

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00239/2018

DATED THIS THE 19th DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Smt.Navya M.K.
Aged 26 years
W/o MN Sarvesh
R/o No.50, "Manjunatha Krupa"
3rd Main, Nanjundeswara Nagara
Nandini Layout
Bangalore – 560 096.

....Applicant

(By Advocate Sri Ranganath S. Jois)

Vs.

1. The National Aerospace Laboratories
Rep. by its Council of Scientific and Industrial
Controller of Administration Research
P.B.No.1779
HAL Airport RoDS
Kodihalli, Bangalore-560 017.

2. The Union of India
Rep. by its Secretary
Ministry of National Aerospace Laboratories
Department of Space
New Delhi-110 001.

3. Smt.Sravani Tungale
C/o National Aerospace Laboratories
Union of India, CSIR
Rep. by its Secretary
P.B.No.1779
HAL Airport RoDS
Kodihalli, Bangalore-560 017.

...Respondents

(By Advocates Sri K.Ananda for R1 & 2 & Sri M.Rajkumar for R3)

O R D E R(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The brief facts of the case is that in response to the Online Notification dtd.24.2.2017 (Annexure-A1), the applicant submitted her application for the post of Senior Technical Officer(STO)(UR) through online along with necessary documents(Annexure-A2). She was called for Skill Test on 28.2.2017(Annexure-A3) in which she was one of the 15 candidates short-listed for the said post based on 75% marks and two years of experience in the Web-based Software Technologies. She was called for interview by communication dtd.8.1.2018(Annexure-A4) with the original documents. She appeared before the interview authority. But the respondents have selected the 3rd respondent vide selection dtd.12.2.2018 (Annexure-A5) without giving details of the marks obtained in the interview and the skill test by the applicant as well as the 3rd respondent. Therefore, she submitted representation dtd.6.3.2018(Annexure-A6) stating that in the absence of marks, the interview conducted was only a farce, though the applicant performed better than the 3rd respondent, she has not been selected. Applicant submitted 'online' request (Annexure-A7) seeking the details of the selected candidate and the remarks of the Selecting Authority and the procedure followed for such selection. But the same was not furnished to her. In the meanwhile, she received certain communication dtd.1.3.2018 (Annexure-A8) from an Association called 'NAL Well Wishers and Merit and Talent Association' wherein she was informed that she would have been selected, but later on unjustly removed from the purview of selection and therefore, she could approach the higher authorities. Therefore, she submitted one more representation to all the authorities on 17.3.2018 (Annexure-A10) to do justice to

her as there has been an arbitrary selection of the 3rd respondent overlooking the merit of the applicant. On 12.3.2018(Annexure-A11), she was informed that the selection is proper and based on performance. But till date they have not furnished the details of the marks of the selected candidate and that of the marks scored by her and the remarks of the selection committee. Not disclosing the details of marks obtained by the candidates and the proceedings of the Selection Committee clearly establish the fact that there has been favouritism and victimisation in the matter of selection and no fairness in the procedure adopted. Therefore, the selection of the 3rd respondent and her non-selection is violative of Articles 14 and 16(1) of the Constitution of India and is also malafide. Since the applicant is highly aggrieved by her non-selection and the procedure followed by the respondents in not intimating the marks obtained by the candidates in the Skill Test and the Interview and remarks of the Selection Committee, she filed the present OA seeking to quash the entire selection proceedings and the selection and appointment of 3rd respondent vide orders dtd.12.2.2018(Annexure-A5) & dtd.22.3.2018(Annexure-A11) passed by the 1st respondent and to direct the 1st respondent to select and appoint the applicant on the basis of her performance and the merit and the marks obtained by her in the qualifying examination with all consequential benefits of pay and allowances.

2. The 1st respondent has filed reply statement stating that the National Aerospace Laboratory(NAL) is a unit of Council of Scientific & Industrial Research(CSIR) which have its own recruitment rules called as CSIR Service Rules, 1994 for recruitment of Scientific, Technical and Support Staff. The rules describes the eligibility criteria, method of recruitment etc.(Annexure-R1). He submits that in order to fill up certain posts, they issued the recruitment notification vide Advt.

No.1/20178 on 24.2.2017(Annexure-R2) wherein the post of Senior Technical Officer-1(STO) was also notified. In pursuance of the said notification, several candidates filed their applications to the post of STO. It is submitted that as per Rule-10.2, the applications received will be scrutinized by the Screening Committee to be constituted amongst the members of the Selection Committee which will adopt its own criteria for short listing the candidates to be called for interview/trade test. The post of STO comes under Gr.III category and therefore, Screening Committee was constituted under Rule 9.1.2 of CSIR Service Rules, 1994. As per CSIR Recruitment Rule 10.3.2, the Selection Committee will interview the short listed candidates to evaluate their suitability and after finalisation of its recommendations, the Appointing Authority will approve the same under Rule 10.3.4. As per CSIR Recruitment Rule 10.3.3, a panel of selected candidates in each discipline will be drawn for filling up a post. Based on the panel, if the candidate with the top merit does not report or does not accept the appointment, the next candidate in the panel can be offered the post. The panel will be alive for a period of one year. Accordingly, the applications of the applicant and 3rd respondent along with others were scrutinized and as per short list, 15 candidates including the applicant and 3rd respondent were eligible to be called for interview and accordingly they were called for interview. All the 15 candidates including the applicant and the 3rd respondent have attended the interview held on 31.1.2018 at the premises of the 1st respondent. There is no rule or procedure to publish the marks secured in the interview. On 12.2.2018 (Annexure-R5), the 1st respondent notified the selection list wherein the 3rd respondent was selected purely on merit to the said post and there is no illegality or infirmity in selection of the 3rd respondent as alleged by the applicant. On

15.3.2018, 1st respondent issued the offer of appointment to the 3rd respondent and thereafter the 3rd respondent reported for duty on 26.3.2018 and is working in the 1st respondent institution(Annexure-R6 & R7).

3. The respondent submits that in Clause-16 & 17 of the said advertisement, it is clearly mentioned regarding the short listing of the candidates amongst the candidates who have applied for and under Clause-25, it is mentioned that the decision of the CSIR-NAL in all matters relating to eligibility, acceptance or rejection of the application, mode of selection, conduct of Skill test/interview will be final and binding on the candidates and no enquiry or correspondence will be entertained in that connection. Admittedly, the applicant duly knowing all these conditions has applied to the said post and now making reckless allegation against the very selection process of the said post which is not permissible in the eye of law. Furthermore the 1st page of Annexure-A3 is in no way connected with the very 2nd page. The 1st page of Annexure-A3 contained the short-listing of the candidates from post code TA-101 to TA-125 to appear for Skill/Trade Test. At no point of time, the applicant was called to attend the Skill Test. Therefore, on this ground alone, the application is liable to be dismissed with exemplary cost. Though the selection was made as per the rules, the applicant being the unsuccessful candidate made several allegations against the 1st respondent based on the created document at Annexure-A8 which is not signed by any person who has alleged to have sent to the applicant and therefore, the allegations of the applicant is not sustainable in the eye of law and there is no violation of Articles 14 & 16 of Constitution of India. Therefore, the OA being devoid of merits is liable to be dismissed.

4. The 3rd respondent has also filed reply statement wherein she submits that she has 75.29% of marks with 5 years and 10 months of experience with the job profile as asked in the advertisement and immediately applied for the post of Senior Technical Officer-1(STO) through online. She has 6 years and 7 months of working experience in Java technologies and she acquired extensive knowledge and expertise in design, development, deployment, maintenance and continuous enhancement of web based software using the technologies Java/j2ee, Struts, HTML 5, Ajax, Jquery in Tomcat server with Oracle RDBMS. She contributed to several projects varying from finance to accounts management systems, production planning to work request systems, tender posting web to national competition web and MIS to CRM tools for big organisations involving large volume of data. Whereas the applicant Smt.Navya M K does not have any experience in Java Programming. She has just completed some external technical training on Java. Since STO is an experienced level position and not an entry level position, the screening committee has looked for the candidates with the relevant experience in the area of expertise along with minimum criteria. As per the applicant, if the selection should be based on only marks, then there are other candidates who had secured more percentage of marks than the applicant. If percentage of marks is only the criteria, then there is no requirement of interview system at all in any job selection process, anywhere and everywhere. The Interview Committee will look for the candidates with the relevant experience in the area of expertise required for the division. Since the 3rd respondent's performance in the interview was exceptionally well, she was selected for the post according to the notification. She submits that the selection is purely on merit and as per rules and in accordance with law. There is no illegality or

infirmity in selection. The applicant has filed the present OA based on an anonymous letter after the selection of the 3rd respondent. If the applicant was really aggrieved in the selection and appointment of 3rd respondent, she would have challenged the appointment order before receiving the anonymous letter which was fabricated by the applicant or sent by somebody namely 'NAL Well Wishers and Merit/Talent Association'. She submits that there is no such association. Though the 3rd respondent got the job with her own merit, she is feeling humiliated and is experiencing a lot of mental stress and agony because of the allegation made by the applicant. Hence, the OA should be dismissed and made the applicant to pay compensation towards 3rd respondent's agony and all other expenses.

5. The applicant has filed rejoinder to the replies filed by the 1st respondent as well as the 3rd respondent reiterating the submission made in the OA and submits that as per the documents filed by the respondents at Annexure-R4, the applicant has scored 79.48% in the qualifying examination which is higher than the marks obtained by the 3rd respondent. Even otherwise, the experience of the applicant was far better than the experience of the 3rd respondent. Several complaints have been filed regarding the injustice done to the applicant who was a better merited candidate as she has the qualification and also the better experience compared to the 3rd respondent. The applicant was in receipt of several communications by the 'NAL Well-wishers Merit/Talent Association' which clearly show that the selection committee though has selected the applicant, the 3rd respondent has been favoured for issuing appointment order to her. The applicant is a graduate in Computer Science and also 4 years experience as a Soft-Ware Engineer in the reputed software company called 'Accenture' whereas the 3rd respondent is

only a B.Tech Degree Holder. The 3rd respondent was not having relevant experience for the post and she was in the internal Data Base Development called PFMS within the Internal Project Accounting Software in which she was a trainee for three years, whereas the applicant is a better qualified and having relevant experience in the field required for the post. The applicant submits that she has the information to believe that on the screening of the internal software on four times, the name of the 3rd respondent was not listed and the 3 officers namely Sri Balamurugan, Rakesh Abbani and Dr.Ravisan Moodithaya manipulated the percentage of marks to select the 3rd respondent. Thus there has not been a fair and proper valuation of merit and in fact, the applicant had been selected on the basis of her better experience and relevant knowledge of the subject but later her name was deleted and the 3rd respondent has been selected. Hence the selection is bad in law.

6. As regards the contention of the 3rd respondent, the applicant submits that she has been working as a regular employee in the Accenture Company with a higher degree of responsibility and also having all the relevant experience as she worked in DHL project and starwood project which involved the skills of Java, HTML CCS and Javery. She worked as Cognos BI Reporting tool which handles large amount of data analyses the same and generates the report and Application is mainly designed using spring and HIBERNATE. Whereas the 3rd respondent was only a Trainee in the internal project of Accounting Software of the Data Base Development and therefore she does not have the required experience as per the Notification. Therefore the applicant is more eligible to be selected. In fact she has better experience in the said technologies and handling large volume of data related to big organisation as she worked in a large multi-

national company of Accenture for nearly 4 years. She had Engineering Degree whereas the 3rd respondent is a B.Tech Degree holder. The 3rd respondent cannot herself analyse her own experience which has to be done by the Committee. The repeated letters received from the 'NAL Well wishers and Merit/Talent Association' stated that the Committee has recommended the applicant's name and at the last minute, the 3rd respondent has been included overlooking the decision of the Committee at the instance of certain departmental officials to favour the 3rd respondent. Therefore, the contention of the 3rd respondent that she is better qualified and had better experience is liable to be rejected and the entire selection is liable to be quashed and the applicant who is better experienced is entitled to be selected.

7. We have heard the Learned Counsel for all the parties and perused the materials placed on record in detail. The respondents have produced the record of recruitment/assessment of Senior Technical Officer before us. The applicant and the 3rd respondent have the minimum educational qualification as prescribed. While the applicant has secured relatively higher marks in the graduating degree more than the 3rd respondent who was finally selected, as rightly contended by the 3rd respondent, there are several other candidates who were not selected but who had higher qualifying marks in their degree examinations. Therefore, as contended by the 3rd respondent, it is not necessary to consider only the marks in the qualifying examination of the two candidates. We had detailed perusal of the qualifications prescribed and the Selection Committee proceedings. It is apparent that the 3rd respondent has substantially more experience in the qualifications related to web based applications and web technologies and also relating to the developing projects for project finance management. It is not however clear

whether her experience in handling large volume of data is there since she has worked only in a limited capacity in the respondent organisation itself. The 3rd respondent point that the applicant has only some external training on Java is also to be noted even though the applicant claims that she has handled several logistic projects involving the skills on Java etc. The applicant has also claimed that she has more experience in terms of handling large amount of data analysis. Even though we would not like to comment on the final decision taken by the Selection Committee, there are certain other relevant aspects in the selection of the 3rd respondent. The 3rd respondent's husband Sri.Jyothi Kumar Puttam is a Scientist with the respondent organisation and secondly, the 3rd respondent has been working from 2013 in the same respondent organisation in temporary capacity as Project Assistant Level-ii and Project Engineer till 2017. The job requirements as per the notification of the respondents also correspond almost exactly with all the duties performed by her in the very same respondent organisation. As is often iterated, justice must not only be done but also seen to be done. Even though the anonymous letter at Annexure-A8 is not signed by anybody, it gives room for suspicion that even though the Selection Committee found the performance of the other persons better than the 3rd respondent, the Chairman of the Committee was influenced to select the 3rd respondent over the heads of the applicant and one more person. In fact, the very same letter suggests that the Chairman must be asked for his fair opinion on decision. We therefore, deem it appropriate to refer the matter back to the Chairman of the Selection Committee to categorically record whether there was any bias in the selection of the 3rd respondent over the head of the applicant. From the marks awarded by the various Members of the Committee, it is seen that they have

unanimously recorded the marks given to the applicant a little less than the 3rd respondent which also leads to a doubt whether all the Members of the Selection Committee were unanimous in this regard in real terms. Normally, except in cases of outstanding merit and the selected candidate being head and shoulder over the others, such kind of unanimity is rare. It is not in the interest of an eminent organisation like the respondents to have such aspersions cast on their selection process go without challenge. From the records of the selection process, it is apparent that the qualifications prescribed for the post were almost tailored to suit the qualifications of the 3rd respondent and the presence of the spouse of the 3rd respondent in the organisation in an official capacity adds further vigour to this suspicion. Therefore, to clear the issue once for all, we direct the Chairman of the Selection Committee to go over the proceedings in detail once again and confirm whether there is merit in the contentions raised by the applicant and take an appropriate decision recording the reasons in detail. A copy of the proceedings of the Chairman of the Selection Committee should also be given to the applicant who will have the liberty to challenge the same in an appropriate proceeding. In the alternative, the respondents are directed to consider whether the organisation can appoint the applicant also based on her qualifications and the requirements of the organisation since we would not like to disturb the appointment already given to the 3rd respondent.

8. The OA is disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00239/2018

Annexure A1: Copy of the notification dtd.24.02.2017
Annexure A2: Copy of the application submitted online
Annexure A3: Copy of the calling for skill test dtd. 28.12.2017
Annexure A4: Copy of the call letter for interview dtd.8.1.2018
Annexure A5: Copy of the notification dtd.12.2.2018
Annexure A6: Copy of the submitted representation dtd.8.3.2018
Annexure A7: Copy of the applicant submitted online request
Annexure A8: Copy of the communication dtd.1.3.2018
Annexure A9: Copy of the envelope received
Annexure A10: Copy of the representation dtd.17.3.2018
Annexure A11: Copy of the letter dtd.22.3.2018

Annexures with reply statement filed by R1:

Annexure-R1: Copy of the CSIR Service Rules 1994
Annexure-R2: Copy of the Advt. No.01/2017
Annexure-R3: Copy of the Letter dtd.27.12.2017
Annexure-R4: Copy of the marks list of the candidates
Annexure-R5: Copy of the Notification dtd.12.02.2018
Annexure-R6: Copy of the Offer of Appointment
Annexure-R7: Copy of the reporting Duty

Annexures with reply filed by R3:

-NIL-

Annexures with rejoinder for the reply of R1:

-NIL-

Annexures with rejoinder for the reply of R3:

-NIL-
