Association of Medical Microbiologists.

36. It was further submitted that since the applicant of the TA has not actually sought appointment to the concerned post at AIIMS-Jodhpur, and her candidature is for AIIMS-Rishikesh, as per the prayer clause at Paragraphs-28 (a) and 28 (c) of the amended petition filed on 11.11.2013, she cannot jeopardise, and put to a halt the entire selection and appointment process of the candidates at the five other newly constituted AIIMS institutes other than that at Rishikesh. It was, therefore, prayed that this TA may be dismissed with exemplary costs, or, in the alternative, the name of Private Respondent R-11 may be deleted from the array of parties.

37. The applicant filed her rejoinders separately to these counter replies. In the rejoinder to the counter reply of Respondent No.1, Ministry of Health & Family Welfare, filed on 26.05.2014, preliminary objection was taken that since Para-wise replies have not been given to her application, it goes to show that Respondent No.1 had accepted her contentions. Most of the facts as already described by her in the OA

were thereafter repeated. It was further repeated that Private Respondents R-8 to R-14 were not at all eligible, and, therefore, in fact their candidature could not have been considered at all, and that her name could not be placed in the Select List or the Wait List only on account of such wrongful inclusion. It was further submitted that it was wrong to state that the Select List has exhausted itself for the reason that if ineligible candidates would not have been given appointments, or they had been kept in the waiting list, the applicant's name would have appeared in the first select list itself, and when that Select List has been challenged within a short span of time, i.e., before one year, the question of that list exhausting itself does not arise.

38. Once again referring to the Writ Petition (Civil) No.1065/2013 **Bijayini Behera** (supra) pursuant to which the petitioner therein had been given an appointment by the respondents, the applicant also claimed to be entitled for appointment against the incorrect appointments given to ineligible candidates Respondent Nos. 8 to 11, and also against the three posts still lying vacant, due to non-joining of the selected candidates.

39. It was further submitted that out of the three sanctioned posts for Assistant Professors (Microbiology) at AIIMS-Rishikesh, only two posts were advertised, and one seat was still vacant and available due to non-joining of the candidate, apart from the one unadvertised post which is also vacant, thus, making two posts vacant and available at AIIMS-Rishikesh. It was further submitted that one seat has been reserved for

the applicant by virtue of Interim order dated 19.12.2013. It was, therefore, submitted that the applicant may be given provisional appointment against one of those two vacant posts.

40. It was further submitted that the Hon'ble Supreme Court's judgment in **Sankarshan Das** (supra) is not applicable to the facts of the present case, because the impugned Select/Wait List has not been exhausted, and even at present appointments are being issued/have been issued from those lists, and, therefore, it cannot be said that the applicant has no right for appointment. It was denied that the applicant has not presented her case with clean hands, and it was submitted that, on the contrary, Respondent No.1 and Respondents No. 2 to 7 have given appointment to ineligible candidates, which is highly objectionable.

41. Thereafter, the applicant had, in a Tabular form, demonstrated her perception of the ineligibility of the Private Respondents, and had discussed her replies to the counters filed by the Private Respondents (R-8, R-9, R-10, R-11, and the cases of R-12 & R-13, and in respect of R-14 also, whose name had already been deleted as a party respondent). In the end, it was prayed that vide this Tribunal's order dated 19.12.2013, already reproduced by us above, one post of Assistant Professor (Microbiology) in all the six newly created AIIMS institutions has been reserved for the applicant, and since two posts of Assistant Professors (Microbiology) are still vacant at AIIMS- Rishikesh, and as the applicant's husband is also working at AIIMS- Rishikesh, hence,

directions for her provisional appointment, preferably at AIIMS-Rishikesh, can safely be issued, in the interest of justice.

42. The same day on 26.05.2014, the applicant also filed a rejoinder to the counter affidavit of Private Respondent R-8. It was submitted that the averment of Private Respondent R-8 that she had opted only for AIIMS-Patna is not relevant, because if ineligible candidates had not been selected, the applicant would have got appointment in the first select list dated 31.01.2012, and she had alleged that Director, AIIMS-Patna has favoured Private Respondent R-8 by giving appointment to her. It was further prayed that the joining of Private Respondent R-8 as Assistant Professor (Microbiology) at AIIMS, is illegal, and liable to be quashed. It was submitted that submission of thesis and award of Ph.D. degree are separate things, and mere submission of thesis does not mean award of qualification. It was also submitted that since it is a well settled position that if eligible candidates are not available, Private Respondent R-8 cannot herself claim that relaxation was given to her by the Selection Board. It was submitted that the Private Respondent R-8 has herself admitted that she had got a provisional certificate of Ph.D. degree only in February 2013, while the cut off date was 15.10.2012, by which it was clear that she neither had Ph.D., nor post-Ph.D. experience on the cut-off date.

43. Citing the Supreme Court's judgment in **Ashok Kumar Sharma & Ors. vs. Chander Shekhar and Ors. (1997) 4 SCC 18**, it was submitted that the authority who issued an advertisement is bound by the terms

and conditions, and a candidate who did not fulfil the eligibility criteria on the cut-off date, but had acquired the same at a later stage, could not have been permitted to appear in the interview.

44. It was further submitted that since her Ph.D. degree subject did not concern Microbiology, the Private Respondent R-8 could not have been considered for the post of Assistant Professor (Microbiology), as she does not have even a M.Sc. in the concerned subject. It was further submitted that Masters' degree in Zoology is allowed for the purpose of Assistant Professor (Entomology), but could not have been allowed for the purpose of Assistant Professor (Microbiology).

45. It was further submitted that the appointment process was conducted together for all the six newly constituted AIIMS, and the orders of preferences were to be considered only for the choice of posting, after selection, and since the applicant had not refused appointment at AIIMS-Patna, it was submitted that it was irrelevant that she had given Patna as only her 6th option. It was submitted that if Private Respondent R-8 and other ineligible candidates had not been selected in the merit list, the applicant would have been selected against any one of the 12 advertised posts which were filled up.

46. It was further submitted that the act of the official respondents in ignoring the initially short-listed candidates, and calling all the applicants for interview indicates their *mala fide* intention, aimed at selecting ineligible candidates, since the same shortlisting criteria had

already been used earlier in respect of five departments (mentioned above), for which interviews were held earlier. It was submitted that ineligible candidates ought not to have been called for interview, and that the Private Respondent R-8 was not only ineligible, but had submitted a false affidavit regarding her eligibility for the post of Assistant Professor (Microbiology), and was liable to be acted against for submission of a false affidavit. Thereafter, the applicant had produced a comparative Table Chart, comparing the counter affidavit of Private Respondent R-8 with the contents of her rejoinder, and had prayed that in view of the fact that Private Respondent R-8 is ineligible, and still continues to work at AIIMS-Patna, and her appointment itself was not in accordance with the terms and conditions of appointment as per the advertisement, and is liable to be quashed accordingly. It may be observed here itself by us that this prayer for quashment of appointment of the Private Respondent R-8 was not a prayer made by the applicant either in her original Writ Petition as filed before the Hon'ble High Court, or in the corrected and amended petition filed on 12.11.2013, the prayers from which we have reproduced above, or even in the prayer for interim directions to reserve one seat for her, and was, therefore, an afterthought.

47. Her rejoinder to the counter affidavit of Private Respondent R-10 was filed on 08.08.2014. The contention of the Private Respondent R-10 was that power of judicial review should not be exercised in such a case, as per the settled law in a catena of judgment by the Supreme Court, including **S.R. Tewari** (supra). It was, however, submitted by the applicant that Courts and Tribunal can interfere when there is a

manifest error, and the order passed can be struck down on the grounds of illegality, irrationality and procedural impropriety. It was further submitted by the applicant that since the Respondent No.1 has already accepted the illegal placement and appointment of two ineligible candidates in the merit list above the applicant, therefore, it has to be held that the selection process comprised of illegal and irrational actions, and was open for judicial review.

48. It was submitted that Private Respondent R-10 also did not possess the required Postgraduate (M.Sc.) degree recognized by the MCI, as his PG degree was not recognized by MCI. It was further submitted that there is no mention of the word “Microbiology” in any of his Ph.D. certificates, as the Ph.D. degree of Private Respondent R-10 was from the Jamia Millia Islamia. It was, therefore, submitted that the Private Respondent R-10 has also submitted a false affidavit regarding his having fulfilled the eligibility criteria as per the advertisement, and his not being an eligible candidate, he should not even have been called for an interview by Respondent No.1, and, therefore, his subsequent selection and appointment are both illegal.

49. It was further submitted that the Official Respondents 1 to 7 had failed in their duty to properly verify the documents of Private Respondents to ascertain their eligibility for appointment against the posts of Assistant Professors (Microbiology), and it was alleged that this fact was also evident from the accepted ineligibility of Private Respondents R-9 and R-13, whose documents were also supposed to

have been verified, before issuing them appointment letters. This dereliction of duty by Official Respondents R-1 to R-7 was termed by the applicant as highly objectionable, and it was submitted that this illegal act cannot legalize the appointment of Private Respondent R-10, and, therefore, his appointment is liable to be quashed. In saying so, the applicant had relied upon the Supreme Court's observations in the case of **Rakesh Kumar Sharma vs. Govt. of NCT of Delhi & Ors. (2013) 11 SCC 58**, and, in particular, Paragraph-17 thereof.

50. It was further submitted by the applicant that the performance of an illegally appointed candidate, after his illegal joining, is of no importance when the very basis on which the appointment had been granted was unconstitutional, and was liable to be quashed. It was submitted that the flimsy ground that his performance in the job should be an excuse for his lacking in eligibility is without any legal standing. It was further submitted that Private Respondent R-10 had made a lot of averments as to how his Ph. D. Degree should be considered to be related to subject/department of Microbiology, when the cover page of his Ph. D. Thesis itself shows that his Ph.D. was not in Microbiology. It was submitted that the claim of Private Respondent R-10 that working on genetics of mycobacteria to pursue his Ph.D. in Department of Biosciences is equivalent to Ph.D. in Microbiology, which makes him suitable for the post of Assistant Professor (Microbiology), was unrealistic and unacceptable. It was submitted that such an approach in interpretation of his doctoral degree would result in perpetuating illegalities.

51. It was further submitted by the applicant that working and gaining research experience as molecular biologist in NCDC does not make the Private Respondent R-10 eligible for the advertised post of Assistant Professor (Microbiology), when he was lacking the basic qualification, and especially when eligible and well qualified people had also applied for the said post. The contention of Private Respondent R-10 that possession of Ph.D. degree is superior to MD in the eyes of scientific world was denied, as being far from ground reality. It was submitted that Private Respondent R-10 has never worked in a hospital set up of Medical Institutes, where teaching, patient care and medical research go hand in hand. The averment of Private Respondent/R-10 that the applicant had attempted for segregation of medicos and non medicos in her petition was denied by the applicant, by stating that even many medico candidates, who were ineligible for this post, had also been impleaded by her as Private Respondents, and that the ineligibility of two of them has also been accepted by the Official Respondent/R-1 in their counter reply.

52. It was reiterated that the applicant is a well qualified MBBS, MD (Microbiology), with 3 years' post MD teaching experience, and not only has expertise in teaching medical students, and attending to the patients, but also has wide credentials in the field of clinical research, as is evident from her research papers published in reputed National and International journals, and awards for research papers, as mentioned in her application for the said post.

53. The submission of Private Respondent R-10 that the Selection Board has rightly concluded that MD candidates do not have proper research profile was denied. It was further submitted that ineligibility of Private Respondent R-10 had been proved beyond doubt, and that the present application for quashing of the appointment of Private Respondent R-10 deserves to be allowed, in view of the facts and circumstances that Private Respondent R-10 was ineligible, but was still selected, and continued to work at AIIMS-Raipur, even though his appointment was not in accordance with the terms and conditions. It was prayed that his appointment was liable to be quashed, which prayer was also not there in the original Writ Petition.

54. In the rejoinder filed by the applicant on 10.07.2014 to the counter affidavit of Private Respondent R-11, it was submitted that Private Respondent R-11 also possessed only a degree of M.Sc. in Biochemistry, and not in Microbiology, and, thus, he was also not eligible for appointment, as he did not possess a Ph.D. degree in the relevant subject, which was the basic and essential qualification, and it was alleged that in spite of this fact, he has been allowed to join and work at AIIMS-Jodhpur by the Director, AIIMS-Jodhpur, who has favoured him by giving appointment to him.

55. Relying upon the Annexure P-1 of the counter affidavit of Respondent No.1, it was submitted that the basic qualifications for the post were PG degree in Microbiology, and Ph.D. in Microbiology, and ineligibility of similar candidate Private Respondent R-9 has been

accepted by Respondent No.1, and the Respondent No.1 had not denied the ineligibility of Private Respondent R-11. Making a distinction in Clause XII of the advertisement, it was submitted by the applicant that Clause-XII (i) was applicable to all candidates, whether medical or non-medical, while Clause-XII (ii) was in the nature of an additional requirement for non-medical candidates. It was further submitted that merely studying Microbiology as one of the subjects in the course for obtaining M.Sc. Biochemistry (PG degree) from Andhra University does not make it equivalent to M.Sc. Microbiology, which was the basic essential qualification for the post of Assistant Professor (Microbiology). Thereafter, the applicant had cited from the judgment of Madras Bench of this Tribunal in OA Nos. 225 and 327 of 2002 **P.S. Velumurugan vs. Union of India & Ors.** regarding equivalence of M.Com and M.A. degrees, and contended that studying Microbiology as a common subject does not qualify Private Respondent R-11 as having M.Sc. in Microbiology.

56. Denying the submission of Private Respondent R-11 that since he holds a Ph.D. Microbiology from AIIMS, which is a recognized medical degree, it was stated that it is so only if it is awarded to a person holding a recognized medical qualification under the Indian Medical Council Act, 1956. It was, therefore, submitted that since Private Respondent R-11 possesses M.Sc. Biochemistry Degree from Andhra University, which is not recognized as a medical qualification under Indian Medical Council Act, 1956, therefore, even his Ph.D. in Microbiology, even though awarded from AIIMS, New Delhi, cannot be said to be recognized by the

MCI. It was further submitted that the Private Respondent R-11 possessing the required experience is irrelevant in the absence of basic essential qualification. It was further submitted that since the applicant had not refused her appointment for AIIMS-Jodhpur, and had actually given her 3rd option for Jodhpur, if the Private Respondent R-11 and other ineligible candidates had not been selected in the merit list, the applicant would have been selected against one of the 12 advertised posts, and since the ineligibility of Private Respondent R-11 has been proved beyond doubt, the present TA deserves to be allowed.

57. The applicant also separately filed a detailed synopsis of the case, giving the page numbers of the OA filed, and once again trying to point out the ineligibility of the Private Respondents through this synopsis, and repeated her prayers as made out in the amended Prayer Clause at pages 492 & 493 of the paper book of the OA. She had also filed certain documents obtained by her under the Right to Information Act, and a Compilation of judgments, also listed in Tabular Form, on which she relied, as follows:-

- “i) **Ashok Kumar Sharma & Ors. vs. Chander Shekhar and Ors.** (supra);
- ii) **P.S. Velumurugan vs. Union of India & Ors.** (supra);
- iii) **State of J&K & ors. vs. Satpal Civil Appeal Nos. 938-939 of 2013 (Arising out of SLP (C) Nos. 31591-31592 of 2012)**
- iv) **Harvinder Singh vs. State of J&K & Ors. SWP No. 2186/2001”.**

58. The applicant also filed copies of these judgments once again, which we have considered. At the conclusion of her arguments made in person, the applicant also mentioned that her instance that CBI has

since registered a criminal case for preliminary investigation on the aspect of corruption in the said recruitment. We are not concerned with the aspect of the CBI Investigation in this case, which would obviously take its own course as per law.

59. The entire case of the applicant is based upon the premise that through Annexure P-7 dated 31.01.2013, when the list of selected candidates for the six to be established new AIIMS institutions were announced, her name did not find a place against any of these six AIIMS, in the Department of Microbiology.

60. Initially, before the High Court, her prayer was for directions upon the respondents to re-schedule the list of appointed candidates for the posts of Assistant Professor (Microbiology) as announced, through the list dated 31.01.2013, by removing the candidates whose qualifications and experience were not in terms of the advertisement dated 28.12.2011, and for further directions upon the respondents to issue appointment letter to her for the post of Assistant Professor (Microbiology) AIIMS, without indicating as to for which particular of the six AIIMS concerned she wanted her appointment to be made.

61. When, in compliance of the orders of the Hon'ble High Court dated 04.09.2013, she was directed to file a fresh Memo of Parties, she also filed a fresh petition itself before the High Court, in which she had changed her prayers, and had modified them as reproduced in Para-1 (supra), through which the applicant had only sought directions upon

Director AIIMS-Rishikesh, to reserve one seat for her, for the post of Assistant Professor in the subject of Microbiology, till the disposal of the Writ Petition.

62. Therefore, when, even before the case was transferred to this Tribunal, the applicant of this TA/Petitioner of the Writ Petition had already limited her prayer to reserve one post of Assistant Professor in the subject of Microbiology at the newly to be created AIIMS at Rishikesh, it does not lie for her to challenge the selection of the Assistant Professors (Microbiology) in respect of other five to be established new AIIMS in respect of which the petitioner of the Writ Petition/applicant of this T.A. had herself dropped her prayer before the High Court itself.

63. Therefore, all the statements and averments in respect of the candidature of the selected candidates concerned in the other five AIIMS, the present TA is reduced to be of the nature of a public interest litigation, since it does not concern the limited prayer of the applicant of the TA/petitioner of the transferred Writ Petition, which cannot be pursued before this Tribunal, in the form of a public interest litigation. While the High Court is empowered and competent to entertain such public interest litigation also, it is trite law that this Tribunal has to confine itself to the very limited power of judicial review of administrative actions, to examine as to whether the Acts, Rules, and Regulations have been followed or not, while denying to the applicant her due, as claimed by her.

64. As already pointed out above, even in the prayer for Interim Relief, as moved by the applicant of this TA/petitioner of the Writ Petition, she had only prayed before the High Court to reserve one seat for the post of Assistant Professor (Microbiology) at AIIMS- Rishikesh.

65. When the Writ Petition was transferred by the Hon'ble High Court to this Tribunal, and got registered as TA, the only last available prayer of the applicant was against the appointment of Assistant Professor (Microbiology), at the proposed to be established AIIMS at Rishikesh, stating that there was unfair selection. The prayer that she could have been appointed against any of the other five AIIMS also cannot be considered at all by us here, as she had herself dropped the prayer, even when the case was before the High Court.

66. When the result was declared in respect of proposed AIIMS- Rishikesh through Annexures P-7 & P-8 dated 31.01.2013, in respect of the proposed AIIMS at Rishikesh, the following persons were selected for appointments as Assistant Professors in the Department of Microbiology:-

Sl. No.	Post	Name of Candidate	ID No.
1.	Professor	Dr. Pratima Gupta	FNAIIMS012011-001632_1
2.	Addl. Professor	Dr. Neelam Kaistha	FNAIIMS012011-005132
3.	Associate Professor	Dr. Balram J Omar	FNAIIMS012011-002346_1
4.	Asstt. Prof.	Dr. Gagandeep Singh	FNAIIMS012011-001010_1
5.	Asstt. Prof	Dr. Sarita Mohapatra	FNAIIMS012011-002551

67. In this list, only two persons had been selected against the posts of Assistant Professor, namely Dr. Gagandeep Singh, and Dr. Sarita Mohapatra, and during her oral submissions itself, the applicant had submitted before us that she had not made them as opposite party-respondents, as both of them were eligible candidates, and she did not want to assail their selection.

68. That being the case, the case of the applicant remains limited to the 3rd available vacant post of Assistant Professor (Microbiology), which she has claimed to be lying vacant at AIIMS-Rishikesh, and against which only perhaps she has claimed appointment, since she has not challenged the selection of Dr. Gagandeep Singh and Dr. Sarita Mohapatra, who had been appointed as Assistant Professor in Microbiology there. The oral averment that one of them has not joined has not been supported by any document.

69. However, there was a basic defect in the Advertisement as brought out by the respondents, inasmuch as while they had advertised for filling up a total of 91 posts, for each of the six new AIIMS Institutes, and they had indicated through Para XI, Details of posts of the Advertisement dated 28.12.2011 (Annexure P-1), the break up of the posts of Professors, Additional Professors, Associate Professors and Assistant Professors. Firstly, only two posts of Assistant Professors in Microbiology were advertised for being filled up for each of the six Institutes, and not three, as has been claimed by the applicant, and, secondly, while

reservation of the posts was indicated to be 27% for OBC, i.e., 12 posts of Assistant Professors, and reservation for SCs 15%, i.e., 08 posts of Assistant Professors, and reservation for STs 7.5%, i.e., 04 posts of Assistant Professors, it was nowhere indicated as to in which of the 27 departments of the respective new Institutes in which the posts of Assistant Professors were to be filled up, this reservation would apply.

70. Also, it is seen that in Para-XII of the Advertisement, the details of qualifications for the purpose of recruitment were stated as follows:-

“XII Qualifications: Qualifications may be relaxed for highly experienced, trained or reputed candidates at the discretion of the search cum selection committee. However, they generally are:

1. PG degree recognized by the MCI or Equivalent in the concerned subject. A PG degree Lab Medicine will be considered for application to Posts in Pathology.
2. PhD or Equivalent in the Anatomy, Physiology, Biochemistry, Pharmacology, Microbiology, Pathology recognized in India for non Medical Candidates.
3. Nursing: As per recommendations of the Nursing Council of India”.

71. In respect of Microbiology subject in particular, the prescribed qualification in general terms was Ph.D. or equivalent for Non-Medical candidates, and a PG degree recognized by the MCI or equivalent in the concerned subject for medical candidates. Since it was clearly mentioned that qualifications may be relaxed for highly experienced, trained or reputed candidates at the discretion of the Search-cum-Selection Committee, and it was nowhere indicated in the qualification Column that the holders of PG degree recognized by the MCI shall be

given preference over the Ph.D. or equivalent in respect of Non-Medical candidates, the claim of the applicant before us that the Selection Committee had erred in selecting qualified and competent non-Medical candidates who were holders of the Ph.D. degrees for the respective fields, is untenable and unacceptable.

72. Even in the Column of Experience in Para XIII, in respect of Assistant Professors, it was prescribed that the required experience would be 3 years of Teaching/Research Experience after the qualifying degree, which obviously would relate to non-Medical candidates holding Ph.D. or equivalent degree, or 3 years' experience as Senior Resident or equivalent, which obviously would relate to holders of PG degree recognized by the MCI or equivalent in the concerned subject. Therefore, it is seen that in this Experience Column also, no distinction had been made, or preference in respect of one of the two categories provided, in between the Teaching/Research Experience, after the qualifying degree of the non-Medical candidates, and the experience as Senior Resident or equivalent experience in respect of Medical candidates.

73. Therefore, we find no merit in the contention of the applicant wherever she has tried to distinguish and decry the selection of the selected Non-Medical candidates, as being ineligible or inferior to the Medical candidates.

74. There is a plethora of judgments, in which it has been repeatedly held that after taking part in the examination/process of selection, the candidate concerned cannot lay a challenge to that process itself:-

- “i) **Madan Lal vs. State of J&K: AIR 1995 SC 1088;**
- ii) **Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.: AIR 2008 SC 1913: (2008) 4 SCC 171;**
- iii) **National Institute of Mental Health & Neuro Sciences vs. Dr. K.Kalyana Raman & Ors. AIR 1992 SC 1806;**
- iv) **Osmania University Represented by its Registrar, Hyderabad, Andhra Pradesh vs. Abdul Rayees Khan: (1997) 3 SCC 124;**
- v) **K.H. Siraj vs. High Court of Kerala & Ors. (2006) 6 SCC 395;**
- vi) **University of Cochin Rep., by its Registrar vs. N. S. Kanjoonjamma and Others, AIR 1997 SC 2083;**
- vii) **K.A. Nagamani vs. Indian Airlines & Ors., (2009) 5 SCC 515;**
- viii) **Amlan Jyoti Borooah vs. State of Assam & Ors., (2009) 3 SCC 227;**
- ix) **Manish Kumar Shashi vs. State of Bihar & Ors. (2010) 12 SCC 576;**
- x) **Chandra Prakash Tiwari & Ors. vs. Shakuntala Shukla & Ors., (2002) 6 SCC 127: 2002 SCC (L&S) 830;**
- xi) **Union of India & Another vs. N. Chandrasekharan & Ors. (1998) 3 SCC 694.”**

75. Much reliance during her arguments has been placed by the applicant on the Waiting List announced by the respondents through their letter dated 10.07.2013, at Annexure P-9. The applicant had argued that among the Assistant Professors, whose list started from S1. No.9 of the Wait List, and went on up to S1. No. 27 in the case of her subject of Microbiology, if the Wait List No.1 person, Dr. Tuhina Banerjee, Private Respondent R-12, Wait List No.10 person Dr. Bijayini Behera, whom the applicant had not made as party respondents, as she

had secured a separate order in her own favour from the Hon'ble High Court in Writ Petition (C) No. 1065/2013 (supra), and who was eligible and appointed at AIIMS-Bhubaneshar, and Dr. Anupam Das at Wait List Sl. No.11, whom also she has not made a party, herein, and, therefore, according to the applicant, he was eligible.

76. But, Dr. Ravisekhar Gadepalli, at Wait List Sl. No.12, Private Respondent R-11 had been placed above her, and Wait List Sl. No.15 Dr. Bibhudutta Rautarya, Private Respondent R-13 had also been placed above her, and Private Respondent R-14 Purva Pankaj Sarkate, whose name was later deleted, had also been placed above her in the Wait List, her name being at Sl. No.17 in the list of 27, she would have got her appointment as Assistant Professor. But we do not find that either Private Respondent R-12 Dr. Tuhina Banerjee, or Private Respondent R-11 Dr. Ravisekhar Gadepalli, or Private Respondent R-13 Dr. Bibhudutta Rautarya, and the dropped Private Respondent R-14 Purva Pankaj Sarkate, were in any manner ineligible for appointment to the posts of Assistant Professors, in terms of the qualifications prescribed in the Advertisement.

77. The applicant has tried to do a lot of scientific hair splitting, by trying to distinguish between the different qualifications, and stating some of them to be not falling within the realm of Microbiology. Even though one may be familiar with the nuances of the differences between these degrees and scientific subjects concerned, it does not lie for this Tribunal to start determining the equivalence of such subjects for the

purpose of determining the eligibility of the candidates. That was the task of the specialized Selection Committee, which had conducted the interviews, and when once during the course of the interview, the concerned Selection Committee has found a particular degree or Research Work or Papers published to fall within the broad definition of the discipline of Microbiology, and had considered the applicants concerned (Private Respondents R-11,R-12&R-13) to be eligible, it does not lie for this Tribunal to challenge the wisdom of this specialized Selection Committee, consisting of Scientists and Doctors of repute, who went through their respective Bio-Data, the Qualifications and Research Papers of the concerned candidates, and interviewed them thoroughly, before arriving at their conclusions.

78. Also, after having limited her prayer to the selection against the post of Assistant Professor (Microbiology) at the proposed AIIMS at Rishikesh only, where her husband is also working in another department, it does not lie for the applicant to keep on challenging the appointment of the other candidates, who were selected for the other five proposed new AIIMS Institutions, for which she was earlier a candidate, as per her options, but had dropped her prayer in respect of those other five AIIMS, as if she did not wish to seek appointment against those posts. In that sense also, the applicant cannot be allowed to challenge the selection of those candidates, who were not at all her competitors, and had been selected in respect of the other five AIIMS, and not AIIMS-Rishikesh.

79. Be that as it may, as was pointed out during arguments, the DoP&T OM dated 29.03.2004 (Annexure R-1), filed along with the counter reply of Respondent No.1, clearly lays down the period of validity of waiting list panels for posts in autonomous bodies recommended by the Screening Committees, and that period has been limited to one year from the date the panel was recommended by the Screening Committee. It is clear that in this case the Screening Committee had met prior to the interviews were conducted during December, 2012, and the Selection Board had examined the cases on different dates. However, since the names of the selected candidates had been notified through Annexure P-8 dated 31.01.2013, even by disregarding the actual dates of the interviews conducted for the posts of Assistant Professors in Microbiology during December, 2012, the date of 31.01.2013 can be taken to be the date on which the panel including the waiting list notified on 10.07.2013 through Annexure P-9 was formed.

80. Therefore, it is clear that counting one year period from 31.01.2013, the life of the Waiting List panel had also expired on 30.01.2014. Though the Writ Petition and the amended Writ Petition were both filed by the applicant by November, 2013, but it is clear that the Waiting List panel, on the basis of which she is seeking her appointment, itself has exhausted its life, and, therefore, as on the date of hearing of this TA, or as on today, the date of pronouncement of this order, this Tribunal cannot grant any relief to the applicant, as prayed for.

81. The TA is, therefore, dismissed, as not maintainable, in view of the discussion as above. Consequently, M.A. Nos.1587-88 of 2014 also stand dismissed. But there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

CC.