

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA/050/00572/14**

Reserved on: 04.01.2019

Pronounced on: 17.01.2019

**C O R A M**

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Pramod Kumar Sahni, aged about 36 years, Son of Sri Chhotelal Sahni, Resident of Flat No. 302, B- Block, Staff Quarters, IHM-Hajipur, Opposite- Government Circuit House, Hajipur, Bihar.

..... Applicant.

- By Advocate: - Mr. B.S. Pandey

-Versus-

1. The Union of India through the Additional Director General (T), Ministry of Tourism, Government of India, New Delhi.
2. Principal Secretary, Department of Tourism, Government of India-cum-Chairman, Institute of Hotel Manager, Catering Technology & Applied Nutrition, Hajipur.
3. Advisor, Department of Tourism, Government of Bihar, Patna.
4. Principal-cum-Secretary, Institute of Hotel Management, Catering Technology & Applied Nutrition, Hajipur.
5. Deleted.
6. Anupam Kumar, Son of Not Known, Sr. Lecturer-cum-Instructor in IHM-Hajipur, Resident of Staff Quarters, IHM- Hajipur, Opposite-Government Circuit House, Hajipur, Bihar.
7. Amit Kumar, Son of not known, Lecturer-cum-Instructor in IHM-Hajipur, Resident of Staff Quarters, IHM- Hajipur, Opposite-Government Circuit House, Hajipur, Bihar.

..... Respondents.

- By Advocate(s): - Mr. H.P. Singh, Sr. SC for UOI.  
Mr. Harsh Singh with Mr. Alok Sinha, for R-4.  
Mr. Satyabir Bharti, for R-6.

**O R D E R**

**Per Dinesh Sharma, A.M.:-** The facts of the case are as follows:

2. The applicant had filed this OA on 4.8.2014 seeking, mainly, to set aside the promotion of Respondent no. 6, Anupam Kumar to the post of

Senior Lecturer-cum-Instructor in the Institute of Hotel Management, Catering Technology and Applied Nutrition ( in short, IHM), Hajipur, while overlooking the applicant's better claim on account of his qualifications, experience, past record and seniority. The promotion, which under the relevant rules should have been on the basis of "Merit with due regard to Seniority", was done after a process in which 40% weightage was given to the personal interview and 60% weightage to APARs. This process was unprecedented. The APARs were not disclosed to the applicant. On these grounds, he has challenged the process as illegal, mala fide, arbitrary and corrupt.

3. This Tribunal, by its order dated 9.9. 2014, disposed of the application by a direction to respondent no. 2 (Principal Secretary, Deptt. Of Tourism, Bihar) to consider the representation of the applicant treating this O.A. as part of that representation and dispose it of by passing a reasoned and speaking order. Following this, Ms. Harjot Kaur, Secretary (Tourism) - cum - Chairperson, IHM, Hajipur passed a detailed order, dated 29.10.2015, setting aside the promotion of Respondent no. 6. This order (Annexure-A/2, to the applicant's MA/050/00041/2017) found that the procedure adopted by the DPC for interview, without having been referred to the Board of Governors for approval, did not "inspire confidence". It also questioned the competence of the Chairman (the then Principal Secretary, Deptt. of Tourism, her predecessor in office) who, in her opinion, "alone had no authority to do something which has been specifically vested in a body such

as the Board of Governors”. Consequently, by an order dated 23.11.2015, the Respondent No. 6 was ordered to be reverted to the post of lecturer.

4. The Respondent No. 6 questioned these orders before the Hon’ble High Court of Patna in CWJC. No. 19010 of 2015. The Hon’ble High Court disposed of this writ by its order dated 29.2.2016, in which, while commenting about the apparent impossibility of same authority (Secy. Deptt. of Tourism) superseding its earlier order, it set aside the order passed by this Tribunal and the two subsequent orders of the Secretary, Department of Tourism (all three orders mentioned in Para 2 above). It also remitted the case back to this Tribunal to decide the OA on merits, rather than sending the matter for deciding the representation.

5. Written Statement was filed by respondent no. 4 (Principal, IHM) in which he has contested the claim of the applicant. He has justified the process of selection by the DPC, since the post was to be filled by merit with due regard to seniority and the rules expressly provided that the DPC may conduct interview/test. He has cited the relevant provisions under which the Board of Governors can delegate its authority. The Board of Governors, had, expressly authorized the Chairman to examine and take a decision on the recommendations of the D.P.C. and the Chairman had done so after having satisfied that the recommendations of the DPC were in accordance with law, rules and regulations. On the basis of this decision, the respondent no. 6 was promoted w.e.f. 6.2.2014. This decision was placed before the Governing body in its next meeting, held on 13.6.2014 and was approved with satisfaction. The respondent has denied the other claims

made by the applicant- about not disclosing his APARs, about his being senior- as untrue. According to him, both the petitioner and the respondent no. 6 belonged to the same batch (interviewed on 10.2.2010), and had secured the same total number of aggregate marks). The applicant had received the copies of his APARs of 2010,2011 and 2012 and acknowledged it by endorsement. He participated in the selection process of interview and therefore cannot question it only because he failed to get selected. The respondent has also argued about no unfairness having been caused to the applicant on account of higher percentage of weightage (40%) assigned to interview, since, even going by his past record (APARs), he failed to secure sufficient marks. Since he got only 30 out of 60 (based on this record), in comparison with 50 out of 60 secured by respondent no. 6, he would not have been selected even if he got 40 out of 40 in the interview.

6. Respondent No. 6, in his W.S. has mostly mentioned the facts and arguments mentioned by Respondent No. 4 and specifically quoted clause 15(iii) of the Bye laws of the IHM, which provide that the "Board may, by resolution, delegate to a committee or the Chairman such of its powers for the conduct of its business as it may deem fit, subject to the condition that action taken by any committee or the Chairman under the powers delegated to them by this rule shall be reported for confirmation at the next meeting of the Board". He has also produced copies of the (relevant extracts of) Minutes, Agenda and Action Taken Report of the meetings of Board of Governors dated 23.10.13 and 13.6.2014 respectively (Annex R6/E and R-6/H series). He has claimed that he has been selected on the basis of

superior merit and is continuing as such since the date of his promotion i.e. 13.2.2014, and therefore the OA should be dismissed.

7. The applicant, in his rejoinder to the Written Statement by Respondent no. 4, has, besides reiterating his earlier claim, mainly drawn attention to apparently contradictory stand taken by Respondent no. 4 in his counter affidavit filed in CWJC No. 19010/2015, where he had justified the action taken by Secretary, Department of Tourism, in setting aside the earlier order of Principal Secretary, Deptt. Of tourism. Quoting extensively from the counter-affidavit and annexing a copy of this affidavit with his rejoinder at Annexure-20) the applicant has sought to reject the reply given by this respondent, due to such glaring contradictions on oath. In the rejoinder to the WS filed by respondent no 6 also, the applicant has referred to the counter affidavit filed by respondent no. 4 to support his contention that there was no proper delegation or subsequent approval by the Board of Governors of the action of the then Principal Secretary cum Chairman IHM to promote respondent no 6. The respondent no 4, in his reply to this rejoinder, has stated that it was in the context of the lis involved before the Hon'ble court and he had to defend the order passed by the then Chairperson (the order which was overturned by the Hon'ble H.C), and he had, at no point misrepresented the facts. He also questioned applicant's raising the issue of competence of the authority granting promotion now, as it was not mentioned in his original O.A.

8. We have gone through the pleadings and heard the counsels for both the sides. The only issue that needs to be decided here is whether

the promotion of respondent no.6 was proper. For deciding this, we have to go into the following main sub-issues of (a) whether it was done by an appropriate authority, and (b) whether it was based on relevant considerations following the procedure prescribed under the relevant rules.

9. It is admitted by both the parties that the Board of Governors was the appropriate authority to approve this promotion. From the records produced before us it is clear that the Board of Governors decided, in their meeting dated 23.10.2013, as “Any other points with the permission of Hon’ble Chairman” “to submit the recommendations of ‘DPC’ meeting dated 23.10.13 with Chairman on file for approval’. The Chairman (Principal Secretary) approved this, on file, on 06.02.2014. This decision of the Chairman was later put before the Board of Governors, in its meeting dated 13.6.2014, as Agenda item no 29.02 headed “To apprise the members regarding the action taken as per the Resolution dated 23<sup>rd</sup> October 2013” with Notes seeking “deliberation and approval “of Action Taken Report” at Annexure-II. This Annexure II, apparently reports “Chairman approved the recommendations of DPC meeting”. From these records, it is clear that the matter was brought before the Board of Governors the very day the DPC met and finalised its recommendations. The Board authorised the Chairman to approve the recommendations on file. The Chairman approved as recommended. The respondent got promotion following this. The matter was later put before the next meeting of the Board of Governors for “deliberation and approval” as part of the Action Taken Report. The minutes of this meeting show that the “Board noted the Action Taken report with

satisfaction. “While it may be possible to point fingers at imperfect recording of minutes and not a very concise and elaborate way of recording resolutions of the Board, there can be no doubt that the Board of Governors did authorise the Chairman and later “noted with satisfaction” his decision, which cannot mean anything other than that they approved of it. It is true that respondent no. 4 had himself pointed out at some of these discrepancies in the decision taking and recording procedure (while defending the action of then Secretary Tourism who had questioned the propriety of the action taken by her predecessor) in the case before the High Court, he has now defended the decision as a representative of the IHM. It is also a fact that the applicant did not raise this issue in his OA and has brought it up only in his rejoinder as an afterthought based on later developments. Since the Board of Governors has not questioned this decision either before or after lapse of such a long time (which they could have very well done if they did not approve of it) the applicant has no right to challenge it as not their decision. We find that the decision to promote respondent no 6 was taken as authorised by the Board of Governors and later confirmed by it and hence it was an action from an appropriate authority.

10. As regards the second issue of considerations of merit, seniority and the procedure adopted for determining merit, there is no dispute regarding the fact that both the applicant and the respondent no 6 belong to the same batch of selection and had secured identical marks at the time of selection. The name of the applicant has been mentioned before

that of respondent no 6 and that can be an indication of seniority within the batch, on whatever considerations it might have been done. It is admitted by both the sides that the rules talk about merit with due regard to seniority. The rules also give powers to the DPC to have test/interview to assess merit. The DPC has done so in this case. Though it might have been unprecedented, it is apparently not illegal, irregular or irrational. Even if giving 40% weightage to interview is to be considered rather on the higher side, the fact remains that the applicant scored so poor on the basis of his APARs that the result of interview becomes immaterial. The respondent has categorically denied the assertion of the applicant that APARs were not shown to him, and the applicant has not questioned this. The applicant did participate in the selection process and that too debars him from questioning it after failing to make it. Thus, we find that the recommendation of the DPC was on proper evaluation of respective merits of all the candidates and the appointment did not suffer from any grave material flaw in the approval (or recording of that approval, whether before or ex-post facto) which may warrant setting aside that decision.

11. The OA, therefore, fails and is dismissed. No orders as to costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**