

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO. 180/01020 of 2018**

**Monday, this the 5<sup>th</sup> day of August, 2019**

## CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member  
Hon'ble Mr.Ashish Kalia, Judicial Member**

Dr.Sajith Sukumaran, aged 45  
S/o.Sukumaran N, residing at T.C No.5/2712(3), CRA A 64(C), Thejus  
Sreekaryam P.O, Thiruvananthapuram  
PIN – 695 017, presently working as  
Additional Professor  
Department of Neurology,  
Sree Chitra Tirunal Institute for  
Medical Sciences and Technology  
Thiruvananthapuram – 695 011

(By Advocate Mr.P.G.Jayashankar)

## Versus

1. Sree Chitra Tirunal Institute for Medical Sciences and Technology, Thiruvananthapuram – 695 011 represented by its Director
2. Director, Sree Chitra Tirunal Institute for Medical Sciences and Technology, Thiruvananthapuram – 695 011
3. Dr.Asha Kishore, Director  
Sree Chitra Tirunal Institute for Medical Sciences and Technology,  
Thiruvananthapuram – 695 011

(By Advocate Mr.T.R.Ravi)

The above application having been finally heard on 31.7.2019, the Tribunal on 5.8.2019 delivered the following:

**O R D E R**

*Per: Mr.E.K.Bharat Bhushan, Administrative Member*

The Original Application No.180/1020 of 2018 is filed by Dr.Sajith Sukumaran against denying him promotion to the post of Professor as per Annexures A 23 and A-25 orders. The reliefs sought in the Original Application are as follows:

- “i. Call for the records leading to the issuance of Annexure A23 and A25, and quash the same
- ii. Declare that the applicant is entitled to be promoted to the post of Professor
- iii. Direct the 1<sup>st</sup> respondent to pass appropriate orders, granting promotion to the applicant
- iv. Declare that the acts on the part of the 3<sup>rd</sup> respondent are biased.
- v. Grant such other and incidental reliefs as this Hon'ble Tribunal may deem just and necessary on the facts and circumstances of this case; and
- vi. Allow this Original Application with costs to the applicant.”

2. The applicant is a Super Specialist Doctor working with the 1<sup>st</sup> respondent Institute and possesses a DM degree in Neurology. He was promoted to the post of Associate Professor in 2011 and as an Additional Professor with effect from 4.7.2013. The next promotion available to him is to the post of Professor of Neurology, for which he became eligible in July 2017. He had submitted his candidature when the first respondent Institute called for applications in December

2017 (Annexure A-1). A copy of the application submitted by the applicant in pursuant to Annexure A-1 is at Annexure A-2.

3. The first respondent had established an Internal Screening Committee (ISC for short) for the purpose of scrutinizing the applications. The ISC and further procedures were established in pursuant to a report submitted by the Committee formed to finalise guidelines for promotion under the so-called 3-3-4 Scheme. As per the outlines of the Scheme, which can be seen at Annexure A-3, eligibility of the candidates has to be ascertained on the basis of objective standards. The assessment includes features such as patient care, teaching, research activities etc. The report of the ISC in respect of the applicant while considering his candidature for the post of Professor is at Annexure A-4. The threshold score of 38 or A+, categorised to 'Outstanding' was exceeded by the applicant. This was on account of a revision, for which the applicant had approached the 2<sup>nd</sup> respondent, by which his marks were scaled up to 43. The applicant maintains in the Original Application that he ought to be considered as a candidate 'par excellence' having obtained a score of 43, which is far ahead of the threshold.

4. Following the scheme, the applicant was required to be interviewed by a Board called the Senior Staff Selection Committee (SSSC for short) which was headed by the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent acting out of *malafide* intention and ill will towards the applicant was seen to have made adverse remarks against the applicant in his Annual Confidential Report and a copy of the ACR is produced at Annexure A-15. The applicant emphasized the fact that the same was never

communicated to the applicant and he had to obtain it by applying under the RTI Act.

5.       Applicant claims to have outstanding credentials in every respect. He has several publications to his credit in various reputed journals. Yet, the 3<sup>rd</sup> respondent, acting out of her bias against the applicant, has made serious allegations in the A.C.R. In fact, she had been instrumental in initiating disciplinary proceedings against the applicant with ulterior motives and the same has been challenged before this Tribunal in O.A 975/2017. After the O.A 975/2017 was disposed of by this Tribunal, the applicant has again filed O.A 973/2018, which is pending. It is in view of this ill will that the 3<sup>rd</sup> respondent who is the head of the Institute has included adverse remarks in Annexure A-15 ACR. Regrettably, the members of the SSSC were swayed by the 3<sup>rd</sup> respondent who is the Director of the Institute and this led to the rejection of his candidature. In view of the history of animosity between them, the 3<sup>rd</sup> respondent ought not have been present in the SSSC, evaluating the candidature of the applicant.

6.       Further, analyzing the failure of the applicant before the SSSC, it was found that all six members of the SSSC have meekly followed the 3<sup>rd</sup> respondent's dictation and made negative notings relating to the applicant which are more or less uniform in nature. The reason attributed to his failure, such as that the applicant did not have any adequate first or corresponding author publications and that he failed to raise project funds from extra mural sources are all denied by the applicant. Aggrieved by this, the applicant filed an appeal before the Governing

Body of the Institute and the Governing Body considered it in its 103<sup>rd</sup> meeting held on 15.3.2018. It is averred in the Original Application that on an erroneous understanding of Annexure A-3 guidelines and due to misapplication of mind, the Governing Body rejected his appeal as is seen from the relevant extracts of the Minutes produced as Annexure A-25.

7. As grounds, the applicant submits that he has been denied promotion through non-adherence of accepted mandates of law, in so far as, he was denied promotion solely on the basis of interview and without taking into account any of the objective standards mentioned in Annexure A-3. The third respondent, for her own reasons, took it on herself to first write extremely adverse remarks on the applicant's ACR and then influenced the SSSC to fail him in during the interview. Again, the Governing body also followed the decision of the selection body. The fact that he has original publications to his credit and his contribution in raising extra mural funding are available for all to assess his claim was overlooked. The 3<sup>rd</sup> respondent who had been a party in her personal capacity in O.A 975/2017 and O.A 973/2018 was carrying out her personal agenda in depriving the applicant of promotion.

8. The respondent nos.1 & 2 have filed a reply statement in which the contentions raised in the Original Application have been denied. The facts of his service under respondent no.1 Institute are admitted. It is stated that as per 3-3-4 Scheme of promotion for academic staff of the Institute, mandated from 1.7.2008, the process of selecting a candidate from Additional Professor to Professor is a

three way process. An Internal Screening Committee, at the first instance, reviews the applications along with supporting documents provided by the candidate and verifies the individual achievements with respect to the relevant bench mark. The ISC scores awarded to the candidates are made available to the candidates in order to offer clarification, if any before the report is submitted to the SSSC. They were also given an opportunity to review the HoD's score on ACR and to offer remarks on the same. The ISC score of the applicant was 43 and HoD's grade was 8 (A+). However, the applicant was seen not to have fulfilled the mandatory criteria required for publications.

9. The ACRs constitute the 2<sup>nd</sup> stage. On the yardstick of ACR also, the applicant was not disqualified. However, it is admitted that the Director of the Institute viz, the 3<sup>rd</sup> respondent, had made certain unfavorable observations in the ACR of the applicant which can be seen at Annexure A-15/2. Going on to the proceedings of the SSSC, which ultimately made the final decision, it is necessary to see that the Committee consists of six members, three of whom are from outside the Institute. As against the grade of A+ (above 70%) required for promotion to the post of Professor), the score secured by the applicant by all six examiners were below B+. SSSC commented on the absence of required first or corresponding author publications during the residency period, failure to raise extra mural funds, his tentative subject knowledge and mediocre performance at interview. These observations of the members of SSSC were recorded in the individual evaluation sheets by the six SSSC members. The applicant has not attributed any bias to the members of the SSSC and this Tribunal is not expected to go into the merits of the

decision of a body of experts like SSSC. The applicant has approached the Governing Body of the Institute with his grievances and the same were considered as decision 14.3 at the meeting of the Governing Body on 15.10.2018. Unfortunately for the applicant, he failed to get any relief from the Governing Body as well.

10. Heard Mr.P.G.Jayashankar, learned counsel for the applicant and Mr.T.R.Ravi, learned counsel for the respondents. Shri.Jayashankar attributed the applicant's misfortunes to arbitrariness and *malafide* on the part of the Director of the Institute who is respondent no.3. The evidence of this are the harsh comments recorded by her in Annexure A-15 ACR of the applicant. The second complaint of the learned counsel was that the applicant has not been given credit for his contribution in terms of published papers and extra mural funded research projects. While admitting that the SSSC consists of 3 outsiders, he was of the firm view that they were all influenced by the Director's noting in the ACR sheet at Annexure A-15.

11. Shri.T.R.Ravi, learned counsel for the respondents submitted that the Institute follows a system of transparent selection when it comes to selecting candidates for appointment to various posts. The guidelines for the purpose, available at Annexure A-3, are unequivocal in its formulation of mandatory and desirable qualifications. A close examination of the various Annexures would show that the assessment made on the applicant's actual

contribution by the Institution is correct and it falls short of the mandatory norms in certain spheres such as publication as first/corresponding author. The allegation of *malafide* and ill will on the part of the Director are denied stating that neither the ACR nor ISC report led to his exclusion and his claim was declined by the SSSC which consisted of eminent outside experts as well.

12. We have considered the pleadings, both oral and documentary made in the Original Application. The applicant states that he has been victimized and denied promotion as Professor on account of his role as Secretary of the Faculty Association and due to ill will on the part of respondent no.3. In so far as the first is concerned, he has not produced any evidence to support his claim that as a representative of the Teachers Association, he had taken up cudgels for which he has been pilloried. In so far as the Director harboring ill will towards him, we have examined the remarks made by the authority at Annexure A-15. They are indeed of an adverse nature and we understand that the applicant has challenged the adverse entries made in the ACR in O.A 1021/2018, which is being separately considered and dealt with. What remains for us is to examine whether the ACR entry resulted in the applicant falling below the Benchmark level and thus leading to failure to qualify in the selection. It is seen that this is not the case. He has received an overall grading of A+ in his

ACR assessment. Hence, the allegation that the Director of the Institute had derailed his claim for promotion is found to be unjustified. The accepted score of the HoD was A+ which was outstanding, which has not been brought down in ISC score.

13. Finally, his name was offered to the SSSC for consideration and it is here that he failed. The SSSC, after interviewing him and considering all factors awarded the following gradings:

		Interview score	Overall grade obtained by candidate
Ist Examiner	-	55	<B+
2 <sup>nd</sup> Examiner	-	60	<B+
3 <sup>rd</sup> Examiner	-	60	<B+
4 <sup>th</sup> Examiner	-	60	<B+
5 <sup>th</sup> Examiner	-	60	<B+
6 <sup>th</sup> Examiner	-	60	<B+

Thus the majority grade granted by the Expert Committee was <B+ and the grade required for the post of Professor was A+. Aggrieved by the same, the applicant approached the Governing Body of the Institute. Here also, it is seen from the Minutes that his case was subjected to a close examination. The Governing Body came to the conclusion that the applicant had obtained more than the minimum required points under certain aspects such as patient care, teaching and training &

corporate/organisational/leadership. He failed to get minimum points under research and publication. The Governing Body took into account the fact that the applicant was not recommended for promotion to the post of Professor due to poor score for his performance in interview and poor score in overall assessment. In so far as the remarks of the Director were concerned, the Governing Body came to the conclusion that there was no evidence of *malafide* and the Director's assessment in the ACR was based on "her judgment on the basis of facts". Finally, the Governing Body came to the conclusion that it could not find any *malafide*, arbitrariness or irregularities in the procedures or recommendations of the SSSC and taking into consideration all facts, it was decided that there is no ground for referring back the case for reconsideration. The appeal was accordingly rejected.

14. It is a difficult task for this Tribunal to adjudicate the relative merits of a technically qualified professional and his standing vis-a-vis, objective scientific bench mark. We can at best only look at the required criteria for promotion as is seen at Annexure A-3 and where the applicant stands vis-a-vis the same. Further, his claim is seen to have been examined by two high level committees viz; ISC and SSSC, the last of which consisted of outside experts. On a quick analysis of the criteria and where the applicant has fallen short, we can see that the view taken relating to the

requirement of first/corresponding authorship and raising extramural resources by the SSSC is fully justified. We do see the adverse remarks made by the 3<sup>rd</sup> respondent in the ACR of the applicant. However, the applicant was never disqualified on account of this and on the basis of his above threshold credit achieved before the ISC, he was chosen to be interviewed. Thereupon, in front of six eminent persons, including three from outside the Institute, he was interviewed and his credentials examined. Unfortunately for the applicant, all of them came to the conclusion that he was not fit for promotion. While he alleges bias on the part of the Institute Director, he has not been able to bring any evidence on the same except to the extent of her having made adverse remarks on his ACR. To make an objective assessment of a subordinate employee, it is the duty of any supervisory/controlling officer and atleast some times, these could be of an adverse nature. That cannot be categorised as *malafide*. On a consideration of all factors, we come to the conclusion that the Original Application is without merit and we dismiss the same. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

### **List of Annexures**

Annexure A1 - True copy of the notification dated 01.12.2017 issued by the 1<sup>st</sup> respondent.

Annexure A 2 - True copy of the application submitted by the applicant.

Annexure A 3 - True copy of the order implementing Dr.Suresh Nair Committee report dated 1.4.2014 along with the relevant extracts

Annexure A4 - True copy of the report of the Internal Screening Committee showing the points and the gradation of the applicant for the promotion to the post of Professor.

Annexure A5 - True copy of the covering letter addressed to the 2<sup>nd</sup> Respondent dated 23.02.2018.

Annexure A6 - True copy of the Acceptance form by Tamil Nadu Doctor MGR Medical University to be an External Examiner.

Annexure A7 - True copy of the Publication details during the Residency period 2013 to 2017.

Annexure A8 - True copy of the Covering page of article published in *Acta Neurological Scandinavia* entitled “*Impact of Obstructive sleep Apnea on Neurological Recovery after Ischemic Stroke : A prospective Study*” (2017)

Annexure A 9 - True copy of the First page of the article in *World Neurosurgery*, entitled “ *Dwell Time of Stentriever Influences Complete Revascularisation and First Pass TICI 3 Revascularization in Acute Large Vessel Occlusive Stroke*”

Annexure A10 - True copy of the First page of the article published in *Journal of Neurological Sciences* entitled “Effectiveness of Speech Language Therapy Either Alone or with Add On Computer Based Language Therapy Software (Malayalam Version) for Early Post Stroke Aphasia: A feasibility Study”

Annexure A11 - True copy of the First page of the article published in *Journal of Neurological Sciences* on “*Moyamoya Disease: A Comparison of Long Term Outcome of Conservative and Surgical Treatment in India.*”

Annexure A12 - True copy of the relevant extracts of the book

entitled “Percutaneous Mitral Valvotomy” compiled by Harikrishnan S (Chapter 31 on “Neurological Complications Related to Percutaneous Mitral Valvotomy” authored by the applicant)

Annexure A13 - True copy of the first page of the article published in Neurology India entitled “Antisynthetase Syndrome with Stroke”

Annexure A 14 - True copy of the first page of the article published in Neurology India entitled “Diffusion Restriction in Fulminant Subacute Sclerosing Panencephalitis: Report of an Unusual Finding”

Annexure A15 - True copy of the Annual Confidential Report of the applicant

Annexure A16 - True copy of order dated 5.6.2018 in O.A No.975/2017 issued by this Hon'ble Tribunal

Annexure A17 - True copy of the evaluation sheet given by the 1<sup>st</sup> member of the Senior Staff Selection Committee

Annexure A18 - True copy of the evaluation sheet given by the 2<sup>nd</sup> member of the Senior Staff Selection Committee

Annexure A19 - True copy of the evaluation sheet given by the 3<sup>rd</sup> member of the Senior Staff Selection Committee

Annexure A20 - True copy of the evaluation sheet given by the 4<sup>th</sup> member of the Senior Staff Selection Committee

Annexure A21 - True copy of the evaluation sheet given by the 5<sup>th</sup> member of the Senior Staff Selection Committee

Annexure A22 - True copy of the evaluation sheet given by the 6<sup>th</sup> member of the Senior Staff Selection Committee

Annexure A23 - True copy of the letter dated 18.9.2018 issued by the 2<sup>nd</sup> respondent

Annexure A24 - True copy of the appeal dated 5.10.2018 preferred by the applicant before the governing body of the 1<sup>st</sup> respondent institution

Annexure A25 - True copy of the relevant extracts of the minutes of the 103<sup>rd</sup> Meeting of the Governing Body of the 1<sup>st</sup> respondent Institute dated 15.10.2018.

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