

(RESERVED ON 20.11.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 10th day of **JANUARY, 2019**.

ORIGINAL APPLICATION NO. 330/143/2015

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Mukesh Chand Sharma, aged about 50 years, son of Late D.R. Sharma, resident of H-1410, Satyam Vihar, Awas Vikas No. 1, Kalyanpur, Kanpur-208017, U.P. Presently posted as Computer Operator-cum-Programmer at Nodal Centre, National Technical Manpower Information System (NTMIS), Board of Apprenticeship Training, Northern Region, Plot No. 16, Block-1A, Lakhanpur, Kanpur-208024, U.P.
2. Praveen Kumar, aged about 52 years, son of, Late S.B.L. Saxena, resident of 398-A, C-Block, Shyam Nagar, Kanpur-U.P. Presently posted as Research Associate at Nodal Centre, National Technical Manpower Information System (NTMIS), Board of Apprenticeship Training, Northern Region, Plot No. 16, Block-1A, Lakhanpur, Kanpur-208024, U.P.
3. Arun Kumar Pandey, aged about 39 years, son of Sri Ram Charitra Pandey, resident of J-1614, Awas Vikas 1, Keshavpuram, Kalyanpur, Kanpur-U.P., Presently posted as Lower Division Clerk at Nodal Centre, National Technical Manpower Information System (NTMIS), Board of Apprenticeship Training, Northern Region, Plot No. 16, Block-1A, Lakhanpur, Kanpur-208024, U.P.

.....Applicants.

VERSUS

1. The Union of India, through the Secretary, Ministry of Human Resource Development, Government of India, New Delhi.
2. The All India Council for Technical Education, (a statutory body under the Ministry of Human Resource Development), through its Chairman, 7th Floor Chandralok Building, Janpath, New Delhi.
3. The Institute of Applied Manpower Research, through its Director General, Plot No. 25, Sector A7, Institutional Area, Narela, Delhi-110040.
4. The Board of Apprenticeship Training, (Northern Region), through its Director, Plot No. 16, Block 1-A, Lakhanpur, Kanpur-U.P.

.....Respondents

Advocate for the Applicants : Shri Shyamal Narain

Advocate for the Respondents : Shri Vivek Nigam
Shri Vidit Khanna proxy counsel for
Shri L P Tiwari

O R D E R

(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

The present Original Application (OA) has been filed by the applicant seeking primarily the following reliefs:-

- “(i) Direct the respondents to reinstate the applicants in service on their respective posts, with all consequential benefits, and pay them their due salary and other allowances, as per the VIth Central Pay Commission's report, regularly, month to month and without any default.
- (ii) Issue a positive and time bound direction to the respondents to pay the applicants their entire outstanding, unpaid salary since 01.09.2013, till date, as also the entire arrears of their salary arising from withdrawal and/or recovery of the payments made to them as per the VIth Pay Commission's recommendations, and for payment of their current salary and other emoluments, regular, month to month, without any default, as per the VIth Central Pay Commission norms and recommendations, instead of Vth Central Pay Commission norms, from 01.04.2010, till date.
- (iii) issue a time-bound direction to the respondents to absorb/deploy/adjust the applicants in the service of the Board of Apprenticeship Training (Northern Region), Kanpur, on suitable alternative posts, commensurate with their qualifications, along with the benefit of continuity and counting of their past services, as decided by the Ministry of Human Resource Development, Department of Higher Education, Government of India, at its meeting dated 22.01.2013.”

2. The facts of the case as detailed in the OA are that the applicant no. 1 was working on the post of Computer Operator-cum-Programmer since, 19.07.1990, the applicant no. 2 was working on the post of Research Associate since 13/22.11.2006 and applicant no. 3 was working on the post of Lower Division Clerk since 03.01.2006 at Nodal Centre, National Technical Manpower Information System (NTMIS), Board of Apprenticeship Training , Northern Region, Kanpur (hereinafter referred to as BOAT).

3. The Ministry of Human Resource Development (MHRD), Government of India, through its Department of Education and Social Welfare had started the NTMIS as a Non-Plan Scheme through the Central Advisory Committee (CAC, for short) and established one of its twenty centers including BOAT (NR), Kanpur in the year 1984. All the three applicants

were appointed in BOAT against sanctioned posts. The ad-hoc appointment of Applicant No. 1 on the post of COCP was regularized on temporary basis w.e.f., 19.07.1990 vide letter dated 30.07.1991 issued by the Director, BOAT, whereas the initial appointment of Applicant No. 2 on the post of Research Associate in the NTMIS Nodal Centre at BOAT was partially modified from ad-hoc to regular basis vide order dated 26.12.2007. Applicant no. 3 was appointed as LDC vide BOAT order dated 03.01.2006 (against the sanctioned post of P.A.)

4. It has also been stated that the All India Council for Technical Education (AICTE) which is a statutory body under the MHRD, was made the funding agency for the Nodal Centres under the NTMIS Scheme since 1994 and continues to be responsible for payment of salary to the employees working under the scheme. The BOAT (NR), Kanpur was identified as the host of the Nodal Center (NTMIS) at Kanpur and was the Drawing and Disbursing Authority in respect of all payments to the NTMIS Staff at the Kanpur Nodal Center, besides being their Appointing Authority. The funding for the NTMIS Scheme was directly provided by the MHRD. However, post 1994, funding of the said scheme was shifted to the AICTE. From time to time, pay fixation of its staff was done in terms of Central Pay Commission's recommendations and the applicants have also been receiving their due arrears increments etc till July, 2013.

5. It is further stated in the OA, that the Director, AICTE vide letter dated 11.03.2011 fixed the salary of the staff of the NTMIS on provisional basis at the initial stage of Vth CPC recommended scales. The Applicant No. 1 represented against the same to the MHRD as the action of the Director, AICTE involved reduction in the pay and emoluments of NTMIS staff. Thereafter, the AICTE vide its letter dated 20.05.2013 issued to all the NTMIS Nodal Centres conveyed that since the existing scheme has

been replaced by a new scheme “National Information System on Technical Human Resource” (NISTECHR) following a Memorandum of Understanding signed between the AICTE and IAMR, the assets and liabilities of the NTMIS were to be utilized by the new NISTECHR scheme by IAMR. The MHRD vide letter dated 07.05.2013 directed IAMR to engage the former staff of the erstwhile NTMIS Scheme as recommended by the Bhatt Committee for the execution of NISTECHR Scheme till they were redeployed/adjusted in the respective Nodal Centres as decided in a meeting held on 22.01.2013. The AICTE was specifically directed by the MHRD to take necessary action in the matter as applicable vide letter dated 07.05.2013. However, it appears that the AICTE did not send any grant after 31.03.2013 and as a result of which the applicants and other staff in various Nodal Centres of the NTMIS received no payment whatsoever since August 2013. The AICTE vide letter dated 06.06.2014 conveyed the sanction for payment of arrears to the Director, BOAT Kanpur towards expenditure under Non-Plan during 2014-15 on account of pay and allowances to the three applicants working under the Nodal Centre for the period 01.04.2010 to 31.03.2013, as per the recommendation of the 5th Pay Commission. Director, BOAT wrote to AICTE seeking additional funds for meeting the requirements of payments as per the 6th CPC recommendations. However, since no reply or funds were received from the AICTE, the Director, BOAT disbursed the arrears of salary to the applicants for the period 01.04.2010 to 31.08.2012 as per the Vth CPC and further payment was deferred until the matter was taken up with the AICTE for release of funds. This issue of payment as per the 6th CPC was faced by many employees at various centres. Faced with similar problems as the present applicants, the staff of the Nodal Centre, NTMIS at Punjab Engineering College had approached the Chandigarh Bench of the Tribunal by filing OA No 315/CH/13, wherein by way of an interim order

dated 21.04.2014, the Tribunal directed the concerned respondents to release the payments in favour of those applicants as per the VIth CPC. During this period when the issue of payment of dues was going on, the MHRD had constituted the Bhatt Committee with Directors, NIT, AICTE and the Director General, IAMR, to examine the issues related to the NTMIS. This Committee, after examining all aspects of the matter, submitted report to the MHRD along with list of staff recommended for being adjusted in the Host Organizations. The names of the present applicants find place in the list. Thereafter, in the meeting held on 22.01.2013 by the Secretary, MHRD, it was decided that a new scheme, namely, National Information System for Technical Human Research (NISTCHR) would come into effect from 01.04.2013 through an MoU signed between AICTE and IAMR on project basis and the staff engaged in the earlier Nodal Centres in the project NTMIS should be considered for absorption in the host institution against suitable posts based on their educational qualification and experience, as recommended by the Bhatt Committee and that the existing employees may be given age relaxation for the vacant posts existing in the host institutions for which they will be considered and if no suitable post is vacant/available in the host institution, then absorption may be brought about by creating supernumerary posts, failing which the staff not finding absorption shall be engaged in the new scheme by the IAMR.

6. In pursuance of the aforesaid meeting, the Director, BOAT Kanpur submitted a proposal addressed to the MHRD for absorption of the applicants. The MHRD asked for certain details by way of letter dated 27.11.2013 in connection with their proposal, which was furnished by the Director, BOAT vide letter dated 05.12.2013 and on 09.12.2013, the Director (TE), MHRD vide letter dated 09.12.2013 addressed to the

Director/Heads of Institutions, All Nodal Centres on the subject of deployment/adjustment of NTMIS staff directed them to assess the possibility of re-deployment/adjustment of the staff of Nodal Centre as per the annexed list against a suitable vacant post subject to person fulfilling the requirements, qualification and experience and after assessing the possibility of re-deployment of NTMIS staff against the existing vacancies, asking for their comments by 31.12.2013 to enable the MHRD to take a reasonable decision in all such cases. The names of the applicants were featuring at serial no. 21, 22 and 23 in the list sent by MHRD along with the aforesaid letter. The Director, BOAT vide letter dated 31.12.2013 replied giving the details about the applicants. The MHRD vide letter dated 15.04.2014 addressed to the Director, BOAT sought further information regarding the creation of supernumerary posts of System Officer, Assistant and LDC in BOAT, Kanpur. As no decision was communicated by the MHRD, the Director, BOAT wrote a detailed letter dated 10.09.2014 to the AICTE requesting for release of grant for making the payment of admissible salary and arrears as per the 6th CPC in terms of the Bhatt Committee Report, a copy of which was also sent to MHRD. The Director, BOAT followed up the matter by writing another letter dated 19.09.2014 to the MHRD in this regard.

7. In the meanwhile, OA No. 315/CH/2013 which was filed before the Chandigarh Bench of this Tribunal was disposed of vide order dated 09.09.2014 allowing salary to the similarly placed applicants in that OA till March, 2013 but discharging the AICTE and the IAMR of any liability towards the applicants for payment of salary upon holding that the NTMIS was a project which had come to an end in March, 2013, and since the services of the applicants were co-terminus with the life of the project, the same did not survive since the project was over.

8. The applicants in this OA highlighted that, the order passed by the Chandigarh Bench was erroneous as it did not consider the significance and impact of the Bhatt Committee Report which specifically recommended absorption of certain NTMIS staff and the fact that NTMIS was not a time bound project. However, taking a cue from the judgment passed by the Chandigarh Bench, the AICTE vide letter dated 31.10.2014 rejected the applicants' long pending grievances and washed their hands of all liability, by taking shelter under the aforesaid judgement. The AICTE also wrote to Director, BOAT vide their letter dated 12.11.2014 and the Director, BOAT, thereafter, vide letter dated 28.11.2014 advised the applicants that "the project NTMIS has ended in March, 2013 and AICTE has no liability towards payment of salary to the staff of Nodal Centre w.e.f., 01.04.2013."

9. Thereafter, the Director, BOAT wrote another letter dated 16.01.2015 to the applicants that the staff of NTMIS were not on the rolls of the BOAT and therefore the BOAT shall have no liability regarding payment of salary, arrears etc to them and immediately after issuance of the aforesaid letter dated 16.01.2015, the applicants were physically ousted from their workplace and have not been allowed to enter the premises since then.

10. It has also been mentioned in the OA that BOAT (NR), Kanpur is having suitable vacancies where the applicants can readily be absorbed. However, instead of absorbing them on those vacancies, the BOAT (NR), Kanpur is in the process of making recruitment from the open market, ignoring the recommendations of the Bhatt Committee and the correspondence exchanged between MHRD and the host institution in this regard.

11. It has also been mentioned that similarly placed staff have been absorbed long back in other Nodal host institution such as NIT, Srinagar (J&K), NIT (Jaipur), NIT (Surat), KAL (Karnataka), Punjab Engineering College and the Board of Practical Training (BOPT), Kolkata. It is further mentioned in the OA that the NTMIS was a continuing scheme of the MHRD and the applicants have been abruptly thrown out of employment and that till date no order terminating the services of the applicants has been passed and there is nothing to show that NTMIS was a time bound project and their services were co-terminus with the life of the said scheme.

12. It is also mentioned that the Bhatt Committee recommendations which were duly accepted by the Government of India clearly recommended that the staff should be absorbed/redeployed or adjusted and if necessary supernumerary posts should be created. This has also not been considered by the respondents.

13. Aggrieved by this adverse action of the respondents, the applicants had approached this Tribunal seeking relief.

14. The applicants had also moved an application for interim relief and this Tribunal allowed the said application and directed the respondents to keep reserve one post of U.D.C. and one post of Assistant for applicant no. 3 and 2 respectively.

15. In the counter affidavit filed by the respondent no. 4 i.e., BOAT (NR), Kanpur, it has been mentioned that the applicants have wrongly mentioned that their services were orally terminated and they have not been paid salary since 01.09.2013 and some arrears have also not been paid to them. It has been stated that the applicants were not entitled for

the 6th Central Pay Commission w.e.f, 01.04.2010. The applicants cannot be accorded these benefits as the NTMIS project ended in the year 2013 and therefore the employment of the applicants which was for the said project also ended and ceased automatically as such they cannot be absorbed, adjusted or deployed except through process of fresh recruitment.

16. It is also clarified by the respondent no. 4 that the NTMIS project was funded by AICTE and monitored by the Institute of Applied Manpower Research (IAMR), New Delhi. The employment of the applicants was for the purpose of NTMIS Project established by Ministry of HRD, Government of India, funded through AICTE. It is also clarified that the applicants have been paid excess emoluments which were not to be disbursed in view of the cessation of the NTMIS project w.e.f., 31.03.2013. It has also been mentioned in the counter that the applicants herein and the applicants of OA No. 351/CH/13 have no similarity, hence, the present applicants are not entitled to any relief in terms of payments as per the 6th Pay Commission. It is also clarified that applicants have been paid all their dues as per the 5th Pay Commission and now nothing is left to be paid to the applicants. In reply to the para 2.7 of OA, it is stated in the counter reply that since NTMIS ceased to exist since 31.03.2013, the respondents have no role in this matter and the same is to be decided and settled by respondent no. 2 & 3. It is also mentioned that recently certain vacancies were advertised by the answering respondents and in response to which the applicants no. 2 & 3 also submitted their credentials and the applicants were called to face the interview board as per selection process, but they did not appear for the same. It is also mentioned that the applicants are well aware that their redeployment/adjustment can only be made by respondent no. 2 & 3 at the nodal centre but despite that, they

have unnecessarily dragged the answering respondents in this litigation and therefore this OA is liable to be dismissed. It is further reiterated that the redeployment/adjustment is to be done by the respondent no. 2 & 3 who are the introducers and implementers of NISTCHER scheme.

17. In the counter reply filed on behalf of respondent no. 1,2 and 3, it is mentioned that NTMIS was established in the year 1983 within the Ministry of HRD to generate and maintain a reliable database for planning and expansion of technical education in the country. This scheme was transferred to AICTE in 1993 and was implemented through IAMR and AICTE has provided funds to NTMIS leading Centres and 20 Nodal Centres depending on their requirement and demand since 1993. These Nodal Centers were expected to collect the data by employing students of senior classes, post graduate and Ph.D students on a nominal remuneration, who were called Field Investigators. Every Nodal Center was allowed to appoint 04 staff members namely Project Officer, Private Assistant, Research Associate and Computer Operator cum Programmer for disposal of the work of NTMIS. It is also stated that in November 2010, after a review of the program, AICTE withheld the salary grants of the officials of NTMIS because it was of the view that the data compiled by NTMIS was not in a form that could be used by AICTE. However, on insistence of MHRD, AICTE had released payment of salary upto 31.03.2013 based on 5th Central Pay Commission. It is further stated in the counter that as decided by AICTE and IAMR, the NTMIS Scheme has been closed on 30.03.2013. Thereafter, to examine the issue of erstwhile NTMIS Scheme and exploring the possibilities of adjustment of staff of nodal centers, a committee, called Bhatt Committee was constituted by the MHRD under the Chairmanship of Director, NIT, Jaipur. The committee submitted its report and recommended 33 staff from different 15 Nodal Centers including 03 staff

from Nodal Center, BOAT, Kanpur for adjustment/deployment. It was also decided in the meeting held on 22.01.2013 chaired by Secretary, MHRD that staff engaged in the erstwhile NTMIS Nodal Centres should be considered for absorption in the host institution against suitable posts based on their educational qualification and experience as recommended by the Bhatt Committee. Accordingly, the Ministry requested all the Nodal Centres to assess the possibility of re-deploying the NTMIS staff against existing vacancies of respective Nodal Centre vide letters dated 09.12.2013 and 02.02.2015.

18. It has also been stated that this matter relates to BOAT, Kanpur and the staff of NTMIS were engaged on ad-hoc basis (as mentioned in the appointment letter). However, the answering respondent has no concern with the applicants and they are not entitled for any relief as prayed in the instant OA which is liable to be dismissed. It has been further stated that the project closed long back in which the applicants worked, therefore, the applicants are no more employees of the respondents after closure of project.

19. It has been further reiterated that the issue is not related with the respondent no. 1, 2 and 3, as the BOAT, Kanpur was the recruiting agency of the applicants on adhoc basis, as is evident from the terms and conditions mentioned in the appointment letters of the applicants. Further, it has been submitted that the Ministry of MHRD had requested to assess the possibility of redeploying the NTMIS staff in respective Nodal centre vide letter dated 09.12.2013, 02.02.2015 and 01.05.2015. It is also mentioned that a new scheme namely NISTECHR is not working, therefore, the staffs have not been engaged.

20. It is also clarified that on MHRD's directives, AICTE had released

payment of salary upto 31.03.2013 based on 5th Pay Commission. It has also been mentioned that MHRD had also requested BOAT to assess the possibility of redeploying the NTMIS staff against the existing vacancies at the Nodal Centres. It has also been submitted that the Government of India has not accepted all the recommendation of the Bhatt Committee. As per the Bhatt Committee, the absorption of suitable NTMIS staff was to be made by the host Institute i.e., BOAT Kanpur.

21. In the rejoinder affidavit, various points of the OA have been reiterated specifically giving details of the decision taken in this regard for absorption of staff members by various similar organizations including BOPT, Kolkata.

22. Learned counsel for the applicants has also cited judgments given by the Mumbai Bench, Guwahati Bench & Kolkata Bench of this Tribunal, Hon'ble High Court of Mumbai and Hon'ble High Court of Guwahati.

23. In OA No. 268 of 2015 and OA No. 269 of 2015, the Mumbai Bench of this Tribunal examined the issue of similarly placed staff of NTMIS. The issue of payment of salary in terms of 6th Central Pay Commission recommendations and absorption of NTMIS staff were dealt with at length and vide order dated 17.08.2016, the Tribunal held that:-

“49. Having regard to the facts and law as discussed herein above the respondent No. 2 is directed (a) to release all arrears of salary and allowances extending the benefits as recommended by the 6th Pay and in terms of Revised Pay Rules payable w.e.f, 01.01.2006 till 31.03.2013, (b) The respondent no. 1 – MHRD and the respondent no. 2 – AICTE are directed to take steps to absorb these applicants immediately in any of the Institutes of MHRD or AICTE, in the event the replaced scheme NISTECHR is not operating from the Nodal Centre at Mumbai.

50. The Original Applications are disposed of with the above directions, MA Nos. 530 & 531/2015 also stand closed. No order as to costs.”

24. Against the aforesaid order, Writ Petition No. 305 of 2017 was filed

by the respondents before the Hon'ble High Court of Mumbai. The Hon'ble High Court in its detailed order dated 21.03.2018 also took note of the Bhatt Committee's Report and the meeting held on 22.01.2013 under the Chairmanship of the Secretary, MHRD for finalization of new scheme called NISTECHR. The order dated 17.08.2016 passed by the Mumbai Bench of this Tribunal in OA No. 268 and 269 of 2015 was upheld by the Hon'ble High Court with the following observations:-

“19. We also find that Gauhati High Court while dealing with the Writ Petition filed by some employees similarly situate issued appropriate directions for absorption of the petitioners therein based on the recommendations of the Bhatt Committee report and in view of the decision dated 21.01.2013 taken therein.

20. The respondent No. 5 has not filed any petition against the Tribunal's order. The order has attained finality in so far as the respondent no. 5 is concerned. The Tribunal by well considered order has allowed the O.A. We agree with the findings recorded by the Tribunal. We, therefore, do not find any reason to interfere with the order passed by the Tribunal.

21. The Writ Petition is dismissed with no order as to costs. The Chamber Summons does not survive and the same is accordingly disposed of.”

25. Further, the AICTE filed SLP No. 12599 of 2018 in the Hon'ble Supreme Court and the same was dismissed vide order dated 17.07.2018. Thereafter, the applicants of OA No. 268 and 269 of 2018 were offered appointments by the AICTE.

26. A similar case by way of OA No. 1133 of 2014 and connected matters, also came up before the Kolkata Bench of this Tribunal and the Tribunal vide order dated 06.08.2015 held as under:-

“Heard Both.

2. The Officer of Respondent No. 7 is present and prays time to file their statement in this regard through advocate. Meanwhile the ld. Counsel for the applicant produced a communication dated 11.06.2013 sent by the Additional Secretary, Ministry of Human Resource Development, Department of Higher Education, New Delhi to the Director General, Institute of Applied Manpower Research, Delhi which is extracted hereunder for ready reference:-

“I would like to draw your kind attention towards your letter dated 15.05.2013, wherein you have furnished a status note of NISTECHR scheme. The ministry has examined and furnishes clarification against point No. 02 and point No. 03 are as follow:-

I. For point No. 02:- For the payment of the outstanding salary amount of the staff of erstwhile NTMIS Scheme. It has already been directed to AICTE vide Point No. 2 (VI) of the letter of even no. dated 06.05.2013 that the AICTE shall pay the outstanding amount as applicable. Hence, MHRD is not in favour to draw any amount from NISTECHR funds for the payment of dues on accounts of salaries of erstwhile NTMIS staff. However, if the staff of erstwhile NTMIS Scheme will be engaged in the new scheme NISTECHR, then the payment could be made from the NISTECHR funds for the period, they are working in this new scheme only.

II. For Point No. 03:- IAMR is advised to engage the recommended staff of erstwhile, NTMIS Scheme by the Bhat Committee in the new Scheme NISTECHR till they are Re-deployed/Adjusted in the respective Nodal Centres as decided in the meeting held on 22nd January, 2013.”

The ld. counsel for the applicant would pray for an interim order for the said relief.

2. We are of the view that if there is no other contrary proof to this AICTE shall comply with it within a period of two months. List on 05.10.2015.

3. Plain copy of this order be given to ld. counsel for the parties.”

27. Learned counsel for the applicants also submitted that similarly situated staff of the erstwhile NTMIS has been adjusted/absorbed by the Board of Practical Training (BOPT), Eastern Region, Kolkata and directions for the absorption was given by the MHRD and AICTE. He has also mentioned that other similarly placed employees of the erstwhile NTMIS working at the NTMIS Nodal Centre, Directorate of Technical Education, Bhopal, Madhya Pradesh have also been directed to be absorbed at their host institution under the orders of MHRD and reiteration of the same by the AICTE vide their order dated 30.01.2017.

28. Learned counsel for the respondents representing the BOAT and Union of India argued that in view of the completion of NTMIS scheme, which was later replaced by NISTECHR scheme, the services of the applicants automatically came to an end.

29. It is worthwhile noting that during the arguments of learned counsel for the respondent no. 4 representing the BOAT, Kanpur it was repeatedly mentioned that all efforts have been made by the BOAT, Kanpur for

seeking necessary directives from AICTE and MHRD for absorption or redeployment of NTMIS staff in the host institution and no directive were received from either AICTE or MHRD. It was also mentioned that BOAT being erstwhile nodal centre has its own limitations in absorbing/redeploying/adjusting the applicants.

30. Learned counsel for the respondent no. 1 to 3 repeatedly argued that the absorption of suitable staff of NTMIS is to be made by the host institute, for which the Ministry had also requested all the Nodal Centres time and again. However, it is obvious from the response made by the BOAT, Kanpur, MHRD and AICTE that the absorption or redeployment of the applicants who were working with NTMIS could not be done despite the Bhatt Committee's recommendation.

31. Heard the counsels for both the parties and perused the pleadings available on record.

32. The applicant no. 1 was appointed by BOAT (NR), Kanpur vide letter dated 19.07.1990 on the post of Computer Operator-cum-Programme on adhoc basis. The appointment letter clearly mentions that appointment is purely on ad-hoc basis subject to the condition that his services can be terminated without any notice or without assigning any reason and he will have no right to the post in due course. The applicant no. 2 and 3 were appointed vide letters dated 13/22.11.2006 and 03.01.2006 to the post of Research Associate and Lower Division Clerk respectively on ad-hoc basis. Later, vide letter dated 30.07.1991 the applicant no. 1 was informed that his ad-hoc appointment has been regularized on the post of Computer Operator-cum-Programmer on temporary basis w.e.f., 19.07.1990. The appointment of the applicant no. 2 on the post of Research Associate was partially modified from ad-hoc to regular basis vide letter dated

26.12.2007. The applicants have continued to work in BOAT (NR), Kanpur since then. Thereafter, vide letter dated 20.05.2013 issued by the AICTE to all the NTMIS Nodal Centres, it was conveyed that the existing scheme has been replaced by National Information System on Technical Human Resource (NISTECHR) following a Memorandum of Understanding signed between the AICTE and IAMR. This letter dated 20.05.2013 also referred to a letter dated 07.05.2013 written by the MHRD, whereby, IAMR was directed to engage the former staff of the erstwhile NTMIS Scheme as recommended by the Bhatt Committee. The Bhatt Committee had been constituted to examine the issues relating to erstwhile NTMIS of AICTE and this Committee also addressed the issue of identification of the number of permanent regular staff of the Nodal Centres, to explore the possibility of adjusting them in their respective Institute or other Institutes of MHRD or AICTE. The relevant extract of the Bhatt Committee Report is as under:-

“2. As per the deliberations of the meeting dated June 8, 2012, the information was sought from all the Nodal Centres of the NTMIS Scheme related to the sanctioned four project positions, namely Project Officer (PO), Computer Operator cum Programmer (COCP), Research Associate (RA) and Personal Assistant (PA) in respondents to the request sent. The same has been complied and was presented before the Committee.

4. Based on this criteria, the committee examined each case and such cases were tabulated as Annexure I. The Committee was of the view that due to their long association with the scheme many of them have crossed the age limit for consideration in any government job and as such the committee recommends that such candidates be considered for absorption at appropriate level in the respective institutions/organizations where these Nodal Centres are operating against the vacant positions. In case such positions are not available the Institutions may get additional positions created and such candidates considered.

6. It is recommended that the ministry may write to these institutions/organizations for possible absorption of these staff members in their organizations, giving relaxation of the age and also weightage to the experience. The institutes may be asked to hold the selection committee meeting at an earlier and not later than three months for their consideration.”

33. Subsequently, a meeting was held on 22.01.2013 under the Chairmanship of the Secretary, MHRD to consider the Bhatt Committee's

Report. The relevant portion of the Minutes of the meeting are reproduced below:-

“Based on the discussions in the meeting, the following decision were taken :

The present NTMIS Scheme would exist till 31st March, 2013.

II. a. A new Scheme named as National Information System for Technical Human Research (NISTCHR) would come into effect from 1st April 2013 through an MoU to be signed between AICTE and IAMR on project basis.

b. A new MoU would be signed between AICTE and IAMR preferably during second week of February, 2013. Chairman, AICTE will submit a revised MoU in the first week of February 2013 incorporating the following :

(i) The period of MoU should be initially for this Plan Period,

(ii) A Committee would be set up under the Chairmanship of Additional Secretary (T) for coordination which can meet once in six month or whenever necessary.

III. a. The staff engaged in the earlier Nodal Centres in the project NTMIS should be considered for absorption in the host institution against suitable posts based on their Educational Qualification and Experience as recommended by the Bhat Committee. The existing employees may be given an age relaxation for the vacant posts existing in the host institutions for which they shall be considered.

b. In case the host institution is a state funded institution (not Centrally Funded Institution), the nearby MHRD Institution may be requested to consider for absorption of the staff.

c. If no suitable post is vacant/available in such an Institution, Supernumerary post may be created.

d. If any staff could not be absorbed by the Host/MHRD Institution, they will be engaged in the new scheme by IAMR. This provision would be specifically mentioned in MoU of NISTCHR.

e. Necessary approval from IFD of the Ministry shall be taken for deployment of such staff in case supernumerary posts need to be created.”

34. The MHRD issued a letter dated 07.05.2013 on the subject “implementation of new Scheme” National Information System on Technical Human Resource (NISTECHR). The relevant portion of the letter dated 07.05.2013 is reproduced below:-

“1. An MoU has been signed on 7th March, 2013 between All India Council for Technical Education (AICTE) and Institute of Applied Manpower research (IAMR) shall be valid for 12th plan period i.e. upto F.Y. 2016-17. It would be effective from 1st April, 2013 to replace the existing NTMIS Scheme between AICTE and IAMR.

2. AICTE and IAMR are requested to intimate the status of the following :-

I. AICTE may intimate all the Nodal Centres about the position of the NTMIS scheme.

II. The Assets and Liabilities of the erstwhile NTMIS Scheme will be utilised for the new NISTECHR Scheme by

IAMR. However, the details of the Asset are to be submitted to AICTE by IAMR.

III. IAMR is directed to engage the former staff of the NTMIS Scheme as recommended by the Bhatt Committee for the execution of NISTECHR Scheme till they are Re-deployed/Adjusted in the respective Nodal Centres as decided in the meeting held on 22nd January, 2013.

IV. No new staff will be engaged in the new NISTECHR Scheme on permanent basis by IAMR.

V. AICTE may take appropriate action based on the Bhatt Committee report.

VI. Several communications were received at MHRD from Nodal Centres and IAMR for the non-settlement of payment of NTMIS Scheme which has been forwarded to AICTE time to time. AICTE is directed to take necessary action as applicable.”

35. On perusal of various judgements in connection with similarly placed staff of other nodal centres and the decisions taken on absorption/redeployment of the erstwhile NTMIS staff reveals that despite clear instructions/recommendations of the Bhatt Committee which also recommended the names of the staff to be absorbed/redeployed including the three applicants of this OA and correspondence exchanged in this regard between the BOAT (NR) Kanpur, AICTE and MHRD till 2015, the applicants could not be absorbed/redeployed. The applicants were informed that in view of the NTMIS scheme having been replaced by NISTECHR scheme, their services are no more required.

36. The applicants have also represented regarding payment of their salaries and arrears as per the 6th CPC recommendations, for which the BOAT, (NR), Kanpur was making reference to MHRD and AICTE. The Director, BOAT has also referred the matter of absorption/redeployment of the applicants to the AICTE and MHRD, vide his letter dated 10.09.2014. Finally, the AICTE in 2014, wrote a letter to the Director, BOAT (NR), Kanpur indicating that as the NTMIS project has ended in March, 2013 and AICTE has no liability towards payment of salary to the staff of Nodal Centre w.e.f., 01.04.2013. However, in the letter dated 12.11.2014 addressed to the Director, BOAT, Kanpur, it was clearly mentioned that

BOAT may take action to absorb the staff of Nodal Centre in its available vacancies as deemed fit.

37. From the above mentioned, it is obvious that the applicants who were working with the BOAT, Kanpur were similarly placed with other staff of NTMIS in 20 Nodal Centres across the country. With the conclusion of the NTMIS Scheme in 2013, similarly placed staff had made representations and also sought relief from the Tribunal and Hon'ble High Courts. The Mumbai Bench of this Tribunal in its order dated 17.08.2016 passed in OA No. 268 and 269 of 2015 had directed that such staff should be paid the salary and arrears as due in terms of 6th Pay Commission recommendations till the time their services were utilised in the scheme and also to absorb the staff against the existing vacancies in any centre of AICTE. The decision of Mumbai Bench of this Tribunal has covered all the aspects and has suitably directed the MHRD and AICTE to do the needful. This decision of the Mumbai Bench of this Tribunal was also upheld by the Hon'ble High Court of Mumbai. It is also a fact that as a result of the orders passed by the Mumbai Bench of this Tribunal and Hon'ble High Court of Mumbai, the MHRD and AICTE have taken necessary action and the applicants of OA No. 268 and 269 of 205 have been offered jobs. Similarly situated staff have also been duly absorbed by BOPT against vacant posts.

38. From the arguments and submissions of respondents, it is evident that respondent no. 1 to 3 have repeatedly mentioned that responsibility for absorption/redeployment of the applicants is the responsibility of respondent no. 4 whereas respondent no. 4 in his submissions has clearly indicated that it is the responsibility of respondent no. 2 and 3 to ensure that staff is absorbed/deployed in terms of Bhatt Committee Report and the decision taken in the meeting chaired by Secretary, MHRD. It is also

brought on record that cases of similarly placed staff has been decided by Mumbai Bench of this Tribunal and the order has been upheld by the Hon'ble High Court of Mumbai. I that order clear directives have been given to MHRD and AICTE to absorb these applicants immediately in any of the institutes of MHRD or AICTE and to also release all arrears of salary and allowance extending the benefit as recommended by the 6th Pay Commission. In the present OA also as an interim relief, directives have already been given to respondents to keep reserve one post of UDC and one post of Assistant for applicant no. 3 and 2 respectively. MHRD & AICTE have taken necessary action following order dated 17.08.2016 of CAT Mumbai Bench in OA Nos. 268 and 269 of 2015 which was upheld by the Hon'ble High Court of Mumbai for the similarly placed persons. Similar action be taken for the applicants also by MHRD & AICTE

39. In view of the above mentioned, the respondent no. 1 and 2 are directed to release all arrears of salary and allowances by extending the benefits as recommended by the 6th Pay Commissioner due to the applicants and take immediate steps to absorb these applicants in BOAT Kanpur or in any of the institutes of MHRD or AICTE, in the event the replaced scheme NISTECHR is not operating from the Nodal Centre at Kanpur, within a period of 03 months from the date of receipt of this Order.

40. With the above directions the OA is disposed of. No order as to costs.

(MOHD JAMSHED)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J

Arun..