

# **CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH**

OA No. 48/2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Dr.Madan Mohan Sahoo, aged about 56 years, S/o Shri Surendranath Sahoo, At-Plot No. 2B/1090, Near Justice Square, Sector-11, CDA, Cuttack-753001.

.....Applicant

## VERSUS

1. Union of India, represented through its Secretary to the Government of India, Ministry of Health & Family Welfare Department, New Delhi.
2. Director, All India Institute of Medical Sciences (AIIMS), Bhubaneswar, Sijua, Post - Dumduma, Bhubaneswar - 751019, Dist. - Khurda.

## .....Respondents.

For the applicant : Mr.A.Mishra, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 14.1.2019 Order on : 7.2.2019

## ORDER

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

"Under these circumstances it is most humbly prayed therefore that this Hon'ble Tribunal may graciously be pleased to direct respondent No. 2 to issue letter of appointment in favour of the applicant for the post of Professor, Orthopaedics pursuant to advertisement at Annexure-1 in an early date."

2. The applicant, who was a candidate for the post of Professor, Orthopaedics in AIIMS, Bhubaneswar, is aggrieved due to his non-selection. Admittedly, he had applied for the post of Professor Orthopaedics in pursuance to the advertisement issued by AIIMS on 7.3.2017 (Annexure-A/1). The applicant did not receive the 'No Objection Certificate' (in short NOC) from his employer i.e. Government of Odisha in time, for which, he moved Hon'ble High Court in WP (C) No. 17435/2017 and as per the interim order of Hon'ble High Court, the applicant was allowed to attend the interview. The said writ petition was disposed of with a direction to the Government of Odisha to issue NOC in favour of the applicant.

3. After the interview, the provisional result was declared on 26.12.2017 (Annexure-A/4) in which, the applicant's name was not there, although he was the only eligible candidate who appeared in the interview. After his name was not included in the select list, the applicant filed this OA, mainly on the following grounds:-

- (i) The action of the respondents not selecting the applicant is illegal since he was the only eligible candidate appearing in the interview.
- (ii) The respondent no. 2 has not conducted the selection process in fair and legal manner, not adhering to the guidelines.
- (iii) The respondent no. 2 illegally debarred the applicant who has the right to be appointed, as he was the only eligible candidate appearing in the interview.

4. Learned counsel for the applicant was heard. He submitted that the applicant was the only eligible candidate who appeared in the interview and as mentioned in para 2 of the counter, the applicant secured 38.5 marks. But the selection committee did not the applicant's name for the post. He also argued that as per the cited case law, if criteria for selection is not mentioned in the advertisement, it cannot be implemented subsequently. A written note of submission has been filed by the applicant's counsel, stating that although there was no minimum qualifying mark for the interview, the counter has mentioned that the applicant was not selected as he secured only 38.5 marks. The selection committee has not taken any decision regarding minimum qualifying mark.

5. Learned counsel for the respondents submitted that as per the regulations of the AIIMS, the selection committee is to devise further methodology for selection including written test, interviews and the basis of marking and evaluation as stated in para 11 of the counter. It was further submitted that 5 candidates were shortlisted for the post of Professor, Orthopaedics for interview, but only the applicant had appeared in the interview. The selection committee awarded 38.5 marks to the applicant for the interview and no minimum mark was specified for the selection. In support of the argument, learned counsel for the respondents referred to another similar case (OA No. 47/2018; Dr. Manoj Kumar Behera vs. Secretary to Government of India, Ministry of Health & Family Welfare), which was dismissed by the Tribunal.

6. The written note submitted by the applicant's counsel mentioned that in the OA No. 47/2018, the candidate was a SC candidate and his case was that he was deliberately not selected for having personal grudge of the subject expert. Hence, the cited case is not exactly similar to the present case. The judgment of Hon'ble Supreme Court in the case of Ramesh Kumar vs. High

Court of Delhi & Anr. in WP (Civil) No. 57/2008 has also been cited by the applicant. In the case of Ramesh Kumar (supra), the petitioners were not selected as they did not secure the minimum marks for the interview. The advertisement specified minimum qualifying marks for written as well as interview. The question in that case was whether the statutory rules governing the selection enabled the employer to specify the minimum benchmark for the interview. It was held by Hon'ble Apex Court that fixing of minimum mark for interview was not permissible. Further, the petitioner was found to have secured more than the cut off 45% in the aggregate. In these circumstances, rejection of the petitioner securing higher than cut off marks in aggregate on the ground of below minimum mark fixed for interview, was held by Hon'ble Apex Court to be illegal. In the present OA, it has not been demonstrated before us that there was a minimum marks fixed for the interview and that the applicant was not selected for not securing the said minimum marks in the interview. Hence, the present OA before us is factually distinguishable from the cited case.

7. Another case of Rakhi Ray & Ors. vs. The High Court of Delhi & Ors. decided by Hon'ble Apex Court was also cited in the written note filed by the applicant's counsel. In that case, the plea of the petitioners was to be appointed against the vacancies which arose during selection process and which were not reflected in the advertisement as per the direction of Hon'ble Apex Court in another case. After examining the law on the subject, it was held by Hon'ble Apex Court as under:-

"26.....A person whose name appears in the selection list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment."

Clearly, the facts of the above cited case are different from the facts of the instant OA before us.

8. The judgment in the case of Rakhi Ray (supra) as quoted above, lays down the principle that the selection/recruitment will have to be done as per the statutory rules applicable. In the present OA, the rules applicable for the selection of the post of Professor, Orthopaedics for AIIMS, Bhubaneswar are as stated in para 11 of the counter, which is undisputed. As per these rules, the Committee for Selection will devise further methodology for selection including the tests and the basis of marking and evaluation. Hence, the Committee, in this case, was competent to finalize the basis for deciding the selection of a candidate and accordingly, the Committee has not found the applicant

suitable. As per the rules, the Committee for Selection is competent to base their decision in respect of candidate on marks or otherwise. The undisputed fact is that the applicant was not found suitable for appointment by the Committee for Selection. There is no allegation that the Committee for Selection has committed any wrongful act or illegality in assessing the applicant.

9. In the circumstances, we are of the view that based on the documents produced and grounds advanced before us by the parties, there is no justification for taking a view different from the Committee for Selection in the matter of selection of the applicant for the post of Professor, Orthopaedics under the Respondent no. 2 and hence the OA, being devoid of merit, is liable to be dismissed. Accordingly, the OA is dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

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