

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No. 420 of 2022
WP (C) No. 430 of 2022
WP (C) No. 433 of 2022
WP (C) No. 112 of 2023

Date of Decision: 05.04.2024

1. Shri Rakesh Kumar Sarmah,
Survey of India Campus,
Barik Point, Shillong-793001
Meghalaya.

..... Petitioner(s)

- Versus -

1. North East Centre for Technology Application and Reach (NECTAR)
Autonomous Body under the Department of Science and
Technology (DST), Government of India,
Headquarter at Survey of India Campus,
Bonnie Brae Estate, Barik Point, Shillong-793001,
Meghalaya.
2. Director General,
North East Centre for Technology Application and Reach (NECTAR)
Survey of India Campus,
Bonnie Brae Estate, Barik Point, Shillong-793001,
Meghalaya.
3. Union of India, Department of Science and Technology Bhawan,
Shaheed Jeet Singh, Marg,
New Delhi-110016.

.... Respondent(s)

1. Shri Simanta Das,
S/o (L) Robin Chandra Das
R/o Survey of India Campus,
Barik Point, Shillong-793001
East Khasi Hills District,
Meghalaya.

..... Petitioner(s)

- Versus -

1. North East Centre for Technology Application and Reach (NECTAR)
Autonomous Society under the Department of Science and
Technology, Government of India,
Headquarter at Survey of India Campus,
Bonnie Brae Estate, Barik Point, Shillong-793001,
Meghalaya.
 2. The Director General,
North East Centre for Technology Application and Reach (NECTAR)
Autonomous Society under the Department of Science and
Technology, Government of India,
Headquarter at Survey of India Campus,
Bonnie Brae Estate, Barik Point, Shillong-793001,
Meghalaya.
 3. The Chairman,
Governing Council,
NECTAR, Shillong
 4. Union of India,
Represented by its Secretary,
Department of Science and Technology
2nd Floor Vishwakarma Bhawan,
ShaheedJeet Singh, Marg,
New Delhi-110016.
- Respondent(s)**

1. Shri Simon Phukan,
S/o Shri Julan Phukan
R/o House No. 16, MG Road,
Uznbazar, Rajbari, Guwahati, Assam
Presently residing at F 103, Pocket A,
Near Phase 1, DDA Flats, Katwaria Sarai
New Delhi.

..... Petitioner(s)

- Versus -

1. North East Centre for Technology Application and Reach (NECTAR)
Autonomous Society under the Department of Science and
Technology, Government of India,
Headquarter at Survey of India Campus,
Bonnie Brae Estate, Barik Point, Shillong-793001,
Meghalaya.

2. The Director General,
North East Centre for Technology Application and Reach (NECTAR)
Autonomous Society under the Department of Science and
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Headquarter at Survey of India Campus,
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3. The Chairman,
Governing Council,
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4. Union of India,
Represented by its Secretary,
Department of Science and Technology
2nd Floor Vishwakarma Bhawan,
Shaheed Jeet Singh, Marg,
New Delhi-110016.

.... Respondent(s)

1. Shri Ankit Shrivastava,
S/o Shri V.K. Shrivastava
R/o Old Hospital Campus, MG Road,
Khargone (M.P) 451001,
Presently residing at 456, DDA Flats,
Section-E2 Near CNG Pump, Vasant Kunj,
New Delhi-110070.

..... Petitioner(s)

- Versus -

1. North East Centre for Technology Application and Reach (NECTAR)
Autonomous Society under the Department of Science and
Technology, Government of India,
Headquarter at Survey of India Campus,
Bonnie Brae Estate, Barik Point, Shillong-793001,
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North East Centre for Technology Application and Reach (NECTAR)
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Meghalaya.

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Governing Council,
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Represented by its Secretary,
Department of Science and Technology
2nd Floor Vishwakarma Bhawan,
Shaheed Jeet Singh, Marg,
New Delhi-110016.

.... Respondent(s)

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge.

Appearance: in WP (C) No. 420 of 2022

For the Petitioner(s) : Mr. B.A. Wanswett, Adv.
vice Ms. P.D.B. Baruah, Sr. Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.

Appearance: in WP (C) No. 430 of 2022

WP(C) No. 433 of 2022

WP (C) No. 112 of 2023

For the Petitioner(s) : Mr. K. Paul, Sr. Adv. with
Ms. R. Dutta, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.

i)	Whether approved for reporting in Law journals etc:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT AND ORDER

1. These writ petitions being similar and related to appointments made from the same advertisement dated 10.07.2021 issued by the North East Centre for Technology Application and Reach (NECTAR) assailing the same impugned order dated 07.10.2022, are being disposed of by this common Judgment and Order.

2. The writ petitioners in response to the advertisement, being eligible and possessing the required qualifications had applied for different posts, which will be detailed hereinafter. Thereafter, after passing through the Screening Committee, the qualified candidates were then shortlisted for Personal Interview and after appearing before the Selection Committee, the petitioners on being successful, offer of appointments were issued to them. The writ petitioners then joined their respective posts and were working against the same, when they were served with the impugned letter dated 07.10.2022, whereby they were informed that the advertisement to the posts they were holding had been considered null and void and the offer of appointment to the said posts was to be treated as cancelled. Being aggrieved thereby, the writ petitioners have preferred these writ petitions before this Court.

3. In brief, the details of the writ petitioners and against which posts they had applied, is given hereinbelow: -

i) WP(C) No. 420 of 2022 (Rakesh Kumar Sarmah)

Post applied – Chief Coordinator (Technical)

ii) WP(C) No. 430 of 2022 (Simanta Das)

Post applied – Chief Radio Technologist

iii) WP(C) No. 433 of 2022 (Simon Phukan)

Post applied - Senior Administrative Officer

iv) WP(C) No. 112 of 2023 (Ankit Shrivastava)

Post applied – Software Engineer

The posts mentioned above against which the writ petitioners had applied as per the advertisement dated 10.07.2022, were given at Serial Nos. 3, 4, 5 (Scientific Post) and 11 (Administrative Post).

4. On behalf of the petitioners, it has been argued by Smti. P.D.B. Baruah, learned Senior counsel assisted by Mr. B.A. Wanswett and Mr. K. Paul, learned Senior counsel assisted by Ms. R. Dutta, that the appointments had been duly granted approval by the Governing Council of NECTAR held on 18.04.2022, wherein at Item No. 4, at 4(A) it was clearly recorded that all the Governing Council members endorsed their approval and that, not a single representation from any candidate had been received.

It has been submitted that thereafter on 18.08.2022, the 9th Meeting of the Governing Council was held, wherein the minutes of the 8th Meeting of the Governing Council were confirmed and adopted. In assailing the impugned letter, it has been submitted that the ground for cancellation of the appointments was stated to be due to certain representations in the matter of recruitment which however, is belied by the fact that it has been recorded in the minutes of the 8th Governing Council that not a single representation had been received. It has been further submitted that though the respondents have stated on affidavit that an Internal Committee was formed to look into the recruitment process in NECTAR, the same is vague as to the reason why a Committee was constituted when the recruitment process had already been approved by the competent authority.

5. The learned Senior counsels have also submitted that the recruitment process having started with an offer, and the same being accepted following a regular selection process, resulting in the appointments of the petitioners, any action on the part of the respondents to scrap the posts and or otherwise affect the employment of the petitioners, would invite the rigours and safeguards as given in Article 311 of the Constitution of India. The impugned letter having been issued without granting any opportunity of hearing, it is contended, is in total violation of

the principles of natural justice and the respondents, after grant of approval in respect of the appointments cannot now take a U-turn after the entire selection process had been completed. Reference has also been made to Rule-9 of the General Bye Laws of NECTAR, wherein it is provided that each member or his representative of the Governing Body shall have one vote, and if they be equality of votes on any question, then the Chairman shall have a casting vote, which they contend in the instant case, the Chairman's absence in the said Meeting, wherein approval was granted, will therefore have no bearing as his representative was present. It has also been highlighted that under the same selection process, such as the appointment to the post of Advisor (Technical), the same has not been cancelled and further the recruitment process, had been carried out for filling up of 25 number of posts, and only the 4 posts of the writ petitioners, have been targeted for arbitrary and discriminatory treatment by the respondents. As such, it is prayed that the impugned letter be set aside and quashed, and the writ petitioners be allowed to continue in employment as per the terms of their selection and appointment.

6. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel for the respondents in reply has submitted that the advertisement dated 10.07.2021, had invited applications for filling up of

various regular posts on deputation, including short term contract/absorption failing which by direct recruitment and that in the instant case of the petitioners, no effort was made to fill their posts on deputation and the same were made straight away by direct recruitment. Further, it is submitted that when the matter was proceeded in the Governing Council Meeting held on 18.04.2022, the Chairman of the Governing Council who is the Secretary to the Department of Science and Technology (DST) GOI, was not available and hence the Meeting was chaired by the Chief Secretary, Mizoram but that in the said Meeting, it was also resolved that though all the members endorsed their approval, the Chairperson desired to place the approval of the Governing Council before the Secretary DST being the Chairman of NECTAR. The lapses in the recruitment process were then noticed, he submits for which a Committee was constituted, which after looking into the same, had recommended the scrapping of the recruitment process. The matter it is then submitted, was then taken up in the 9th Governing Council Meeting held on 18.08.2022, where it was recommended by the Council to take necessary corrective measures including scrapping of the said recruitment process and for fresh recruitment to be initiated for recruitment to the 4 posts. He submits that it

was in this backdrop, the impugned letter dated 07.10.2022 was issued for cancellation of the appointments of the petitioners.

7. On another aspect, it has been argued that the appointment of the other appointee to the post of Adviser Technical was not cancelled as the same was given ex-post facto approval by the Governing Council and moreover the Chairman, NECTAR himself, was in the Selection Committee. It has also been submitted that in WP(C) No. 433 of 2022, the writ petitioner therein was himself a member of the Screening Committee and thereafter was declared as the selected candidate for the post of Senior Administrative Officer. He finally submits that the entire selection process was vitiated and in order to ensure fair and transparent selection in accordance with the Recruitment Rules, the DST based on the report of the Inquiry Committee had taken the decision to scrap the recruitment and to do the same afresh.

8. Heard the learned counsel for the parties. It is first to be noted that the recruitment that was to be conducted, was to be as per the Approved Recruitment Rules and Bye Laws of NECTAR. In this exercise pursuant to the advertisement, as is evident from the materials and records available, the Governing Council in its 7th meeting held on 14.10.2021, had noted at Item 8 of the minutes, with regard to the revival of sanctioned

posts, its satisfaction in the progress of the recruitment process. Thereafter, in the 8th meeting of the Governing Council held on 18.04.2022, at Item 4, under the heading ‘**Status of Recruitment Process and Approval of Governing Council**’, it was recorded at Sub-Para:4(A) as follows.

“Sub Para:4 (A)”

GC was apprised about the recruitment process relating to “Group-A” posts carrying Grade Pay of Rs.6600/- & above. The criteria mentioned in the Recruitment Rules (RRs) and role of GC in terms of rule 3(i) of Service Bye-laws of NECTAR for regularization of Group-A posts carrying Grade Pay of Rs.6600/- & above was explained in general for seeking approval of GC.

Chairperson asked DG (NECTAR) to clarify whether recruitment rules (RRs) of NECTAR as approved by the appropriate authority (DoPT/MoF/DST) have been followed in the matter.

DG, NECTAR assured the Chairperson and all other GC members that RR's have been scrupulously followed and also the procedure. Selection of candidates has been made by the Selection Committee/Interview panel duly approved by the Chairman, NECTAR in a transparent manner. Score sheet of marks awarded by the Selection Committee duly signed by each member of Committee is available for perusal and records. The scores of each candidate were displayed on the website of NECTAR. Not a single representation from any of candidates has been received in this regard.

The offers of appointment were sent to the candidates in order of merit following the precedent adopted by NECTAR in recruitments made earlier and approved by GC as well.

Further, the status of recruitments has already been brought to the kind notice of GC members through circulation vide this office letter no. NECTAR (403)/DST/2020 dated 25.02.2022 for approval, for regularization of these appointments in terms of para 3(i) of Service Bye-laws of NECTAR and as advised by DST vide Under Secretary (A.I.

Division), letter no. AI/16/05/Misc/NECTAR/2020 dated 16.03.2022 (copy enclosed).

Executive Council of NECTAR has already approved these recruitments during its meeting held on 21.02.2022.

It was also informed that approval of five (05) GC members i.e., from Chief Secretary, Meghalaya, Manipur, Nagaland, Sikkim and Secretary, NEC has already been communicated through correspondence, as such approval of remaining GC members was also sought for in terms of provisions contained under Rule 9 & 10 Part-III of General Bye-laws of NECTAR.

All the GC members endorsed their approval. Chairperson desired to place approval of GC before Secretary DST being Chairman NECTAR.”

9. A perusal of the above quoted proceedings clearly shows that, there was no quarrel or dispute as to whether there was any divergence from the approved Recruitment Rules, inasmuch as, it is recorded therein that, the RR's had been scrupulously followed as also the procedure, and that, the selection of candidates had been made by the selection committee/interview panel, duly approved by the Chairman of NECTAR. The same also records that the Executive Council of NECTAR, had already approved the recruitments during its meeting held on 21.02.2022. All the members of the Governing Council then, endorsed their approval and the Chairperson desired that, the approval of the GC be placed before the Secretary DST, being the Chairman of NECTAR.

10. Thereafter only, it is noted that, the recruitments were then sought to be scrapped in the 9th meeting of the Governing Council of

NECTAR, wherein in Item 14, under the heading ‘**Any other item with the permission of the Chair**’ it was resolved to concur to the decision of the Secretary DST, on the scrapping of the 4 posts, and for a fresh recruitment to be gone into. This decision it is seen, was not on the basis of an agenda item, and the decision was taken, even though at Item No. 1 of the same meeting thereof, the minutes of the 8th meeting of the Governing Council had been read out, confirmed and adopted. This in itself, leaves a big question mark, as to the decision making process, in arriving at the conclusion to scrap the recruitment. From the submissions of the learned DSGI earlier, it had been asserted that, the recruitment was scrapped as the Chairman of the Governing Council was not available on the 8th meeting, which was chaired by Dr. Renu Sharma, the Chief Secretary, Mizoram, when the approval was accorded. The absence of the Chairman of the Governing Council on the said meeting, however, speaks otherwise on an examination of the Bye Laws of NECTAR itself, Bye Law 7 reads as follows.

“7. A person holding the membership of the Governing Body or the Governing Council by virtue of an office held by him (ex-officio) shall normally attend the meetings himself in person but in exceptional circumstances shall have the right to nominate a representative, not below the level of Joint Secretary to the Government of India, to act on his behalf. The representative shall also have the voting right of the member.”

As such, the absence of the Chairman therefore, cannot be a ground to vitiate the recruitment process.

11. Bye Law 9, has further provided that, each member or its representatives shall have one vote, and if there be an equality of votes, on any question to be decided, the Chairman shall have a casting vote. In the absence of the Chairman, on a plain reading of the Rules and Bye Laws, in a meeting of the Governing Council, as given in Rule 1 of the Rules, under the heading '**Proceedings of the Governing Council**', the same can also be presided by a member, selected from amongst the members present. The 8th GC meeting, which had approved the recruitment, on being chaired by the Chief Secretary of Mizoram, in the absence of the Chairman i.e. the Secretary DST, therefore cannot be said to have acted without jurisdiction and beyond the scope of its powers and functions, as given under the Rules and Regulations of NECTAR, and its Bye Laws. It may be added that, though the Secretary DST, by virtue of being the Chairman of NECTAR, as per the Rules does not enjoy any special powers over and above the General Council, to nullify and scrap a decision taken, passed and confirmed by the General Council.

12. The other aspect, which cannot be ignored by this Court, is that in arriving at the impugned decision, which has been stated to be on the

basis of an Inquiry Report, is the total absence of any opportunity of hearing being afforded to the writ petitioners, who on their appointments have been visited with civil consequences. The total non-adherence to the Principles of Natural Justice, notwithstanding any other circumstances, is sufficient enough to cause interference with the impugned order. The other grounds put up by the respondents that, the writ petitioner in WP(C) No. 433 of 2022, was himself a part of the Screening Committee, will also not serve any purpose as the selection was conducted by a duly selected committee, and as is well known, the Screening Committee is only to examine the eligibility of candidates.

13. The recruitment of the writ petitioners, as per the facts laid out herein above, cannot be said, or held to be irregular or illegal, and at the most due to the stipulation in the advertisement, that efforts should have first been made to fill up the post by deputation including short term contract, be said to have been made with a slight deviation from the advertisement. In the instant case, the Recruitment Rules being followed, and the approval accorded as per due process, the appointments of the petitioners which are neither illegal or irregular, are therefore liable to be reconsidered by the respondents, for regularization of appointment, subject to the Rules as contained in the Service Bye Laws of NECTAR.

14. Accordingly, in view of the findings and discussions made herein above, these writ petitions are allowed, and the impugned letter dated 07.10.2022, is hereby set aside and quashed.

15. No order as to costs.

JUDGE

Meghalaya
05.04.2024
"V. Lyndem PS"