

**Central Administrative Tribunal
Principal Bench**

OA No.1268/2016

Reserved on: 31.05.2016
Pronounced on: 16.07.2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

S. B. Singh S/o Hari Bansh Singh,
C/o National Informatics Centre,
Ministry of Communication and
Information Technology,
Government of India,
A-Block, CGO Complex,
Lodhi Road, New Delhi-110003

Posted at:

National Informatics Centre,
Ministry of Communication and
Information Technology,
Government of India,
A-Block, CGO Complex,
Lodhi Road, New Delhi-110003.

... Applicant

(By Advocate: Shri R. K. Kapoor)

Versus

1. Union of India through
DeitY, Ministry of Communication
and Information Technology,
Government of India,
Electronics Niketan,
CGO Complex, Lodhi Road,
New Delhi-110003.

2. Secretary,
Department of Personnel & Training (DOP&T),
Ministry of Personnel, Public
Grievances and Pensions,
Room # 112, North Block,
New Delhi-100001.

3. Smt. Neeta Verma, Scientist "G",
 National Informatics Centre,
 Ministry of Communication and Information Technology,
 Government of India,
 A-Block, CGO Complex,
 Lodhi Road, New Delhi-110003. ... Respondents

(By Advocate : Shri M. C. Dhingra with Shri Vikrant Yadav and Shri Hanu Bhaskar)

O R D E R

Justice Permod Kohli, Chairman :

The applicant herein has challenged the appointment of the respondent No.3, Smt. Neeta Verma, Scientist 'G' to the post of Director General (DG), National Informatics Centre (NIC) in the pay scale of Rs.67000-79000 on promotion basis, till the date of her superannuation, or until further orders, whichever is earlier, vide order dated 30.03.2016 (Annexure A-1).

2. The applicant himself is also working as Scientist 'G' having been promoted on 12.08.2009. The applicant claims to be a Scientist of rich experience having worked in all sectors - private, public and Government. The applicant also claims to have received various awards, i.e., Prime Minister's Award for Excellence in Public Administration for the year 2006-07; E-Governance Award, 2006; Rashtriya Gaurav Award; selected for the Best Citizens of India Award, 2010; and Mahatma Gandhi Ekta Samman, 2013. Copies of these awards/certificates have been placed on record as Annexure A-4 (colly).

3. Pursuant to an advertisement issued by the respondents inviting applications for the post of DG, NIC in the year 2014, the applicant applied for the said post. It is alleged that subsequently the process was cancelled by the department with a view to revise the recruitment rules for the post and make the same more broad-based. This information has been received by the applicant through RTI. Later, another notification was issued on 27.04.2015, again inviting applications for the post of DG, NIC in the Higher Administrative Grade (HAG) scale of Rs.67000-79000. The applicant and the respondent No.3, both applied. The respondent No.3 has been selected, and consequently appointed vide the impugned order.

4. Challenge to the appointment of the respondent No.3 is primarily based upon three grounds – (i) ineligibility of the respondent No.3 at the time of her selection/appointment; (ii) non-consideration of higher merit of the applicant; and (iii) *mala fides*.

5. On the first ground of challenge, it is alleged that the respondent No.3 was ineligible as she was appointed as Scientist 'G' by *in situ* promotion vide order dated 24.12.2012, and at the time of her selection she was not having three years' residency as Scientist 'G', and thus ineligible for the post, whereas the applicant who was promoted as Scientist 'G' by *in situ* promotion on 12.08.2009, had

completed three years' residency in the year 2012, and thus was eligible on the date of selection/appointment.

6. Both sides have relied upon the eligibility conditions as appended to the OMs inviting applications for the post of DG, NIC. The eligibility conditions are part of both the OMs, i.e., dated 24.04.2014 – the first advertisement, and dated 27.04.2015 – the second advertisement. Relevant extract of the eligibility conditions appended as Annexure-I to the advertisement notice is reproduced hereunder:

"6. Method of recruitment By Promotion/deputation (including short-term contract)/direct recruitment.

7. Eligibility Deputation:

(A) Officers of the Central Government or State Government or Public Sector Undertaking or Autonomous bodies:

(a) (i) Holding analogous post on regular basis; or

(ii) with three years regular service in the pay band 4 Rs.37,400-67000/- with Grade Pay of Rs.10,000/-; and

(b) Possessing the qualifications and experience prescribed for direct recruits.

(B) All India Service Officers with three years regular service in pay band-4 Rs.37,400-67,000/- plus Grade Pay of Rs.10,000/- after empanelment of their Batch at the centre and with five years experience in the area of e-Governance.

The National Informatics Centre Scientist 'G' in the pay band-4, Rs.37,400-67,000/- plus grade pay - Rs.10,000/- with three years regular service in the grade shall be considered along with outsiders and in case he is selected for appointment, the post shall be deemed to have filled by promotion. Age & Educational Qualifications prescribed for

Direct Recruits would not be applicable in Promotion mode."

7. From the method of recruitment as mentioned for the post in question, it appears that the appointment to the post of DG, NIC can be made by any of the three modes, i.e., by promotion, deputation (including short-term contract) and direct recruitment. Admittedly, the applicant as also the respondent No.3, were in-service candidates and they were to be considered under the 'deputation/promotion' category. Under the eligibility clause 7 (A), officers of Central Government or State Government or Public Sector Undertakings or Autonomous Bodies are eligible to be considered for recruitment under this category. Clause 7 (A) (a) (i) & (ii) further prescribes that persons holding analogous post on regular basis, or with three years' regular service in the pay band-4 Rs.37400-67000 with grade pay Rs.10000/- are eligible. It is not in dispute that the applicant as also the respondent No.3 were not holding analogous post on regular basis, and thus they were eligible only under clause 7 (A) (a) (ii), whereunder three years' regular service in the pay band-4 Rs.37400-67000 with grade pay Rs.10000/- is the eligibility criteria. They must also possess the qualification and experience prescribed for direct recruits under sub-clause (b) of clause 7(A).

8. According to Mr. R. K. Kapoor, learned counsel appearing for the applicant, the respondent No.3 having been

promoted as Scientist 'G', which is the qualification for direct recruitment, and thus qualification for deputation/promotion as well, did not have three years' regular service in the pay band-4 as prescribed under clause 7 (A) (a) (ii), whereas the applicant had more than three years service, having been appointed as Scientist 'G' on 12.08.2009.

9. Claim of the applicant is, however, refuted both by the private and official respondents in their counter affidavit. According to the respondents, the respondent No.3 was having more than three years' experience as Scientist 'G', even though she was initially promoted as Scientist 'G' w.e.f. 24.12.2012. However, she was granted retrospective benefit of promotion in terms of the judgment dated 21.02.2014 passed by the Principal Bench of the Tribunal in OA No.1809/2013 in the case of *Iqbal Hasan & others v Union of India & others*, wherein the following directions were given:

"6. We have heard the learned counsel for the parties. We agree with the learned counsel for the Applicants that this case is squarely covered by the judgment of the Apex Court in the case of *S.K. Murti* (supra) as followed by this Tribunal in OA No. 1111/2012 - *Vinay Kumar* (supra). We, therefore, allow this OA and direct the Respondents to consider granting benefit of promotion to the Applicants as prayed for by them as extracted earlier in para 2 of the order from the due date with all consequential benefits of pay fixation and payment of arrears as directed by Hon'ble Supreme Court in the case of *S.K. Murti* (supra). The aforesaid direction shall be implemented within a period of six

weeks from the date of receipt of a certified copy of this order."

In terms of the above directions, earlier directions issued in *S. K. Murti*'s case by the Hon'ble Supreme Court were required to be implemented. In *S. K. Murti*'s case, the Tribunal had declined the relief to the applicant for deemed retrospective promotion. However, in writ petition filed before the High Court of Delhi, the judgment of the Tribunal was set aside and direction was issued by the Hon'ble High Court to promote the petitioner under the Flexible Complementing Scheme (FCS) with effect from the date of eligibility. When the matter was taken to the Apex Court, while dismissing the SLP of the Union of India and upholding the directions of the High Court, the Hon'ble Supreme Court issued the following further directions, vide order dated 02.05.2011:

"Since the time fixed by the High Court for compliance of the direction given by it has already expired, we direct the petitioners to do the needful within four weeks from today. Similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the High Court questioning the order passed by the Tribunal. This direction is being given to avoid further litigation in the matter."

It is under these circumstances that the Government of India, Ministry of Communications and Information Technology, while implementing the judgment in *Iqbal Hasan*'s case (supra), granted

the benefit even to non-applicants who had not gone to the court. Respondent No.3 was accordingly also granted benefit of promotion from the date of eligibility vide office memorandum dated 22.04.2015 at serial number 101 in the following manner:

Sl. No.	Name of applicant(s) and emp. Code	Designations under promotions granted	Date of actual promotions granted	Promotion due from date of eligibility as per CAT order	Date of antedated promotion
xxx	xxx	xxx	xxx	xxx	xxx
101	Neeta Verma 176	'E' 'E' to 'F' 'F' to 'G'	01-01-1998 18-11-2003 19-12-2012	01-01-2003 01-02-2008	01-01-2003 01-01-2009

The respondent No.3 has thus earned promotion from Scientist 'F' to Scientist 'G' w.e.f. 01.01.2009. The implementation order referred to above not only grants retrospective promotion, but the same has been granted with all consequential benefits of pay fixation and payment of arrears, as is evident from para 6 of the judgment in *Iqbal Hasan's* case (supra) on the basis of the earlier directions of the Apex Court in *S. K. Murti's* case (supra). Thus, the respondents No.3 was eligible under the eligibility conditions prescribed in the advertisement notice, having three years' regular service in the pay band-4 of Rs.37400-67000/- with grade pay Rs.10000/-. The contention of the learned counsel for the applicant that the respondent No.3 was not eligible is thus devoid of any merit.

10. It is interesting to note, and as pleaded by Mr. Dhingra, learned counsel appearing for the respondents, that the applicant is guilty of concealment of facts. The applicant had also earned retrospective promotion as Scientist 'G' pursuant to the judgment of the Tribunal passed in OA No.1735/2014 filed by him. Copy of the judgment dated 20.05.2014 in the aforesaid OA has been placed on record as Annexure SA-1 with the additional affidavit of the respondents. This OA filed by the applicant was decided in terms of an earlier OA No.1111/2012 - *Vinay Kumar v Union of India*, decided on 27.09.2013, wherein the following directions were issued:

"6. Accordingly, we allow this O.A. and direct the respondents to consider granting benefit of promotion to Scientist-D and Scientist-E under the FCS Scheme to the applicant from the due date with all consequential benefits of pay fixation and payment of arrears as directed by Hon'ble Supreme Court in the case of S. K. Murti (supra). This will be done within a period of six weeks from the date of receipt of a certified copy of this order. No costs."

In view of the above directions, the applicant was also granted the following relief:

"6. In view of the above position, we dispose of this Original Application with the direction to the Respondents to consider the aforesaid reliefs sought for by the Applicant and in the light of the aforesaid orders/judgment to pass appropriate order under intimation to him. The Respondents shall comply with the aforesaid direction within a period of four weeks from the date of receipt of a certified copy of this order. No costs."

This judgment was implemented by the Government of India, Ministry of Communications and Information Technology vide office memorandum dated 22.04.2015, relevant portion whereof reads as under:

“Subject: Implementation of the order dated 20.5.2014 of Hon’ble Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. 1735/2014 filed by Shri Shyam Bihari Singh Vs. Union of India & others.

xxx xxx xxx xxx

2. On examining the official records it is found that Shri Shyam Bihari Singh was granted promotion as Scientist-F w.e.f. 11.3.2003 and Scientist-G w.e.f. 4.8.2009, in compliance with Hon’ble CAT order dated 20.5.2014, his promotion is antedated w.e.f. 1.1.2002 & 1.1.2008 for Scientist-F and Scientist-G respectively as per date of eligibility.”

Thus, the applicant is also a beneficiary of retrospective promotion as Scientist ‘G’ w.e.f. 01.01.2008 only pursuant to the judgment of the Tribunal. He is equally placed with the respondent No.3 and cannot be allowed to plead that the benefit granted to respondent No.3 was illegal or improper in any manner. In any case, the benefit has been granted to the respondent No.3 as well as the applicant on the basis of the judgments of the Tribunal and the Hon’ble Supreme Court, and the judgments having been implemented by the Government, such a plea cannot be entertained. It would not be out of context to mention that the applicant is definitely guilty of concealment of facts.

11. Next it is submitted by the applicant that he was having higher merit than the respondent No.3. In support of his submission, he has referred to various awards earned by him, as noticed hereinabove, and also that his work has always been appreciated. He claims to be an expert. In the counter affidavit, it is stated that after the last date of receipt of applications, 24 applications were received pursuant to the first advertisement, and 29 applications pursuant to the second advertisement, out of which 19 were new applicants. Thus out of total 43 applicants, the screening committee short-listed 19 candidates for interaction/interview. The duly constituted Departmental Promotion Committee (DPC) met on 14th and 16th September, 2015 and interacted with the short-listed candidates. All the 19 candidates appeared before the DPC chaired by the Secretary, DeitY. After due consideration of the performance of the candidates during interaction, their qualification, relevant experience, APARs/ACRs and other relevant aspects, the DPC recommended a panel of three candidates in order of preference for appointment to the post of DG, NIC. Minutes of the meeting of DPC have been placed on record as Annexure-IV with the counter affidavit filed by the respondents. The DPC chaired by Shri J. S. Deepak, Secretary, Department of Electronics and Information Technology; and Prof. Ashutosh Sharma, Secretary, Department of Science and Technology; Shri Sanjay Kothari, Secretary, Department of Personnel and

Training; Shri Rakesh Garg, Secretary, Department of Telecommunications; and Prof. Pankaj Jalote, Director, Indraprastha Institute of Information Technology, Delhi, as its members, recorded as under:

“4. Accordingly, 19 candidates appeared for personal interaction before the Departmental Promotion Committee. The Committee, based on the qualification, relevant experience, performance of the candidates during the personal interaction, ACRs/APARs and other relevant aspects, recommends a panel of the following candidates for appointment to the post of DG, NIC in order of preference:

- (i) Smt. Neeta Verma
- (ii) Sh. Sanjeev Gupta
- (iii) Sh. Deepak Chandra Misra”

These recommendations were duly accepted by the competent authority, and consequently the impugned order of appointment of the respondent No.3 was issued. The applicant was nowhere amongst the short-listed three candidates, and it is difficult to speak about his better merit/credentials. In any case, it is settled proposition of law that the Tribunal while exercising the power of judicial review in respect of selection process does not exercise appellate jurisdiction to assess and re-assess the merit of the candidates. The Tribunal can only examine the mode and manner of carrying out the selection process in accordance with the laid down criteria/rules. It is not for the Tribunal to evaluate or re-evaluate the participating candidates. The Hon’ble Supreme Court in *Union of*

India v S. K. Goel & others [(2007) 14 SCC 641] held that there will ordinarily be no interference by the courts in the proceedings and recommendations of DPC unless such DPC meeting is conducted illegally or in gross violation of relevant instructions and rules.

Relevant part of the judgment is reproduced hereunder:

“27. In our opinion, the judgment of the Tribunal does not call for any interference inasmuch as it followed the well settled dictum of service jurisprudence that there will ordinarily be no interference by the courts of law in the proceedings and recommendations of the DPC unless such DPC meetings are held illegally or in gross violation of the rules or there is misgrading of confidential reports. In the present case, the DPC had made an overall assessment of all the relevant confidential reports of the eligible officers who were being considered. The DPC considered the remarks of the reviewing officers. There was clear application of mind. Respondent No.1 did fulfill the bench mark. Hence, the impugned direction of the High Court ought not to have been issued as the same will have the impact of causing utter confusion and chaos in the cadre of the Indian Revenue Service, Customs and Central Excise Service.”

It is equally well settled legal position that while exercising the power of judicial review of administrative action, the court is not to act as an appellate authority or to direct or advise the executive in matters of policy or to sermonize any matter which may be within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. Reference in this connection may be made to the decision of the Apex Court in *Ashif Hamid v State of Jammu & Kashmir* [(1989)

Supp 2 SCC 364]. In *Ekta Shakti Foundation v Government of NCT of Delhi* [(2006) 10 SCC 337], the Hon'ble Supreme Court held that scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provision or is violative of the fundamental rights of a citizen or is opposed to the provisions of the Constitution. Therefore, even if the decision taken by the Government may not appear to be agreeable to the court, the same cannot be interfered with. The Apex Court further held that the correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another, is not a matter of concern in judicial review. In *State of Orissa & others v Gopinath Dash & others* [(2005) 13 SCC 495], the Apex Court held that the court should not substitute its own judgment for that of the executive in matters of policy, and further in assessing the propriety of a decision of the executive, the court cannot interfere even if a second view is possible than that of the executive. The contention of the learned counsel appearing for the applicant in this regard is thus liable to be rejected.

12. As regards the question of *mala fides*, the contention of learned counsel appearing for the applicant is that the first advertisement was issued in the year 2014. The same was, however, kept in abeyance pending revision of the recruitment rules.

According to him, the real purpose was to allow the respondent No.3 to participate in the selection process, as she was not eligible when the first advertisement was issued, and that the second advertisement was issued only to accommodate the said respondent. It is further contended that the interview was sham as 14 candidates, including the respondent No.3, were interviewed between 08:30 a.m. and 10:00 a.m., meaning thereby only six minutes were spent on each candidate. In the counter affidavit, the respondents have narrated the reasons for issuance of second advertisement. It is stated that initially the post was advertised in the year 2013. However, the selection committee chaired by Secretary, DeitY did not find anyone suitable. Secondly, the recruitment rules were revised in consultation with the Cabinet Secretariat and DOP&T and notified in February, 2014. Earlier the recruitment rules were considered to be restrictive. The second advertisement was issued in May, 2014 with last date of receipt of applications as 23.06.2014. In response, 24 applications were received till last date. During internal scrutiny it was felt that wider choice of candidates, particularly under the direct recruitment mode could not emerge. The process was thus kept in abeyance to initiate further action for revision of the recruitment rules. The recruitment rules were thus amended vide gazette notification dated 08.04.2015, after seeking advice of DOPT and vetting by the Legislative Department, Ministry of Law. Changes were made in the

qualification and eligibility criteria, whereupon the second advertisement was issued in May, 2015 with last date of receipt of application as 22.06.2015. Total 29 applications were received, out of which 19 were new applicants. On selection being made by the DPC, its recommendation/proposal was approved by the Appointments Committee of the Cabinet (ACC), whereafter the respondent No.3 was appointed vide the appointment order dated 30.03.2016.

13. In the light of the aforesaid factual background, the submission of Mr. Kapoor regarding *mala fide* action of the respondents is not substantiated. There is no specific allegation of *mala fides* against any official or person, nor such person has been impleaded as party respondent. There is no specific averment indicating the nature of *mala fides* either. The allegations are thus without any basis and are not substantiated in law, warranting any cognizance by this Tribunal.

14. In the totality of the circumstances, as discussed hereinabove, this Application has no merit and deserves to be dismissed. We order accordingly.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/