

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00945/2016**

Thursday, this the 29th day of November, 2018

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**  
**Hon'ble Mr.Ashish Kalia, Judicial Member**

Dr.Prabha D.Nair  
W/o.V.Damodharan Nair  
Aged 59 years, Working as Scientist G (Senior Grade)  
Sree Chitra Tirunal Institute for Medical Sciences and Technology  
Poojappura, Thiruvananthapuram – 695 012 ..... **Applicant**

**(By Advocate – Mr.Gopalakrishna Kurup,Sr. with Ms.Deepthi S.Menon)**

**V e r s u s**

1. The Sree Chitra Tirunal Institute for Medical Sciences and Technology, Medical College Campus  
Medical College P.O, Thiruvananthapuram – 695 011  
Represented by its Director
2. Selection Committee for Selection of Head Bio Medical Technology Wing, Sree Chitra Tirunal Institute for Medical Sciences and Technology, Medical College Campus, Medical College P.O, Thiruvananthapuram-695 011  
Represented by its Chairman, the Secretary, Department of Science & Technology, Technology Bhavan, New Delhi
3. The Governing Body of Sree Chitra Tirunal Institute for Medical Sciences and Technology, Medical College Campus  
Medical College P.O, Thiruvananthapuram – 695 011  
Represented by its President
4. The Director, Sree Chitra Tirunal Institute for Medical Sciences and Technology, Medical College Campus  
Medical College P.O, Thiruvananthapuram – 695 011
5. Union of India , represented by the Secretary, Department of Science & Technology, Technology Bhavan, New Delhi
6. Dr.Harikrishna Varma, Head, Bio Medical Technology Wing  
Sree Chitra Tirunal Institute for Medical Sciences and Technology  
Poojappura,  
Thiruvananthapuram – 695 012 ..... **Respondents**

**(By Advocate – Mr.T.R.Ravi for R 1-4, Mr.Brijesh.A.S for R 5 & Mr.Vishnu S Chempazhanthiyil for R6)**

This Original Application having been heard and reserved for orders on 27.11.2018, the Tribunal on 29.11.2018 delivered the following:

**ORDER**

**Per: Mr.E.K.Bharat Bhushan, Administrative Member:**

Original Application No.180/00945/2016 is filed by Dr. Prabha D.Nair, Scientist G (Senior Grade), Sree Chitra Tirunal Institute for Medical Sciences and Technology, Thiruvananthapuram against rejection of her candidature for the post of Head, Bio Medical Technology Wing at the same Institute. She seeks the following reliefs:

“A) To call for the records leading to Annexure A13 and Annexure A14 appointing the 6<sup>th</sup> respondent as the Head of Bio Medical Technology Wing of the Sree Chitra Tirunal Institute for Medical Science and Technology, Thiruvananthapuram and to set aside the same

B) To call for the records leading to Annexure A-4 and Annexure A-6 and to declare that the recommendations made under the same by the Selection Committee are illegal and against the provisions of the relevant rules and to set aside the same;

C) To declare that the applicant is eligible to be appointed as the Head, Bio Medical Technology Wing of the 1<sup>st</sup> respondent and to direct respondents 1 and 2 to appoint the applicant as the Head, Bio Medical Technology Wing of the 1<sup>st</sup> respondent; and

D) To allow all cost to the applicant. ”

2. Sree Chitra Tirunal Institute for Medical Science and Technology, Thiruvananthapuram (Institute for short) is an Institute of national

importance, which was established in 1980. The said Institute is governed by Act No.52 of 1980 promulgated on 3<sup>rd</sup> December 1980 with Rules notified by the Department of Science and Technology, Government of India on 28.5.1981. The Institute aims at :

“(a) Promotion of bio-medical engineering and technology.

(b) to provide and demonstrate high standards of patient care in advanced medical specialities; and

(c) To develop post-graduate training programmes of the highest quality in advanced medical specialities and biomedical engineering and technology.”

3. The two major wings of the Institute are the Hospital Wing functioning at Medical college Campus and the Bio Medical Wing functioning at the Satelmond Palace Compound at Poojappura. Section 10 of the Act referred to above provides for establishment of a Governing Body as prescribed by regulations. The Chief Executive of the Institute is designated as Director (Section 11) who is appointed by the Institute as per Rules and who shall work as the Secretary also to the Governing Body.

4. With reference to the post in question, Rule 7(iii) stipulates the manner of appointment of the post of Head of Bio Medical Technology Wing. It lays down that :

“the Head of the Bio Medical Technology Wing of the Institute shall be made by the Governing Body on the basis of the recommendations of the selection committee consisting of the Secretary, Department of Science and Technology, Government of India as Chairman, the Director as ex-officio member and an expert to be nominated by the President as a member thereof.”

5. The said post was vacant since 28.2.2014 and the senior most Scientist G (the applicant in the O.A) was appointed as acting Head of the Bio Medical Technology Wing. On 5.8.2014, as per Annexure A-1 notification issued by the first respondent, an advertisement/notification for appointment of Head, Bio Medical Technology Wing was issued with specified qualifications. The applicant who was fully qualified and was working as Scientist 'G' (Senior Grade) in the Bio Medical Technology Wing applied for the said post with copies of stipulated credentials (Annexure A-2). The 6<sup>th</sup> respondent who was Junior to the applicant and who was working as Scientist 'F' in the Bio Medical Technology Wing also applied for the said post. The Selection Committee, stipulated under Rule 7(iii), interviewed the 11 short listed candidates on 28.9.2015. True copies of the minutes of the meeting of the Selection Committee, which was obtained under RTI, is produced by the applicant as Annexure A-4. The conclusion of the Selection Committee was as below:-

“ 5. After detailed examination of the technical strength and personal discussion with the candidates the Committee did not find any candidate suitable for the position from any of the candidates interviewed, to the Head, BMT Wing of Sree Chitra Tirunal Institute for Medical Sciences and Technology (SCTIMST), Thiruvananthapuram. The Committee recommends a wider search for encouraging thought leaders to be nominated for the position from heads of the institutions/eminent scientists in the field and consider also deputation as a mode of appointment in addition the direct recruitment. ”

6. The Governing Body which met on 5.11.2015 considered the issue and decided as follows:

“ The Governing Body approved the recommendations of the Committee and ratified the resolutions adopted by circulation under the SCTIMST Regulation – 17(1) for seeking nominations of candidates with exceptional credentials who are willing to relocate on either on deputation or regular recruitment for the post of Head BMT Wing.

The GB Approved the same Selection Committee as for the Selection on 28.9.2015, to conduct the selection process as per Institute Rules.

1. Dr.Ashutosh Sharma, Secretary, DST: Chairman
2. Dr.T.Ramasami : President’s Nominee
3. Dr.Asha Kishore: Director, SCTIMST ”

7. None responded to the efforts made to seek nominations. It appears that the Selection Committee that met again on 16.2.2015 recommended that the applicant and respondent no.6 may be invited to have a personal discussion by the Governing Body, thereby leaving the selection to the Governing Body (Annexure A-6).

8. Applicant was formally invited to meet the Governing Body members at its meeting on 30.7.2016 but the information was passed on as confidential. She understood that the 6<sup>th</sup> respondent Dr.Harikrishna Varma was also similarly invited to appear and make a presentation. On 3.8.2018, respondent no.6 Dr.Harikrishna Varma was appointed as the Head, Bio Medical Technology Wing designating him as Engineer ‘G’. The applicant came to know about this only when she came across the minutes of the Governing Body dated 30.7.2016. Finally, she was left with no other recourse except to approach this Tribunal.

9. As grounds, the post in question is to be filled up based on the recommendations of the Selection Committee consisting of Secretary, DST, Director-ex-officio and an expert to be nominated by the President. The said Selection Committee had interviewed the candidates, but instead of making recommendation in favour of any of the candidates interviewed, it recommended a nomination procedure. The applicant argues that this procedure adopted by the Selection Committee is *ultra-vires* and violative of its powers conferred on it as per Rules. Neither the Governing Body nor the Selection Committee can adopt a new method of selection surreptitiously without public notification of the same. The Selection Committee that had met on 28.9.2015 had come to the conclusion that it did not find any candidate suitable from among the candidates interviewed. Later, on the failure of the nomination process, the same Selection Committee met again and made a recommendation to invite two candidates viz; the applicant and the 6<sup>th</sup> respondent, on the ground that they possessed all essential qualifications for the post. The applicant also finds fault with the role of the Secretary DST and the Director who were present in the Governing Body as well as the Selection Committee.

10. The Governing Body's powers are circumscribed by the relevant provisions under the Rules and it cannot appropriate for itself the power of making the final selection which was within the mandate of Selection Committee regardless of the fact that the Selection Committee had "recommended" the process. It is maintained that the 6<sup>th</sup> respondent does not possess essential qualification i.e, credible experience in Science,

Administration and Managing interdisciplinary research of Major Research Programme as he was never a Principal Investigator of any research programme in interdisciplinary research prior to applying for the post of Head, Bio Medical Technology Wing. Thus, the candidate who possesses all the required qualification was the applicant alone.

11. In the reply statement filed on behalf of the first respondent, the contentions made in the Original Application are strongly opposed. While admitting the pioneering nature of the Institution concerned, respondent no.1 maintains that the selection of the post in question was conducted in due accordance with the procedures laid down in the Rules. With the intention of selecting the best candidate, the Selection Committee had interviewed and considered the candidature of 11 candidates. The Committee, as stipulated in the Rules, consisted of Secretary DST as Chairman, the Director of the Institute and an eminent expert. After finding that there were no candidates who were suitable, the Committee with the best of intentions had recommended a wider search for encouraging “thought leaders” to be nominated for the post from among Heads of the Institutions/eminent Scientists in the field. Unfortunately, despite the best efforts of the executive, a suitable hand could not be located for the post. The Committee again considered the issue and in view of the fact that the search process did not yield the desired result, recommended that two of the empanelled internal candidates interviewed in the first meeting, the applicant and respondent no.6, could be invited to make a presentation to the Governing Body so that a suitable candidate could be selected by their superior body.

Accordingly, the Governing Body at its meeting considered the minutes of the Selection Committee and decided to invite the two Scientists for a personal discussion as well as a presentation. The two candidates appeared before the Governing Body meeting on 30.7.2016 and it was resolved that Dr.Harikrishna Varka, respondent no.6, be appointed.

12. It would be incorrect to state that the Selection Committee had exceeded its powers. While it is mandated with the task of selecting a Scientist for the concerned post, nothing stands in its path to make a recommendation. The Rule only stipulates that the Governing Body's decision is to be based on the recommendation of the committee. There is no provision that the committee should invariably recommend a particular candidate. Thus, the Committee's decision not to recommend any particular candidate and instead to recommend a wider search cannot be termed as *ultra-vires*. In any case, the applicant after having participated in the selection process cannot now turn around and question the process. Considerable effort and time was devoted to the selection and the incumbent was selected after a long drawn process wherein every possible course to locate the best candidate was undertaken.

13. The contention that the 6<sup>th</sup> respondent does not have the essential qualifications for the post for which he was selected is baseless and the statement goes on to narrate the qualifications of the said candidate. It is not relevant whether a candidate is in the level of Scientist/Engineer G or F for appointing him as Head so long as he fulfills the qualification and

experience criteria. There are other instances which bear out this point.

14. In the rejoinder submitted by the applicant, the alleged illegality in the conduct of the Selection committee is further reiterated. It is also claimed that the final selection was conducted in an opaque and secret manner. With reference to the final interview, it is alleged that no detailed questioning was done at the Governing Body meeting and there was no expert member or subject expert present.

15. In a separate reply statement, respondent no.6 has countered the contentions raised by the applicant. He avers that he possessed all the required qualifications and fulfilled all eligibility criteria for the post. The procedure adopted was also in keeping with the Rules on the subject. He had been selected after a detailed process where he, as well as the applicant, had appeared before the Selection Committee and then before the Governing Body and the authorities had taken care that the best candidate was finally selected.

16. Heard Mr.Gopalakrishna Kurup, Senior Advocate, learned counsel for the applicant, Mr.T.R.Ravi, learned counsel for respondent nos.1-4, Mr.A.S.Brijesh,ACGSC, learned counsel for respondent no.5 and Mr.Vishnu S Chempazhanthiyil, learned counsel for respondent no.6.

17. The learned counsel for the applicant dwelt at length on the alleged illegalities which have been highlighted in the Original Application by the

applicant. The Selection Committee whose task was to “Select” had abdicated its responsibilities in favour of the Governing Body, which though a superior entity, cannot arrogate to itself the duties of selection for the post in question. Under Rule 7(iii) the Selection Committee consisting of Secretary DST, Director and an expert is mandated to analyse the merits of the contesting candidates and crystallize the selection of the most suitable. The Committee has erred in making “recommendations” which was beyond the scope of the task entrusted to them. The applicant by virtue of the fact that she was a Scientist 'G' Grade and who was holding charge of Head BMT Wing has been overlooked in favor of a candidate who was less qualified and her junior, holding an 'F' Grade position. It is claimed that at the interview conducted on 28.9.2015 by the Selection Committee, the applicant had been ranked first. The personal discussion held by the Governing Body at its 96<sup>th</sup> meeting was a sham with only one member of the Body addressing questions to the applicant.

18. Shri.T.R.Ravi on behalf of respondent no.1 strongly countered the arguments raised by the learned counsel for the applicant. Firstly, it was maintained that the applicant who had willingly co-operated and participated in the selection process, on finding her candidature rejected, cannot turn around and question the process at a later stage. He calls to his assistance the decisions of the Hon'ble Supreme Court in (2017) 9 SCC 478 *D.Sarajakumari v. R.Helen Thilakom*, 2010 KHC 2028 SC *G.S.Singhvi v. C.K.Prasad, JJ.* and 2008(2) KHC 108 SC *S.B.Sinha v. S.Sirpurkar, JJ.*

19. The post in question is the second highest post in the Institute and the selection for the same ought to be conducted with due importance to the scope and level of the post. It is further maintained by the learned counsel that while the Selection Committee is mandated with the selection of the candidate, it is in no way prohibited from making a recommendation on further course in a manner which it feels is correct. In a matter where all procedures have been carefully met, there is little scope for the Tribunal to interfere as it is important to note that no *malafide* has been alleged.

20. Shri.Vishnu.S.Chempazhanthiyil was also heard on behalf of respondent no.6. He maintained that respondent no.6's selection had been fully in compliance with all regulations and through an elaborate method, the best candidate has been selected.

21. We have considered the case in detail. The main challenge raised by the applicant in the Original Application is centered around the recommendations made by the Selection Committee at its meeting on 28.9.2015 recommending a "Wider Search". The applicant argued that she was the best candidate at the interview although none was finally found suitable. Examining the Rule under which the Selection Committee had been constituted and the Minutes, we see that the Committee did not conclude the selection as might have been expected of them. However, based on the interview conducted on the date, they wanted a wider search. Given the high profile and nature of the post, the Committee cannot be faulted for having recommended other alternatives such as nominations from other Institutions.

We do not see how this could be violative of the relevant Rules as the same do not spell out in what manner the recommendation ought to be made. Seized of the issue, the foremost entity in the Institute viz; the Governing Body initiated steps to spread the net wider. These steps did not fructify and the Selection Committee again met to consider the matter and this time recommended that the internal candidates who possessed all basic qualifications may be called for a personal discussion and presentation by the GB. The fact that at least two members of the Selection Committee were also members of the Governing Body does not take anything away from the Governing Body's mandate. After due consideration of the candidature of both candidates, the Governing Body decided to select respondent no.6. We are unable to discern any impropriety or illegality in the process adopted.

22. Again in respect of the qualifications of respondent no.6 after due consideration of the facts provided in the reply of respondent no.1, we are not of the view that the selected candidate i.e, respondent no.6 falls short of any of the qualification/experience criteria. It is also a point to be considered that no *malafide* has been alleged in the selection process and the contention that the applicant possessed better credentials fails to convince us.

23. It is also relevant to see that the applicant had willingly co-operated with the process and had opposed the same only after she failed to make the grade. The three judgments of the Hon'ble Supreme Court of India cited by the learned counsel for the respondent nos.1-4 are relevant in this context. To quote from one of them **D.Sarojakumari v. R.Helen Thilakom**, it is

decreed:

“..... Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this, we need not go into the other issues raised. ”

24. Considering all the above facts, we are of the view that this is not a fit case for the Tribunal to interfere with. We do not see any illegality in the process adopted and in the selection made in favour of respondent no.6. The Original Application is dismissed. No costs.

**(ASISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**List of Annexures**

- Annexure A1 - True copy of the notification No. P&A 11/31/HBMT/SCTIMST/2014 issued by the 1<sup>st</sup> respondent.
- Annexure A2 - True copy of the application and other certificate submitted by the applicant.
- Annexure A3 - True copy of the copy of the call letter for the interview.
- Annexure A4 - True copy of the Minutes of the Meeting of the Selection Committee for Selection of Head Bio Medical Technology Wing, Sree Chitra Tirunal Institute for Medical Sciences and Technology, held on 28.9.2015
- Annexure A5 - True copy of the minutes of the Governing Body of the 1<sup>st</sup> respondent held on 5/11/2015.
- Annexure A6 - True copy of the Minutes of the meeting of the Selection Committee for selection of Head Bio Medical, Technology Wing, Sree Chitra Tirunal Institute for Medical Sciences and Technology, held on 16.12.2015.
- Annexure A7 - True copy of the request dated May 19, 2016 of the Director for filling the post of Acting Head of the BIO MEDICAL TECHNOLOGY Wing.
- Annexure A8 - True copy of the appointment order dated 24/5/2016.
- Annexure A9 - True copy of the order No. DIR/SCTIMST/P&A GL/DELEPOWERS/2016 dated 15.6.2016 issued by the Director.
- Annexure A10 - True copy of the letter dated 27/6/2016.
- Annexure A11 - True copy of the letter dated 15/7/2016.
- Annexure A12- - True copy of the letter dated 8/8/2016.
- Annexure A13 - True copy of the Order No.P&A 1/242/SCTIMST/2016 dated 3.8.2016 issued by the 4<sup>th</sup> respondent appointing the 6<sup>th</sup> respondent as the Head, Bio Medical Technology Wing, of the Sree Chitra Tirunal Institute for Medical Science and Technology, Thiruvananthapuram.

Annexure A14 - True copy of the Resolution No.2 of the Governing Body meeting of the Sree Chitra Tirunal Institute for Medical Science and Technology, Thiruvananthapuram held on 30<sup>th</sup> July, 2016

Annexure A15 - True copy of the reply dated 29/12/2016 furnished to the applicant by 1<sup>st</sup> respondent.

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