

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1252 OF 2014

New Delhi, this the 11<sup>th</sup> day of May, 2018

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER  
AND**

**HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER**

.....

Dr.Tarkeshwar Devidas Golghate,

aged 42 years,

D-3, Shree Ganga Apartment,

Temple Bazar, Behind Apna Bhandar,

Sitabuildi, Nagpur, Maharashtra

.....

Applicant

(By Advocate:Ms.Tripti Poddar for Ms.Juishree Satpatue)

Vs.

1. Ministry of Health and Family Welfare,

Through its Secretary,

Nirman Bhawan,

New Delhi 110108

2. All India Institute of Medical Sciences,

Through its Director,

Tati Bandh,

Raipur, Chhattishgarh 392001

3. Dr.Dinesh Kumar Sharma,

Additional Professor,

Department of Anatomy,

All India Institute of Medical Sciences,

Raipur 492099

.....

Respondents

(By Advocates: Mr.N.K.Aggarwal for R-1, Ms.Rashmi Malhotra for R-2)

.....

**ORDER**

**Per RAJ VIR SHARMA, MEMBER(J):**

The applicant filed this Original Application on 15.4.2014 seeking the following reliefs:

- A. Pass an order setting aside order F.No.C-17011/2/2014-SSH dated 12.3.14 passed by the Respondents herein.
- B. Direct the Respondents to appoint the Applicant as an Additional Professor Anatomy at AIIMS Raipur with the immediate effect.
- C. Direct the Respondents to convert the currently vacant post of Professor into the Additional Professor Anatomy or create another post of the Additional Professor Anatomy to accommodate the Applicant at AIIMS Raipur.
- D. Direct the Respondents to place the Applicant on seniority list as per merits.
- E. Award cost for the present litigation;
- F. Pass any further order(s) which this Hon'ble Tribunal may deem fit and proper to the facts and circumstances of the case and the interests of justice.”

2. Resisting the O.A., the respondents have filed three separate counter replies.

3. We have carefully perused the records and have heard Ms.Tripti Poddar for Ms.Juishree Satpute, learned counsel appearing for the applicant, and Mr.N.K.Aggarwal and Ms.Rashmi Malhotra, learned counsel appearing for respondent nos.1 and 2 respectively. Though a counter reply was filed by the private respondent no.3, yet he chose not to appear or present his case in person or through any Advocate on the date of hearing.

4. Brief facts of the case, which are relevant for the purpose of deciding the controversy and are not disputed by either side, are as follows:

4.1 Respondent no.1 issued an Advertisement: “Faculty New AIIMS No.1/2011/ dated 28.12.2011” for filling vacancies in faculty positions of Professor, Additional Professor, Associate Professor, and Assistant Professor in six new to be established All India Institutes of Medical Sciences (AIIMS) established at Rishikesh, Bhopal, Jodhpur, Patna, Raipur and Bhubaneswar under *Pradhan Mantri Swasthya Suraksha Yojana*.

4.2 Clause XII of the Advertisement dated 26.12.2011 is reproduced below:

“XII. Details of posts: For each of the Six Institute, applications are invited for the following posts:

SL. No.	Name of Department	Prof.	Addl. Prof.	Associate Prof.	Asst. Prof.
1	Anatomy	1	1	1	5
2	Physiology	1	1	1	4
3	Biochemistry	1	1	1	3
4	Pathology	1	1	1	2
5	Microbiology	1	1	1	2
6	Pharmacology	1	-	1	1
7	Forensic Med	1	-	-	1
8	Community Med.	1	1	1	2
9	Gen. Med.	1	-	-	1
10	Dermatology	1	-	-	-
11	Psychiatry	1	-	-	1
12	Pediatrics	1	-	-	1
13	Pediatric Surgery	1	1	-	-
14	Gen. Surgery	1	-	1	1
15	Trauma & Emergency	1	-	1	12
16	Orthopedics	1	-	-	1
17	Ophthalmology	1	-	-	1
18	Obst.&Gyne.	1	-	-	1
19	E.N.T.	1	-	-	1
20	Radio Diagnosis	1	-	-	1
21	Anesthesiology	1	-	-	1

22	Dentistry	1	-	-	1
23	Transfusion Medicine & Blood Bank	1	-	-	1
24	Radio Therapy	1	-	-	1
25	Pulmonary Med	1	-	-	1
26	Physical Medicine & Rehabilitation	1	-	-	1
27	Nursing	1	-	-	1
	Total	27	7	9	48
	Reservation for OBC 27%	7	2	2	12
	<b>Reservation for SC 15%</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>8</b>
	Reservation for ST 7.5%	2	1	1	4
	Grand Total	91			

\*The number of vacancies is subject to increase/decrease. Reservation will be as per Government of India policy.”

4.3 The Advertisement stipulated that the post of Additional Professor carried the Pay Band-4: Rs.37400-67000 with Academic Grade Pay of Rs.9500/- (Plus NPA for medially qualified candidates only) with minimum Pay being Rs.46000/- and AGP of Rs.9500/-. The post of Associate Professor carried the Pay Band-4: Rs.37400-67000 with Academic Grade Pay of Rs.9000/- (Plus NPA for medially qualified candidates only) with minimum Pay being Rs.42800/- and AGP of Rs.9000/-.

4.4 The Advertisement also stipulated the qualifications of PG Degree recognized by the MCI or Equivalent in the concerned subject, besides 9 years of Teaching/Research Experience after Qualifying degree or 3 years as Associate Professor for the post of Additional Professor; and 6 years of Teaching/Research Experience after Qualifying degree or 3 years as Assistant Professor for the post of Associate Professor.

4.5 Being a post graduate in Anatomy, i.e., MS (Anatomy), and having the requisite experience of working as Assistant Lecturer, Assistant Professor and Associate Professor, the applicant responded to the

Advertisement and applied for the posts of Additional Professor and Associate Professor in Anatomy.

4.6 The private respondent no.3 was also a candidate for selection and appointment to the post of Additional Professor in Anatomy.

4.7 After interview, respondent no.1 published the result of selection on 13.7.2012, as per which the applicant was selected for the post of Associate Professor (Anatomy), and one Dr.Hitendra Kumar Loh was selected for the post of Additional Professor(Anatomy) at AIIMS, Raipur. Accordingly, offers of appointments were issued to the applicant and to Dr.Hitendra Kumar Loh.

4.8 As the applicant was not relieved of his duties at his parent organization, he could not join the service as Associate Professor (Anatomy) at AIIMS, Raipur, within the period stipulated in the offer of appointment.

4.8.1 Dr.Hitendra Kumar Loh, who was offered appointment to the post of Additional Professor (Anatomy) at AIIMS, Raipur, also did not join the service as Additional Professor (Anatomy) at AIIMS, Raipur, within the period stipulated in the offer of appointment.

4.8.2 Therefore, the offers of appointments issued to the applicant and Dr.Hitendra Kumar Loh stood cancelled/withdrawn.

4.9 Respondent no.1, by letter dated 7.3.2013 (Annexure A/6), approved the waiting lists for different faculties including Anatomy submitted by the Selection Boards, and forwarded the same to the six new AIIMS where the faculty positions remained vacant due to non-joining of

the candidates selected vide main lists. So far as the AIIMS, Raipur, is concerned, the name of the private respondent no.3 appeared in the waiting list for the post of Additional Professor (Anatomy), and the name of one Mr.Konuuri Vijay Kumar appeared in the waiting list for the post of Associate Professor (Anatomy).

4.10 The applicant, by his representations dated 20.3.2013 (Annexure A/7), pointed out that in the common general merit list his name appeared at sl.no.66 whereas the name of the private respondent no.3 appeared at sl.no.86 for the post of Additional Professor (Anatomy) and requested the respondent nos.1 and 2 to correct the waiting list for the post of Additional Professor (Anatomy), and to appoint him to the post of Additional Professor (Anatomy) at AIIMS, Raipur.

4.11 With reference to applications made by the applicant's wife under the RTI Act, respondent no.1, by its letter dated 22.8.2013 (Annexure A/9), informed her that the private respondent no.3 had scored 50 marks in the interview for the post of Additional Professor (Anatomy). Respondent no.1, by its letter dated 17.10.2013 (Annexure A/10), also informed the applicant's wife that the applicant had scored 55 marks in the interview for the post of Additional Professor (Anatomy). Being armed with the aforesaid information, the applicant, by his representation dated 1.11.2013 (Annexure A/11), requested the respondent no.1 to select him for the post of Additional Professor (Anatomy) at AIIMS, Raipur.

4.12 There being no response, the applicant filed OA No.4404 of 2013. The Tribunal, by order dated 19.12.2013 (Annexure A/12), disposed of OA No.4404 of 2013 and directed the respondent no.1 to consider the applicant's representation and to take appropriate decision by passing a reasoned and speaking order within six weeks from the date of receipt of copy of the order dated 19.12.2013 (ibid).

4.13 In compliance of the Tribunal's order dated 19.12.2013 (ibid), the respondent no.1 considered the applicant's representation, but rejected the same, vide order dated 12.3.2014 (Annexure A/1), which is reproduced below:

**“Order**

1. Whereas, Ministry of Health and Family vide an advertisement No.AIIMS No.1/2011 dated 28.12.2011 invited applications for recruitment to the following posts in the Department of Anatomy at six new All India Institutes of Medical Sciences (AIIMS) at Bhopal, Bhubaneswar, Jodhpur, Patna, Raipur and Rishikesh:
  - a) Professor 1
  - b) Additional Professor 1
  - c) Associate Professor 1
  - d) Assistant Professor 1
2. Whereas, Dr.Tarkeshwar Devidas Golghate applied for the posts of Additional Professor and Associate Professor with reference to the advertisement dated 28.12.2011;
3. Whereas, interviews were held in April, 2012 and candidates were selected for the following posts in the Department of Anatomy at AIIMS, Raipur and this was submitted to Ministry of Health & Family Welfare, by the Selection Committee vide their letter No.AIIMS/Result/A-P-B-C/2012 dated 24<sup>th</sup> April, 2012:
  - i) Professor 1
  - ii) Additional Professor 1
  - iii) Associate Professor 1
  - iv) Assistant Professor 5

4. Whereas, the Selection Committee fixed the lowest merit for selection to the post of Additional Professor (Anatomy) as 58 marks. Dr.Tarkeshwar Devidas Golghate who had been interviewed in April, 2012 by the Selection Committee and obtained 55 marks. So he was not selected for the post of Additional Professor. He was selected as Associate Professor for AIIMS, Raipur and after being selected as Associate Professor for AIIMS, Raipur, Dr.Tarkeshwar Devidas Golghate lost his claim to be wait listed for the post of Additional Professor. He was, therefore, not included in the waiting list for Additional Professor as per the decision of Selection Committee. He had filed a representation, which was forwarded by Hon'ble Member of Parliament to the Hon'ble Minister for Health and Family Welfare on 25.4.2013, which was duly examined and rejected and in turn conveyed vide D.O. letter dated 6.9.2013.
5. Whereas, Dr.Tarkeshwar Devidas Golghate was selected for the post of Associate Professor in AIIMS, Raipur, and he was given offer of appointment as Associate Professor in Anatomy at AIIMS, Raipur, vide AIIMS letter No.AIIMS/Raipur/2012/23 dated 18<sup>th</sup> July, 2012 and he was directed to report for duty by 21<sup>st</sup> August, 2012 and if he did not join by the stipulated date, the offer of appointment will be treated as cancelled/withdrawn. Dr.Tarkeshwar Devidas Golghate did not assume charge till February, 2013. Perusal of resolution dated 22<sup>nd</sup> March,2013 (Annexure A-7 to OA) would reveal that he had not been relieved by the Government of Maharashtra till 21<sup>st</sup> March, 2013;
6. The Selection Committee vide their letter No.AIIMS/Result/A-P-B-C/2012 dated 24<sup>th</sup> April, 2012 had submitted a list of wait listed candidates for the posts in Anatomy. Dr.Dhanesh Kumar Sharma was placed in the wait list for Additional Professor in Anatomy and orders were issued to AIIMS, Raipur by the Ministry of Health and Family Welfare for issue of appointment orders for Dr.Dhanesh Kumar Sharma as Additional Professor in Anatomy at AIIMS, Raipur vide letter No.Z-28016/3/2012-SSH dated 7<sup>th</sup> March, 2013 and Dr.Dhanesh Kumar Sharma assumed charge on 5<sup>th</sup> April, 2013. Furthermore, as per DoPT O.M. dated 29<sup>th</sup> March,2004 the period of validity of the panels recommended by the Selection Committee is one year from the date of such recommendations. Thus, it could be seen that Dr.Tarkeshwar Devidas Golghate filed representation dated 1.11.2013 after the expiry of panel. Belated representation preferred on 1.11.2013 would not revive the expired and exhausted panel. It may also be

pointed out that Dr.Tarkeshwar Devidas Golghate was Assistant Professor in State Government Medical College and therefore he could aspire one higher rank in a higher level institution like AIIMS. One higher level in present circumstance is Associate Professor, for which he was selected, an offer of appointment was issued but he did not join for personal reasons, which in turn caused serious prejudice to the students, who had already been admitted. Additional Professor is two rank higher than the present post held by him at present.

7. Whereas, Dr.Tarkeshwar Devidas Golghate filed OA NO.4404/2013 in Central Administrative Tribunal Principal Bench, New Delhi on 13.12.2013 and Central Administrative Tribunal, Principal Bench, New Delhi passed order dated 19<sup>th</sup> December, 2013 disposing of OA with a direction to the respondents to consider the aforesaid representation dated 1.11.2013 of Dr.Tarkeshwar Devidas Golghate in the light of rules and instructions on the subject and pass reasoned and speaking order within a period of six weeks from the date of receipt of copy of the order.
8. Whereas, on examination of afore noted representation dated 1.11.2013, it is observed that in the light of discussion made herein above, there is no substance and justification of the issue raised therein;
9. Now, therefore, the present order, rejecting Dr.Tarkeshwar Devidas Golghate representation dated 1.11.2013, is passed in compliance with the directions of Central Administrative Tribunal, Principal Bench, New Delhi given in the order dated 19.12.2013.”

5. In the above context, it has been contended by Ms.Tripti Poddar, learned counsel appearing for the applicant that when the Advertisement did not stipulate any bar for any eligible and prospective candidate to apply for selection and recruitment to both the posts of Additional Professor (Anatomy) and Associate Professor (Anatomy), when the applicant had applied for selection and recruitment to both the posts of Additional Professor (Anatomy) and Associate Professor (Anatomy) and had appeared at the interviews for both the said posts, and when the Selection

Board/Committee had assessed his performance at the interviews for both the said posts and had recommended his appointment to the post of Associate Professor (Anatomy) and had also awarded 55 marks to him in the interview for the post of Additional Professor (Anatomy), when the Selection Board/Committee had awarded 50 marks to the private respondent no.3 in the interview of the post of Additional Professor (Anatomy), the Selection Board/Committee acted arbitrarily and illegally in not including the name of the applicant in the waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur. The respondent no.1 equally acted arbitrarily and illegally in acting upon the said waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur, and in rejecting the applicant's representation without considering the fact that he had scored 55 marks and the private respondent no.3 had scored 50 marks in the interview for the post of Additional Professor (Anatomy). The Advertisement did not also contain any stipulation that in the event of any candidate applying for selection and recruitment to two posts and being selected for one of the said posts, he/she would not be wait-listed for the other post notwithstanding his/her higher merit position than that of any of the candidates in the selection process for the said post. The Selection Board/Committee as well as the respondent no.1 also erred in taking a view that in view of selection of the applicant for the post of Associate Professor (Anatomy) at AIIMS, Raipur, he had lost his claim to be wait-listed for the post of Additional Professor (Anatomy) at AIIMS, Raipur, and hence he was not included in

the waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur. When the waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur, stated to be prepared and forwarded by the Selection Board/Committee, vide letter dated 24.4.2012, was never made public and when the said waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur, saw the light of day only on 7.3.2013, the applicant's representation dated 20.3.2013 and 1.11.2013 cannot be said to be barred by delay and laches inasmuch as the cause of action accrued to the applicant only on 7.3.2013. The present O.A. filed by the applicant on 15.4.2014 challenging the order dated 12.3.2014(Annexure A/1) and praying for consequential reliefs is very much within the prescribed period of limitation.

6. *Per contra*, it has been contended by Mr.N.K.Agarwal, learned counsel appearing for the respondent no.1 that the applicant's representation dated 18.4.2013 (forwarded through the Member of Parliament) was considered in details and rejected by respondent no.1, vide letter dated 6.9.2013. Thereafter, the applicant made another representation dated 1.11.2013 which did not provide a fresh cause of action to him. The order dated 12.3.2014 passed in compliance with the Tribunal's order dated 19.12.2013 in OA No.4404 of 2013 also did not provide him a fresh cause of action. Therefore, the O.A. filed by the applicant on 15.4.2014 is grossly barred by delay and laches. It has also been contended by Mr.N.K.Agarwal that the panel dated 24.4.2012 prepared by the Selection Board/Committee

had expired on 23.4.2013 in terms of the DoP&T O.M. dated 29.3.2004 which stipulated that the period of validity of the panel recommended by the Screening Committee for appointment was one year. When appointments had already been made pursuant to the main panel and waiting list recommended by the Selection Board/Committee, the applicant was not entitled to claim inclusion of his name in the waiting list and appointment to the post of Additional Professor (Anatomy) at AIIMS, Raipur, which has already been filled up. The applicant did not have 13 years of experience of working as Assistant Professor and Associate Professor in Government Medical Colleges and was, therefore, ineligible for selection and appointment to the post of Additional Professor (Anatomy) at AIIMS. The appointment of Dr.Dhanesh Kumar Sharma as Additional Professor (Anatomy) at AIIMS, Raipur, being neither illegal nor arbitrary, the applicant's claim for appointment as Additional Professor (Anatomy) at AIIMS, Raipur, is baseless.

7. It has also been contended by Ms.Rashmi Malhotra, learned counsel appearing for the respondent no.2-AIIMS, Raipur, that the private respondent no.3 was very much eligible for selection and appointment to the post of Additional Professor (Anatomy), and that the private respondent no.3 was appointed as Additional Professor (Anatomy) at AIIMS, Raipur, on the basis of the order issued by the respondent no.1. Therefore, there was no illegality in the appointment of the private respondent no.3 as Additional Professor (Anatomy) at AIIMS, Raipur.

8. It has mainly been averred by the private respondent no.3 in his counter reply that the applicant had never worked as Associate Professor (Anatomy). The applicant also did not submit NOC from his parent department as required under the Advertisement. Hence, the Selection Board/Committee cannot be faulted for not recommending and including the applicant in the waiting list for appointment to the post of Additional Professor (Anatomy) at AIIMS, Raipur. Therefore, the applicant's challenge to his appointment as Additional Professor (Anatomy) at AIIMS, Raipur, is untenable, and the applicant is not entitled to the reliefs claimed by him.

9. After having given our thoughtful consideration to the rival contentions, we have found considerable merit in the contentions of the applicant.

10. As regards the respondent no.1's plea of delay and laches on the part of the applicant in seeking redressal of his grievances by way of making representations and filing Original Applications before this Tribunal, it is not the case of the respondent no.1 that the waiting list, appended to the letter dated 7.3.2013(Annexure A/6), was duly published and/or circulated to the candidates including the applicant who participated in the selection process. Soon after the respondent no.1 communicated the said waiting list to the six new AIIMS, vide letter dated 7.3.2013, the applicant, by his representation dated 20.3.2013 (Annexure A/7), pointed out the illegality in the inclusion of the private respondent no.3 therein for appointment as Additional Professor (Anatomy) at AIIMS, Raipur, and requested the respondent nos. 1 and 2 to

cure the said illegality and appoint him as Additional Professor (Anatomy) at AIIMS, Raipur. These representations of the applicant were not replied to by the respondent nos. 1 and 2. Therefore, apparently, the applicant made a request to Mr.Vilas Muttemwar, Member of Parliament and Chairman, Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution, who requested Dr.Ghulam Nabi Azad, Minister of Health & Family Welfare, Government of India, to consider the grievance of the applicant. Dr.Ghulam Nabi Azad, the then Minister, by his letter dated 6.9.2013 (Annexure R/3), informed the said Mr.Vilas Muttemwar that the Selection Committee did not select the applicant for the post of Additional Professor (Anatomy). The copy of the said letter dated 6.9.2013 does not appear to have been communicated to the applicant. It cannot be said that the representations made by the applicant were considered and rejected by the respondent no.1, vide letter dated 6.9.2013. Furthermore, after getting the information from the respondent no.1 that he had scored 55 marks and that the private respondent no.3 had scored 50 marks in the interview for the post of Additional Professor (Anatomy), the applicant again made a representation dated 1.11.2013 requesting the respondent no.1 to select and appoint him to the post of Additional Professor (Anatomy) at AIIMS, Raipur, against which the private respondent no.3 was appointed on the basis of the aforesaid waiting list. There being no response, the applicant filed OA No.4404 of 2013 which was disposed of by the Tribunal, vide order dated 19.12.2013 (Annexure A/12), directing the respondent no.1 to consider

the applicant's representation dated 1.11.2013 and to take appropriate decision by passing a reasoned and speaking order. In compliance with the Tribunal's order dated 19.12.2013, the respondent no.1 considered and rejected the applicant's representation, vide order dated 12.3.2014 (Annexure A/1) which has been sought to be quashed by the applicant as being arbitrary and illegal. As the applicant is questioning the non-inclusion of his name in the waiting list for Additional Professor (Anatomy) and inclusion of the private respondent no.3 in the waiting list as well as appointment of the private respondent no.3 to the post of Additional Professor (Anatomy) at AIIMS, Raipur, on the ground of his having scored 55 marks as against 50 marks scored by the private respondent no.3 in the interview for the post of Additional Professor (Anatomy), the question of validity or otherwise of the panel and the waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur, is not relevant for the purpose of considering and deciding the applicant's claim in the present proceedings. In the above view of the matter, we reject the respondent no.1's plea of delay and laches on the part of the applicant in pursuing the matter for redressal of his grievances by way of making departmental representations and filing the present O.A before this Tribunal.

11. As regards the plea raised by the respondent no.1 and private respondent no.3 about the ineligibility of the applicant for the post of Additional Professor (Anatomy), it is found from records that the applicant had acquired the post graduate degree, i.e., MS (Anatomy) in the year 2001.

He had worked as Assistant Lecturer at Government Medical College, Nagpur, from 7.1.1998 to 18.5.2001, as Assistant Professor from 23.5.2001 to 4.6.2008 at Government Medical College Nagpur, as Associate Professor at Dr.Ulhas Patil Medical College, Jalgaon, from 3.2.2009 and 31.8.2009, and again as Assistant Professor at Govt. Medical College, Nagpur, from 2.2.2010. When he made the applications pursuant to the Advertisement, he was continuing as Assistant Professor (Anatomy) at the Government Medical College, Nagpur. For the post of Additional Professor, the Advertisement stipulated experience of 9 years of Teaching/Research after qualifying degree or three years as Associate Professor for a candidate to be eligible to apply for selection. The Advertisement also stipulated that qualifications might be relaxed for highly experienced, trained or reputed candidates at the discretion of the Search-cum-Selection Committee. Considering the qualifications and experience of the applicant, the Selection Committee having found the applicant as eligible and having shortlisted and interviewed the applicant for selection to the post of Additional Professor (Anatomy), we have found no substance in the plea of the respondent nos. 1 and 3 that the applicant was ineligible to apply for selection and appointment to the post of Additional Professor (Anatomy).

12. After going through the Advertisement, we have found that there was no bar for any eligible and prospective candidate to apply for selection to both the posts of Associate Professor (Anatomy) and Additional Professor (Anatomy). In view of this, the applications made by the applicant

for selection and recruitment to both the posts of Additional Professor (Anatomy) and Associate Professor (Anatomy) were duly considered by the Selection Committee. The Selection Committee also called the applicant to appear at interviews for both the posts of Associate Professor (Anatomy) and Additional Professor (Anatomy), assessed his performances, and awarded marks to him in the interviews held for both the posts of Associate Professor (Anatomy) and Additional Professor (Anatomy). As per the marks scored by the applicant in the interview held for the post of Associate Professor (Anatomy) he was selected and recommended by the Selection Committee for appointment to the post of Associate Professor (Anatomy), and, accordingly, the applicant was issued offer of appointment to the post of Associate Professor (Anatomy) at AIIMS, Raipur. As his parent organization did not relieve him, the applicant could not join the service as Associate Professor (Anatomy) at AIIMS, Raipur, within the stipulated period and the offer of appointment issued to him stood cancelled/withdrawn. As regards his selection for the post of Additional Professor (Anatomy), the Selection Committee had awarded 55 marks to the applicant in the interview for the post of Additional Professor (Anatomy), and Dr. Hitendra Kumar Loh, who had been awarded 68 marks in the interview for the post of Additional Professor (Anatomy), was selected and appointed to the post of Additional Professor (Anatomy) at AIIMS, Raipur. The private respondent no.3 was awarded 50 marks in the interview for the post of Additional Professor (Anatomy). When admittedly separate merit lists for different posts were

prepared, the Selection Committee ought to have also considered the applicant's marks in the interview for the post of Additional Professor (Anatomy) while preparing waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur. In the absence of any stipulation in the Advertisement that in the event of any candidate applying for selection and recruitment to two posts and being selected for one of the said posts, he/she would not be wait-listed for the other post notwithstanding his/her higher merit position than that of any of the candidates recommended and included in the said waiting list and he/she lost his/her right to be included in the waiting list for the other post, the applicant was entitled to be included in the waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur, in place of the private respondent no.3 who had scored 50 marks in the interview for the post of Additional Professor (Anatomy). Accordingly, when Dr.Hitendra Kumar Loh did not join the service as Additional Professor (Anatomy) at AIIMS, Raipur, and the offer of his appointment stood cancelled/withdrawn, the applicant could have been offered appointment to the post of Additional Professor (Anatomy) at AIIMS, Raipur. Furthermore, in the absence of any stipulation in the Advertisement that a candidate having experience for the requisite period as Associate Professor would only be ineligible for selection as Additional Professor, there being one higher grade, i.e., Associate Professor, in between those two grades, the ground of rejection of the applicant's claim for inclusion in the waiting list for the post of Additional Professor (Anatomy) and

consequential appointment to the post of Additional Professor (Anatomy) at AIIMS, Raipur, being baseless is untenable. In the above view of the matter, we have no hesitation in holding that the impugned order dated 12.3.2014 (Annexure A/1) rejecting the applicant's claim having been passed by the respondent no.1 on extraneous considerations and without taking into account the fact that the applicant had scored 55 marks and the private respondent no.3 had scored 50 marks in the interview for the post of Additional Professor (Anatomy) is perverse, bad and illegal and liable to be quashed. We have also no hesitation in holding that the inclusion of the private respondent no.3 in the waiting list for the post of Additional Professor (Anatomy) at AIIMS, Raipur, and his appointment to the post of Additional Professor (Anatomy) at AIIMS, Raipur, are unsustainable and liable to be interfered with by this Tribunal, and that the applicant is entitled to be appointed to the post of Additional Professor (Anatomy) at AIIMS, Raipur.

13. The other aspect of the matter, which needs consideration by this Tribunal, is that on the basis of erroneous recommendation and/or inclusion of the private respondent no.3 in the waiting list by the Selection Committee, the respondent nos. 1 and 2 have appointed the private respondent no.3 to the post of Additional Professor (Anatomy) at AIIMS, Raipur, and the private respondent no.3 has joined and has been serving as Additional Professor (Anatomy) at AIIMS, Raipur, since 2013 and he has already put in more than five years of service by now as Additional

Professor (Anatomy) at AIIMS, Raipur. The private respondent no.3 never misrepresented any fact either before the Selection Committee or before the respondent nos. 1 and 2 and was also not party to the illegality committed by the Selection Committee and by the respondent nos. 1 and 2. Hence the private respondent no.3 should not suffer for the fault committed by the Selection Committee and by the respondent nos.1 and 2. He acted *bona fide* in accepting the offer of appointment and in joining the service as Additional Professor (Anatomy) at AIIMS, Raipur, in the year 2013. It would, therefore, be unjust and harsh to quash the appointment of the private respondent no.3 as Additional Professor (Anatomy) at this stage. While refraining from quashing the appointment of the private respondent no.3 as Additional Professor (Anatomy), we are of the view that the respondent nos.1 and 2 should consider the entire matter and take appropriate decision to accommodate the private respondent no.3 in service as Additional Professor (Anatomy) against a vacancy now available at any of the AIIMS, or by creating a supernumerary post of Additional Professor (Anatomy), or by upgrading a post of Associate Professor (Anatomy) to that of Additional Professor (Anatomy) at any of the AIIMS functioning under the respondent no.1, with all consequential service benefits from the date of his joining as Additional Professor (Anatomy) at AIIMS, Raipur.

14. In the light of our above discussions, we quash the impugned order dated 12.3.2014 (Annexure A/1) and direct the respondent nos. 1 and 2 to appoint the applicant to the post of Additional Professor (Anatomy) at

AIIMS, Raipur, with effect from the date of joining of the private respondent no.3 as Additional Professor (Anatomy) at AIIMS, Raipur, and grant him all consequential service benefits, except back wages. The respondent nos. 1 and 2 are also directed to consider the entire matter and take appropriate decision to accommodate the private respondent no.3 in service as Additional Professor (Anatomy) against a vacancy now available at any of the AIIMS, or by creating a supernumerary post of Additional Professor (Anatomy), or by upgrading a post of Associate Professor (Anatomy) to that of Additional Professor (Anatomy) at any of the AIIMS functioning under the respondent no.1, with all consequential service benefits from the date of his joining as Additional Professor (Anatomy) at AIIMS, Raipur. The respondent nos. 1 and 2 shall comply with the directions contained in this order within a period of three months from today.

15. Resultantly, the O.A. is allowed to the extent indicated above.

No costs.

(PRAVEEN MAHAJAN)  
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)  
JUDICIAL MEMBER

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