

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00330/2017

Date of Order: This, the 12th day of October 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

DR. SHARAT AGARWAL
S/o- Dr. S. Agarwal
Associate Professor
Department of Orthopedics and Traumatology
North Eastern Indira Gandhi Regional Institute
Of Health and Medical Sciences, Quarter No. B-10A
Faculty Quarters, NEIGRIHMS, Mawdiangdiang.

...Applicant

By Advocates: Mr. J. I. Borbhuiya, Mrs. K. H. Choudhury &
Mr. L. Mohan.

-Versus-

1. THE UNION OF INDIA
Through the Secretary to the Government of India, Ministry
of Health & Family Welfare Department, A-Wing, Nirman
Bhawan, New Delhi- 110011.
2. The North Eastern Indira Gandhi
Regional Institute of Health & Medical Sciences, through
the Director NEIGRIHMS, Mawdiangdiang, Shillong-
793018, Meghalaya.
3. The Selection Committee for Group 'A'
(Faculty) Posts, at NEIGRIHMS, Shillong, held on 20.12.2016
at ICMR, New Delhi, through the Chairman of that
Committee, c/o The Director, NEIGRIHMS,
Mawdiangdiang, Shillong- 793018, Meghalaya.

4. The Director NEIGRIHMS
Mawdiangdiang, Shillong- 793018, Meghalaya.

... Respondents.

By Advocate: Mr. R. Hazarika Addl. CGSC.

5. Dr. Bhaskar Borgohain, son o Shri Jibon Chandra Borgohain, resident of Quarter No. B/10 B, NEIGRIHMS, NEIGRIHMS Campus, Mawdiangdiang, Shillong- 793018, Meghalaya.

...Impleaded Respondents

By Advocates: Mr. A.C. Borbora, Sr. Advocate, Mr. U. K. Nair, Sr. Advocate & Ms. N. Shyamal

ORDER

MANJULA DAS, JUDICIAL MEMBER:

The instant O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “8.(i) This Honourable Tribunal may be graciously pleased to set aside and quash the impugned minutes/report of the proceedings of the Selection Committee for group ‘A’ (Faculty) posts held on 20.12.2016 at ICMR, New Delhi, to select the candidate for one unreserved post of professor in the Department of Orthopedics and Trauma in NEIGRIHMS, Shillong.
- (ii) This Honourable Tribunal may further be graciously pleased to declare that the candidature of the applicant for the said post of Professor in the Department of orthopedics and Trauma in NEIGRIHMS,

Shillong pursuant to the earlier advertisement of 2016 be reckoned on the basis of his merits assessed on the basis of his academic records, experience details and the APARs for the last three years and also on the basis of the absence of any marks allotted to him at the said interview held on 20.12.2016 although it was imperative so to do.

- (iii) This Honourable Tribunal may also be graciously pleased to declare the applicant as selected for the said post of Professor in the Department of Orthopedics and Trauma on the basis of the laid down criteria.
- (iv) This Honourable Tribunal may also be graciously pleased to direct NEIGRIHMS to forthwith appoint the applicant to the post of Professor in the Department of Orthopedics and Trauma in NEIGRIHMS, Shillong, pursuance to selection process of 2016.
- (V) This Honourable Tribunal may also be graciously pleased to forthwith set aside and quash the ongoing impugned selection procedure of 2017 for the said post of Professor in the Department of Orthopedics and trauma in NEIGRIHMS, Shillong pursuant to the said fresh advertisement of 2017 wherein 30.06.2017 was fixed as the last date for receipt of applications.

-AND-

- (VI) This Honourable Tribunal may also be pleased to grant such other relief/reliefs to which the applicant may be found to be eligible.

2. Briefly the applicant states that while he was serving as Associate professor at NEIGRIHMS, Shillong in the year 2016, NEIGRIHMS brought out the Advertisement No. NEIGR-E.II/19/2004 /Pt.XVI calling for applications for filling up various academic posts, including one post of “professor” in the Department of Orthopedics and Trauma, fixing the last date of receipt of application on 30.06.2016 upto 5:30 p.m. As he has fulfilled the eligibility criteria, he duly submitted his application for that post being lone candidate and was found prima facie eligible and was interviewed by the Selection Committee for group ‘A’ (Faculty) posts held on 20.12.2016 at ICMR, New Delhi. The results of the said selection on the basis of the said advertisement of the 2016, was declared by the NEIGRIHMS Notification No. NEIGR-E.II/19/2004/Pt.-XVII-A, dated 22.03.2017. Accordingly, the results for all the other advertised post were declared, except for the post of Assistant Professor, Department of Nephrology, which was stated as would be declared as and when the approval of the competent authority is received but there was no mention whatsoever of the result of the selection process for the said post of “Professor in the Department of Orthopedics and Trauma”, in which the applicant had participated as single eligible candidate, For

which, he made an application under the Right to Information Act, 2005 asking for certain relevant information and he was provided with a reply dated 09.10.2017 with enclosures including the impugned Minutes etc. From that reply he learnt that the criteria to select a candidate for the post of professor in the Department of Orthopedics and Trauma, was “basic merit requirement and interview marks in breakdown as per requirement”. He was also informed that after he had been interviewed by the Selection Committee for group ‘A’ (Faculty) posts held on 20.12.2016 at ICMR, New Delhi, as single eligible candidate, but selection Committee, after deliberations, did not recommend him for the said post of “Professor in the Department of Orthopedics and Trauma” by impugned minutes dated 20.12.2016 in a very arbitrary manner, without disclosing any justification/reason whatsoever thereon. The RTI authority even did not transmit the names of the members of the said impugned Selection Committee in their Reply for ulterior motive.

3. Applicant further states that he was also informed that the post for Professor, Department of Orthopedics and Trauma, NEIGRIHMS, Shillong had been advertised as many as 14 (fourteen) times without any application for the said post in

so many years. Meanwhile the NEIGRIHMS has come out with another fresh Advertisement No. NEIGR-E.II/19/2004/Pt.XVI for various faculty posts including that of "Professor in the Department of Orthopedics and Trauma", fixing 30.06.2017 as last date of receipt of applications and having no other option, the he again submitted his candidature. Although the last date for receipt of applications for the faculty posts, fresh impugned advertised in 2017 has been fixed as 30.06.2017, the period for reckoning the requisite experience has been fixed at 31.12.2017, which is much beyond the said last date for receipt of applications. As it is absolutely unusual for experience to be reckoned upto a date much beyond the last date of receipt of applications in any advertisement, the logical conclusion is that the said date has been so extended with the specific objective of allowing the participation in the interview of a particular person, who would otherwise be ineligible. The impugned actions of the respondents reveals that the person next in line after the applicant for the said post of "Professor in the Department of Orthopedics and Trauma" also becomes eligible if the experience is reckoned till 31.12.2017, whereas he shall not be so eligible if the experience is reckoned till 30.06.2017 and the said actions of the respondents totally

against the mandates of law liable to be interfered with. The impugned actions of the respondents grossly explicit that great injustice has been done by not selecting him for the said post of “Professor in the Department of Orthopedics and Trauma” by impugned minutes of the Selection Committee held in pursuant to First advertisement and also by re-advertising the post by including the requisite experience upto the extended date of 31.12.2017, which are total violation of service jurisprudence and liable to be interfered by this Court by setting aside the same and be declared the same as illegal and in-operative in the eye of law.

4. The respondent Nos. 1 to 4 by filing their written statement on 15.03.2018 states that in pursuance of the advertisement No. NEIGR-E.II/19/2004/Pt.XVI, the interview for Faculty Posts for Group ‘A’ of the Institute was conducted by a Committee called ‘Standing Selection Committee’(SSC in short) constituted by the Ministry of Health & Family Welfare, Govt. of India, New Delhi which was communicated to the respondents vide letter dated 01.02.2012. After completion of interview held on 19.12.2016 & 20.12.2016, the recommendation of the SSC was submitted to the Ministry of Health & family Welfare, Govt. of India, New Delhi for approval. On receipt of

the same, the Ministry accorded approval for appointment of the candidates for various Faculty posts vide Notification No. F No. U12012/27/2010-NE dated 21.03.2017 in pursuance of the said approval, the NEIGRIHMS declared the result of the various Faculty posts vide Notification No. NEIGR-E.II/19/2004/Pt.-XVII-A dated 22.03.2017. The applicant appeared before the SSC on 20.12.2016 for Group A post. However, the SSC did not recommend the applicant to the post of Professor, Orthopedics Trauma. As per normal practice of the institute, the names of candidates who are not recommended by the SSC for Faculty posts are not displayed openly as the same may affect the reputation of the candidates in their field.

5. Respondents further states that all candidates appeared in the interview dated 19.12.2016 and 20.12.2016 were assessed by SSC based on their performance in the interview and evaluation by experts. Based on such performance and evaluation, the SSC takes a decision for recommending/rejecting candidates, as the case may be, for appointment to faculty post in NEIGRIHMS. SSC is the competent authority for the selection of candidates. According to the respondents, in the said process of selection the applicant was not recommended by the SSC for the post of

Professor, Orthopedics & Trauma. In reply to the RTI application made by the applicant seeking information relating to the post of Professor, Orthopedics and Trauma, they have furnished Minutes of the Screening committee, attendance sheet of candidates to appeared in the interview for the post of Professor, Orthopedics & Trauma held on 20.12.2016, the selection criteria for the said post, details of performance of the applicant in the interview for the said post etc.

6. Respondent further states that there is only one sanctioned vacant post of Professor in the department of Orthopedics & Trauma and since the SSC did not recommend any candidates in its interview dated 20.12.2016 for appointment, the said post was re-advertised by the Institute in the month of May, 2017 along with other vacant Faculty posts of various departments vide the above mentioned advertisement. So far as fixing of reckoning the requisite experience upto 31.12.2017 is concerned, the method of recruitment for faculty posts of the institute is guided by a set of rules known as the 'Recruitment Rules, 2012' where Rule 9 of the said Rules deals with Relaxation of Academic qualification/experience. According to the respondents, they have not done anything against the Rule and as such the

prayer made by the Applicant in the instant OA for setting aside the proceeding of the SSC for Group 'Á' faculty posts held on 20.12.2016 at ICMR, New Delhi inasmuch as the impugned Advertisement, 2017 is not tenable in law and the instant O.A. is liable to be dismissed with costs.

7. Dr. Bhaskar Borgohain, who is impleaded as respondent No. 5 in the array of the respondents in the O.A. vide order dated 02.08.2018 (In M.A. No. 043/00147/2018) states that being eligible in all respects, he submitted his candidature for the post of Professor in the Department of Orthopedics and Trauma in NEIGRIHMS as advertised vide the advertisement issued in the year 2017 and had participated in the selection process. As per his assessment, he had performed well in the selection process and stands good chance to be recommended for appointment against the post in question where the applicant in the O.A. also participated in the selection process without any objection whatever. The earlier selection held on 20.12.2016 in pursuance to the advertisement issued in the year 2016 was not taken to its logical conclusion inasmuch as the selection committee had not recommended any candidate for appointment against the post of Professor in the Department of Orthopedics and Trauma in NEIGRIHMS. As

such, applicant in the O.A. cannot pray for a direction from this Tribunal to declare him to be selected for the said post on the ground that he was the only candidate in the fray more so when the applicant had participated in the selection held in pursuance to the advertisement of 2017 without any objection whatsoever. According to respondent No. 5, the prescription for reckoning the experience criteria as made in the advertisement in 2017 being in conformity with the provisions of Rule 9(b), there exists no infirmity thereon.

8. Heard Mr. J.I. Borbhuiya, learned counsel for the applicant, Mr. R. Hazarika, learned Addl. CGSC for respondent Nos. 1 to 4 and Mr. A.C. Borbora, Sr. Advocate along with Mr. U.K. Nair, Sr. Advocate assisted by Ms. N. Shyamal, learned counsel for newly impleaded respondent No. 5.

9. The main planks of the argument of Mr. J.I. Borbhuiya, learned counsel for the applicant are as follows:-

- i. That in pursuance of the advertisement made in the year 2016 for appointment to the one post of Professor in the Department of Orthopedics and Trauma, the applicant on being applied, appeared in the interview who was the single eligible candidate. However, the Selection Committee vide impugned minutes dated 20.12.2016 did not recommend applicant's name without disclosing any reason whatsoever.

- ii. That said post of Professor in the Department of Orthopedics and Trauma thereafter re-advertised reckoning the experience upto 31.12.2017 which is beyond the last date of receipt of applications fixing on 30.06.2017 and according to the learned counsel, it is unusual for experience to be reckoned upto date much beyond the date of receipt of applications in any advertisement.
- iii. That the respondent authorities have done great injustice to the applicant by not selecting the applicant for the said post of Professor in the Department of Orthopedics and Trauma and also by re-advertising the said post by including the requisite experience up to extended date of 31.12.2017.
- iv. That it is well settled rule of law that in the system of recruitment to public post there is a great deal of sanctity attached to the selection process unless the selection is vitiated by illegality and anomalies, which strike at the root of the selection and which cannot be cured. According to learned counsel, the subsequent advertisement made in the year 2017 for particular post keeping withheld of one post for want of approval and conducting fresh selection without cogent reasons are bad in law. The applicant's APARs for the last three years as well as his academic and experience certificates and credentials ought to have been taken into account while examining and appreciating the actions and inactions of the selection committee. More so, the copy of his APAR for the year ending March, 2017, vide letter dated 01.09.2017 reveals that the First Reporting Officer categorized him at 'A' grade, commenting that the applicant is an excellent officer dedicated to patient care with interest in scientific research, whereas the Reviewing Officer categorized the applicant at 'A+' grade and commented that he follows very logical clinical guidelines in patient management, has

very sound knowledge with excellent clinical skills and is an asset to the institute. As such, not recommending the case of the applicant who was a sole eligible candidate in the year 2016 is not permissible under the law.

- v. That from the RTI reply, it reveals that the applicant secured 46.44 out of 100 marks, as such, the Standing Selection Committee (SSC in short), in a malafide and arbitrary manner, did not recommend the name of the applicant despite the fact that he was a lone candidate for the post in question.

10. By countering the argument advanced by the learned counsel for the applicant, Mr. R. Hazarika, learned Addl. CGSC by referring reply filed by the respondent Nos. 1 to 4 submits that in pursuance of the Advertisement made in May 2016, the interview for Faculty Posts for Group 'A' of the Institute is conducted by a Committee called "Standing Selection Committee' (SSC in short) constituted by the Ministry of health & Family Welfare, Govt. of India, New Delhi. In the selection process for Faculty Members of Group 'A' in NEIGRIHMS, the SSC was held on 19.12.2016 and 20.12.2016 where the recommendation of the SSC was submitted to the Ministry of Health & Family Welfare, Govt. of India, New Delhi for approval. On receipt of the same, the Ministry accorded approval for appointment of the candidates for various Faculty posts vide letter dated 21.03.2017. In pursuance of the said approval, the

NEIGRIHMS declared the result of the various Faculty posts vide Notification dated 22.03.2017. The applicant namely Dr. Sharat Agarwal also appeared before the SSC on 20.12.2016 for Group 'A' post. However, the SSC did not recommend the applicant for appointment to the post of Professor in the Department of Orthopedics and Trauma. According to Mr. Hazarika, as per normal practice of the Institute, the names of candidates who are not recommended by the SSC for Faculty posts are not displayed openly as the same may affect the reputation of the candidates in their field.

11. By referring para 9 of the written statement filed by the respondents, Mr. Hazarika submits that so far as fixing of reckoning the requisite experience upto 31.12.2017 is concerned, the method of recruitment for faculty posts of the Institute is guided by a set of Rules known as the 'Recruitment Rules, 2012'. Rule 9 of the said Rules deal with Relaxation of Academic qualification/experience. According to Mr. Hazarika, all the candidates of different categories appeared in the interview dated 19.12.2016 & 20.12.2016 and the SSC assessed based on their performance in the interview and evaluation by experts. Based on such performance and evaluation, the SSC takes a decision for

recommending/rejecting candidates, as the case may be, for appointment to faculty post in NEIGRIHMS. SSC is the competent authority for selection of candidates for the post of Professor in the Department of Orthopedics and Trauma.

12. Mr. Hazarika further submits that in the earlier advertisement issued in the year 2016, same procedure was applied for reckoning the requisite experience as laid down in Rule 9 of Recruitment Rules, 2012 whereupon the applicant applied for the post of Professor in the Department of Orthopedics and Trauma without objection to the same and on being not recommended by SCC, he has raised this issue for the first 1st time where similar procedure has been followed in the subsequent next advertisement in 2017 reckoning the requisite experience upto 31.12.2017, that too, after submission of his application, which is not tenable in the eye of law.

13. Mr. A.C. Borbora, Sr. counsel and Mr. U.K. Nair, Sr. counsel assisted by Ms. N. Shyamal, learned counsel appearing for the newly impleaded party respondent No. 5 vociferously argued as follows:-

- i. That the instant O.A. filed by the applicant Shri Sharat Agarwal is not at all maintainable under the law.

- ii. In pursuance of the advertisement made on 2016, the applicant applied for the post of Professor in the Department of Orthopedics and Trauma and appeared in the interview held on 19.12.2016 & 20.12.2016. As the Selection Committee had not recommended any candidate for appointment against the post of Professor in the Department of Orthopedics and Trauma, the respondent department re-advertised the said post of post of Professor in the Department of Orthopedics and Trauma along with others in the year 2017 where last date of receipt of application was 30.06.2017. The applicant waited for long 11 months and for the reasons best known to him, the applicant filed the instant case after 11 months is not at all permissible under the law.
- iii. In pursuance of the said re-advertisement of 2017, the applicant did apply, even participated in the selection process. Hence, in view of the decision of **Union of India & Ors. Vs. S. Vinodh Kumar & Ors, AIR 2008 SC 5**, the case of the applicant is liable to be dismissed inasmuch as challenging the present selection for declaring him successful candidate in pursuance of vacancies of 2016 which was further re-advertised is not tenable in the eye of law.
- iv. The point has been raised by the learned counsel for the applicant for reckoning effective date upto 31.12.2017 in case of 2017 advertisement. However, in the instant case, Recruitment Rule 2012 was not challenged. The advertisement made incorporating the reckoning of requisite experience is within the purview of Rule 9(b) of Recruitment Rules of 2012. Hence the submission made by the learned counsel for the applicant by alleging to give someone undue advantage is also at all not tenable under the law.

- v. Further submits that the applicant took a chance of selection process against the advertisement made in the year 2017 for the post of Professor in the Department of Orthopedics and Trauma by filing a composite petition is nothing but abuse of due procedure of law and as such, the O.A. deserves to be dismissed.

14. We have heard the learned counsel for the parties, perused the pleadings and materials placed on record as well as precedent relied upon.

15. In the instant O.A., notice was issued on 08.12.2017 and as an interim measure, respondents were directed not to go ahead of the Selection Process for the Post of Professor, Orthopaedics & Trauma pursuant to the Advertisement No. NEIGR-E.II/19/2004/Pt.XVI of 2017 with the liberty to the respondents to file M.A. for alteration, modification etc of that order. Accordingly, respondents have filed M.A. No. 043/00060/2018 for vacation of the said interim order passed by this Tribunal on 08.12.2017. Accordingly, M.A. was heard by this Tribunal on 25.04.2018 and same was disposed of on the same very day on 25.04.2018 with following direction:-

“Let the Selection process take place. But however, with respect to the post of Professor of Orthopedics and Trauma is concerned, the result of the selection should be kept in sealed cover. No

further action should be taken till the disposal of the O.A., and the further action is subject to the result of this O.A."

16. For speedy justice, entire matter was heard on 02.08.2018 and kept reserved. As directed by this Tribunal vide orders dated 25.04.2018 and 02.08.2018, Mr. R. Hazarika, learned Addl. CGSC has submitted the Minutes of the Selection Committee held on 02.05.2018 for the post of Professor, Orthopedics and Trauma.

17. The advertisement for the post of Professor, Orthopedics and Trauma along with other various streams in NEIGRIHMS was made in the year 2016. The present case is concerned with the selection and appointment for the post of Professor, Orthopedics and Trauma at NEIGRIHMS. Against the said advertisement of 2016, the present applicant participated by appearing in the interview which was held on 19.12.2016 as well as 20.12.2016. In 2016, the applicant was only sole eligible candidate for the said post of Professor, Orthopedics and Trauma. However, the Standing Selection Committee (SSC in short) did not recommend his case for appointment to the said post. On being reply from the RTI by the respondent authority on being applied by the applicant, we found that the SSC "did

not recommend". Thereafter, the said post i.e. Professor, Orthopedics and Trauma which was not filled up in the year 2016 recruitment process was re-advertised in the year 2017 by giving effect of reckoning the requisite experience upto 31.12.2017. In pursuance of the said advertisement of 2017, there are two candidates who applied for the post of Professor, Orthopedics and Trauma namely (i) Dr. Sharat Agarwal (applicant in the instant O.A.) and (ii) Dr. Bhaskar Borgohain (newly impleaded as party respondent No. 5). Both were appeared in the interview held on 02.05.2018 and Minutes of the Selection Committee was prepared by the SSC which was under sealed cover. However, the result could not be declared as the Minutes is under sealed cover because of pendency of the O.A. filed by the applicant.

18. Now the main issues to be decided as to:-

- (i) Whether the present applicant on being applied in the re-advertisement of 2017 and appeared in the interview, can claim the Minutes of earlier selection of 2016, decision dated 20.12.2016?
- (ii) Once he was found to be "not recommended" in the Selection Committee, mere appearance before the interview whether applicant can claim for selection and appointment?

- (iii) Once the applicant did not object the previous Recruitment Rule 2012 more particularly 9 (b) of the said Rule, whether said previous Rule can be pointed out in terms of objection without challenging the said Rule?
- (iv) Whether after re-advertisement in the year 2017 for selection and appointment of particular “unfilled post in question” having the validity period to claim retrospective way once he participated in the subsequently re-advertisement of 2017 for the same unfilled post?

19. For coming to proper finding on the points made above, we required to Rule 9(b) of Recruitment Rules, 2012 which is extracted as hereunder:-

“Rule 9(b) – For post, which are advertised in the period from January to June of any calendar year, the effective date upto which the requisite experience must be completed will be 31st December of that year. Similarly, the posts advertised from July to December, the effective date upto which the requisite experience must be completed will be 30th June of the following year and so on.”

20. In the case of **S. Vinodh Kumar (supra)**, the Hon'ble Apex Court held that – “It is well-settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

21. In our view, SSC is the competent authority for selection of candidates and in the said process of selection, the applicant was not recommended by the SSC for the post of Professor, Orthopaedics & Trauma. Earlier view of the SSC appeared in the Minutes dated 20.12.2016 has not been challenged before participating in the recruitment process of 2017. As the said two advertisements were for the same particular post and as the applicant has already entered in the fray of competition with another as a principle of estoppels, in our view, the applicant cannot back or turn about for claiming to the previous events on being afterthought decision that he may not compete which seems like that on competition field on being found and attempted, that cannot compete and immediately turn back for claiming previous benefit whatsoever is not permissible under the law inasmuch as the post in question has already been left for any open market for further competition.

22. The court opened the sealed cover of the interview held on 02.05.2018 which was held in pursuance of the advertisement made in 2017 wherefrom it appears that the applicant secured 54.85 marks out of 100 marks and private respondent No. 5 secured 60.85 out of 100 marks. Further from

said Minutes and Proceedings of SSC for Group 'A' (Faculty) posts held on 02.05.2018 at AllMS, New Delhi, it appears that name of respondent No. 5 namely Dr. Bhaskar Borgohain has been recommended by the SSC for appointment to the post of Professor (Orthopaedics & Trauma) against UR.

23. In view of the above circumstances and after taking into consideration of the entire conspectus, we do not find any merit in the present case as being devoid of merit. Hence, the O.A. is dismissed. No order as to costs.

(N. NEHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB