

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO.060/00653/2016 &
MA No.060/01216/2017**

(Reserved on 01.02.2018)

Chandigarh, this the 9th day of February, 2018

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Dr. (Mrs.) Rajasri Bhattacharyya w/o Dr. D Banerjee, Age 41 years, Teacher Flat 13, Postgraduate Institute of Medical Education and Research (PGIMER) Chandigarh – 160012. (Group A)

....Applicant

(Present: Mr. Rohit Seth, Advocate)

VERSUS

1. Union of India through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. Postgraduate Institute of Medical Education and Research (PGIMER) Chandigarh – 160012, through its Director.
3. Prof. Y.K. Chawla, Director, PGIMER, Chandigarh- 160012.
4. Institute Body PGIMER, Chandigarh 160012 through its Director.
5. Governing Body, PGIMER, Chandigarh – 160012, through its Director.
6. Dean, PGIMER, Chandigarh – 160012.
7. Standing Selection Committee, PGIMER, Chandigarh – 160012 through its Chairman.
8. Sh. Narindra K Ahluwalia, Sr. Administrative Officer (HR) & CPIO Recruitment Cell, PGIMER Chandigarh.
9. Prof. D. Kaul, HOD, Department of Experimental Medicine and Biotechnology, PGIMER, Chandigarh – 160012.
10. Prof. Jagat Ram, HOD, Department of Ophthalmology, PGIMER, Chandigarh – 160012.
11. Dr. Ashutosh Tiwari, Assistant Professor (Molecular Biology) Department of Experimental Medicine and Biotechnology, PGIMER, Chandigarh.
12. Dr. Nirbhai Singh, Assistant Professor of Ophthalmology (Non-medical Biosciences) Department of Ophthalmology, PGIMER, Chandigarh – 160012.

....Respondents

Present: Mr. Rohit Sharma, Advocate proxy for Mr. Girish Agnihotri, Sr. Advocate for Respondents Nos. 1,2, 4 to 7 & 9)
Mr. Gunjan Gera, Advocate for Resp. No. 11
Mr. R.K. Sharma, Advocate for Resp. No. 12)

ORDER

HON'BLE MS. P. GOPINATH, MEMBER (A)

1. Applicant applied for two posts of Assistant Professor, one of Molecular Biology, at the Department of Experimental Medicine and Biotechnology, and second of Biosciences at the Department of Ophthalmology, in response to an advertisement dated 20.10.2014 (Annexure A-6). A call letter was issued to the applicant on 08.08.2015 (Annexure A-8). She made a presentation, highlighting her achievements with a one page synopsis of her bio-data in accordance with clause 6 of the interview call letter dated 08.08.2015. She appeared before the Selection Committee on 28.08.2015 for the first post and on 01.09.2015 for the second post. Dr. D. Kaul, HOD, Department of Experimental Medicine and Biotechnology was the internal expert. Applicant submits that she was not allowed to present her case properly before the Selection Committee. She also submits that there were large number of candidates to be interviewed and hence challenges the assessment and appraisal of the merits of the candidates due to paucity of time. This, the Bench notes, is the personal observation of the applicant, submitted without any supporting facts or data. Applicant still chose to address the Director, PGIMER, expressing her apprehensions regarding presence of Dr. Kaul, HOD of the subject discipline on the Board.

2. Applicant admits in the O.A. that in the interview for the post of Assistant Professor (Bio Science), Department of Ophthalmology, the Selection Committee gave attention to her presentation, and also asked her relevant questions. She even submits that she was offered a chair to sit and discuss her presentation and her interaction with the Committee, particularly Respondent No. 10,

was very meaningful. In view of the above submissions, the Bench observes that the applicant would not have any grievance for her non-selection to this post.

3. On 14.10.2015, a select list was published on the respondents' website. The applicant was not selected. The applicant submitted an application under the RTI Act, demanding selection parameters, merit list and bio data of candidates and other documents, to be given to her, within 48 hours, as against the Act provision of 30 days. Some of the information asked for under the RTI Act was supplied and some other information was denied, on the ground of 3rd party information. Applicant also expresses doubt about the ratification of the selection to the posts by the Governing Body. Also that there may have been an oral communication and not a written approval is what the applicant contends. She argues that the impugned selection process is vitiated due to lack of approval of the Governing Body, which is a mandatory requirement for Group-A faculty appointment. She also expresses doubt whether the selection criteria is evolved by the Standing Selection Committee (in short SSC), with the approval of the Central Govt. in the challenged recruitment.

4. Applicant draws attention to the proviso to Rule 7(5) Post Graduate Institute of Medical Education and Research, Chandigarh Rules (hereinafter to be referred as PGIMER Rules) which states as under:-

“The method of recruitment, the age limit, the educational qualifications and other matters relating to the appointments to various posts in the Institute shall be determined in the manner provided for by regulations”

Applicant also reproduces the proviso to Rule 32 (1) of these Rules which mandates that “the Institute may, with the previous

approval of the Central government, make regulations consistent with this Act and the rules made there under to carry out the purpose of this Act”.

5. While quoting the above provisions, the applicant argues that the criteria adopted by the SSC is neither approved by the Central Govt. nor prescribed by any Regulation. For a single post, candidates more than three times the vacancies had been shortlisted for interview, which the applicant feels, was for too many to merit for a proper appraisal and assessment of inter-se merit leading to a fair selection. The applicant also appears to have obtained forensic report of copies of selection committee minutes and submits that there is evidence of one- penmanship in the marks award sheet. She also attributes malafide intention to Respondents No. 9, who was present in the Selection Committee, which may have resulted in vitiation of the selection process, declaring her not fit for the post of Assistant Professor. Besides making the above general allegations, the applicant does not have any substantive argument to establish malafide. It is evident that the applicant who was working in the respondents' organization would have to face persons in the interview committee, who are also employed in the same respondent organization. To attribute malafide to such persons, with whom/under whom the applicant had been working, without any substance is not acceptable. It is obvious from the language and expression in the O.A. and the representations, submitted by the applicant, that the applicant was not seeking a popularity vote.

6. The relief sought by the applicant is for quashing the selection of private respondents and also the selection criteria

evolved by the SSC. The applicant seeks re-do of the selection process.

7. Respondent No. 9, in his written statement, submits that the applicant's petition regarding his involvement and active contribution in applicant's non-selection in the faculty position is malicious, prejudicial and biased. He submits that the selection was made by the Selection Committee, chaired by the Director, PGIMER Chandigarh, on the basis of performance of the candidates, and certain other relevant criteria shortlisted by the SSC, and from amongst those who had a postgraduate degree in the specialty of Bioinformatics. Applicant did not possess the qualification of postgraduate degree in Bioinformatics or Molecular Biology. Applicant's claim that she taught Molecular Biology in the department, Experimental Medicine and Biotechnology, as a Senior Demonstrator, is not factually correct. She took only one class on structure of nucleic acids which involves a little bit of Bioinformatics-modeling tools. She was given the task of teaching Bioinformatics to M.Sc. Medical Biotechnology students in the absence of any other person, who had knowledge of the subjects as different from specialization in the subject.

8. The 9th respondent also challenges the argument of his being adversely biased against the applicant. He submits that he was the subject expert in the Selection Committee, which selected the applicant as a Senior Demonstrator, and hence the bias was in favour of the applicant and not against her in the said selection. She was given the same and equal opportunity as given to the 21/22 other candidates, who were called for interview for the post,

and she was treated no differently from any of the other applicants to the post.

9. The Selection Committee had one internal expert and one external expert (nominated by the Director, PGIMER, Chandigarh) along with other members. The 9th respondent challenges the argument of the applicant that one member can influence the decision of the entire Selection Committee. He also challenges the applicant's lack of confidence in the Selection Committee to her own lack of confidence in her ability and expertise for the post applied.

10. Respondents No.1, 2 and 4 to 7, in their written statement, submit that the Head of the Department was appointed as Internal Expert in the Selection Committee, with the due approval of the Competent Authority. The interview for the post, which the applicant had applied for, was conducted by a high-profile Standing Selection Committee (SSC), comprising of internal as well as external experts. This Selection Committee was approved by the Governing Body, which was the highest body of the Institute. As per decision of the Governing Body, the selection of Assistant Professor (un-reserved) in the departments of Cardiology and Ophthalmology was re-assigned to the Selection Committee of All India Institute of Medical Sciences (AIIMS), New Delhi. The result in respect of the posts under reserved category was declared, and the result of the unreserved posts was withheld with the selection being re-assigned for fresh assessment and selection to the AIIMS. The selection, argues respondents, was based on the recruitment rules, which were duly approved by the Governing Body.

11. The applicant had sought information under the RTI Act, and the said information was provided, except that which related to 3rd party. The applicant's demand for supply of information under the RTI Act within 48 hours was ignored, as the Act provides for supplying of information within a period of 30 days. The respondents also argue that the denial of any information was not to withhold any transparency in the selection process, but to protect the interest of third parties as provided in the Act. Admittedly, the information asked for by the applicant was provided, as per the provisions of the Act.

12. We have heard learned counsel for the parties and gone through the pleadings filed by the parties.

13. It is vehemently argued that the selection has been made by the Standing Selection Committee (SSC), constituted in compliance of PGIMER Rules/Regulations, which consisted of inside and outside members, and subject experts. This Selection Committee is an experienced body, and the selection decision so taken by it is not of an individual member, but the collective wisdom of all the members, who constituted the Committee. The applicant's effort to oppose the selection or charge bias on an individual member is far-fetched, as the Committee would not allow one person to dominate the system of selection. The respondents also have a Governing Body, which accepts and ratifies the recommendations of the SSC, hence providing a second level checks and balances. The applicant, who appeared before the SSC, cannot now, belatedly after non-selection, argue irregularity in the selection. The Governing Body having noted that some relative of faculty member had appeared for the interview, directed re-selection by an Institute outside the

city of Chandigarh despite the recusing of the said Committee Member. Hence, the argument of the applicant, that the Governing Body was a rubber-stamp, merely approving the recommendations made, cannot be accepted. The Governing Body ratified selection of only reserved category candidates, and directed that un-reserved category selection be made by AIIMS New Delhi.

14. To challenge that the SSC did not have expertise or capability to make a proper selection is also not maintainable. The SSC comprised of insiders and some outsiders. The fact that experts from inside the respondent organization were present should not be a reason to prejudice the selection. It is expected that the insiders would be present in the selection and that the experts would conduct themselves in a mature and unbiased manner, and make a selection in order to provide the best medical services from the respondent institution. Participation of internal experts is the norm in almost all selections in Govt. organization and internal expert as a user has a right to be present also. It would also be expected that the SSC, in the interest of maintaining the reputation of the respondent organization and the department for which the selection was made, would ensure that they select the best person for the post. It is also expected that the members of the SSC would be above petty bias or prejudice while sitting in the Selection Committee.

15. It would be difficult for such a Selection Committee to sit with a stop watch and give same amount of time of interview time to all the persons, who had applied for the post. It is generally expected that the caliber of the participants would be adjudged from the bio-data, already placed before them, and the persons' interaction

would be additional input. Whereas some reticent participants may require more time to be assessed by the Committee, some other may be more forthcoming and requiring less time for assessment. It may be possible to assess the caliber of some persons in a shorter time span and for some others in a longer time span. There can be no specific ready reckoner on time slot to assess a person for success or failure. The assessment would depend on the manner in which a candidate projects himself/herself, that he is the best and fit person to hold the post, in this premiere respondent institute.

16. We do not find and hold that the selection process made by the SSC is vitiated against the applicant. The applicant has also not pointed out any specific discrepancy which would have gone against her. Self-judgment of capability would normally go in favour of self and it would be difficult for any candidate for the post to believe that he fails to qualify. It is for the senior members of the SSC to make a proper assessment, as per requirement of the respondent organization and the requirement of the post and the job required to be performed, as specified in the Recruitment Rules.

17. The submission of the applicant that it appears to her that the official respondents have done injustice in the matter of selection is casting a general aspersion on the SSC, without any specific and mature proof of the statement made . The arguments made appear more to be schoolish in the nature of a school teacher's favourite or like and dislike, and not in tune with selection to a middle level post in a premier postgraduate medical institution of national repute. The SSC, in its minutes of the

evaluation process, prior to commencing the selection, drew up the following guidelines for the selection:-

“Before the start of the interviews, the grading method of evaluation was discussed in detail and it has been felt that to ensure transparency and objectivity in the selection process the evaluation of candidates should be done on the basis of qualification, experience, publications, patents, awards/honors, membership of profession bodies, special achievement such as starting a unit/department etc. and performance in the interview. for this, marking should be done by the subject experts out of 100 marks (in percentage terms). The Committee will give the consensus marks to the candidates taking into consideration the performance of the candidates, their records and the evaluation of the subject experts. It was further decided that keeping in view the Institute of National Importance status of PGIMER, the status cut off for various categories of candidates will be – 60% (General Category), 55% (OBC Category), 50% (SC/ST Category). The seniority of the candidates will be on the basis of the marks allotted by the Committee i.e. on the basis of order of merit.”

We do not find anything adverse in the evaluation methodology, so drawn up, as above. The committee had also decided that it will arrive at consensus decision while awarding marks to the applicants for the post, bearing in mind the performance of the candidates, their records of experience, publications etc. and the evaluation of the subject experts.

18. The Tribunal cannot put itself in the place of the members of the SSC, assess the performance of the applicant or other candidates, who appeared before the Committee and awarded marks. The applicant’s argument that each member of the Selection Committee should have awarded marks separately in her own understanding of how the SSC should conduct itself. But we would still hold that the SSC has a right to draw its own procedure to assess the candidates, as per the Rules and Regulations of the Institute, and not as desired or wished by the applicant.

19. Applicant also has no argument nor has put forth any point or any document which mandates that any person working in the respondent hospital in lower post should be selected to a higher post in the same hospital. Further the applicant’s argument that

the publications of private respondents, sought under the RTI are denied, is countered by the argument that the publication are available in public domain, and would lead to the converse argument that in such an eventuality there would be no reason to ask for such publications under the RTI as they are available in the public domain.

20. A perusal of Annexure R-1 reveals that the information denied to the applicant relates to the copies of bio-data/synopsis sheet of other candidates, who applied for the post, which under the RTI Act comes under the category of third party information which can rightfully be denied under Section 8(1)(e). A reasoned order was passed by the appellate authority quoting judgment of Apex Court in the **UPSC Vs. Gourhari Kamila** in CA 6362 of 2013 decided on 06.08.2013 while denying these third party documents to the applicant.

21. The respondent institution has a Standing Selection Committee for making selection to posts in the institution. The SSC prior to commencing the selection for the post, in its meeting on 24.08.2015, attended by four Members and Chairman laid down the criterion, to be followed in the selection process, in respect of all applicants to the post. The committee laid down that the qualification, experience, publications, patents, awards/honours, membership of professional bodies, special achievement such as starting a unit/department etc. and performance in interview would be assessed for all candidates. The committee also decided to adopt the modality of consensus for the selection to the post and we note from Annexure A-2 that the candidates have been awarded one consensus marking on the basis of assessment. We do not

find any shortcoming in the selection process so adopted. We also note from Annexure A-3 (colly) that only three candidates out of 22 have got more marks than the applicant. Hence it cannot be argued that the applicant was under-marked or was marked by the Committee without application of mind. From the various marks awarded to the candidates by the SSC, we can draw the conclusion that the Committee has applied its mind while assessing on the basis of various criteria shortlisted for selection and awarded marks accordingly. That the candidate is not satisfied with her award of marks would not be a reason to set aside the selection. The selection was made by a duly constituted committee, with selection criteria drawn up in detail and by award of marks by consensus, based on assessment of each applicant for the post. Hence we do not find any fault in the selection process. Having participated in the selection process, the applicant cannot now perform a post mortem and draw up shortcoming in the selection procedure, in view of her non-selection. Having run the race, she has to accept the fact that the best man wins.

22. Whereas applicant has every right to self assess her performance and draw conclusions, she cannot impose her self assessment on the five member expert SSC comprising of senior faculty members, who have enough experience to make the right choice for the post advertised. Also the argument of the applicant that because an earlier selection of Tutor challenged by the applicant was quashed the selection under challenge in this O.A. also merits the same conclusion, is farfetched. The argument of the applicant is that there were too many candidates and the number of candidates to be interviewed should be limited. It

appears that the applicant abrogates to herself the role of the respondent institution and the SSC, and desires to call the shots as to how many candidates should apply or be interviewed or how the candidates should be assessed or how the interview be conducted. Applicant should confine herself to the role of an applicant for the post and should not sit in the chair of the SSC or the mind of the Members of the SSC and decide or direct as to how the selection is to be made. The respondent institution has a SSC for recruitment which is well versed with its functions and responsibilities and does not require to draw from the wisdom of the aspiring applicants to the post applied for.

23. The PGIMER Act 1966 under clause 32 (k) has empowered the Institute, with approval of the Central Govt., to make rules and regulations regarding who may be appointed to the posts of professors, readers and lecturers and other posts. Under this power the counsel for the respondents argues that, an SSC for making selection to faculty posts has been constituted. The posts are advertised as per provisions of the approved and notified recruitment rules and the selection made by the above SSC is placed before the Governing Body for its consideration and approval. The Governing Body is not a simple vetting body, as we observe that it set aside selection of unreserved posts and reassigned it to the AIIMS Delhi. Hence, a system of checks and balances is prescribed in the respondent organization to ensure that selections etc. are made in the manner notified or in an appropriate manner. Thus, this Bench is satisfied that neither the Selection Committee nor the Governing Body is a rubber stamp

and both would apply their mind in the manner as indicated in the rules and regulations to ensure that selections are made properly.

24. This Bench is not a medical expert, and we leave the task of selection to a post in a premiere Medical Institute of the country to the duly constituted expert SSC to fulfill the role of making the best selection to the post. The Committee has five members including Chairman and to argue that all the five have conspired to sabotage the right of the applicant to be selected appears to be again far-fetched.

25. The applicant appears to, in rejoinder to the reply of the respondent No. 9, put words into his mouth or his reply as to what he intends to submit or his role as a participant in the selection committee. As the Head of the Department, for which the selection was made, he has expertise and knowledge about the requirement of the post in his department, and the notified recruitment rules and regulations of the respondent institution. Whereas the applicant can have a legitimate expectation to be considered for the post, she cannot dictate her way for appointment to the post. She does not have a vested right to be appointed to the post. The selection to the post was made by the SSC comprising of internal and external experts, whose constitution was approved by the Governing Body, and bears no comparison to the applicant's selection to the post of Tutor which was made by the Local Selection Committee.

26. The applicant having participated in the selection process cannot now turn around and pick holes in the selection in a manner to favour her selection. The judicial review of any administrative action is to check as to whether the action had been

done lawfully. It is also intended to rule out arbitrariness, irregularity, un-reasonableness and malafide. We find that none of the above is attracted in the instant case. This is a case where the applicant has made self-assessment of her capabilities and argues that she is the fit person to occupy the post. Judicial review is not directed against a decision but needs to be confined to the decision making process. The judicial review cannot also be extended to the examination of the correctness and reasonableness of the selection as the Tribunal cannot place itself in the chair of the Selection Committee.

27. The applicant has been given a chance to apply for the post, be interviewed by the SSC, and her capability was assessed by the specialist insider and outsider experts. Judicial review being a review of the manner in which the selection was made, it would be erroneous to think that the Tribunal would impose on itself the role of the Selection Committee. The power to select an appropriate person has been vested in the SSC, by the rules and regulation, and the selection having been made consistent with the Rules, would meet the ends of justice. If a person selected is appropriately qualified and experienced, as required for the post, the applicant's self-assessment of her capability should not be allowed to upset the selection. The Tribunal has no power to substitute its own discretion for that of the statutorily constituted SSC or the Governing Body.

28. In Civil Appeal No. 6057/2010 titled **Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others**, decided by the Hon'ble Apex Court on 29.07.2010, the case of **Dalpat Abasaheb Solunke & Others Vs.**

Dr. B.S. Mahajan & Others(1990) 1 SCC 305, has been quoted as under:-

"... . . . It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

29. In the case of **M.V. Thimmaiah Vs. UPSC** (2008) 2 SCC 119, the ratio was that the Court cannot sit in appeal over the assessment made by the Selection Committee. The Apex Court in para 9 held that normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like a Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit as a Court of appeal to examine the selection of the candidates. Nor is it the business of the Court to examine candidates who have applied for the post and record its opinion.

30. Having bestowed our consideration to the rival submissions made, we find no substance in the arguments of the applicant. Whereas we appreciate her confidence and self assessment to occupy the post whose selection she has challenged, we find no valid reason to abrogate the selection process, and uphold the same and the appointments made therein.

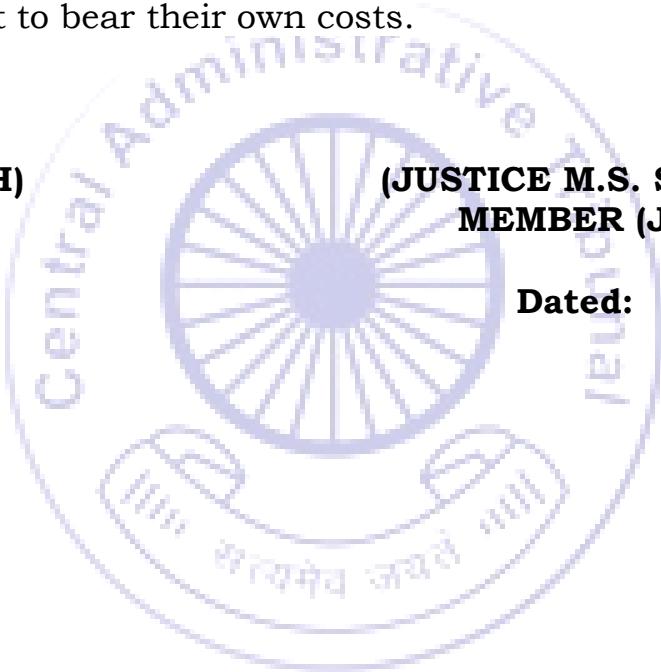
31. On the lines of the judgments aforementioned and discussion hereinabove, we are of the view that the Tribunal cannot sit as an Appellate Authority over the Selection Committee. This power is not vested in the Tribunal. The duly constituted SSC assessed the candidates, who had applied for the post, and made the selection. The selection has also been ratified by the Governing Body of the PGIMER Chandigarh, and we are strongly of the view that this selection, does not need to be interfered with. Accordingly, the O.A., being devoid of any merit, is hereby dismissed. M.A. No. 060/01216/2017 is also disposed of accordingly. However, the parties are left to bear their own costs.

**(P. GOPINATH)
MEMBER (A)**

**(JUSTICE M.S. SULLAR)
MEMBER (J)**

Dated:

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Draft order in O.A. NO. 060/00653/2016 titled Dr. Rajasri Bhattacharyya Vs. U.O.I. & Others is enclosed herewith for concurrence.

(Ms. P. Gopinath)
Member(A)

Hon'ble Justice Mr. M.S. Sullar, Member (J)

