

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.210/00221/2017

Dated this Friday, the 12th day of January, 2018.

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A) .**

Mahasen Sambhajirao Gandle,
Chief Administrative Officer,
Bhabha Atomic Research Centre,
Homi Bhabha National Institute,
Anushaktinagar, Mumbai.
(R/o.A-15, Kedarnath,
Anushaktinagar, Mumbai-400094.)

.. Applicant.

(In person) .

Versus

1. Union of India, through
Secretary,
Department of Atomic Energy
& Chairman, Council of
Management,
Homi Bhabha National Institute
CSM Marg,
Mumbai-400001.

2. Director,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Mumbai - 400 085.

3. Registrar,
Homi Bhabha National Institute,
Training School Complex,
Anushaktinagar,
Mumbai - 400 094.

.. Respondents.

(By Advocate Shri Abhay Kini) .

Order reserved on : 19.12.2017

Order delivered on : 12.01.2018.

O R D E R**Per : Arvind J. Rohee, Member (J) .**

The applicant, who is presently working as Chief Administrative Officer / Deputy Registrar in Homi Bhabha National Institute (HBNI), Mumbai under Respondent No.2 has grievance regarding the impugned Advertisement No.1/2017 (Annexure A-1) published by Respondent No.3 inviting applications from the eligible candidates to fill up one vacant post of Registrar, HBNI in Pay Band-4 with Grade Pay Rs.10,000/-, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “(a) To allow the Original Application.*
- (b) To order stay on further continuation of recruitment process till the decision on application of the applicant is finally pronounced by this Hon'ble CAT.*
- (c) To settle the terms and condition of the employment of applicant on his appointment as Dy. Registrar in HBNI with retrospective effect.*
- (d) To declare the entire recruitment process initiated by HBNI as arbitrary, illegal and null & void with immediate effect.*
- (e) To award the cost of Original Application.*
- (f) To grant any other consequential benefits that Hon'ble CAT may deem fit.”*

2. The applicant joined Bhabha Atomic

Research Centre (for short '**BARC**') on transfer from National Fuel Corporation (for short '**NFC**') Hyderabad on 09.05.2016 as Deputy Registrar which post is equivalent to Chief Administrative Officer. On 31.12.2016, the post of Registrar, HBNI fell vacant, consequent upon resignation of the incumbent. Hence process was initiated by the respondents to fill up the said vacant post by issuing Advertisement (Annexure A-1) inviting applications from the eligible candidates as per the educational qualification and experience prescribed therein by the end of 24.02.2017. The applicant having been qualified and eligible for the said post, submitted application (Annexure A-5) on 24.02.2017.

3. On 27.02.2017, the applicant submitted a request letter to Respondent No.3 for supply of copy of Recruitment Rules prescribed for the post of Registrar HBNI. On the same day i.e. 27.02.2017 by another application (Annexure A-6), the applicant forwarded copy of Notification issued by the University Grants Commission (for short '**UGC**') which prescribes 5% relaxation for SC/ST candidates to the extent of 5% of marks obtained at Post Graduation level. It is stated

that in the Advertisement, the said relaxation is not prescribed by Respondent No.3 which results in violation of the aforesaid Notification. In response to the first letter dated 27.02.2017, the applicant received communication dated 06.03.2017 (Annexure A-3) from Respondent No.3 forwarding a copy of the Recruitment Rules to him.

4. On 09.03.2017, the applicant forwarded another representation to the Respondent No.3 to consider his case with relaxed standard with regard to the marks secured by him at post graduation level and also experience prescribed in the Advertisement. In response to it, vide communication dated 20.03.2017 (Annexure A-2), it was informed that the applicant does not meet the requirement for seeking relaxation. On 21.03.2017, the applicant submitted a representation (Annexure A-7) against the said communication and by another letter dated 27.03.2017 (Annexure A-4), he prayed for considering his claim for adhoc appointment on the post of Registrar even in the lower pay scale since according to him, he is the only competent and experienced person for the said post. It is

stated that since there was no response from the respondents, the applicant approached this Tribunal in the present O.A. on 30.03.2017.

5. In the O.A. the following interim reliefs are sought :-

“i) To suspend the ongoing recruitment process forth with.

ii) To direct the respondent No.1 to consider the candidature of the applicant for the post of Registrar as per UGC Regulations and extant reservation orders.”

6. While issuing notice to the respondents, this Tribunal vide order dated 03.04.2017 has directed the recruitment not to finalize the process initiated in pursuance of the Advertisement No.1/2017 (Annexure A-1).

7. The reliefs sought are based on the following grounds as mentioned in Paragraph 5 of the O.A. The same are reproduced here for ready reference:-

“5.1) The applicant belongs to SC category and has rendered meritorious service to the department for over 37 years. It would be pertinent to mention here that despite of the victim biased ill treatment and harassment meted out to him he has attained the feat of rising up to the level of group “A” post i.e. CAO by means of dint of hard work and sincerity of purpose in hostile environment. He has been issued with a commendation certificate by the department for his contributions to the department. He is due for retirement consequent upon his attaining the age of superannuation in May-2018. He is also entitled to be considered for further promotion to post of Director (P&A). However, to hamper

the chances of the Applicant for further promotion like on earlier occasions, he has been implicated in the farcical inquiry on flimsy grounds where in plenty of procedural lapses and an inordinate delay has been taken place.

5.2) *The applicant has submitted his application in this Hon'ble Tribunal and the same has been admitted and is likely to be quashed by this Hon'ble Tribunal on merit. Further, departmental inquiry instituted against the applicant has no bar for his submission of application for promotion and recruitment on higher posts within the department.*

5.3) *Respondents No.1 to 3 were fully aware about the fact of ongoing departmental inquiry against the applicant, despite that ignoring this fact he was posted in HBNI as Deputy Registrar. Hence, while considering his candidature for the post of Registrar, Respondents have to ignore this fact being the applicant a departmental candidate. As per CCS (CCA) Rules, departmental inquiry is no bar for considering the case of delinquent Official for his appointment to the higher grade.*

5.4) *The Government of India, Department of Personnel & Training OM No.36026/3/85-Estt. (SCT) dated 24.6.1985 and OM No.36011/25/89-11Estt. (SCT) dated 21.8.1989 have issued instructions to protect the interests of SC/ST employees who are subjected for discrimination based on the social origin of the employee concerned. Hence, protection of these instructions needs to be extended to the applicant at this critical juncture. The copy of said OM dated 24.6.1985 and 21.8.1989 is enclosed as Exhibit-A8.*

5.5) *The applicant is eligible to get relaxation of 5% marks at the post-graduation level as per the UGC regulations and relaxation of experience qualification as per the chapter 8 of Brochure on reservation and concessions and so also being the departmental candidates who was subjected for wilful discrimination at the time of AO-III promotion interviews and CAO interviews by which he was deprived of 5 years from getting appointment to the respective higher posts.*

5.6) *The applicant has also expressed his willingness to accept the post of Registrar with Rs.8700/- Grade pay for which he is eligible without any relaxation and the Council of Management, HBNI is competent to relax and repeal the conditions attached to recruitment rules.*

5.7) *The natures of duties prescribed in the advertisement are purely administrative in nature and that the applicant has the wide varieties of experience of over 20 years in handling various Administrative functions stipulated in the advertisement with greater efficiency.*

5.8) *The applicant fulfils the desirable qualification being the DAE employee and has rich experience of over 10 years in direct handling legal cases in the department.*

5.9) *The applicant being the native of Maharashtra is well versed with functioning of various Maharashtra state Government Departments and can handle the University and other matters efficiently and effectively."*

8. On notice the respondents appeared and by a common reply dated 18.04.2017 filed on 11.05.2017 resisted the O.A., in which all the adverse averments, contentions and grounds raised therein are denied.

9. It is stated that HBNI, Mumbai is grant-in-aid Institution under the Department of Atomic Energy (for short '**DAE**'), Government of India and it is deemed University under Section 3 of the University Grants Commission Act, 1956. It is an internationally renowned research University specialized in Nuclear Science and Engineering including Mathematics. It has been accredited by National Assessment and Accreditation Council (NNAC) with 'A' Grade.

10. It is stated that the Council of

Management of HBNI in its meeting held on 16.09.2014 framed the Recruitment Rules for the post of Registrar, HBNI on the basis of the guidelines published vide Notification No.1-32/2006-U.II/U.I(ii) dated 31.12.2008 issued by Ministry of Human Resources Development. The said Notification was forwarded to the UGC, New Delhi. The Recruitment Rules framed by Council of Management of HBNI were forwarded to the DAE for approval, which was accorded. The recruitment process in pursuance of the Advertisement No.1/2017 was initiated in the month of January, 2017 strictly in pursuance of and in accordance with those Recruitment Rules (Annexures R-2 / A-3).

11. It is not disputed that the post of Registrar became vacant due to resignation of incumbent officer with effect from 30.12.2016 and hence the Respondent No.3 issued an open Advertisement in major newspapers on 25.01.2017 and also in Employment News dated 04.02.2017 calling upon prospective candidates to apply for the said post of Registrar latest by 24.02.2017. The Advertisement elaborately prescribed eligibility criteria including educational

qualification and experience as per Recruitment Rules.

12. It is stated that application dated 24.02.2017 submitted by the applicant in response to the Advertisement was examined/scrutinized by the concerned Selection Committee. On evaluation, it was revealed that the applicant does not meet the eligibility criteria corresponding to the requisite for the post advertised. It is specifically stated that the candidate should possess 15 years of experience in PB-3 mentioned above of which at least eight years service as Deputy Registrar or equivalent post in Grade Pay of Rs.7600/- and above. It is stated that the applicant holds 13 years and 6 months of experience only in PB-3 and out of 5 years and 6 months in administrative post in Grade Pay of Rs.7600/-. As such, the applicant does not meet the eligibility criteria as per Advertisement.

13. While the recruitment process was in progress, the applicant vide letter dated 27.02.2017 sought relaxation in the Recruitment Rules on the ground that he belongs to SC category and placed reliance on the Notification

dated 31.12.1998 issued by the UGC. However, it is stated that eligibility criteria specified for the advertised post is based on the Notification dated 31.12.2008 issued by the DAE, which does not provide for any relaxation in educational qualification in the form of marks secured at post graduation level.

14. By the same letter dated 27.02.2017 the applicant has sought relaxation in experience criteria also and stated that such relaxation in experience is also available and that it speaks for itself. However, it is stated that the Government of India vide Brochure dated 23.01.2014 (Annexure R-4) on reservation for SC, ST and Other Backward Class in Government service, mandates that relaxation of qualification will be considered only for the post reserved for SC/ST categories. In this respect, DOP&Ts OM is relied upon which categorically states that in the event educational qualification is prescribed in the Recruitment Rules all candidates including the SC/ST and OBC shall specify such educational qualification. As such, there is no question of relaxation of educational qualification or

experience as claimed by the applicant.

15. It is further stated that the applicant being Central Government employee in the DAE on receipt of his application in pursuance of the Advertisement for the post of Registrar, it was forwarded to the DAE for vigilance clearance, which is required as per instructions issued which are applicable to a Government servant, who applied for direct recruitment or otherwise. It is stated that by open Advertisement process for direct recruitment to fill up one vacant post in general / open category is initiated and hence vigilance clearance was absolutely necessary. In pursuance, thereof, vide letter No.2/1/2016/Vig (part file)/3511 dated 09.03.2017 (Annexure R-5), DAE informed that a disciplinary proceeding is pending against the applicant and a charge-sheet dated 31.07.2015 is also issued. In view of this, the applicant was not free from vigilance angle and hence, there was no question of considering his candidature. The applicant has suppressed this fact. As such, it is not open for the applicant to avert that the reply dated 20.03.2017 (Annexure A-2) submitted by Respondent No.3 is vague or is improper, since

disciplinary proceeding is pending against him.

16. It is stated that the previous O.A.No.363/2011 filed by the applicant challenging his non-inclusion in the select panel for the post of Deputy Registrar has been dismissed by this Tribunal vide order dated 02.02.2015 in the following words:-

“There is no arbitrariness, illegality or infirmity in the decision of DPC in not empanelling the Applicant in the grade of Senior Administrative Officer for the year 2010.”

17. It is, thus, obvious that the applicant's contention that his promotion to the grade of Chief Administrative Officer was delayed by 2 years is false and baseless. Copy of the order in the aforesaid O.A. is at Annexure R-6.

18. So far as the applicant's request dated 27.02.2017 for adhoc appointment to the post of Registrar in the vacancy to be filled up on regular basis, the matter was considered and he was informed vide letter dated 20.03.2017 (Annexure R-7) for filling up the vacancy on adhoc basis vide DOP&T OM No.28036/97-Estt(D) dated 30.03.1988 and guidelines framed therein are to be followed. It is stated that the vacancies are filled on adhoc basis only when

short term vacancy caused by regular incumbents proceeding on leave for 45 days or more, study leave or deputation for less than one year, whereas regular vacancies are not to be filled by adhoc appointment. In view of this, applicant's request for adhoc appointment on regular post of Registrar cannot be considered favourably.

19. It is stated that in the Advertisement to fill up the unreserved/general category post, there is no question to grant any relaxation in educational qualification in the form of percentage of marks obtained at post graduation level to the SC/ST candidates. Hence, there was no need to mention about such relaxation in advertisement. The applicant's contention that he is entitled for relaxation of 5% marks at Post Graduate level as per UGC Notification is devoid of merit.

20. It is stated that the applicant on one hand alleged discrimination on the basis of caste and victimization meted out to him throughout his career and on the other hand, he stated that his services have been appreciated and that the applicant is recipient of certificate of commendation. It is stated that the allegations

qua the applicant's aspirations are mere imaginary in nature and hence, cannot be considered.

21. It is further stated that as per DOP&Ts OM dated 14.07.1993 application of any Government servant for direct recruitment or on promotion post cannot be considered if disciplinary proceedings are initiated and pending against him or he is facing criminal prosecution, since charge-sheet is already filed against the applicant which in his case could not be considered.

22. So far as grounds raised in paragraph 5.2 is concerned, it is submitted by applicant that despite ongoing disciplinary proceeding against the applicant he was posted as Deputy Registrar. In this behalf it is stated that it was in cadre position i.e. by way of promotion and not by direct recruitment. It is wrong on the part of the applicant to say that on going disciplinary proceedings were not considered while he was posted as Deputy Registrar and as such it should be ignored while considering applicant for the post of Registrar, since it is by way of direct recruitment and not by promotion.

23. So far as grounds raised in Paragraph 5.4 is concerned, it is submitted that the respondents and its constituent units including aided institutions have a large workforce of employees including many members belonging to SC/ST categories and all the employees are treated equally, without any discrimination based on caste and/or any other considerations. It is emphatically submitted that there is no discrimination against the applicant and the applicant be put to strict proof of the same.

24. So far as grounds raised in Paragraph 5.5 is concerned it is stated that delay in applicant's promotion cannot be considered as willful discrimination against him, unless proved contrary which is not the case.

25. So far as ground raised in Paragraph 5.6 is concerned regarding applicant's willingness to accept the post of Registrar with lower Pay Band itself states that the respondents are not empowered to accept such willingness. In this respect it is stated that HBNI is an internationally renowned Research University specialized in Nuclear Science and Engineering including Mathematics. The post of Registrar has

been created in accordance with the terms and norms as laid down by UGC. As such, the terms of employment of the Registrar are determined with specific expertise, experience and specialized knowledge commensurate with the mandate of the Institute. The terms of employment including pay cannot be varied according to the whims and fancies of the applicant or any other individual.

26. It is stated that after submitting representation dated 27.03.2017 to consider the applicant for grant of promotion to the post of Deputy Registrar retrospectively, without waiting for the response on it, the applicant straightway approached this Tribunal. Hence the O.A. is not maintainable by virtue of the provisions of Section 20(b) of the Administrative Tribunals Act, 1985 and hence it is liable to be dismissed.

27. It is specifically denied that the recruitment process initiated by respondent No.3 is arbitrary, illegal and improper as alleged by the applicant. None of the grounds raised are sustainable and hence he is not entitled to any relief. The O.A. is, therefore, liable to be dismissed.

28. The applicant then filed a rejoinder on

28.06.2017 in which all the adverse averments and contentions made in the reply are denied. The facts and grounds raised in the OA for seeking the reliefs are reiterated. Along with the rejoinder, copy of OA No.363/2011 in which the applicant has challenged the order of transfer from BARC Mumbai to Hyderabad is also filed. Reliance is also placed on the OM No.36011/14/83-Estt.(SCT) dated 30.04.1983 issued by the Department of Personnel and Administrative Reforms on the subject "*adhoc promotions consideration of cases of Scheduled Castes and Scheduled Tribes - Regarding*" in which elaborate guidelines are issued. In support of the contentions that the applicant had a meritorious and commandable service record, he has also produced photographs of some awards functions and commendation letter.

29. Refuting the averments made by the respondents that there cannot be relaxation in age and experience for the Scheduled Castes and Scheduled Tribes candidates, since the post of Registrar is to be filled up from general category and is being isolated post and there cant be no relaxation. Relying on the decision

rendered in landmark case of ***R.K.Sabrawal Vs. State of Punjab***, in pursuance of which DOPTs OM dated 02.07.1997 was issued for change of roster from vacancy based to post based. It is stated that the respondents should have reconstructed the roster accordingly and post earmarked for Scheduled Castes/Scheduled Tribes candidates should have been filled up immediately. However, this has not been done and the respondents have thereby willfully denied the rightful claims of the Departmental Scheduled Castes / Scheduled Tribes candidates. It was only through the intervention of National Commission for Scheduled Castes, the respondents have taken appropriate steps in the matter. The applicant is, therefore, entitled to the reliefs sought.

30. On 19.12.2017, when the matter was called out for final hearing, we have heard the oral submissions of the applicant, who appeared in person and the reply arguments of Shri Abhay Kini, learned Advocate for the Respondents.

31. We have carefully gone through the entire pleadings of the parties and various documents relied upon by them in support of their rival contentions.

32. We have also given our thoughtful considerations to the submissions advanced before us by both the parties.

FINDINGS

33. The only controversy involved for resolution of this Tribunal in the present OA is whether rejection of candidature of the applicant for the post of Registrar HBNI is illegal, improper or incorrect on the grounds raised by the applicant and he is entitled to the reliefs sought.

34. To begin with it may be stated here that the applicant joined DAE long back in 1980 and thereafter he secured couple of promotions in different grades and also worked in different units of BARC. Thereafter, in the year 2014, he was transferred to NFC Hyderabad from BARC Mumbai, which order he has challenged in the OA before this Tribunal. However, since no relief was granted to him, ultimately, he joined on the said post and thereafter on 09.05.2016, the applicant is again transferred to BARC, Mumbai and was posted as CAO in HBNI, on which post he is presently working. It is stated that the said post is equivalent to Deputy Registrar and hence,

according to the applicant, he is eligible and qualified for being considered for the higher post of Registrar. This fact has not been disputed by the respondents. However, it is to be considered if the applicant meets the eligibility criteria so far as it relates to educational qualification and the experience as mentioned in the Advertisement Annexure A-1. It elaborately states various units of DAE, constituent institutions of HBNI, pay scale of the post of Registrar, tenure of the post, nature of duties, eligibility criteria and experience, selection procedure, application procedure along with format of application. We are mainly concerned with eligibility criteria and experience, which is reproduced here for ready reference :-

“Eligibility criteria :

Age :- Candidate shall not be more than 60 years of age as on 01.01.2017. Age of superannuation will be 62 years.

Educational Qualification :- Master degree with at least 55% marks or equivalent grade “B” in the UGC 7 point scale.

Desirable Qualification :- Familiarity with the working of DAE and legal framework for governance of education in India.

Experience :-

- a) At least 15 years as Faculty in Grade Pay of Rs.7,000/- and above or with 8 years of service in the GP of Rs.8,000/- and above including as Faculty with grade pay of Rs.8700 and above with experience in education administration; or*
- b) 8 years of experience as scientific officer in a research establishment and / or other institutions of higher learning with a grade pay of Rs.8,000/- and above along with experience in education administration;*
- c) 15 years of administration experience in Pay Band 3 and above of which at least 8 years shall be as Dy. Registrar or an equivalent post in grade pay of Rs.7600 and above.”*

35. It is not disputed that the applicant holds Master's Degree in Sociology and also MBA. It is not disputed that he belongs to SC category. As per the advertisement, it is the isolated post which is to be filled up by eligible candidates working in different units of BARC. This is to be filled up by direct recruitment and not by way of promotion as per Recruitment Rules. There is nothing in the advertisement to show that as per the roster point, the said post is reserved for SC/ST category. As such, it is to be filled up from General category or that it is earmarked for general category. However, this does not mean that the candidate belonging to SC/ST/OBC

category cannot apply for the said post, in as much as if they apply, they will be treated as general category candidate and not as reserved category, for the simple reason that the post is not reserved for SC/ST/OBC category.

36. Keeping in mind the above factual position, according to the applicant, he should have been granted relaxation of 5% of marks obtained by him at Post Graduation level since he belongs to SC category and since no such relaxation is contemplated in the advertisement, the entire selection process is vitiated. For the purposes of his submission, he placed reliance on the UGC notification of 1998 on *“revision of pay scale, minimum qualification for appointment of teachers in University and Colleges and other measures for the maintenance of standards”*. It is, thus, mainly concerned with teaching faculty. However, in paragraph No.3.0 and 3.4.0, relaxation in marks obtained at Post Graduation level is prescribed. Although, it is stated that the minimum requirement is 55% marks at the Post Graduation level, special concession relaxation is granted to the candidates belonging to ST/SC category to

the extent of 5% of the marks. This follows that candidate belonging to SC/ST category if he applied for teaching faculty is eligible even if he secures 50% of marks at Post Graduation level under relaxed standards. Paragraph No.3.0 also prescribes certain non teaching faculty for getting such relaxation in marks. For the sake of convenience and ready reference, the entire text of paragraph Nos.3.0 and 3.4.0 is reproduced here :-

“3.0. The minimum requirements of a good academic record, 55% of the marks at the master's level and qualifying in the National Eligibility Test, or an accredited test, shall review for the appointment of Lectures. It would be optional for the University to exempt Ph.D. holders from NET or to require NET, in their case, either as a desirable or essential qualification for appointment as Lectures in the University Departments and Colleges. The minimum requirement of 55% should not be insisted upon for Professors, Readers, Registrars, Deputy Registrars, Librarians, Deputy Librarians, Directorate of Physical Education, Deputy Registrars of Physical Education for the existing incumbents who are already in the University system. However, these marks should be insisted upon for those entering the system from outside and those at the entry point of Lecturers, Assistant Registrars, Assistant Librarians, Assistant Director of Physical Education.

3.4.0. A relaxation of 5% may be provided, from 55% to 50% of the marks, at the master's level for the SC/ST category.”

37. It is, thus, obvious that under the

aforesaid provision, relaxation to the extent of 5% of marks at Post Graduation level is available to non teaching staff also in the cadre of Registrar, Deputy Registrar, Librarian etc and on the basis of this provision, the applicant submitted that he is entitled to relaxation of 5% of marks at Post Graduation level and hence, he is eligible since secured 50% of marks. However, according to him, his candidature has been illegally rejected.

38. In rebuttal, the learned Advocate for the respondents submitted that the UGC notification of 1998 is mainly concerned with teaching and non teaching staff in University and Colleges and hence, the same cannot be made applicable while considering appointment to the post of Registrar, HBNI. However, it is undisputed that HBNI is deemed to be University in terms of the provisions of Section 3 of the University Grants Commission Act, 1956 and hence, in other words, it can safely be said that the teaching and non teaching staff of HBNI are also governed by the said notification and hence, it may be said that the applicant, who applied for the post of Registrar is *prima facie* entitled to relaxation

of 5% of marks obtained by him at Post Graduation level.

39. The learned Advocate for the respondents, however, has rightly pointed out that the said relaxation can be granted to SC/ST category if the post is exclusively reserved for SC/ST category and not otherwise. In other words, it is not applicable if the post advertised is for General category. For the purposes of this submission, the learned Advocate for the respondents placed reliance on the brochure dated 23.01.2014 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training under the caption *“Brochure on reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes in services”* (Annexure R-4) and particularly provisions of Chapter III thereof which deals with relaxation and concessions. Paragraph No.3.6 of the aforesaid Brochures deals with relaxation of experience, qualification for Scheduled Castes / Scheduled Tribes in direct recruitment. Since the post advertised although is a Group A post, it is to be filled up by the Search-cum-Selection

Committee set by HBNI and not by UPSC. We are mainly concerned with the provisions of paragraph No.3.6(b) of aforesaid Brochure. For the sake of convenience and ready reference, the entire text of paragraph Nos.3.6 and 3.7 in which there is reference regarding Recruitment Rules prescribing relaxation is reproduced here for ready reference :-

3.6. Where some period of experience is prescribed as an essential qualification for direct recruitment to a post, and where, in the opinion of the Ministry / Department concerned, the relaxation of the experience qualification will not be inconsistent with efficiency, a provision should be inserted under the 'Essential Qualification' in the relevant Recruitment Rules as at (a) or (b) below to enable the Union Public Service Commission / competent authority to relax the 'experience' qualification in the case of Scheduled Caste/Scheduled Tribe candidates in the circumstance mentioned in the provisions :-

(a) Where the post is filled by direct recruitment through the Union Public Service Commission, the provision to be inserted will be :

“The qualification regarding experience is relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes, if at any stage of selection, the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them. The appointing authority shall record the reasons for relaxing the qualification regarding experience in writing while doing so.”

(b) *Where the post is filled by direct recruitment otherwise than through the Union Public Service Commission, the provision to be inserted will be :*

“The qualification regarding experience is relaxable at the discretion of the competent authority in the case of candidates belonging to the Scheduled Castes or Scheduled Tribes, if at any stage of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them. The appointing authority shall record the reasons for relaxing the qualification regarding experience in writing while doing so.”

3.7. When any vacancies reserved for Scheduled Castes and Scheduled Tribes are advertised or intimated to the Employment Exchange, it should be specifically mentioned in the advertisement/requisition that the period of experience prescribed is relaxable, at the discretion of the Union Public Service Commission or the competent authority, as the case may be, in the case of Scheduled Caste/Scheduled Tribes candidates as provided in the Recruitment Rules. This is intended to ensure that the aspirants who may fall slightly short of the requisite experience may know about the possibility of relaxation in this regard [DP&AR O.M. No.27/10/71-Estt.(SCT) dt. 5.9.1975.]

40. It is, thus, obvious from the above referred provisions that the relaxation as prescribed by UGC for Scheduled Castes / Scheduled Tribes candidates in percentage of marks obtained at Post Graduation level can be granted if the post is to be filled up from Scheduled Caste / Scheduled Tribe candidates only

and not otherwise. As stated earlier, the isolated post of Registrar is open for all and hence, it cannot be stated that the applicant is justified in claiming the relaxation of 5% of marks obtained by him at Post Graduation level, so as to make him eligible for being considered for the said post of Registrar.

41. Further, in this respect, Rule 4 of the Recruitment Rules (Annexures A-3 / R-2) which prescribes qualification, experience and age, nowhere speaks about relaxation of 5% of marks and in the column of essential qualification, the Masters Degree with at least 55% of marks or equivalent grade B in UGC seven point scale is required. As such, it cannot be said that simply because the applicant belongs to Scheduled Caste category, he is entitled to claim relaxation to the extent of 5% of marks obtained at Post Graduation level, since it is not specifically provided in the Recruitment Rules. However, under Rule 7 of the Recruitment Rules, power to relax is also conferred on competent authority, which states that the Council of Management of HBNI shall be competent to relax these rules with the concurrence of DAE. It is, thus, obvious

that there is a provision for relaxation of the rules. However, as stated earlier, this power of relaxation can be exercised if the post in question is to be filled up from Scheduled Caste/ Scheduled Tribes category only. As stated earlier, with the risk of repetition the isolated post of Registrar is open for all categories and is not reserved for SC/ST/OBC category. In spite of this, as per the communication dated 20.03.2017 (Annexure A-2), HBNI has considered the issue of granting relaxation and referred the matter to DAE, which has rightly declined. We do not find any illegality, impropriety or arbitrariness in doing so.

42. In such circumstances of the case, we find substantial force in the contentions of the learned Advocate for the respondents that the applicant is not entitled for relaxation of 5% of marks at Post Graduation level and hence, his candidature on the ground of not possessing essential qualification has been rightly rejected by the respondents, with the approval of DAE since admittedly the applicant has not secured minimum 55% of the marks at Post Graduation level in Sociology as well as in Business

Administration. As such, there is no scope for grant of any relaxation to the applicant as claimed by him and it cannot be said that the decision taken by respondent No.2 which is approved by DAE is in any manner illegal, improper or incorrect, which calls for interference by this Tribunal.

43. Now turning to the other aspect of the case viz. relaxation in experience as claimed by the applicant, Rule 4(a) of the Recruitment Rules prescribes the following experience :-

“4.a) At least 15 years of experience as Faculty in Grade Pay of Rs.7,000 and above or with 8 years of service in the GP of Rs.8,000 and above including as Faculty with grade pay of Rs.8,700 and above with experience in education administration; or

b) 8 years of experience as scientific officer in a research establishment and/or other institutions of higher learning with a grade pay of Rs.8,000 and above along with experience in education administration; or

c) 15 years of administrative experience in Pay Band 3 ad above of which at least 8 years shall be as Dy. Registrar or an equivalent post in the grade pay of Rs.7,600 and above.”

44. We are mainly concerned with the provisions of Rule 4(c) referred above. In this respect, although the applicant is working in the equivalent cadre of Deputy Registrar, it is not

disputed that he is promoted to the said cadre in June, 2011 and not earlier. This being so, till the last date of advertisement, which is 24.02.2017, the applicant has completed six years i.e. less than eight years of experience in the said cadre. This being so and as admitted by the applicant, he falls short of about two years of experience as Deputy Registrar. He has also not acquired 15 years of administrative experience in Pay Band-III, since he falls short of 1½ years. This being so, he is not justified in asking relaxation for the same reason quoted earlier that post is not reserved for SC/ST category and it is open to all. This being so, the decision taken by the respondents while rejecting the candidature of the applicant by not granting any relaxation in the marks obtained at Post Graduation level or in experience cannot be said to be illegal, improper or incorrect.

45. So far as this aspect of the case is concerned, the applicant submitted that there was delay on the part of the respondents in filling up the vacant post of Deputy Registrar and even that of the feeder cadre post of Senior Administrative Officer and hence, relaxation

should be granted to him since he was not at fault. However, in this respect, the record clearly shows that the applicant was considered thrice for the post of Deputy Registrar in successive years. However, he could not be empaneled on merit although he was considered in SC category. In one such matter, the applicant has challenged the decision regarding his non empanelment to the post of Deputy Registrar. However, the same was rejected as elaborately stated by the respondents in the reply, thereby justifying the decision of the respondents.

46. In such circumstance of the case, there is hardly any material on record to show that the respondents indulged in causing any discrimination to the applicant, on the ground that he belongs to SC category, although he has large experience in administrative field and has secured some awards for rendering commendable services. However, although the DPC has considered all these aspect, he could not be empaneled on merit. This position cannot be faulted with and it cannot be said that the respondents have deliberately avoided to keep the post of Deputy Registrar and that of the feeder

cadre of SAO vacant for couple of years without any justification. All these allegations raised by the applicant in the OA are baseless and cannot be considered so as to set aside the decision taken by the respondents for rejecting his candidature for the post of Registrar.

47. It is, thus, obvious from the above discussion that the applicant's candidature has been rejected on the ground that he does not fulfill the eligibility criteria as per the Recruitment Rules in respect of educational qualification and also experience as required under Recruitment Rules. His request for granting relaxation in both has been rightly rejected. As stated and discussed earlier, no relaxation can be granted to the applicant only on the ground that he belongs to SC category. Had the post been advertised to be filled up only from SC/ST category i.e. reserved for the said category then the applicant would have been justified in asking relaxation both in educational qualification and experience and then it would have been for the Management of HBNI to consider his request. However, since the post is not reserved and to be filled up as open, there

is no question of granting any relaxation to the applicant.

48. The applicant's candidature has also been rejected on the ground that he is not free from vigilance angle, since it was informed by DAE vide letter dated 09.03.2017 (Annexure R-1) that a Disciplinary Proceeding is initiated against the applicant vide memorandum / charge-sheet dated 31.07.2015 and the same is pending adjudication. For the purposes of this submission that since the post is to be filled up by direct recruitment by inviting applications from the eligible candidates, who are obviously departmental candidate working on the post of Deputy Registrar or equivalent in various units of BARC, HBNI and not by holding Limited Departmental Competitive Examination or by way of promotion from the eligible candidates, the candidate must be free from vigilance angle. In this respect, reliance was placed on DOPTs OM dated 14.07.1993 which specifically states that application of Government servant for appointment by direct recruitment, deputation on transfer to any other post should not be considered / forwarded if disciplinary proceedings are

initiated against the Government servant and a charge-sheet has been issued. The applicant being a Central Government servant at the time when advertisement was issued and he applied for the said post, he is governed by the aforesaid DOPTs OM dated 14.07.1993. The case would have been different had the Recruitment Rules provided that the said post is to be filled up by promotion and in that event a case of Government servant pending disciplinary proceedings against him can be considered and recommendations of the DPC can be kept in a sealed cover till a decision is taken on the pending disciplinary proceedings. As stated earlier, since the post is to be filled up by direct recruitment, it cannot be said that the applicant is entitled to be considered during pendency of the disciplinary proceeding against him.

49. In this respect, the applicant submitted that he was considered and appointed to the post of Deputy Registrar although a disciplinary proceeding was pending against him and hence on the similar line, he should be considered for appointment to the post of Registrar pending Disciplinary Proceedings against him. However,

in this respect, it has been rightly pointed out by the learned Advocate for the respondents that the post of Deputy Registrar was by way of promotion i.e. in cadre post whereas the post advertised is to be filled up as direct recruitment and not by way of promotion and hence, vigilance clearance is absolutely necessary in this case. We do not find any force in the contentions of the applicant that his claim has been illegally rejected on the ground that the disciplinary proceeding is pending against him which he has challenged by way of separate OA before this Tribunal, which is pending adjudication.

50. During the course of the arguments, the applicant submitted that if it is not possible to consider him for regular appointment to the post of Registrar, he be appointed on the said post purely on adhoc basis since he is due for retirement in May, 2018 and is the only competent candidate for the said post having extensive experience in administrative fields. For considering the contentions of the applicant for adhoc appointment, the respondents placed reliance on the DOPT's OM dated 30.03.1998

(Annexure R-7) under the caption “*adhoc appointment – Revision of instances on*”. By referring to the provision of the said Office Memorandum in which the previous instances by various departments by which adhoc appointments were granted and it has been specifically laid down that there cannot be adhoc appointment henceforth in absence of the Recruitment Rules, pending revision of Recruitment Rules, revision of seniority list or shortage in direct recruitment quota. In paragraph No.3 of the aforesaid DOPT's OM instances are quoted where appointment need to be made on adhoc basis. For ready reference, the said paragraph is reproduced here :-

3. If the prescribed instructions and procedures are strictly adhered to, it may be seen that there will be very few cases where appointments need to be made on an adhoc basis. Such circumstances may be -

(i) where there is an injunction by a Court / Tribunal directing that the post may not be filled on a regular basis and if the final judgment of the Court / Tribunal is not expected early and the post also cannot be kept vacant.

(ii) where the DR quota has not been filled and the RRs also do not provide for filling it up on transfer or deputation temporarily and the post cannot also be kept vacant.

(iii) In short term vacancies due to regular incumbents being on leave / deputation etc and where the posts cannot be filled as per para 2(v), and cannot also be kept vacant.”

51. It is obvious that the applicant's case does not fall under any of the aforesaid clauses. Further, if any, such appointment is to be made under any of the aforesaid three clauses then the same can be made in exceptional circumstance and subject to the conditions prescribed in paragraph No.4 of the said OM. A reference to instances of adhoc promotions is also made in the said paragraph No.4 in which in paragraph No.4(iii) (c), it is specifically stated that claims for SC / ST in adhoc promotion shall be considered in accordance with guidelines contained in the DOPT's OM No.36011/14/83-Estt.(SCT) dated 30.04.1983 and 30.09.1983.

52. It is, thus, obvious that there is no scope for adhoc appointment of the applicant as Registrar, HBNI since it is isolated post and for this reason, there cannot be any reservation for the said post, which needs to be filled up from open category, although reserved category candidate can apply for the said post, who will be considered along with other candidates ignoring the fact that he belongs to SC / ST category. The reasons given by respondents for

not considering the applicant's claim for adhoc appointment pending filling up the said post on advertisement and till his retirement from the present post cannot be said to be illegal, arbitrary or unreasonable in any manner whatsoever.

53. During the course of arguments, the learned Advocate for the respondents submitted that the applicant on the one hand has challenged the entire selection process as vitiated on the ground that the advertisement does not contain provision for relaxation for the SC/ST candidates in educational qualification as per the UGC notification and on the other hand, on the basis of same advertisement he claims relaxation in educational qualification and experience. As such, he cannot be allowed to blow both hot and cold in the same breath, since those are contradictory prayer. In fact, he should have challenged the selection process as illegal to the extent of his exclusion and cancellation of his candidature since he does not fulfill the eligibility criteria according to the Recruitment Rules. However, instead of doing so after taking part in the selection process, he has challenged the entire selection process, which is not permissible in law. For this reason also, the OA cannot be entertained

and no relief can be granted to the applicant.

54. Before concluding, it may be mentioned here that in the OA the applicant has claimed plural and distinct reliefs which are not consequential in nature and hence, for this reason also the OA is liable to be dismissed as barred by misjoinder of causes of action as prescribed under Rule 10 of Central Administrative Tribunal (Procedures) Rules, 1987, which reads as under :-

“10. Plural remedies – An application shall be based upon a single cause of action and may seek one or more reliefs, provided that they are consequential to one another.”

55. In the OA beside challenging the recruitment process and claiming the relief that his candidature be considered for the post of Registrar, the applicant also prayed to settle the terms and conditions of the employment of the applicant for the post of Deputy Registrar with retrospective effect. This is altogether a distinct claim for which the representation is submitted by the applicant. However, it is for the respondents to consider it in accordance with law and in this OA, no directions can be issued in this behalf.

56. From the above discussion, it is obvious that the applicant failed to establish any of the grounds raised by him in the OA for seeking the

necessary relief, it cannot be said that his candidature has been illegally, arbitrarily or improperly rejected by the respondents and hence, it is necessary for this Tribunal to exercise the power of judicial review to set aside the said decision. As stated earlier, it is amply clear from record that the applicant does not fulfill the eligibility criteria both on educational qualification and experience as per the Recruitment Rules for the post of Registrar and hence, there is no question to consider him for the post of Registrar.

57. We, therefore, do not find any merit in the present OA. The OA is accordingly dismissed. Consequent upon dismissal of the OA on merit, the interim order not to finalize the selection process automatically stands vacated and hence, the respondents will now be at liberty to take appropriate steps in the matter.

58. The parties are, however, directed to bear their respective costs of this OA.

59. Registry is directed to supply certified copy of this order to both the parties at the earliest.

(R. Vijaykumar)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

*H / kmg**