

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

+ **W.P.(C) 481/2014**

% Judgment Reserved on: 17.03.2015
Judgement pronounced on: 08.04.2015

KALPANA MEHDIRATTA Petitioner

Through: Mr R.K. Saini and Ms Aastha Chopra,
Advs.

versus

AIR FORCE BAL BHARATI SCHOOL AND ORS..... Respondents

Through: Ms. Rekha Palli and Mrs Punam
Singh and Mrs Garima Sachdeva,
Advocates for respondents No. 1 and
2.

Ms Megha Bharara for Ms Ruchi
Sindhwani, Advocate for respondent
No.3

Mr Alok Agarwal, Advocate for
respondent No.4

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide the present writ petition, the petitioner has challenged the selection of respondent No.4 to the post of Vice-Principal.

2. The admitted facts of the case are that the petitioner was appointed as TGT (English) on 30.07.1983 and on 18.03.1991, she was appointed as PGT (English) on the basis of an interview by the Departmental Promotional

Committee (hereinafter referred to as 'the DPC'). Respondent No.4 was also working as PGT and was senior to 9 months to the petitioner. For the post of Vice-Principal, the applications/consents from all the PGT teachers were called for 20.10.2013. The petitioner applied for the said post on 31.10.2013. Besides respondent No.4, seven other PGTs applied for the post of Vice-Principal. All of them were called for an interaction with the DPC on 11.11.2013 and accordingly they all had appeared before the DPC.

3. The contention of the petitioner is that on 26.11.2013, the respondent had verbally announced in the school that respondent No. 4 had been selected for the Vice-Principal post. The said selection of respondent No.4 has been challenged by the petitioner on the grounds, that the academic and administrative experience of petitioner is better and more impressive than that of respondent No.4. That the break in service, disciplinary enquiry against respondent No.4 and number of 'Leaves Without Pay' breaks should have been taken into account while drawing the merit list of the candidates, but the same had not been done. That her ACR is better than that of respondent No.4. She had earned two 'Good', two 'Very Good' and one 'Outstanding' ACRs during the previous five years prior to the date of selection while the respondent No.4 has not earned any 'Outstanding' ACR

and had earned only three 'Very Good' and two 'Good' ACRs. It is further contended that the service record and the ACRs of the candidates have not been given due weightage by the Selection Committee. The petitioner had protested vide her letter dated 28.11.2013 and also offered to resign from the service. However, she withdrew her resignation before it was accepted vide her letter dated 30.11.2013. The respondent communicated to her vide letter dated 06.12.2013 that her withdrawal of resignation had been accepted and her other averments were found lacking in substance and merit. The DPC in this case has not acted in a fair manner and had acted in a biased manner and the whole exercise seems to be just an eye-wash and the entire farce was a well orchestrated attempt to give effect to the decision which has already been taken. The petitioner has given the comparative data of herself and respondent No.4 in paragraph 15 of her petition contending that the merit, as reflected in ACRs in service file of the candidates, has not been considered by the DPC. The petitioner had also asked for direction to respondent to supply her, her ACRs.

4. The claim is contested by all the respondents. Respondent Nos. 1 and 2 have filed their counter-affidavit and respondent No.4 has adopted the counter-affidavit filed by respondent Nos. 1 and 2. The respondents have

denied any favourism towards respondent No.4. It is submitted that DPC had taken into consideration all the relevant factors and had acted as per the rules and procedure and the selection was not motivated by any criteria. It is submitted that post of Vice-Principal was a selection post and method of recruitment to the post was by promotion. It is submitted that DPC had taken into consideration the ACRs of the last five years of all the candidates and all the other relevant materials, including the merit of the candidate. It has not selected the respondent No.4 merely because of her seniority. It is submitted that chart prepared by the petitioner is a self-screening chart. It is further submitted that the respondent No.4 had taken the approval of leave without pay and that cannot be considered as break in service. The DPC had considered all the relevant factors, including seniority and performance and has done the selection as per the Recruitment Rules. The respondents have further submitted that the duty list of the teachers depends on various things which include the extracurricular activities, inter-school competitions, intra-school competitions, number of students in a particular stream, the extra classes needed for weak students and other combined activities of the school where the participation of the teacher is involved. It is further submitted that a fair and clear policy has been observed by the DPC for the appointment of

the Vice-Principal and overall grading and performance, including seniority was taken into consideration by the DPC. It is further submitted that as asked for by the petitioner, the ACRs of the last five years have been supplied to the petitioner. It is prayed that petition is liable to be dismissed.

5. Respondent No.3 in its counter-affidavit has submitted that the post of Vice-Principal is to be filled as per the Recruitment Rules and according to the seniority of the employees and the selection process was based on performance and academic record and the same had been taken into consideration by the DPC.

6. In the rejoinder to the counter-affidavit of respondent Nos. 1 and 2, the petitioner has controverted the contentions and has reiterated the statements made by her in the petition and has further given in detail her achievements, including the administrative achievements, the board results of the students in her subject, co-curricular activities and initiatives taken. It is also contended that respondent No.4 had tendered her resignation in March, 2004 and again in May, 2010 and these were duly accepted, however, later the respondent Nos.1 and 2 permitted her to join back and considered the absence period as Leave Without Pay and she was granted extraordinary leave from 01.07.2010 to 14.08.2010 and because of that her

date of increment was also shifted from initial month of joining, i.e., July to October in 2004 and this shows that punitive action was taken against her and the respondent Nos. 1 and 2 to favour respondent No.4 have suppressed this fact from this Court and this shows the bias on the part of respondent Nos. 1 and 2 in favour of respondent No.4. In March, 2011, the respondent No.4 in accordance with school rules, submitted an application to proceed to a foreign country on undertaking to resume her duty on a fixed date, failing which the leave application be treated as her resignation and since she did not report for duty on the due date in 2011, the Disciplinary Enquiry was initiated against her and once again respondent Nos. 1 and 2 condoned the casual and non-serious attitude of respondent No.4 towards her official commitment. It is further submitted that since respondent No.4 had resigned on two occasions and the resignation having been accepted, the same should be considered as break in service. It is further contended that the duty list issued by the Principal to the petitioner shows that she has been assigned 10 key duty areas as compared to one duty area to respondent No.4. It is further submitted that respondents have not shown any material to substantiate that the performance, including seniority vis-a-vis other candidates of respondent No.4 were taken into consideration while considering her for the post of

Vice-Principal. It is submitted that overall grading of respondent No.4 was nowhere close to that of petitioner which is clear from the facts and figures given in para 15 of the writ petition. It is submitted that petitioner is one of the senior most teachers of the school and has an unblemished record and has been doing her job sincerely and honestly for the last 31 years. She has never given any cause of complaint to anyone during her entire service period and everyone in the school was happy with her conduct and performance still she had not been selected for the post of Vice-Principal. It is further submitted that writ petition be allowed and the appointment of respondent No.4 to the post of Vice-Principal be set aside and the Writ of Mandamus be issued to respondent Nos. 1 and 2 to forthwith promote the petitioner to the post of Vice-Principal with effect from the date on which respondent No.4 was promoted.

7. It is argued on behalf of the petitioner that the petitioner was more meritorious than respondent No.4. It is further argued that though respondent No.4 was senior to the petitioner, the seniority had no role to play in selecting a candidate for the post, yet the respondents by giving go-by to the merit had selected respondent No.4 solely on the basis of seniority. It is further argued that the petitioner has less residual service than that of

respondent No.4 and so she should have been given the preference. It is further argued though not contended that the respondents have acted with a mala fide intention by inviting nine persons while as per DPC rules for one post, only five persons were to be considered and it has been done with the intention to defeat the claim of the petitioner and it also amounts to violation of the rules and shows that the respondents had a vested interest in selecting the respondent No.4 and this shows their intention and bias.

8. On the other hand, it is argued on behalf of the respondents that the petitioner had never objected the considerations of nine candidates for one vacancy at any time and it is not even pleaded. Had the objections been raised earlier, the respondents would have been able to give the reasons for said act and also would have duly disclosed the same in their written statement. It is argued that petitioner has failed to show any prejudice having been caused to her since the respondent No.4 has fallen in the zone of first five candidates. It is argued that the DPC had duly followed the prescribed rules and the procedures. It was consisting of senior officers, including Anand Swaroop, Principal, Anupama Monga, Wing Commander Executive Director, AFBBS, H.N. Bhagwat, AIR Commodore, Chairman Managing Committee of Air Force Schools and the petitioner has made a general

complaint of bias and mala fide without mentioning any specific instance showing bias on behalf of any member of the DPC. No reason has also been shown in the petition for the whole DPC to act in a mala fide and bias manner against the petitioner. It is further argued that it was for the DPC to decide who is more meritorious and the self-proclamation of the petitioner that she is more meritorious than that of respondent No.4 is of no consequence. It is argued that this Court does not sit as an Appellate Court over the decision of the DPC and cannot substitute its own assessment. It is submitted that DPC was consisted of senior officers, competent to make the assessments about the merits of the candidates and do the selection. Reliance is also placed on Sant Ram Sharma Vs. State of Rajasthan and Others, AIR 1967 SC 1910, Union of India Vs. S.K. Srivastava and Others, (1979) 3 SLR 724, N.K. Panda Vs. Union of India & Ors., (1977) 1 SLR 574, B.V. Sivajah and Ors. Vs. K. Addanki Babu & Ors, (1998) 6 SCC 720, Central Council for Research in Ayurveda & Siddha and Anr. Vs. Dr.K. Santhakumari, (2001) 5 SCC 60, Haryana State Electronics Development Corporation Ltd. & Ors. Vs. Seema Sharma & Ors, AIR 2009 SC 2592.

9. It is submitted that from the perusal of the proceedings of the DPC, it is apparent that the DPC had taken into consideration the several criteria

including Annual Confidential Reports, personality, extra-curricular activities/contribution, residual service, popularity amongst the staff, attitude/behaviour towards fellow employees and did the assessment on that basis and selected respondent No.4.

10. It is submitted that for the assessment of the candidates, the interaction was done with them and remarks had been given regarding the suitability of each candidate. The proceedings of DPC shows that while the respondent No.4 is at the top, another candidate Mrs Rupa Chatterji was at number 2 and the petitioner is at third stage along with another candidate Mr E.T. Mani, who is also placed equally with the petitioner. It is further argued that now respondent No.4 has already been selected for the post of Principal and she is functioning on the said post and the petitioner has also challenged the said selection vide a separate writ which is also pending in this Court and that the post of Vice-Principal has again been advertised. It is further argued that if the ACRs be the only criteria for selection then there was no requirement of holding any DPC and the candidate would have been selected on the basis of ACRs. Therefore, the contention that petitioner is more meritorious having better ACRs does not create any right in her favour for selection.

11. In reply to the arguments of the learned counsel for the respondents, the petitioner has contended that points and aspects which were taken into consideration by the DPC, point (e) and (f), i.e., popularity amongst the staff and attitude/behaviour towards fellow employees cannot be objectively assessed and this shows that the DPC had sat with the pre-determined mind.

12. I have given due consideration to the rival contentions and submissions of the learned counsels for the parties. There is no dispute to the fact that the post of Vice-Principal is a selection post and the method of recruitment to that selection post was by way of promotion failing which by direct recruitment. Pursuant to this, the applications were invited and nine candidates were selected for consideration by the DPC. The petitioner in her petition had contended that she was not supplied her ACRs, and demanded the same. During the proceedings the respondents had supplied her the five ACRs preceding the date of application for the post of Vice-Principal. On demand, the respondents have also produced in the sealed cover the proceedings of the DPC.

13. The post of Vice-Principal being a selection post, the DPC was to make the selection to the said post. The guidelines/procedure to be observed by DPC has been circulated by way of office memorandum dated

10.03.1989 by the DoPT.

14. Guideline No. 2.1.1 lays down the Selection Method as follow:-

“Selection Method

Where promotions are to be made by selection method as prescribed in the recruitment rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade(s), restrict the field of choice as under with reference to the number of clear regular vacancies proposed to be filled in the year:

No. of vacancies	No. of officers to be considered
1	5
2	8
3	10
4	3 times the number of vacancies.

15. While this provision requires the DPC to determine five officers against one vacancy, guideline No. 2.1.2 gives DPC full discretion to device their own method and procedure for objective assessment of the suitability of the candidates who are to be considered by them. Although the DPC had selected nine officers for consideration, the petitioner had not pleaded in her

petition that any prejudice had been caused to her by calling four extra candidates for consideration. She has not raised any such objection before DPC either and has also failed to show that any prejudice has been caused to her by this act of the DPC. It is apparent that the selected candidate, i.e., respondent No.4 falls within the first five candidates considered for the selection to the post of Vice-Principal.

16. The petitioner has argued that seniority cannot be the criteria for appointment to a selection post and has relied on the findings in the case **Sant Ram Sharma** (*supra*), wherein the Supreme Court has held that merit-cum seniority is an approved method of selection and that promotion of selection grade post is not automatic on the basis of ranking in the gradation list and the promotion is primarily based on merit and not on seniority alone.

The Court has so observed in para 6 of the said judgment:-

“The circumstance that these posts are classed as “Selection Grade Posts” itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any

right on the petitioner to be promoted to selection posts and that it is a well- established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available.”

17. The Constitution Bench of the Supreme Court in the case of **State of Orissa vs. Durga Charan Das**, AIR 1966 SCC 1547 has also held that promotion to a selection post is not a matter of right which can be claimed merely by seniority.

18. The petitioner has also relied on the findings of the Delhi High Court judgment in the case of **S.K. Srivastava and Others** (*supra*), wherein the Court has held that where the post is a selection post, seniority alone is not sufficient to determine the choice of the candidate. Reliance is also placed by the petitioner on the findings of the Orissa High Court in the case of **N.K. Panda** (*supra*) in support of the argument that seniority alone cannot be the criteria of selection. Reliance has been placed on para 17 of this judgment, wherein the Orissa High Court has held that since the post of Superintendent

was classified as a selection post, selection had to be made on the basis of merit and not on seniority and has relied on the findings and while giving such findings, the Court has relied on findings in the case of **Sant Ram Sharma** (*supra*).

19. The petitioner has also relied on para 9 of the judgment in the case of **B.V. Sivajah** (*supra*) which is reproduced as under:-

“9. The principle of 'merit-cum-seniority' lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (Appointment by promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew. J. in **Union of India v. Mohan Lal Capoor & Ors.**, 1974 (1) SCR 797, has said :-

" for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play a secondary role. It is only when merit and suitability are roughly

equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

Similarly, Beg J. (as the learned Chief Justice then was) has said :- (S.C. P-851) (Para 22)

22. "Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant rules, is that the "entrance" or "inclusion" test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor."

Relying on the above case, the petitioner has argued that it is the merit which has to be given greater importance over the seniority. In order to bring home the same contention, the petitioner has also relied on the findings in the case of **Central Council for Research** (*supra*). In this case

also, the Court has observed that seniority alone cannot be the criteria for promotion and allowed the appeal of the Department. In that case, the respondent who was an Assistant Research Officer (Ayurveda) in the Indian Institute of Panchakarma, Cheruthuruthy, in Kerala had challenged the preparation of the panel of the eligible candidates by the DPC on the ground that although she was senior to the candidates appearing at serial No. 1,9,11,12,13 and 14, but the DPC had placed her at Serial No.15 below her juniors and had claimed the promotion on the basis of principle of seniority cum fitness. It was on these facts that the Court has observed as under:-

“14. Therefore, even if the appellants had mistakenly contended in the High Court that the principle of seniority-cum-fitness was to be followed for promotion to the post of Research Officer, the departmental rules clearly show that the promotion was in respect of a 'selection post' and the promotion was to be made on the basis of the inter se merit of the eligible candidates. In that view of the matter, the respondent was not entitled to get promotion to the post of Research Officer on the strength of her seniority alone. The seniority list prepared by the Departmental Promotion Committee was not challenged by the respondent on other grounds and we also do not find any

ground to assail that select list. Thus, the Writ Petition is liable to be dismissed by setting aside the orders made therein and in the writ appeal arising therefrom. Therefore, the appeal succeeds and is allowed, however, without costs.”

20. The petitioner has also relied on **Haryana State Electronics Development Corporation Ltd.** (*supra*), wherein the Court has made the distinction between the principles of merit cum seniority and that of seniority cum merit had held as under:-

“8. The Court is of the opinion that the principle of Merit-cum-Seniority and that of Seniority- cum-Merit are two totally different principles. The principle of Merit-cum- Seniority puts greater emphasis on merit and ability and where promotion is governed by this principle seniority plays a less significant role. However, seniority is to be given weightage when merit and ability more or less are equal among the candidates who are to be promoted. On the other hand, insofar as the principle of seniority-cum-merit is concerned it gives greater importance to seniority and promotion to a senior person cannot be denied unless the person concerned is found totally unfit on merit to discharge the duties of the higher post.

The totality of the service of the employee has to be considered for promotion on the basis of Seniority-cum-Merit (see AIR 1996 SC 273).”

21. The ratio of the above discussed case laws thus is that seniority alone cannot be the sole criteria for appointment of a candidate to a post which is a selection post, even if the method of recruitment is by way of promotion. The merit as well as the seniority has to be given due consideration. It is thus required to be seen if the DPC had acted in violation of these established principles of law. In the present case, the proceedings before DPC were guided by certain rules. The original DPC proceedings were produced in sealed envelope for perusal. The DPC rules in conformity with para 6 Rule 96 of DSEAR 1973. The relevant portion is reproduced:-

“(d) Although among those who meet the prescribed benchmark inter se seniority of the feeder grade shall remain intact, eligibility for promotion will no doubt be subject to fulfilment of all the conditions laid down in the relevant Recruitment Service Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder post.

- (i) The mode of promotion shall be 'selection'.
- (ii) The benchmark for promotion, as it is now, shall continue to be 'Good'.
- (e) **Seniority be given due weightage.**

The deliberation on each candidate were conducted covering the following points/aspects:-

- (a) Annual Confidential Reports for five preceding years.
- (b) Personality
- (c) Extra-curricular activities/contribution
- (d) Residual Service
- (e) Popularity amongst the staff
- (f) Attitude/Behaviour towards fellow employees.”

22. It is apparent from the proceedings of the DPC that DPC had acted in conformity with the rules and had graded the candidates on the basis of deliberation on each candidate covering aspects like (a) ACRs for five preceding years (b) personality (c) extra-curricular activity/contribution, (d) residual service (e) popularity amongst the staff (f) attitude/behaviour towards fellow employees. There is nothing in the proceedings before the DPC to show that DPC had adopted the seniority of the candidate as the sole criteria for selecting the candidate for the post of Vice-Principal.

23. In the present case, there is nothing in the rules which requires that it

was only the merit which was to be considered by the DPC and the seniority had to be discarded totally. Even the rules followed by the DPC require that seniority be given due weightage. Also, there is nothing on record which shows that the selection of respondent No.4 to the post of Vice-Principle has been made solely on the basis of her seniority over the petitioner.

24. The petitioner has also challenged the selection of the respondent No.4 on the ground that there was a bias and mala fide in such selection. The principle governing bias and mala fide have been discussed by the Court in various pronouncements.

25. The term ‘mala fide’ has been described by the Supreme Court in **State of Bihar and Another vs. Shri P.P. Sharma and Another** AIR 1991 SC 1260 as under:

“50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the

statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

26. In the present petition, the petitioner has not claimed bias or mala fide against any member of the DPC, but during the course of arguments, it is argued that the entire DPC had acted with mala fide intention and bias against her.

27. The Hon'ble Supreme Court has defined the term 'bias' in the case of **State of Gujarat and Nar. Vs. Hon'ble Mr. Justice R.A. Mehta (Retd.) and Ors.** reported in **Civil Appeal Nos. 8814-8815 of 2012 and S.L.P. (C) Nos. 2625-2626 and 2687-2688 of 2012** as under:-

“The apprehension of bias must be reasonable, i.e., which a reasonable person would be likely to entertain. Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim - *nemo debet esse judex in causa propria sua*. It applies only when the interest attributed to an individual is such, so as to tempt him to make a decision in favour of, or to further, his own cause.

While deciding upon such an issue, the court must examine the facts and circumstances of the case, and examine the matter from the view point of the people at large.”

Again, the Hon'ble Supreme Court in the case titled as **Chandra Kumar Chopra Vs. Union of India (UOI) and Ors.** cited in **Criminal Appeal No. 665 of 2002** after taking into consideration the law laid down in earlier pronouncements such as **Manak Lal Vs. Dr. Prem Chand** MANU/SC/0001/1957, AIR 1957 SC 425, **Gullapalli Nageswara Rao and Ors. Vs. Andhra Pradesh State Road Transport Corporation and Anr.** (1959) Supp. 1 SCR. 319 **A.K. Kraipak and Ors Vs. Union of India and**

Ors. MANU/SC/0427/1969, AIR 1970 SC 150, **Dr. S.P. Kapoor Vs. State of Himachal Pradesh and Ors.** MANU/SC/0715/1981: 4 SCC 716, **Ranjit Thakur Vs. Union of India and Ors.** MANU/SC/0691/1987 : (1987) 4 SCC 611, **M/s Crawford Bayley and Company and Ors. Vs. Union of India and Ors.** MANU/ SC/2985/2006: AIR 2006 SC 2544, **S. Parthasarathi Vs. State of Andhra Pradesh** MANU/SC/0059/1973: (1974) 3 SCC 459 and **Metropolitan Properties Company (F.G.C.) Ltd. Vs. Lannon** (1969) 1 QB 577, 599 has summarised as under:-

“22. From the aforesaid pronouncement of law, it is discernible that mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one’s imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by Rule of Law, fairness of action propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute

the pillars on which its survival remains in continuum.”

28. Thus, in order to apply the element of bias, it is required that the person claiming bias must put forward the cogent facts which constitute the bias.

29. The petitioner has contended that the respondent No.4 had proceeded on long leaves, Departmental Enquiry had also started against her and that she had a break in service, but none of this factor was considered by the DPC. The petitioner, however, has also admitted in the rejoinder that the leaves of respondent No.4 were regularized under the rules and that the matter relates to the year 2004 and 2010, i.e., many years prior to the DPC. It is also admitted that the Departmental Enquiry was dropped against respondent No.4 and her absence was condoned. It is apparent that the officer who had written the ACR of respondent No.4 must have taken into consideration all these factors while writing her ACR. Moreover, the petitioner has herself admitted that no Departmental Enquiry was conducted against the respondent No.4 and her leaves were regularized by the Department, and this was done much before the convening of the DPC. It, therefore, cannot be said that either the DPC or the Department had acted in a bias manner with a view to select the respondent No.4 to the post of Vice-

Principal. There is nothing on record to show that there was any adverse remark against the respondent No.4. It is also a settled proposition of law that if the bias or mala fide is pleaded against a person, the person is required to be impleaded as a party. The Supreme Court in the case **M.V.Thimmaiah and Ors. vs. Union Public Service Commission and others** (2008) 2 SCC 119 has held as under:-

“19. So far as the allegation of mala fide against Shri B.S.Patil is concerned, he was not impleaded as a party. Therefore, the allegation of mala fide could not be entertained by the Tribunal. As such, the allegation of mala fide against Shri B.S.Patil could not be taken into consideration and rightly so, by the High Court as well as by the Tribunal. The allegation of mala fide is very easy to be levelled and it is very difficult to substantiate it, specially in the matter of selection or whoever is involved in the decision making process. People are prone to make such allegation but the Courts owe a duty to scrutinize the allegation meticulously because the person who is making the allegation of animus sometimes bona fide or sometimes mala fide due to his non-selection. He has a vested interest. Therefore, unless the allegations are substantiated beyond doubt, till that

time the Court cannot draw its conclusion.
Therefore, we reject the allegation of mala fide.”

30. In **Major General, IPS Dewan vs. Union of India and Ors.**, (1995) 3

SCC 383 the Supreme Court has held as under:-

“18. Sri Ramaswamy then relied upon the decision in *Manager, Government Branch Press and Anr. v. D.B. Belliappa*: (1979)1SCC 477 in support of his submission that administrative orders affecting the rights of citizens should contain reasons therefore. We are afraid, the said principle cannot be extended to matters of selection. Unless the rules so require, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. If the said decision is sought to be relied upon with respect to the adverse remarks made against the appellant, the attack should fail for the reason that the memo containing adverse remarks in this case does set out the particulars in support of the same. It is equally relevant to note that no allegation of mala fides or arbitrariness has been levelled against the Chief of the Army Staff who made the said remarks.”

31. Further, in the case of **Param Hansh Mishra vs. Union of India** (2008) 2 SLJ 93, this Court has observed as under:-

“7. The order of transfer in the instant case has been passed by Air Officer Commanding (AOC), respondent No. 5 in the case. Although, there is a vague assertion in the petition that respondent No. 5 was biased against the petitioner and the order of transfer was issued for malafide reasons, no particulars of the circumstances constituting malafides have been given. It is fairly well settled that while malafides are easy to allege but difficult to prove. Any challenge based on bias or malafides must be supported by particulars and assertions that would probabalize, if not conclusively prove, the allegation. Besides, the Officer against whom malafides are alleged must be arrayed as a party respondent to the petition by name to enable him to meet the allegations and defend his action.”

32. Also, in the case **Prem Prasad Verma vs. Swaraj Swadesh Saikia and Ors.**, Civil Appeal No.5007 of 2014, decided on 01st May, 2014, the Supreme Court has clearly held that where the allegations of bias and malafide has been made, the persons against whom such allegations have been made, are required to be made party to the petition.

In the present case, the petitioner has not specifically claimed bias against any particular member of the DPC and has argued that the entire DPC has acted with bias and that too without making them a party in the

present writ petition. In the present case, the petitioner has not placed on record any fact which can show that the DPC had acted with bias or *mala fide* against her. As discussed above, it is apparent that the DPC had duly followed the procedure prescribed under the rules. The plea of bias and mala fide against DPC is thus a bald plea, devoid of any substance.

33. The petitioner has also been urging constantly that she ought to have been selected for the post of Vice-Principal by DPC since she is more meritorious than respondent No.4 and has charted out her achievements in her petition and rejoinder in detail and prays that by a writ of certiorari, the appointment of respondent No.4 be quashed and by way of writ of mandamus she be promoted to the post of Vice-Principal.

34. On the other hand, it has been argued by the respondents that the Court does not sit as an Appellate Authority over the decision of the DPC and has relied on the findings in the case of **Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan**, AIR 1990 SC 434.

I have given due consideration to the findings of the Supreme Court in **Dalpat Abasaheb Solunke** (*supra*). The Supreme Court has observed as under:-

“9. It will thus appear that apart from the fact that the High Court has rolled the cases of the two

appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the

candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.”

Thus, it is clear that the findings of DPC or Selection Committee can be interfered with only when it is found that there is some irregularity or any illegality in the constitution of DPC or the procedure adopted by the DPC has vitiated the selection or the DPC had acted with mala fide or bias affecting selection. In the present case, the petitioner has not contended that there was any illegality or irregularity in the constitution of DPC. As discussed above, the DPC had acted as per the rules and regulations and the petitioner has also failed to bring on record any element of bias or mala fide on behalf of DPC affecting selection. The only ground which she had raised is that she is more meritorious than that of respondent No.4 and ought to have been selected by the DPC.

35. In the matter of judicial review of a selection for appointment on a selection post, the law stands settled by the decision of the Supreme Court. In **Union of India and Another vs. Samar Singh and Others** (1996) 10 SCC 555, the Supreme Court has held as under:-

“6. In the matter of judicial review of a selection for appointment on a particular post the law is well-settled by the decisions of this Court. In

Dalpat Abasahed Solunke and Other V. Dr. B.S. Mahajan and Others, 1990 (1) SCC 305, it has been laid down :-

“It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.”

8. **In Major General I.P.S. Dewan v. Union of India and Others**, 1995 (3) SCC 383, it has been held that the principle that administrative orders affecting rights of the citizens should contain reasons therefor cannot be extended to matters of selection and unless the rules so require, the Selection Committee/Selection Board is not obliged to record reasons why are they selecting a

particular person, as the case may be [SCC at p. 389].

9. The Tribunal was conscious of the limitations on its power and has observed :-

"Once a competent authority makes a selection for appointment or empanelment considering all those who are eligible in accordance with rules, instructions or guidelines then the Tribunal or High Court will not act as an appellate body and interfere on the ground of insufficiency of the material or incorrectness of the decision applying its own yardstick. If the decision making process is not vitiated the resultant decision cannot be interfered with by the tribunal on the ground that It if were the Tribunal which took the decision it would not have been the same. Even if on a perusal the file relating to the selection on a comparative assessment of the merits of the applicant vis-à-vis respondents 3-11, the Tribunal comes to a conclusion that the applicant was more meritorious than them, the Tribunal cannot interfere with the selection and empanelment."

If it is seen that the Cabinet secretary assisted by a Special committee of Secretaries made a selection considering all the eligible officers in the light of

the guidelines contained in the Central Staffing Scheme, then we are of the considered view that interference would not be justified even if a different view on the selection may possibly be taken.”

36. Therefore, simply because the DPC has not given individual marks for different criteria and has given consolidate marks does not make the proceedings of the DPC illegal. Also, merely because it does not contain the reason for giving particular marks to a particular candidate does not mean that the merits and the suitability of the candidates were not considered by the DPC. Also, in the case of **Siya Ram vs. Union of India and Ors.** (1998) 2 SCC 566, the Supreme Court has held as under:-

“10. This Court held that the selection for the post of Munsifs was valid and could not be struck down. It said that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public service. It said that in that in the case of service to which recruitment had necessarily to be made from persons of mature personality, interview test may be the only way and subject to basic and essential academic and professional requirements being satisfied and that subjecting such persons to

written test might yield unfruitful and negative results. There cannot be any rule of thumb regarding the precise weight to be given and that it must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. The Court said that it was a matter for determination by experts and also a matter for research and that it was not for the Court to pronounce upon it unless exaggerated weight had been given with proven or obvious oblique motives.”

37. In the case of **Som Raj & Ors. vs. State of Haryana and Ors.** AIR 1990 SC 1176, the Supreme Court has held as under:-

“The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists

which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority.”

38. Also, in the case of **Renu and Others vs. District and Sessions Judge, Tis Hazari and Anr.** 2014 LAB I.C.1237, while discussing the scope of judicial interference with the discretion exercised by the authorities, the Court has observed as under:-

“21. As a safeguard, the Constitution has also recognized that in the internal administration of the High Court, no other power, except the Chief Justice should have domain. In order to enable a judicial intervention, it would require only a very strong and convincing argument to show that this power has been abused. If an authority has exercised his discretion in good faith and not in

violation of any law, such exercise of discretion should not be interfered with by the courts merely on the ground that it could have been exercised differently or even that the courts would have exercised it differently had the matter been brought before it in the first instance or in that perspective.”

39. Also, in the case of **Nutan Arvind (SMT) vs. Union of India and Another** (1996) 2 SCC 488, the Supreme Court has clearly held as under:-

“The DPC which is a high-level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted.

.....When a high-level committee had considered the respective merits of the candidates assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority.

40. The ratio thus is that the Court cannot sit in judgment over the assessment made by the DPC of the candidates and substitute its findings, unless it is shown that it had acted in brazen disregard to the rules governing it or had acted with oblique motives or the entire proceedings before DPC were vitiated.

41. In the present case, the petitioner has failed to point out any irregularity either in the constitution of the DPC or in the procedure adopted by the DPC. She has also failed to point out any mala fide or bias on the part of DPC affecting the selection. DPC has acted as per the procedure and has taken into consideration the merit of the candidates and has given due credit under the rules to the seniority as well. I find no ground to interfere in the matter.

42. The petition is dismissed with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

APRIL____, 2015
BG