

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1498/2003

New Delhi, this the 5th day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

Dr. M.K. Soni,
S/o Shri P.L. Soni,
R/o BA-5, Campus,
N.I.T. Kurukshetra (Haryana) ...Applicant

(By Shri Ashok Kashyap with Ms. Poonam
Kumari & Ms. Rakhi Nigaim, Advocates)

Versus

Union of India
Through Secretary,
Ministry of Human Resources & Development,
Chairman Search Cum Selection Committee,
Department of Secondary & Higher Education,
Shastri Bhawan, New Delhi. ...Respondent

(By Shri Adish C. Aggarwal, Senior Counsel
with Mr. Neeraj Goyal, Advocate)

O R D E R (ORAL)

Shri Shanker Raju, Member (J)

Applicant through this OA seeks quashment of selection proceedings and appointment to the post of Director, NIT, Kurukshetra.

2. By an interim order dated 13.06.2003, respondents have been restrained from making any appointment.

3. Briefly stated, applicant has held the post of Professor-cum-Chairman, Electrical Engineering Department in NIT, Kurukshetra. On 11.11.2002, the post of Director was advertised for various NITs. Applicant responded to the advertisement and on being short-listed was called for personal discussion/interview in the Ministry of Human Resources Development.

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4. In pursuance of advertisement dated 11.11.2002, applicant appeared for the discussion on 23.02.2003 but no appointments had been made.

5. An advertisement has been issued for appointment of Director, NIT, Allahabad, Kurukshetra and Surat on 14.03.2003. The applicant submitted his application directly for the post of Director, NIT, Kurukshetra.

6. On 7.5.2003 again the post of Director was re-advertised adding four more institutions with a stipulation that those who had already applied for need not apply.

7. In pursuance of the advertisement, name of the applicant was not short-listed for personal discussion, giving rise to the present OA.

8. Learned counsel of the applicant Shri Ashok Kashyap contends that non-inclusion of the name of the applicant in the short-listing of the candidates, is discriminatory and arbitrary as well.

9. According to Shri Ashok Kashyap non-inclusion is arbitrary and is with malafide intention to favour some of the persons. It is stated that one Shri S.K. Sharma, who was junior to the applicant and had never headed any department independently, on cancellation of first advertisement and issuance of second, was considered and



short-listed though not subsequently appointed.

10. It is stated that no uniform guidelines have been followed for short-listing the candidates for the post of Director and as the applicant on two earlier occasions had been found fit to be called for discussion, non-inclusion is unjustifiable. Shri Kashyap relying upon the decision of the Apex Court in the case of Kasturi Lal Lakshmi Reddy & Ors vs. State of Jammu & Kashmir & Anr., AIR 1980 (SC) p.1992, contends that short-listing criteria should be in conformity with norms. He also alleges violation of principles of equality as according to him no norms have been laid down to short-list the candidates and it is at the ipsi-dixit of the authorities showing favouritism. In so far as appointment of one Shri Som Nath Mahendra is concerned, it is stated that the aforesaid person does not fulfil the criteria and has no experience of administrative working as required under the rules.

11. On the other hand Shri Adish C. Aggarwal, Senior Central Government Council contends that in a judicial review this court cannot sit as an appellate authority over the selection.

12. In so far as short-listing criteria is concerned, it is stated that out of 153 applications received 5 candidates had been short-listed and Professor Som Nath Mahendra was recommended. The guidelines of All

India Council of Technical Education (hereinafter referred to as AICTE) have been followed.

13. According to Shri Aggarwal, as a selection post is not a promotion, the seniority has no role to play. Shri S.K. Sharma, who applied afresh in response to March, 2003 advertisement, was short-listed having confirmed to the norms of short-listing but Shri Som Nath was found the most fit candidate to be appointed. As such denial to any violation under Articles 14 & 16 of the Constitution of India is made.

14. We have carefully considered the rival contentions of the parties and perused the rival merits of the parties of the candidates as well as the norms laid down by AICTE.

15. The contention that Shri S.K. Sharma has been accommodated as earlier in the advertisement he was not qualified and was subsequently allowed to apply shows favouritism on part of the respondent is not well founded.

16. We have seen the comparative merit of the applicant as well as of Shri S.K. Sharma. In the advertisement in response of which Shri Sharma has applied does not preclude fresh application. The qualification prescribed was Professor in the respective discipline and an eminent person in the field. As per AICTE norms, 15 years experience in teaching out of which 5 years must be



at the level of Professor was required. Shri Sharma fulfils all the criteria and on maticulous consideration of the Expert Committee/Selection Committee he has been short-listed. Therefore, the contention that Shri Sharma has worked as a junior to the applicant cannot be countenanced as this selection not being a promotion, seniority has no role to play. It is on the individual comparative analysis of the qualifications as per the norms had determined the short-listing. In so far as the other ground that Shri Som Nath is of lessor merit, we do not advert to this. On perusal of the comparative merits, we find that Shri Som Nath is a better candidate as per qualiffication and experience and the decision of the Selection Committee cannot be found fault with. This evaluation we have made not while sitting as an appellate authority but on the basis of the record produced regarding comparative merits by the respondent.

17. The ACITE criteria laid down shows that there were valid norms for short-listing all the candidates in absence of any violation of the rules or statutory principles and malafides of the respondents, the short-listing crietria, which has been arrived at by the Expert Committee in a selection proceedings is not amenable to our judicial review.

18. Apex Court in the following decisions has held that judicial review of selection Committee's decision is precluded as the Tribunal cannot exercise its jurisdiction

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by entering into the field reserved for Selection Committee which is an expert and has reasonableness in assessment.

1994 (Suppl)(2) SCC 667

A.M. Vadi vs. India Trade Promotion Organization & Ors.

1997(5)SCC 60

Kuldip Chand vs. State of H.P. & Ors.

19. In so far as short-listing criteria is concerned by following decision, the proposition of law as laid by the Apex Court is as followed:

"In so far as short listing criteria is concerned, the Apex Court in Jagat Bandhu Chakravorty vs. G.C. Roy, (2000) 9 SCC 739 held that it was for the Expert Committee to evaluate the relevant experience of the appellant to ascertain if he possesses the requisite experience. The answering given by the Expert Committee cannot be set aside by the Tribunal in a judicial review.

In Mohd. Riazul Usman Gani and Others v. District and Sessions Judge, Nagpur, (2000) 2 SCC 808 the Apex Court has held that laying down short listing criteria when there are a large number of candidates is permissible and the criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made.

In so far as experience is concerned, Apex Court in S.J. Bagde v. State of Maharashtra, 1991 (18) ATC 838 held that the experience prescribed would depend upon the relevant provisions and also the particular time for experience required."

20. In absence of any malafide or arbitrariness in the laid down criteria of short-listing, the same is beyond our judicial review.

21. It is a common tendency of a person who has not been selected to assail the selection process. The same is not vitiated till the arbitrariness or malafide is

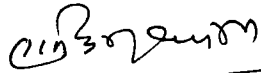



proved to its hilt by credible material. Mere vague averments not founded on reasons would not suffice.

22. Assuming that the short-listing criteria was bad or incompetent persons have been short-listed yet the fact remains the aforesaid persons have not been appointed rather the person who is more meritorious and confirms to the criteria laid down is being appointed. Any interference in this arena would cause administrative chaos. In the result, for the foregoing reasons, the selection process and appointment of Shri Som Nath cannot be found fault with.

23. It is a settled position of law that one has no right for appointment. In selection one has a right only to be considered. In the present case, once considered, in absence of any malafide or violation of rules, it is not open for the applicant to challenge the selection, having participated in it. As the applicant was not found fit to be short-listed, he has not been called for a personal discussion.

24. Moreover, we find that as Shri Som Nath has been appointed, any order adverse to him affecting his rights, cannot be passed without his impleadment. Non-impleadment of the selected person is hit by non-joinder of necessary party. In the result, the application, for the foregoing reasons, is found bereft of merits and is dismissed. No costs. *I.R. is vacated.*


(R.K. Upadhyay)
Member (A)


(Shanker Raju)
Member (J)