

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00491/2017

DATED THIS THE 22nd DAY OF JULY, 2019

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

CR.Benakanahalli,
S/o Late Rudrappa,
Aged about 63 years,
Residing at House No.1319,
11th Main, Judicial Layout,
GVK, Allalsandra,
Bengaluru – 560 065.

...Applicant

(By Shri MS.Bhagwat..... Advocate)

Vs.

1.The Union of India,
Ministry of Finance,
Represented by its Secretary,
3rd Floor, Jeevan deep Building,
Sansad Marg, New Delhi – 110 001

2.Union of India,
Represented by its Principal Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public
Grievances & Pensions
Central Secretariat, North Block
New Delhi – 110 001

3.Sri Kuruppath Ravindran Nair,
S/o Not known
Aged Major
Working as General Manager
Bank of India, 6B, Shahnaz,
90, Napeansea Road, Malabar Hill,
Mumbai 400006. ...Respondents

(By Shri.Vishnu Bhat, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR K.B.SURESH, MEMBER (J)

1. Heard. The applicant submits that he has been penalised for the judgements he wrote. He was District and Sessions Judge who was appointed in 2012 as a Presiding Officer, Debt Recovery Tribunal, Bangalore and had functioned as such. On 31.8.2016 the applicant demitted his office. Apparently, the M/o Law and Justice enacted the Finance Act, 2017. Some amendments were brought in indicating that the term of office shall be for a period of 5 years and Judges shall be eligible for reappointment and Proviso 2 of the said Section makes it clear that the age limit for holding the office is 67 years. But, under Section 124 of the Act Rules were framed known as Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other conditions of Service of

Members) Rules 2017 and the tenure is fixed as 3 years and the age limit for holding the office of Presiding Officer is 65 years. On 2.6.2017 the respondents herein had issued a notification calling for application from eligible candidates for filling up the posts of Presiding Officer, Debt Recovery Tribunal, including that of Bangalore. The applicant had also applied for it. In the mean while it appears that the application form submitted by the applicant was apparently missing in the office of the respondents. Whereupon the applicant produced a duplicate copy of the application along with proof of receipt. But, apparently the respondents failed to keep up their words and turned down the request of the applicant to be permitted for interview and also informed that the applicant would be informed on the future course of action. It seems that on 19.8.2017 the respondents had issued a communication indicating that application form of the applicant is not received by the respondents and copy produced by the applicant is considered , but however, since the name of the applicant is not shortlisted and the applicant cannot be given an interview by the Selection Committee, thereby debarring the applicant from being considered for the selection to the post of Presiding

Officer, Bangalore. He claims that this was clearly because of malafides and that the methodology of selection through shortlisting leaves much to be desired. He claims that since judicial officers might not be amenable to suggestions, process unknown to law was inverted to find pliable objects. But we could not find any specific elaboration of these by the applicant. These are very serious allegations and must be supported by at least some evidence.

2. The applicant would say that the action of the respondents in not considering the case of the applicant for selection and not calling him for interview is arbitrary and illegal. He says that in spite of producing authentic proof for receipt of the acknowledgements, the respondents have ignored the legitimate claim of the applicant. The applicant had produced a copy of his order in OA.No.766/2013 dated 7.3.2013 which we quote:-

"IN THE DEBTS RECOVERY TRIBUNAL, KARNATAKA
AT BANGALORE

Dated this the 7th day of march, 2016

***Present:- Shri. C. R. Benakanahalli,
Presiding Officer***

OA No. 766/2013

CAUSE TITLE OF O.A:

Sate Bank of India and Others **APPLICANTS,**

V/s

Kingfisher Airlines Ltd., & others **DEFENDANTS,**

CAUSE TITLE OF I.A: No. 1059/2016

Sate Bank of India and others **APPLICANTS,**

V/s

1. *Dr. Vijay Mallya,
S/o Late Vittal Mallay
R/at 3, Vittal Mallya road,
Bengaluru – 560001*
2. *Diago PLC, Lakeside Dr.,
London NW 10 7H Q,
United Kingdom*
3. *United Spirits Limited, UB Tower,
24, Vittal Mallya Road, Bengaluru – 560001*
4. *Diageo Holdings,
Netherlands. B. V*

..... **RESPONDENTS,**

***RELEVANT EXTRACT OF ORDER IS SUBMITTED IN RESPECT TO THE
CASE OF KINGFISHER – DR. VIJAY MALYA AND OTHERS***

54. *It is also contended by the applicant banks that properties in question i.e., charged to the applicant banks are not sufficient to satisfy the huge dues of the defendants with the Applicants banks.*

*No doubt OA schedule indicates the properties, which are obtained as security for loan in question *prima facie* their value at this stage does not satisfy the due amount to be paid by defendants to applicant banks. Therefore at this stage applicants banks have made out *prima facie* case by establishing essential ingredients to attach the amount and give directions to Daigo PLC and USL and defendant No. 3 as sought in present IA.*

55. *I must place on record that who is responsible for such situation i.e, non-making of sufficient security/securities by the banks, which has to be seriously introspected by the banks as cases of such a situation are increasing in DRTs, and for that, banks/FIs cannot blame to DRTs/DRATs/Courts and cannot make them scape-goat.*

61. *While departing with this order, I would like to place on record that I have been appointed by the Government of India by virtue of recommendation of Hon'ble Supreme Court of India to discharge my duties as Presiding Officer (Judge) of DRT, Bangalore without fear or favour and without any prejudice to deliver justice and also to uphold the Constitution of India.*

62. *I cannot become a silent spectator, I owe onerous duty to nation and Society to place on record that, filling of cases before DRTs is being increased in many folds which indicates that the system and mechanism of advancement of loans is not healthy and *prima facie* it appears that it is suffering with many diseases i.e., (bona fide negligence, culpable negligence by some authorities of banks and some officials of bank, etc.,) and for that, eternal solution lies with the banks and also lies with parliament. Hence, to cover up the said diseases, they cannot make scape-goat to DRTs/DRATs and courts. In the interest of nation, banks have to wake up and address issues and find out solutions in respect to advancement of loans referring appraisal, scrutiny of papers etc, and to improve legal scrutiny system and find out*

rigorous accountability which will certainly enable the banks to curb the NPAs Litigations and also filing of cases before DRTs/Courts. Cases filed before DRTs are becoming more than Civil Suits defeating the very object of RDDB & FI Act, which prescribes summary procedure for disposal of cases which contain serious question of laws and facts, which is consuming lot of time by DRTs and creating legal problems leading multiplicity of proceedings. If banks addresses diseases, definitely filing of cases will be reduced substantially. Some honest officials and authorities of the bank doing honest work. I am not stating that the banks & authorities are negligent etc. But there are also good officials and authorities who are discharging duties strictly and humbly. DRTs are finding complicated cases in high profile natters where huge amount is involved.

Prima facie, there is no explanation as to why effective precautionary steps were not taken before advancing loans and why the interest of the bank has been subjected to Jeopardized. The concept of rigorous public accountability and performance should be made applicable. The well established precepts of public Trust and public accountability are fully applicable to the functions which emerge from bank authorities and bank employees, They have to faithfully discharge their duties to elongate and to fulfill the object of advancement of loans by Banks/FIs Inaction, arbitrary action, irresponsible action, culpable negligence, criminal acts of some bank authorities/officials, jeopardize the interest of bank and public funds.

The bank authorities and bank officials must have more practical and pragmatic approach to provide solutions, so that, cases like on hand shall not emerge as their number is alarmingly increasing in DRTs in which huge amount is involved and by virtue of precautionary measures, NPAs filing of cases will be substantially decreased. If not, devastating results will emerge and we are finding signs of it. But officials and authorities of banks are liable both for their inaction and irresponsible actions.

Lack of probity, due diligence of few bank few officials and bank authorities will destroy the system itself if it is not curtailed at appropriate stage of advancement of loans. At the same time, I would like to make it clear that the observations of the Tribunal referred above reffering to bank authorities and bank officials are not general statements applicable to all the employees; and prima facie it indicates that those are the authorities and employees causing damage and loss to the entire system by their acts, as a result banks/FIs are subjected to higher degree of risks emerging in high profile cases wherein huge amount of public money is involved.”

3. He would say that several people in the Finance Ministry was inimical towards him because of this order and therefore had it made to appear that he had not even applied in the first place and made certain that his name was not shortlisted and therefore, he was not interviewed. The respondents had filed an affidavit. He would say that at present the applicant is not holding a civil post having demitted it. Therefore, OA is not maintainable and obviously this ground raised by the government is not valid as whether in service or retired. Any government servant can maintain a litigation if he is aggrieved. But the applicant had not named or made as

parties against whom he now raises his sword. Without giving them an opportunity of being heard, this contention of the applicant cannot be taken at face value. But the respondents' suggestions are also meaningless.

4. Therefore, what is a civil post, as the government now contends that in LPA No.248/2015, the Hon'ble High Court of Delhi has said that the post of Presiding Officer of Tribunal cannot be equated with the civil post. We cannot understand what is the meaning of this new definition which is being brought in. The employees of Debt Recovery Tribunal squarely come in the ambit of Administrative Tribunal's Act and whether they are in service or retired they still continue to be so. Therefore, this contention of the respondent also will not lie. The responsibilities of the Tribunal is a combination of Article 226 of the Constitution of India and Section 9 of the Code of Civil Procedure. Therefore, this contention of the respondent is rejected.

5. In paragraph 4 of the affidavit they say that even though somehow the application of the applicant could not find place in the office of the respondents, the application of the

applicant was duly considered and it was placed before the Scrutiny Committee. They would say that the Scrutiny Committee considered the application of the applicant considering the eligibility criteria as per the "Rules" and the Shortlisting criteria approved by the Search cum Selection Committee headed by Hon'ble Judge Supreme Court of India under Rule 4(3) of the aforementioned rules. As the applicant did not fulfill approved Shortlisting criteria, the Scrutiny Committee did not short list him to be called for interview. But we have to understand that Search Committee and the Selection Committee were two different entities contrary to what is stated by the respondents.

6. In the meanwhile UOI had filed LPA No.248/2015 against the order passed in favour of Shiv Charan Lal Sharma dated 27.7.2015 which we quote:-

"IN THE HIGH COURT OF DELHI AT NEW DELHI

*Judgment Reserved on: July 09, 2015
Judgment Delivered on: July 27, 2015*

LPA 248/2015

UNION OF INDIA & ORS
Represented by:

.....Appellants
Mr.Kirtiman Singh, Ms.Prerna

*Shah Deo, Mr.Waize Ali Noor
and Mr.Gyanesh Bhardwaj,
Advocates.*

versus

SHIV CHARAN LAL SHARMA

Represented by:

*..... Respondent
Mr.Darpan Wadhwa, Mr.Nikhil
Singhvi, Mr.Aubert Sebastian,
Ms.Tamili Wad and Mr. Arnu
Kumar, Advocates.*

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. *Shiv Charan Lal Sharma, the respondent No.1 herein, filed a writ petition being W.P.(C) No.8158/2013 inter alia praying for summoning the records relating to his appointment in terms of the circular dated May 25, 2003, setting aside the communication dated April 02, 2013 regarding the decision of the Appointments Committee of the Cabinet (ACC) rejecting his candidature for the post of Presiding Officer, National Highway Tribunal (in short the NHT), seeking a writ of mandamus directing the Union of India to appoint him to the said post in terms of the circular dated February 25, 2003.*
2. *Vide the impugned judgment and order dated January 07, 2015 the writ petition has been allowed, issuing a mandamus to the appellant Union of India directing it to appoint Shiv Charan Lal Sharma as Presiding Officer, NHT in terms of the recommendations dated September 18, 2003 made by the Selection Committee constituted in terms of Rule 3(6) of the National Highway Tribunal (Procedure for appointment as Presiding Officer of the Tribunal) Rules 2003 (in short the Rules). Hence the present appeal by the Union of India.*
3. *Before advertiring to the contentions of the parties it would be relevant to note a brief background of the case. The Central Government vide its notification dated December 20, 2004 established 8 NHTs at Bengaluru, Chandigarh, Chennai, Guwahati, Jabalpur, Kolkata, Lucknow and Mumbai in terms of sub-section (1) of Section 5 of the Control of National Highways*

(Land and Traffic) Act, 2002 (in short the Act). As per sub-section (1) of Section 6 of the Act the Tribunal would consist of one person only and Section 7 of the Act provides that a person shall not be qualified for appointment as a Presiding Officer of the NHT unless (a) he is qualified to be a Judge of a High Court or (b) has been a member of the Indian Legal Service and has held a post not less than Grade II of that service. Section 8 of the Act further provides that the Presiding Officer of the NHT shall hold office from the date on which he assumes office till he attains the age of 62 years. Rule 3 of the Rules provides for the method of appointment of the Presiding Officer of the NHT and for the said purpose the Selection Committee consists of a Judge of Supreme Court of India as nominated by the Chief Justice of India as Chairman and the two Secretaries of the Government of India i.e. from the Ministry of Road Transport and Highways and Ministry of Law and Justice as its members. The Selection Committee is free to devise its own procedure for selecting a candidate for appointment as Presiding Officer. Rule 3 sub-rule 6 further provides that Central Government shall on the basis of recommendations of the Selection Committee make a list of persons selected for appointment as Presiding Officers and the said list shall be valid for a period of two years and the appointment of Presiding Officer shall be made from the list so prepared. As per Rule 6 for appointment to the post of Presiding Officer, NHT approval of the Appointments Committee of the Cabinet (ACC) is required to be obtained before the said appointment is approved by the appointing authority.

4. For the purpose of filling up the post of Presiding Officers of NHT of Bengaluru, Chandigarh, Chennai, Guwahati, Jabalpur, Kolkata and Mumbai applications were invited vide the office memorandum of the Ministry of Road Transport and Highways (in short the MRTH) dated February 25, 2003. The notice inviting applications restricted the field and relevant would it be to highlight that advocates who were otherwise eligible to apply for being appointed to the post were excluded as a category to apply for the post because the advertisement did not invite applications from advocates. Total 33 candidates applied, including the respondent Shiv Charan Lal Sharma, out of whom 20 candidates were shortlisted and called for interview on September 18, 2003. For the interview only 16 candidates appeared and the Selection Committee after conducting the interview recommended the names of candidates at Sr.No.(i) to (v) for appointment as Presiding Officers NHTs and the next 4 candidates were kept in the reserve panel. The names of the candidates so approved were:

- "(i) Shri Mithilesh Kumar Sharma
- (ii) Shri Subodh Chandra Verma
- (iii) Shri Syed Nazir Abbas Zaidi
- (iv) Shri Aloke Kumar Das
- (v) Shri Ghanshyam Pandey

The Committee also recommended a reserve panel of the following persons for appointment in future:

- (i) Dr.S.D.Singh
- (ii) Shri Hari Kumar Godra
- (iii) Shri Gopal Chandra Mitra
- (iv) Shiv Charan Lal Sharma (the respondent)"

5. Out of the 9 candidates including the 4 candidates in the reserve panel as noted above recommended by the Selection Committee unfavourable reports were received from the intelligent agencies in respect of two candidates. Another recommended candidate i.e. Shri Gopal Chandra Mitra retired on attaining the age of 60 years and thus vide letter dated January 05, 2005 six names were sent to the ACC for their approval with the approval of the then Minister (S, RT&H) as under:

- "(i) Shri Mithilesh Kumar Sharma
- (ii) Shri Syed Nazir Abbas Zaidi
- (iii) Shri Aloke Kumar Das
- (iv) Shri Ghanshyam Pandey
- (v) Dr.S.D. Singh
- (vi) Shri Shiv Charan Lal Sharma (Respondent herein)

6. The DOPT vide its communication dated March 30, 2005 conveyed the approval of the ACC in respect of 5 names other than that of Shri Shiv Charan Lal Sharma. However, Mithilesh Kumar Sharma and Syed Nazir Abbas Zaidi did not accept the offer on personal grounds and in the meantime Aloke Kumar Das attained the age of 60 years and thus Shri Ghanshyam Pandey was appointed as Presiding Officer NHT Lucknow vide notification dated January 29, 2005. Though Dr.S.D.Singh accepted the offer, however since he was not spared from his earlier assignment his appointment was cancelled vide notification dated April 30, 2008.

7. On a representation of Shiv Charan Lal Sharma dated April 07, 2005 the matter was put up to the ACC again for re-consideration which decided against the appointment of Shiv Charan Lal Sharma to the post of Presiding Officer, NHT on January 04, 2006 communicated to him vide the letter of Ministry dated January 19, 2006. This communication dated January 19, 2006 informing the non-acceptance of the recommendations of Shiv Charan Lal Sharma by the ACC was challenged by him by filing a petition before the Central Administrative Tribunal (CAT), Principal Bench, New Delhi. The CAT vide its order dated August 24, 2006 passed an interim order staying selection to one of the post of Presiding Officers of NHT till disposal of the case.

8. The Union of India challenged the order passed by the CAT vide W.P.(C) No.15754/2006 inter alia pleading that the CAT had no jurisdiction to entertain the petition. Vide the judgment dated April 26, 2007 this Court allowed the writ petition being W.P.(C) No.15754/2006 holding that CAT could not exercise its jurisdiction as the post of Presiding Officer of the NHT was not a civil post within the meaning of [Section 14\(1\)](#) of the Administrative Tribunal Act, 1986.

9. While this process was on, on August 09, 2005 fresh applications were invited by the Ministry of RT&H for filling up post of Presiding Officers NHT at Bengaluru, Chandigarh, Chennai, Guwahati, Jabalpur, Kolkata and Mumbai. In response 51 candidates applied. The Selection Committee shortlisted 19 candidates excluding Shiv Charan Lal Sharma who were called for interview on December 20, 2006. Out of the 19 shortlisted candidates only 11 candidates appeared and after conducting the interview on December 20, 2006 the Selection Committee recommended the names of Shri Chaudhary Satish Kishan and Shri Rajesh Sethi for appointment as Presiding Officer of the NHTs and the name of Shri Sanjeev Kumar Walia was kept in the reserve panel. The ACC conveyed its approval only for Shri Chaudhary Satish Kishan as Presiding Officer, who was appointed on September 18, 2007, and directed the other vacancies to be advertised with the specific mention that practicing advocates with the required experience etc. are eligible to apply and also directed the Selection Committee to consider applications received in response of such advertisement along with the names of Shiv Charan Lal Sharma and Rajesh Sethi for the remaining vacancies. In response to the fresh applications invited by the Ministry of RT&H 49 applications were received out of which the Selection Committee shortlisted 15 candidates for interview. Shiv Charan Lal Sharma did not apply as a candidate. However as directed by the ACC Shiv Charan Lal Sharma and Rajesh Sethi were also

called for interview by the Selection Committee on May 11, 2008. Only 10 candidates appeared for the interview, however Shiv Charan Lal Sharma did not appear. After conducting the interviews Selection Committee recommended the names of Shri Ajay Verma, Shri Gyan Chandra, Shri Radheyshyam Chimanka and Shri Rajesh Sethi for appointment as Presiding Officers, NHT which names were duly approved by the ACC.

10. In the meantime Shiv Charan Lal Sharma filed a writ petition before this Court being W.P.(C) No.3660/2007 wherein vide an interim order dated May 16, 2007 this Court directed that one post of Presiding Officer NHT shall be kept vacant till further orders. During the pendency of the W.P.(C) No.3660/2007 the matter was examined and on legal advice the matter was again referred for reconsideration to the ACC by the M/RT&H vide communication dated November 04, 2009. In response the DOPT vide their communication dated March 13, 2010 conveyed that the ACC did not approve the proposal for appointment of Shiv Charan Lal Sharma to the post of Presiding Officer, NHT and that the writ petition should be contested on its merits and as the average income of Shiv Charan Lal Sharma was less than `1,50,000/- per year it was a fair inference that he did not have adequate practice in the High Court and moreover he did not appear for interview on the third occasion on May 11, 2008. Thus, it was the case of the appellant that Shiv Charan Lal Sharma did not qualify to be appointed as Presiding Officer of the NHT.

11. Vide the judgment dated August 06, 2012 in W.P.(C) No.3660/2007 this Court held that there was no justification to ignore him for appointment and the reasons given were contrary to the own circulars of the appellant. The Court found no material against Shiv Charan Lal Sharma except the reasons given in the note. It was held that though approval of ACC was mandatory and the final authority vests in the ACC, however the ACC can reject any candidate by giving the reasons on record which were missing in the case. Thus the communication dated January 19, 2006 was set aside and directions were passed to the ACC to reconsider the name of Shiv Charan Lal Sharma and in case the same is approved the concerned Ministry shall issue the appointment letter to him against the first available vacancy.

12. Pursuant to the order dated August 06, 2012 passed by this Court in W.P. (C) No.3660/2007 the ACC reconsidered the matter in the light of the judgment of this Court, however decided against the appointment for the following reasons:

"(a) Government was entitled to limit the field of selection and had rightly called applications/nominations from the Registrar of High Court. If applications from practicing advocates had been invited explicitly, then many other advocates may have also applied.

(b) On the second occasion, for selection for the same post, the Selection Committee did not consider his name because his average income was less than `1,50,000/- per year, which leads to a fair inference that Shri Sharma did not have an adequate practice in the High Court.

(c) On the third occasion, he did not appear for the interview."

13. Pursuant to the rejection of the case of Shiv Charan Lal Sharma for appointment as Presiding Officer NHT he filed a Contempt Petition (civil) No.481/2013 which is pending before this Court and W.P.(C) No.8158/2013 wherein by the impugned judgment dated January 07, 2015 directions have been passed as noted in Para-1 above. Vide the impugned judgment dated January 07, 2015 the learned Single Judge held that the decision of the ACC now taken was arbitrary and illegal because the reasons having been given for rejecting the appointment of Shiv Charan Lal Sharma have already been considered and decided against the Government in terms of the learned Single Judge of this Court in W.P.(C) No.3660/2007, the judgment of this Court dated August 06, 2012 in W.P.(C) No.3660/2007 has attained finality as the respondent did not challenge the same in any higher Court.

14. Vide the impugned order the contention of learned counsel for the Union of India that the panel prepared by the Selection Committee in its meeting dated September 18, 2003 was valid only for a period of two years and the said time period had already expired, was rejected firstly on the ground that the Government cannot justify a decision de-hors the reasons which were given in the order which was challenged before the Court by filing affidavits containing grounds as held in (1978) 1 SCC 405 Mohinder Singh Gill and Anr. Vs. Chief Election Commissioner, New Delhi and Ors. and secondly that the period of two years with respect to the panel was not applicable as it was only a recommendation by the Selection Committee in this case and the period of two years has actually to be counted from the date it was prepared not by the Selection Committee but by the Government of India in terms of Rule 3(6). Further Shiv Charan Lal Sharma had approached this Court and thus it cannot be said that the validity of the period of the panel had expired.

15. The learned Single Judge vide the impugned order finally allowed the writ petition on the grounds that reasons (b) and (c) as noted above were irrelevant for the respondent was not seeking appointment to the post of Presiding Officer, NHT in terms of subsequent advertisements issued and the issue is only with respect to the appointment pursuant to the letter dated 25th February, 2003 issued by the Government to the Registrar of all the High Courts, pursuant to which the Selection Committee in terms of the rules recommended the name of the petitioner. It was further held that the Government was in fact bound by the recommendations of the Selection Committee and therefore the ACC is ordinarily bound by the decision of the Selection Committee and cannot set aside the same much less for wholly, arbitrary/unjustified reasons and which reasons now given were more unjustified in as much as the same have been already declined by the learned Single Judge of this Court vide order dated August 06, 2012 in W.P.(C) No.3660/2007.

16. Learned counsel for the Appellant/Union of India contends that the impugned judgment is erroneous in as much as it notes that the decision of the ACC dated April 02, 2013 was arbitrary because the reasons contained therein were the ones considered and decided against the Union of India vide the judgment and order dated August 06, 2012 in W.P. (C) No.2660/2007. While passing the order dated August 06, 2012 the fact that the note to the ACC for consideration mentioned that the applications were not called from practicing lawyers and thus all appointments except that of Shiv Charan Lal Sharma be approved weighed with the learned Single Judge and thus it was directed that the matter be placed before ACC for reconsideration. On reconsideration order dated April 02, 2013 was passed which would establish that ACC considered various factors including the non-suitability of the Respondent for the post of Presiding Officer, NHT and thus decided to reiterate its previous decision of not appointing him. The reliance of learned Single Judge on the decision of Mohinder Singh Gill (*supra*) is misconceived as the decision maker can always rely upon subsequent material to support his decision. Reliance was placed on the decision reported as 2010 (6) SCC 614 *Chairman, All India Railway Recruitment Board and Anr. vs. K. Shayam Kumar and Ors.* It is contended that the finding of the learned Single Judge in the impugned order that the period of two years of the panel does not commence from the recommendation of the Selection Committee is a fact contrary to the record and unsustainable. The recommendations of the Selection Committee were given on September 18, 2003 and finally approved by the ACC on March 30, 2005. The Selection Committee recommended five

names on September 18, 2003 of which four names were finalised on March 30, 2005 and thus the panel came to an end on September 18, 2005. The directions given by the learned Single Judge vide the impugned judgment for appointing Shiv Charan Lal Sharma to the position of Chairman, NHT is contrary to the law as laid down by the Supreme Court in the decision reported as 1974 (3) SCC 220 *State of Haryana vs. Subash Chander Marwaha and Ors.*

17. In response learned counsel for Shiv Charan Lal Sharma contends that the plea of Union of India regarding the expiry of select list is based on misplaced notion that the select list as referred to in Rule 3(6) relates to the names recommended by the Selection Committee on September 18, 2003. Since Shiv Charan Lal Sharma initiated legal proceedings against the rejection of his appointment within the period of limitation he cannot be thrown out on this ground. The pendency of judicial proceedings cannot defeat the right of a person on the expiry of the list. Reliance is placed on the decision reported as 2000 (3) SCC 699 *State of U.P. vs. Ram Swarup Saroj.* Further Shiv Charan Lal Sharma could not be refused appointment on the ground that he did not appear in the interview process on the third occasions.

18. We have heard learned counsel for the parties at length and perused the file.

19. Vide the ACC decision which was communicated by the DOPT on March 30, 2005 the ACC noted that Shri Shiv Charan Lal Sharma is an advocate and the post of Presiding Officers were circulated to the High Courts and the Ministry of Law and it does not appear that applications of practicing advocates has also been called for and thus the name of Shri Shiv Charan Lal Sharma was not approved.

20. On the representation of Shiv Charan Lal Sharma dated April 07, 2005 the matter was reconsidered by the ACC. The ACC again in December 2005 noted that the applications were circulated to the Registrar of Delhi High Court and there is nothing to indicate in specific terms that applications of practicing advocates have also been solicited. The particulars of 31 candidates considered indicated that there were only 4 advocates among the applicants and thus the non-approval of the appointment of Shri Shiv Charan Lal Sharma, Advocate as Presiding Officer, NHT by the ACC was re-conveyed vide letter of the DOPT dated January 19, 2006 which was challenged in W.P.(C) No.3660/2007.

21. Before advertiring to the rival contentions it would be appropriate to note the findings of the learned Single Judge of this Court vide judgment dated August 06, 2012 in W.P.(C) No.3660/2007. The relevant paragraphs 33-37 of the judgment dated August 06, 2012 are reproduced as under:

"33. Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, however, the appointing authority cannot ignore the select panel or on its whims and fancies decline to make the appointment. When a person has been selected by the selection committee and there is a vacancy which can be offered to him, keeping in view his merit position then ordinarily, there is no justification to ignore him for appointment.

34. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, the reasons given are contrary to their own circular. This Court finds no material against the petitioner, except the reasons given in the note mentioned above.

35. No doubt, the approval of the ACC is mandatory and the final authority vests with the ACC. But if the selection committee has selected any candidate, the ACC can reject the same by giving the reasons on record, which is missing in the present case.

36. In view of the above discussion, I am of the considered opinion that there was no reason against the petitioner not to send for ACC approval. Therefore, impugned communication dated 19.01.2006 is set aside.

37. Since the name of the petitioner has not been approved by the ACC which is mandatory, therefore, the respondent Ministry is directed to send the name of the petitioner for ACC approval. If the ACC approves the same, the concerned Ministry shall issue the appointment letter to the petitioner against the first available vacancy.

22. Indubitably to the extent that the earlier decision of the ACC has been set aside by this Court vide the order dated August 06, 2012 in W.P.(C) No.3660/2007 and having not been challenged has attained finality. The only

issue before this Court is whether the decision of the ACC communicated vide letter dated April 02, 2013 as noted above is illegal, arbitrary and unwarranted or not. The three grounds given for rejection are:

- "a) Government was entitled to limit the field of selection and had rightly called applications/nominations from the Registrar of High Court. If applications from practicing advocates had been invited explicitly, then many other advocates may have also applied.*
- b) On the second occasion for selection for the same post, the Selection Committee did not consider his name because his average income was less than `1,50,000/- per year, which leads to a fair inference that Shri Sharma did not have an adequate practice in the High Court.*
- c) On the third occasion, he did not appear for the interview.*

23. *There is no dispute that the decision has to be tested on the basis of reasoning given in the order and cannot be supplemented by affidavits. The learned Single Judge vide the impugned judgment in paragraph-9 noted that the reasons (b) and (c) as noted above are irrelevant as Shiv Charan Lal Sharma was not seeking appointment to the post of Presiding Officer, NHT in terms of subsequent advertisement and the only issue is with respect to the appointment pursuant to letter dated February 25, 2003.*

24. *We have gone through the original file. While taking the decision the ACC took note of the fact that Shri Shiv Charan Lal Sharma applied as a practicing advocate and directly, if applications from practicing advocates had been invited explicitly then many advocates may have also applied. Further the average income of Shri Shiv Charan Lal Sharma was less than `1.50 lakhs per year from which a fair inference can be drawn that he did not have an adequate practice in the Court. The said decision cannot be by any stretch of imagination said to be arbitrary, capricious or whimsical. In other words the decision in question deals with the suitability of Shiv Charan Lal Sharma as distinct from the issue of his eligibility.*

25. *Indubitably even on re-consideration pursuant to the order dated August 06, 2012 passed by this Court in W.P.(C) No.3660/2007 was that the Government was entitled to limit the field of selection and had rightly called*

applications/ nominations from Registrar of the High Court and if applications from practicing advocates had been invited implicitly, then many other advocates may have also applied. However the said reason has been held to be not valid reason by the earlier order of this Court dated August 06, 2012 in W.P.(C) No.3660/2007, thus we are not going into the same except to note that there is a fine distinction between eligibility and suitability. If the Government had openly advertised seeking applications from Advocates many more candidates could have applied, giving rise to a wider selection zone to be able to consider the best amongst the advocates who applied. A perusal of the file of the department would disclose that the ACC in both the selection process did not approve the appointment of the advocates i.e. in the first the candidature of Shiv Charan Lal Sharma and in the second the candidature of Rajesh Sethi and in the third selection process explicitly applications from advocates were invited when it was directed that the case of Shiv Charan Lal Sharma and Rajesh Sethi be also considered. Further, the learned Single Judge vide the impugned order committed illegality in coming to the conclusion that grounds (b) and (c) could not be looked into for the reason they did not exist when the order dated August 06, 2012 had been passed. Indubitably in W.P.(C) No.3660/2007 the challenge was to the communication dated January 19, 2006 informing the non- acceptance of the recommendations of Shiv Charan Lal Sharma by the ACC, however the order dated August 06, 2012 did not bar the ACC from considering the subsequent events and a fresh ground as a whole which revealed that the average income of Shiv Charan Lal Sharma was less than `1,50,000/- per year which led to the fair inference that he did not have adequate practice in the High Court. It is well settled that for departmental candidates ACRs are perused to ascertain the suitability, however for ascertaining the suitability of the advocates one of the criteria is the practice of the advocate. The learned Single Judge vide the impugned judgment ignored these subsequent events and held that they could not be looked into, which in our opinion is unwarranted.

26. *It is trite law that if the Court is satisfied that the reasons given by the Government for passing an administrative order are extraneous and not germane then the Court can issue and would be justified in issuing a writ of mandamus even in respect of an administrative order, however the propriety, adequacy or satisfactory character of the reasons are not open to judicial scrutiny. (See AIR 1960 SC 1223 State of Bombay Vs.K.P. Krishnan and AIR 1975 SC 2226 Hochtief Gammon Vs.State of Orissa and Ors.)*

27. *It is well settled that the recommendations of the Selection Committee/DPC are advisory in nature only and the same are not binding upon the appointing authority. It is always open to the appointing authority to differ from the recommendations in public interest. (See AIR 1995 SC 568 Union of India Vs.N.P. Dhamania).*

28. *As noted above, reason (a) communicated by the ACC was earlier the reason for rejection to which extent the order dated August 06, 2012 has attained finality. The third reason is also irrelevant because Shiv Charan Lal Sharma having not appeared for the interview on the third occasion was irrelevant to decide whether the recommendations of the Selection Committee concerning the selection process which started on February 25, 2003 should or should not be accepted by the ACC. The second reason given by the ACC, due to the inappropriateness of the language used to convey the thought, has been treated by the learned Single Judge as an extraneous reason on account of the fact it records that on the second occasion for selection for the same post, the selection Committee did not consider Shiv Charan Lal Sharma's name because his average income was less than `1,50,000/- per year which lead to an inference that he did not have an adequate practice in the High Court. The learned Single Judge has treated this to be irrelevant on the ground that what happened at the second stage of selection was irrelevant to decide the issue pertaining to the first stage of selection. But meaningfully read, what is conveyed is the fact that for a lawyer having income of less than `1,50,000/- per year would justify an inference that he did not have adequate practice, and therefore inadequate experience, and hence the candidate would be unsuitable for being appointed to the post in question. Suffice would it be to state that the mandate of the order dated August 06, 2012 passed by a learned Single Judge of this Court was that the ACC would be required to treat Shiv Charan Lal Sharma as an eligible candidate but would be free to decide on his suitability and while doing so all relevant parameters would be taken into account. Surely, a lawyer sans an experience in the field of law and for which the evidence would be a meagre income of `1,50,000/- per year, may be eligible to be considered for being appointed as a Judge of a High Court and thus would be eligible to apply for the post in question, but a view taken that he is a candidate not suitable to be appointed to the post in question cannot be said to be a perverse view.*

29. *The appeal is accordingly allowed. The impugned order dated January 07, 2015 is set aside and the writ petition filed by Shiv Charan Lal Sharma is dismissed.*

30. Parties shall bear their own costs all throughout.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 27, 2015 "

7. But we had noted one crucial element in the matter. Vide No.7/5/2017-DRT, Government of India, M/o Finance, Department of Financial Service dated 8.8.2017 the minutes of the meeting of the Scrutiny Committee, were available for inspection. The Scrutiny Committee for short listing candidates to be called for interview for the selection to the post of Presiding Officer, DRT is seen as thus.

I)Ms.Anindita Sinharay, Director as Chairman of the Scrutiny Committee

II)Shri Gulab Singh, Deputy Secretary as Member

III)Shri Anshuman Sharma, Deputy Secretary as Member

It was mentioned by the affidavit filed by the government that the committee which considered the matter was indicated, even though not in very clear cut terms as the committee under the

Chairmanship of the Hon'ble Supreme Court Judge. When we had called for the file and looked at it we found that it is one Director and 2 Deputy Secretaries who are the Members of the Scrutiny committee. **Without any doubt this cannot be of a binding nature of consideration for the post in the nature of Presiding Officer of the Debt Recovery Tribunal because of its flawed constitution.** The applicant had produced his profile in which it is stated that he had disposed of 12000 cases in his tenure and apparently, his superior officers have praised him and placed encomiums on his efforts.

8. Therefore we will examine what is the Shortlisting Criteria

- 1) Candidates who are, or have worked as or are qualified to be District Judges would be considered, if otherwise eligible. (As the applicant was not only a District Judge but also a former Tribunal Member he became eligible for this)
- 2) Candidates who are practicing advocates who should have experience of 20 years and should have an annual gross income of more than Rs.20,00,000 in the assessment year 2016-17

- 3) With regard to eligibility for appointment to the post of District Judge, the 7 years is all desired for a District Judge and this matter should be kept in view while shortlisting.
- 4) In the case of candidates presently working in Public Sector Banks, only those who are working in Scale 7 or above may be shortlisted.
- 5) Candidates other than PO reappointment cases who will attain the age of 65 years after 16.7.2020 ie., with at least 3 years of balance of service as on the last date of receipt of applications can be shortlisted.
- 6) Candidates who are presently working as Presiding Officers of DRTs and completing their tenure on the present post on or before 30.6.2018 may be considered for reappointment which is equivalent to a fresh appointment.
- 7) In cases where a PO would demit office as per the present approved tenure, after the last date of applications, the balance of service should be at least 2

years as on 17.7.2017 giving due consideration to the experience gained by them.

The condition 8 is not applicable as we have not granted any interim order. Therefore, the question would be if the applicant had not been considered whether he had a balance of 3 years service as on the last date of receipt of the application or the question is what is his age on 17.7.2017. But the applicant being born on 1.9.1954 which will mean that he cannot be shortlisted at that point of time as it is beyond the criteria prescribed. At this point of time he takes strong exception to the formation of Scrutiny Committee when a judicial post which has relevance to the National finances are being debated the Scrutiny Committee must necessarily consist of a Chairman of not below the rank of the Secretary and others must be at least of the rank Joint Secretary. The composition of the Committee is without any doubt wrong. But the fact remains that even though the applicant had been very good at his work the criteria thus seems to be universally created. There does not seem to be any arbitrariness in it

so as to specifically exclude up the applicant. That being so we have to hold that there may not be any ground on that applicant can place his case. Therefore, held to be without merit.

9. Since the criteria was not in challenge, we are not answering the issue raised only in the hearing as no opportunity was given to the other side to rebut it.

10. OA dismissed. No order as to costs.

(CV.SANKAR)
MEMBER (A)

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

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Annexures referred to by the applicant in OA.No.491/2017

- Annexure A1: Copy of the profile of applicant
- Annexure A2: Copy of relevant portion Act 2017
- Annexure A3: Copy of Rules 2017
- Annexure A4: Copy of advertisement Dtd. 2.6.2017
- Annexure A5: Copy of office copy of application form
- Annexure A6: Copy of postal receipt
- Annexure A7: Copy of postal acknowledgment
- Annexure A8: Copy of impugned communication

Annexure referred to in the reply by the Respondents

- Annexure R1: Copy of LPA No.248/2015, the Hon'ble High Court of Delhi dt.27.7.15
- Annexure R2: Copy of relevant extract of Finance Act, 2017
- Annexure R3: Copy of Rule 1.6. 2017

Annexure referred to in the Additional documents

- Annexure A9: Copy of order dated 14.11.2017
- Annexure A10: Copy of letter dated 17.11.2017
- Annexure A11: Copy of orders passed In Transfer Petition (Civil) No.1315-1320/2017
- bk.