

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: August 22, 2013*
Judgment Pronounced on: September 17, 2013

+ **WP(C) NO. 8124/2011**

UOI & ORS. Petitioners
Represented by: Mr.V.Shekhar, Sr.Advocate with
Mr.D.S.Mahindru, Mr.Vishal Saxena and
Mr.Piyush Jain, Advocates

versus

SWAPAN KUMAR DAS Respondent
Represented by: Mr.S.K.Das, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Union of India and its subordinate office '*National Statistical Commission*' are aggrieved by the judgment and order dated October 20, 2011 passed by the Central Administration Tribunal allowing OA No.1653/2010. Challenge by the respondent to the decision of the Search Committee to empanel Prof.T.C.A.Anant at serial number 1 for the post of Chief Statistician of India and his consequent appointment to said post has succeeded before the Tribunal.

2. With a view to reorganise the statistical departments, the Ministry of Statistics & Programme Implementation, set up a Commission under the Chairpersonship of Dr.C.Rangarajan, which presented a report on September 05, 2011, recommending that a National Statistical Commission be constituted, of which a professional should be the Chief Executive Officer;

to be called Chief Statistician of India. Accordingly, vide resolution dated June 01, 2005, the Government established the National Statistical Commission; to be headed by a Chief Statistician of India. Simultaneously the post of Director-General of the Central Statistical Organisation was abolished from the cadre of the Indian Statistical Service (ISS).

3. It was followed by a notification dated May 08, 2006, prescribing the appointment, tenure and service conditions of the Chief Statistician of India.

The same read as under:

“4. Appointment, Tenure and Service Conditions of the Chief Statistician of India.

4.1 The Chief Statistician of India will be the Secretary of the Commission. He will also be the head of the National Statistical Organisation and discharge the functions of the Secretary to the Government of India in the Department of Statistics.

*4.2 The search committee shall recommend names of two persons for the post of the Chief Statistician of India, out of which the Government of India shall appoint one person as the Chief Statistician of India. **Persons with statistical and managerial experience in a large statistical organisation shall be considered for appointment.** (Emphasis supplied)*

4.3 The tenure of the Chief Statistician of India will be five years or till he/she attains the age of 62 years, whichever is earlier. The Chief Statistician of India will be eligible for reappointment. He/she should have attained the age of 52 years at the time of appointment.

4.4 The Chief Statistician of India will be eligible for the salary and allowances of a Secretary to the Government of India. He will also be eligible for government accommodation, telephone, medical attendance and all other facilities as admissible to a Secretary to the Government of India.

4.5 xxxxxxxx”

4. Dr.Pronab Sen was appointed as the first Chief Statistician of India on February 22, 2007 for a period of three years. He was offered extension for a period of two years, an offer which he declined, requiring process for selection of a suitable candidate to be commenced.

5. Advertisement dated February 12, 2010 was issued inviting applications for the post of Chief Statistician of India and the said advertisement prescribed the following qualifications:

*“**Qualifications:** The applicants shall be Indian nationals with proven statistical and managerial experience in a large statistical organisation. He or she should have attained the age of 52 years and should be below the age of 62 years at the time of appointment.”*

6. And needless to state that the qualifications notified in the advertisement mirrored the qualifications as per para 4.2 of the Notification dated May 08, 2006 pertaining to the appointment, tenure and service conditions of the Chief Statistician of India.

7. A Search Committee comprising four persons was constituted. They were the Deputy Chairman of the Planning Commission; who was also to function as the Chairperson of the Committee; Dr.Subir Gokarn, a Deputy Governor of the Reserve Bank of India; Prof.K.L.Krishana (Retd.) (from the Delhi School of Economics); and Prof.S.P.Mukherjee, Chairman, Calcutta Statistical Association.

8. In response to the advertisement inviting application twelve applications were received. The Members of the Search Committee met and opined that the field of eligible candidates should be expanded and thus a collective decision was taken that eminent persons having proven statistical and managerial experience in large statistical organizations should

be contacted and thus eleven candidates were contacted on the suggestions of the members of the Search Committee. The Search Committee deliberated on five days and considered the *curriculum vitae* of the twelve applicants who had applied pursuant to the advertisement and the persons whom the Committee members had contacted and as a result had obtained the *curriculum vitae* of said persons as well. The Search Committee unanimously recommended on May 08, 2010, the names of Prof.T.C.A.Anant and Sh.Ramesh Holli for being considered to be appointed as the Chief Statistician of India by the competent authority. The competent authority i.e. the Appointments Committee considered the recommendations of the Selection Committee and accorded approval to the name of Prof.T.C.A.Anant to be appointed as the Chief Statistician of India for a term of five years.

9. The respondent Sh.Swapan Kumar Das, challenged the appointment by filing OA No.1653/2010. One Tushar Ranjan Mohanty sought impleadment in said Original Application by filing M.A.No.735/2011 which was disposed of by granting him liberty to address arguments when OA No.1653/2010 was heard.

10. The selection of Prof.T.C.A.Anant was assailed before the Tribunal on five counts. Firstly it was contended that Prof.T.C.A.Anant did not satisfy the prescribed qualification in as much as he did not possess the statistical and managerial experience in a large statistical organisation. The fact on which said plea was urged was that he was an economist, who had worked as an Assistant Professor in Economics in Michigan State University and University of Delhi and thereafter as a Professor in Economics in the University of Delhi. With respect to he having worked as Member-Secretary of the Indian Council of Social Science Research (ICSSR) it was

contended that the ICSSR was a small organisation with 200 employees and thus notwithstanding data being analysed, applying principles of statistics in said organization, it could not be said that the organization was a large organization. Additionally it was pleaded that the principle functioning of ICSSR was to co-ordinate research on social science subjects and that statistical analysis was an incidental part of the functioning of ICSSR. Further, it was pleaded that three-year tenure as Member Secretary of said organisation would not give Prof.T.C.A.Anant the required statistical and managerial experience prescribed for the post of Chief Statistician of India. It was thus contended that he did not satisfy the prescribed eligibility criteria and his appointment was in violation of the conditions mentioned in the notification dated May 08, 2006 as well as the advertisement dated February 12, 2010. Secondly, it was urged that no reasons were recorded as to why Prof.T.C.A.Anant was asked to apply for the said post and no reasons were given as to why he was selected in preference to Sh.Ramesh Holli. It was contended that the said two facts are sufficient to cast aspersion of bias and nexus between some members of the Search Committee and Prof.T.C.A.Anant. Thirdly, it was urged that Prof.K.L.Krishna, a member of the Search Committee, had co-authored a paper with Prof.T.C.A.Anant and thus the element of bias could not be ruled out. Fourthly, it was urged that Dr.Sukhbir Gokarn, a member of the Search Committee had vehemently supported the candidature of Prof.T.C.A.Anant because he was personally interest in his candidature because he was one year junior to Prof.T.C.A.Anant at the Delhi School of Economics and both had doctoral studies from the same University in the United States of America. It was urged that the same was indicative of a close nexus between the final appointee and two members of the Search Committee. Fifthly and lastly, it

was urged that Prof.R.Radhakrishnan, Chairman of the National Statistical Commission was not only present at the Search Committee meetings but also took an active part in the selection process, which he could not since he was not a member of the Search Committee; in other words, the presence of an outsider had vitiated the meetings of the Search Committee.

11. The Tribunal rejected the arguments pertaining to the alleged bias of Dr.Sukhbir Gokarn and association of Prof.R.Radhakrishnan i.e. the fourth and the fifth argument and held that the deliberations of the Selection Committee could not be said to be vitiated on said two grounds. But, the Tribunal found merit in the first three contentions to set aside the empanelment.

12. Since during arguments in the writ petition learned Counsel for the respondent's did not urge any submission pertaining to the reasoning of the Tribunal rejecting respondent's fourth and fifth contention which was negated by the Tribunal, we need not deliberate upon the same.

13. Pertaining to the first three contentions the Tribunal noted that there were no Recruitment Rules governing appointment to the post of Chief Statistician of India and thus took note of the notification dated May 08, 2006 which prescribed the eligibility norm to be met i.e. statistical and managerial experience in a large statistical organization, which was mirrored in the advertisement dated February 12, 2010. On facts, the Tribunal opined that Prof.T.C.A.Anant lacked the necessary experience of statistics and management in a large statistical organization. His working in ICSSR as a Member Secretary was found not to be in a large organization inasmuch as ICSSR employed only 200 persons and secondly the principal functioning of ICSSR was co-ordinating research on social science subject with statistical analysis being an ancillary functioning. The Tribunal has further noted that

the minutes of the meetings of the Search Committee did not indicate as to on what reasoning the Search Committee short-listed Prof.T.C.A.Anant as a prospective candidate when eight candidates were short-listed for a detailed examination. The Tribunal noted the relevant minutes of the meeting held on March 16, 2010, which reads as under:-

“The Search Committee examined the CV's of the remaining 19 candidates and their professional background keeping in view the eligibility conditions prescribed, and shortlisted the cases of eight candidates for further detailed examination. The search committee also considered the views of Prof.Radhakrishnan, the Chairman of the NSC.”

14. With reference to the minutes of the Search Committee held on April 21, 2010 wherein following was recorded:-

“With reference to the seven candidates who appeared for the personal talk, the Search Committee examined the CV's and the professional background, the level of their knowledge in official statistics, their involvement and contribution to the system, their exposure to international statistical scenario, and their commitment. The relative professional merit relevant to the post of CSI, their knowledge about the national and international statistical systems, their personal talk and all other relevant material were considered by the Committee in its last meeting held on 8th May 2010. The Committee also considered the views of Prof.R.Radhakrishnan, Chairman of the National Statistical Commission who has been a special invitee in all its meetings. The Committee has decided not to sign any marks to any candidate.”

the Tribunal observed that there was no mention regarding the eligibility criteria and whether the candidates who were interviewed had or had not satisfied the eligibility criteria. The Tribunal observed that the record did not indicate as to on what basis the candidates were shortlisted

and others eliminated. Besides, there was no discussion about the relative merits of the candidates themselves. Rejecting the argument of the writ petitioners that Prof.T.C.A.Anant was a distinguished economist and in that capacity satisfied the condition of having statistical and managerial experience in a large organisation, keeping in view the fact that he had worked as a Member Secretary of ICSSR, the Tribunal held that there were a large number of disciplines where data was analysed through a process of inductive logic employing statistical tools, but the same did not make persons in these professions eligible for the post of Chief Statistician of India. The Tribunal further held that if it would have been in the knowledge of the public that such an elastic interpretation would have been employed, many other distinguished economists and social scientists would also have applied for the post in question.

15. The Institution of the Chief Statistician of India is a high office, tasked with an arduous and demanding goal: *to reduce the problems faced by statistical agencies in the country in relation to collection of data and restoring public trust in the figures released by the Government.*

16. For high offices and posts at the senior most executive level in organizations it may not only be difficult but even inadvisable to strictly codify eligibility norms, an essential requirement to otherwise hold a public post. The reason being that the holder of these posts is a bridge between the executive wing of the organization and the public trust in the organization. It is to facilitate this expected role that one is always in search of persons with high values, personality characteristics and integrity in addition to academic excellence and administrative experience in the field in which the organization works. The community's expectation are no doubt high from the holder of these posts. Thus these expectations indicate the standard i.e.

the qualifications to be met by the holder of the post and become the eligibility norm.

17. In the decision reported as (2011) 4 SCC 1 Centre for Public Interest Litigation & Anr. vs. UOI & Anr., pertaining to the appointment of the Central Vigilance Commissioner the Supreme Court has opined that institutional integrity has to be maintained on the touchstone of *public interest*.

18. Extending the jurisprudence a little further, one can say that for some category of post such as Vice-Chancellor of Universities, Central Vigilance Commissioner, Chief Statistician of India etc. since the community's expectations are so high and thus it may be difficult to lay down qualification and eligibility norms in any straitjacket formula, the principle of institutional integrity i.e. expectation of the society from the holder of the office would translate itself into a standard, based whereon qualification and eligibility of suitable candidates can be objectively measured.

19. More so for the reason simply possessing fundamental pre-requisites may not be enough. Something more may be desirable. Adequate and good administrative capability and knowledge of the subject in the field in which the organization works may not be sufficient indicators to determine suitability of the person who heads the organization. A visionary, a person commanding high respect amongst all sections of the society would also be the essential qualifications. Thus, apart from academic worth i.e. essential educational qualifications and administrative competence i.e. desirable qualifications (which we normally find in public posts in the notified Recruitment Rules) a moral stature, a vision and acceptability in the society would also be objective standards which need to be not only taken into

account but even, in some instances, given primacy while making appointment to some category of posts.

20. To put it simply, an institution reaches a certain standard of excellence based on the work done and the results are delivered. Said results are achieved due to a combination of factors, including quality of the employees, the effectiveness of the administration; but most importantly, excellence can only be achieved when the institution is effectively helmed by a person who continuously strives towards excellence. So, if an institution reaches a certain level, it would be expected of the person who takes over the charge of such institution to not only maintain that same level but to raise the bar and take the institution to greater heights. Thus, it is this expectation that becomes the new standard by which the new administrator is measured. Obviously, the same would not be found prescribed in any rule or guideline regarding the qualifications expected to be fulfilled to hold the said post.

21. What emerges is that at times merely fulfilling the prescribed eligibility criteria may simply not be enough. In order to effectively guide the organisation/institution forward, a person so appointed at the helm should be one of vision and foresight. History evidences that the greatest leaders, generals, orators and administrators have always been those with the ability to do things differently. They were able to see things differently from others and make better and faster decisions and so were able to act accordingly, where others may have failed. In today's rat race, organisations/institutions also seek the same '*X Factor*'. Sometimes it is not the institution that makes the man, but the man who makes the institution. Such is the nature of effective leadership and guidance.

22. Let us now examine the position in relation to statistical organizations.

23. Existing statistical organizations such as the Central Statistical Organisation (CSO) and the National Sample Survey Organisation (NSSO) faced numerous problems in collecting data from State and Central Government departments, and thus a conscious decision was taken that an autonomous body having statutory status would be better able to co-ordinate data collection and its analysis. A Committee was constituted by the Government of India in January 2000 under the Chairpersonship of Dr.C.Rangarajan to review the statistical system and the entire gamut of Official Statistics in the country. The Rangarajan Commission submitted its report to the Government in August 2001. One of the key recommendations of the Commission was to establish a permanent '*National Commission on Statistics*' to serve as a nodal and empowered body for all core statistical activities of the country; evolve, monitor and enforce statistical priorities and standards, and to ensure statistical co-ordination amongst the different agencies involved.

24. The *National Statistical Commission* was formed in July 2006 with the object of reducing the problems faced by statistical agencies in the country in relation to collection of data. It was created with a special emphasis on ensuring collection of unbiased data so as to restore public trust in the figures released by the Government.

25. The National Statistical Commission (NSC) is mandated to perform the following functions, namely: -

- a. *to identify the core statistics, which are of national importance and are critical to the development of the economy;*
- b. *to constitute professional committees or working groups to assist the Commission on various technical issues;*

- c. to evolve national policies and priorities relating to the statistical system;*
- d. to evolve standard statistical concepts, definitions, classifications and methodologies in different areas in statistics and lay down national quality standards on core statistics;*
- e. to evolve national strategies for the collection, tabulation and dissemination of core statistics, including the release calendar for various data sets;*
- f. to evolve national strategies for human resource development on official statistics including information technology and communication needs of the statistical system;*
- g. to evolve measures for improving public trust in official statistics;*
- h. to evolve measures for effective co-ordination with State Governments and Union Territory Administrations on statistical activities including strengthening of existing institutional mechanisms;*
- i. to exercise statistical co-ordination between Ministries, Departments and other agencies of the Central Government;*
- j. to exercise statistical audit over the statistical activities to ensure quality and integrity of the statistical products;*
- k. to recommend to the Central Government, or any State Government, as the case may be, measures to effectively implement the standards, strategies and other measures evolved under clauses (c) to (h);*
- l. to advise the Government on the requirement of legislative measures on statistical matters including the statute for the National Statistical Commission; and*
- m. to monitor and review the functioning of the statistical system in the light of the laid down policies, standards and methodologies and recommend measures for enhanced performance.*

26. A perusal of the functions of the Commission would reveal that much of the statistical work is non-mathematical: ensuring that data collection is

undertaken in a way that produces valid conclusions; coding and archiving data so that information is retained and made useful for international comparisons of official statistics; reporting of results and summarized data in ways comprehensible to those who must use them; implementing procedures that ensure the privacy of census information. Additionally, the Commission undertakes large scale policy development, evolution of new standards, co-ordination between various State Governments and ministries, as well as carrying out audit functions.

27. Applying the requirements of the principle of '*the preservation of institutional integrity*' as laid down in Centre for PIL's case (supra) it would be seen that the Chief Statistician of India should be a person who is capable of steering and guiding the Commission in achieving its object i.e. of reducing the problems faced by statistical agencies in the country in relation to collection of data. The goals and objectives of the organization being the ultimate end sought to be achieved, the foremost requirement would be a person who is able to direct the Commission towards the said objective in the most efficient manner.

28. The head of such an organization would be expected to oversee and co-ordinate Indian statistical policies, standards, and programs; develop and advance long-term improvements in national statistical activities, and to act as representative of the Indian Government in international statistical organizations.

29. An important requirement would be the ability to manage and ensure increasing co-operation between several levels of the Government in the production of national statistics, strengthening the interface between academic and Government statisticians, and enhancing the statistical literacy of the public. Other qualifications would include the ability to administer,

manage and co-ordinate various large scale projects simultaneously. In this regard, an important requirement would be prior work experience.

30. This brings us to the point at hand. How to determine whether a candidate possesses the requisite experience?

31. Answering the same would be extremely difficult for the reason it would be impossible to encapsule the whole gamut.

32. Thus, we limit ourselves to the post in question i.e. 'Chief Statistician of India'. In paragraph 26 above we have noted the principle functioning of the Statistical Commission of India. A person having experience of research and teaching in economics would obviously have experience in devising methodology to collect data in a manner which can produce valid conclusions. Such a person would have an experience in analysing data and drawing conclusions therefrom and preparing reports. Such a person would have experience of ensuring how privacy is to be maintained when data is collected. Such person would also have an experience to recommend strategies for human resource development policies to be framed; for economics is not simply a number game.

33. The Tribunal has not held against empanelment of Prof.T.C.A.Anant on the finding that he lacked statistical and managerial experience, but has found him wanting in having the experience in a large statistical organization.

34. The Tribunal has been influenced by the fact that as a Member Secretary of ICSSR Prof.T.C.A.Anant was associated with an organization having 200 members. There appears to be an underline reasoning, though not very clearly stated by the Tribunal, that the functioning of ICSSR in the field of data collection and statistics was an incidental functioning of the organization and not principle and thus it could be said that

Prof.T.C.A.Anant lacked the necessary managerial experience in a large statistical organization.

35. Experience, at first blush, is often linked with time i.e. the duration of working on a subject or at a post, experience whereof is required i.e. is one of the many measure to determine either eligibility or suitability. But what should be the duration of the period? Is at the core. Normally, the employer is the one who determines the chord segment of time by which experience is to be measured. But for some category of posts the employer may have to leave the said chord segment of time undetermined, leaving it to be decided on case to case basis, for the reason an intense working even for a short duration of time may clothe a person with sufficient experience in comparison to a person whose working is not intense but spans a larger period of time. Perhaps, this was in the mind of the Government of India in the instant case while framing the policy regarding recruitment to the post of Chief Statistician of India. The Government consciously did not specify a period i.e. the number of years as the measure for the experience.

36. It is not the first time that Courts have faced such a quandary. In a recent decision of the Canadian Supreme Court reported as 2010 PSST 0001 Peter Zankl v.s The Chief Statistician of Canada and Statistics Canada & Other Parties the complainant alleged mala-fides in the screening process held for the post of *Chief of Portfolio in Statistics Canada*. (What a coincidence that even we are dealing with the post of the head of a Statistical Organization). Complainant alleged that he was screened out of the selection process because he failed to demonstrate that he possessed ‘acceptable experience managing large or complex information technology projects’; i.e. the qualification prescribed in the advertisement. The Court noted that the experience sought is normally acquired over a period of two to

three years, but observed that in gradually more complex projects, the same i.e. experience could be acquired within six months. The Court observed further that experience could also have been acquired while working in only one very complex project.

37. In short, a candidate may have acted as the Manager of a large number of projects but of lesser complexity, the other may have managed few or even only one very complex project. Further, the former may have been associated as a Manager for a long duration of time and the later for a short duration of time. It would be impossible to define who had a better experience. Thus, the intensity and the complexity of a work even for a short duration managed by a person may clothe the person with sufficient experience. Similarly, the largeness of a work need not be measured quantitatively; it can be measured qualitatively as well.

38. Reverting back to the facts of the instant case, the respondent had vehemently contended before the Tribunal that Prof.T.C.A.Anant did not satisfy the prescribed qualifications since he did not possess proven statistical and managerial experience in a large statistical organisation; being a Professor of Economics and having worked as Member Secretary of ICSSR for a period of three years only.

39. In view of the foregoing discussion, it can be seen that experience is not easily quantifiable. It may be that the same person can acquire the requisite amount of experience over a single project in a short duration, and similar experience may be acquired over many long projects of relatively smaller durations. The Screening Committee obviously saw merit in the work of Prof.T.C.A.Anant, and if they were of the opinion that the said experience of three years could be equated with a larger stint elsewhere, they were not wrong in arriving at said conclusion, being experts in the field.

Thus, the contention that having worked for a period of three years with the ICSSR would render Prof.T.C.A.Anant unsuitable for appointment to the said post due to lack of experience and because the said organisation was small and conducted social science research would not be correct. Because, as noted above, experience can be acquired in different ways.

40. Statistics being a diverse field, it is not imperative that the organisation in which one has worked should have been a large-scale organisation. Research projects carried out in smaller organisations, though they may be smaller in number but can be larger in complexity and diversity; thereby leading to acquiring a better working experience than one may have had heading a relatively simple, albeit large-scale project.

41. It was urged that Prof.T.C.A.Anant had an economic backgrounds i.e. he lacked the requisite expertise in the field of statistics.

42. The argument was feebly advanced. Economics is not a number game. Economists are engaged actively in creating policies for a better human resource development and not merely in revenue collection. These policies are based upon data which is collected, analyzed and sieved; and a theory projected, based whereon a policy is framed.

43. On the reasoning of the Tribunal that when applications were invited what was the need to personally get in touch with persons of eminence and seek their consent to be appointed to the post in question, we find that the Tribunal has overlooked the fact that all over the world, for many posts applications are not invited. Search Committees are constituted. The personal knowledge of the members constituting the Search Committee is used as the reservoir to hunt for talent. Even when a position is proposed to be filled up and is widely advertised and applications or nominations invited by a specified date, the Search Committee contact individuals directly. This

is a universal phenomenon all over the world for posts and positions at very high levels.

44. As regards the issue of likelihood of bias of Prof.K.L.Krishna, a member of the Search Committee, who had co-authored a paper with Prof.T.C.A.Anant, the Tribunal has overlooked the fact that as one rises up the pyramid in the hierarchical structure of posts in an organization, the area becomes small and at the top of the pyramid one is left with only the tip. At said level there is bound to be some interface in the past between he who determines suitability and he whose suitability has to be determined. One has to keep in mind that as one lives one's life, the interface at the professional level gets limited as one climbs up at the ladder and thus it is inevitable that at some stage the interface leads to each knows all, in the limited segment of the area of activity (at the higher level). Merely with reference to past association of having co-published a paper, without any common economic interest, as for may be, when a book is co-authored and revenue generated from sale thereof, apprehension of likelihood of bias cannot be inferred.

45. Accordingly, we allow the writ petition and quashed the impugned judgment and order dated October 20, 2011 and as a consequence dismiss OA No.1653/2010.

46. No order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 17, 2013

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