

IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **W.P.(C) 8158/2013 & C.M.No.17218/2013 (for directions)**

7th January, 2015

SHIV CHARAN LAL SHARMA Petitioner
Through Mr.Darpan Wadhwa with Mr.Nikhil
Singhvi and Ms.Nidhi Mohan,
Advocates.
versus

UNION OF INDIA Respondent
Through Mr.Amit Mahajan, CGSC for UOI.

CORAM:
MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner who is an aspirant to the post of the Presiding Officer of the National Highways Tribunal (hereinafter referred to as the 'Tribunal') formed under the Control of National Highways (Land & Traffic) Act, 2002.

2. The appointment of the Presiding Officer of the Tribunal is governed by the National Highways Tribunal (Procedure for appointment as Presiding Officer of the Tribunal) Rules, 2003 (in short 'the Rules'). The relevant rule in this regard dealing with the procedure and method of

appointment of the Presiding Officer is Rule 3, and which reads as under:-

“ **3. Method of appointment of Presiding Officer** – (1) For the purpose of appointment to the post of a Presiding Officer, there shall be a Selection Committee consisting of-

(i) a Judge of the Supreme Court of India as ----- Chairman;
Nominated by the Chief Justice of India

(ii) the Secretary to the Government of India in the ----- Member;
Ministry of Road Transport and Highways

(iii) the Secretary to the Government of India in the ----- Member.
Ministry of Law and Justice (Department of Legal Affairs)

(2) The Judge of the Supreme Court shall be the Chairman of the Selection Committee.

(3) Any two members of the Selection Committee including the Chairman shall form a quorum for meeting of such Committee.

(4) The Selection Committee may devise its own procedure for selecting a candidate for appointment as Presiding Officer.

(5) The Selection Committee shall recommend persons for appointment as Presiding Officer from amongst the persons on the list of candidates prepared by the Ministry of Road Transport and Highways after inviting applications therefor.

(6) The Central Government shall on the basis of the recommendations of the Selection Committee make a list of persons selected for appointment as Presiding Officer and the said list be valid for a period of two years. The appointment of a Presiding Officer shall be made from the list so prepared.”

(underlining added)

3. A reading of the aforesaid Rule shows that the Selection Committee which is constituted is headed/chaired by a Judge of the Supreme Court of India as a nominee of the Chief Justice of India. The Selection Committee has two other members being the Secretary to the Government of India in

the Ministry of Road Transport and Highways and the Secretary to the Government of India in the Ministry of Law and Justice (Department of Legal Affairs).

4. In the present case, the Government vide its letter dated 25.2.2003, addressed to the Registrars of all the High Courts, sought the names of suitable persons/officers for being appointed as Presiding Officers of the Tribunal. Petitioner's name was one such name which was forwarded, and the petitioner's name was after the procedural formalities put up before the Selection Committee. The Selection Committee in its meeting held on 18.9.2003 recommended the names of five persons for being appointed as the Presiding Officers of the Tribunal, further naming four persons on a reserved panel, which was to be valid for two years. The decision of the Selection Committee dated 18.9.2003 reads as under:-

“ Subject: Selection of Presiding Officers, National Highways Tribunals.

A meeting of the Selection Committee was held at 11.00 AM on Thursday, the 18th September, 2003 in the Supreme Court Judges Lounge, Supreme Court Building, to recommend the names of persons for appointment as Presiding Officers of National Highways Tribunals proposed to be established under section 5 of the Control of National Highways (Land and Traffic) Act, 2002. The following were present:-

- Justice Shri Y.K. Sabharwal	- Chairman
- Shri Ashoke Joshi	- Member
- Shri R.L. Meena	- Member

2. The Committee noted that for the present, only five Tribunals

were proposed to be established. It also noted that interview calls were issued to 20 candidates. However, the following 16 candidates only appeared before it for interview:-

- i) Dr.S.D.Singh
- ii) Shri K. Biswal
- iii) Shri Mithilesh Kumar Sharma
- iv) Shri Hari Kumar Godara
- v) Shri Gopal Chandra Mitra
- vi) Shri Alope Kumar Das
- vii) Smt. Jamna Yadav
- viii) Shri Surendra Kr. Singh Yadav
- ix) Shri Subodh Chandra Verma
- x) Shri Ghanshyam Pandey
- xi) Shri Syed Nazair Abbas Zaidi
- xii) Shri Akhil Kumar Upadhyay
- xiii) Shri Baldev Singh Rajput
- xiv) Shri Shiv Prasad Joshi
- xv) Shri Thana Ram Bisnoi
- xvi) Shri Shiv Charan Lal Sharma

3. Based on the performance of the candidates in the interview and taking into account the latest available five annual confidential reports of the officers, the Committee recommended in the order below the names of the following for appointment as Presiding Officers of the proposed National Highways Tribunals:-

- i) Shri Mithilesh Kumar Sharma
- ii) Shri Subodh Chandra Verma
- iii) Shri Syed Nazair Abbas Zaidi
- iv) Shri Alope Kumar Das
- v) Shri Ghanshyam Pandey

4. The Committee also recommended a reserve panel of the following persons for appointment in future:-

- i) Dr.S.D.Singh
- ii) Shri Hari Kumar Godara
- iii) Shri Gopal Chandra Mitra
- iv) Shri Shiv Charan Lal Sharma

The above panels would be valid for appointment within two years.”

5. I need not labour in too much with regard to the facts of entitlement of the petitioner for being appointed and the recommendation having been made by the Selection Committee to the government for appointment of the petitioner inasmuch as this aspect was directly in issue before this Court in W.P.(C) No.3660/2007 filed by the petitioner titled as “ *Sh.Shiv Charan Lal Sharma Vs. Union of India & Ors.*”. This writ petition was allowed by a learned single judge of this Court vide his judgment dated 06.8.2012 by rejecting the contention of the government that the petitioner was not qualified to be appointed because he was not qualified to be appointed as the Judge of the High Court, and which qualification was a requirement for appointment as a Presiding Officer of the Tribunal. A learned single judge of this Court in the judgment dated 06.8.2012 has referred to the Article 217 of the Constitution of India which states that the qualification for being appointed as a Judge of the High Court is that a person must have practice as an advocate for 10 years in a High Court or of two or more such courts in succession, and which qualification the petitioner fulfilled. The relevant observations of a learned single judge of this Court deciding the respective contentions and holding that the petitioner was fully qualified are made in para 24 to 37 of the judgment dated 06.8.2012, and which paras read as under:-

“ 24. Ld. Counsel for the respondent has submitted that inclusion of the name of the petitioner in the Selection panel does not give him the right to be appointed. Further the ACC is the final Authority to approve the name. The case of the petitioner was not approved as he was not found eligible for the said post.

25. During arguments, Ld. Counsel for the respondent has produced the original record of the ACC. This Court has perused the same and found that the reasons recorded vide note which is at Page 34 of the File No. 1/1/2005/EO/SM-II as under:-

“There was nothing to indicate in specific terms, that applications of Practicing Advocates were also being solicited. Under the above circumstances, the Appointment Committee of the Cabinet may kindly reiterate non-approval to the appointment of the petitioner, as Presiding officer, National Highways Tribunal.”

26. Accordingly, same has been approved by the ACC, which is contrary to the memorandum issued on 25.02.2003 by which it is stated that under Section 7 of the Act for appointment as Presiding Officer, a person has to be qualified to be a Judge of High Court or he should have been member of Indian Legal Service.

27. After hearing ld. Counsel for the parties and on perusal of the record produced by the respondent, it is clear that vide Circular dated 21.02.2003 addressed to Registrar of High Courts, applications were invited for appointment of Presiding Officer of the National Highways Tribunal in the Pay Scale of Rs.18,400-22,400. In pursuance of the said circular, petitioner, who is a practicing Advocate with more than 24 years experience applied for the said Post. The Selection Committee, which was presided over by sitting Judge of the Supreme Court, found him eligible and selected him.

28. In its note dated 10.03.2005, Ministry noted the names of the 9 candidates, who have been selected by the Selection Committee and in Paragraph no. 6 clearly noted that the petitioner is not in Government Service, but selected him for appointment in the service of the Tribunal till the age of 62 years. He was placed at Serial no.6 in the said note, which was then sent to ACC (Appointment Committee of the Cabinet).

29. In the note dated 17.03.2005 sent for ACC approval, it is

specifically mentioned that applications from Practicing Lawyers were not called for, therefore, the appointment of the 5 persons, except the petitioner, may be approved. Accordingly, the name of the petitioner was not approved.

30. It is evident from the Circular dated 21.02.2003, addressed to the Registrar of High Courts, for wide publicity amongst the eligible persons and names of suitable persons / Officers along with their complete bio-datas / experience etc. sent to the respondent Ministry by 31.03.2003.

31. Article 217 of the Constitution of India under Clause 2 provides that a person “shall not be qualified for appointment as a Judge of High Court unless he is a citizen of India and (a) has for at least 10 years held a Judicial Office in the Territory of India or (b) has for at least 10 years been an Advocate of High Court or of two or more such Courts in succession.

32. The particular of the petitioner, which is placed on record, clearly shows that he has experience of more than 24 years as Advocate at High Court of Rajasthan. Therefore, he is eligible for the post in question. Moreover, the selection committee, headed by the sitting Judge of Supreme Court of India, selected him after interview.

33. Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, however, the appointing authority cannot ignore the select panel or on its whims and fancies decline to make the appointment. When a person has been selected by the selection committee and there is a vacancy which can be offered to him, keeping in view his merit position then ordinarily, there is no justification to ignore him for appointment.

34. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, the reasons given are contrary to their own circular. This Court finds no material against the petitioner, except the reasons given in the note mentioned above.

35. No doubt, the approval of the AC is mandatory and the final authority vests with the ACC. But if the selection committee has selected any candidate, the ACC can reject the same by giving the reasons on record, which is missing in the present case.

36. In view of the above discussion, I am of the considered opinion that

there was no reason against the petitioner not to send for ACC approval. Therefore, impugned communication dated 19.01.2006 is set aside.

37. Since the name of the petitioner has not been approved by the ACC which is mandatory, therefore, the respondent Ministry is directed to send the name of the petitioner for ACC approval. If the ACC approves the same, the concerned Ministry shall issue the appointment letter to the petitioner against the first available vacancy.”

(underlining added)

6. A learned single judge of this Court while passing the judgment dated 06.8.2012 could have issued a writ of *mandamus*, however, the learned single judge of this Court only directed the matter to be again put up before the Appointments Committee of Cabinet (ACC) and observed that ACC can reject the name as proposed by the Selection Committee by giving the valid reasons on record, and which were missing when ACC decided not to appoint the petitioner as the Presiding Officer of the Tribunal only on the ground that applications were not invited from practising advocates.

7. Pursuant to the directions contained in the judgment dated 06.8.2012 in W.P.(C) No.3660/2007, the case of the petitioner was again put up before the ACC and the ACC has now again reiterated its decision of not appointing the petitioner as the Presiding Officer, and which decision shows that the same reasons have been given which were the subject matter of the decision in W.P.(C) No.3660/2007 and decided against the respondent/government.

8. Let me at this stage reproduce the relevant communication dated 02.4.2013 rejecting the name of the petitioner after being considered by the ACC, and which reads as under:-

“ Reference correspondence resting with Ministry of Road Transport & Highways’s OM No.NH-11014/3/2006-P&M (Vol.VIII) dated 06.09.2012

2. After re-examining the proposal for appointment of Shri Shiv Charan Lal Sharma to the post of Presiding Officer in the National Highway Tribunals, the Appointments Committee of the Cabinet (AC) has reiterated its earlier decision of non appointment of Shri Shiv Charan Lal Sharma to theh post on the following grounds.

- a) Government was entitled to limit the field of selection and had rightly called applications/nominations from the Registrar of High Court. If applications from practicing advocates had been invited explicitly, then many other advocates may have also applied.
- b) On the second occasion for selection for the same post, the Selection Committee did not consider his name because his average income was less than Rs.1,50,000/- per year, which leads to a fair inference that Shri Sharma did not have an adequate practice in the High Court.
- c) On the third occasion, he did not appear for the interview.

3. While rejecting the proposa, l ACC has directed the Ministry to contest the case by filing a SLP brining out the detiled background on which the ACC had not approved the proposal even on reconsideration.”

9. Reasons (b) and (c) in para 2 are irrelevant for the present petition because the petitioner is not seeking appointment to the post of the Presiding Officer of the Tribunal in terms of subsequent advertisements issued, and the issue is only with respect to the appointment pursuant to the

letter dated 25.2.2003 issued by the government to the Registrars of all the High Courts, and pursuant to which the Selection Committee in terms of the rules recommended the name of the petitioner.

10. A learned single judge of this Court in the present petition by his order dated 09.5.2014 had directed that one post be kept vacant for appointment to the post of the Presiding Officer of the Tribunal.

11. In view of the above, it is clear that the decision of the ACC which has now been taken after the judgment of the learned single judge dated 06.8.2012 in W.P.(C) No.3660/2007 is clearly arbitrary and illegal because the reasons having been given for rejecting the appointment of the petitioner have already been considered and decided against the government in terms of the judgment of a learned single judge of this Court in W.P.(C) No.3660/2007. It may be stated that the judgment of a learned single judge of this Court dated 06.8.2012 is final as the respondent did not challenge the same in any higher court, and this was inspite of the fact that in the impugned order dated 02.4.2013, a recommendation was made for filing of the SLP against the judgment of a learned single judge dated 06.8.2012, but till date no such SLP has been filed against the judgment dated 06.8.2012 in W.P.(C) No.3660/2007.

12 (i) Learned counsel for the respondent did try to urge and give reasons

beyond the reasons which are found in the communication dated 02.4.2013 for not appointing the petitioner, and it is argued that the panel in terms of the Selection Committee meeting dated 18.9.2003 was valid only for a period of two years and which two years have expired, but I cannot consider such arguments for two reasons.

(ii) Firstly the Supreme Court in the judgment in the case of ***Mohinder Singh Gil & Anr. Vs. Chief Election Commissioner, New Delhi & Ors. (1978) 1 SCC 405*** has held that the government cannot justify a decision *dehors* the reasons which were given in an order which were challenged before the court by filing in the shape of affidavits containing the grounds. The ground now urged by the government is not a ground given in the Communication dated 2.4.2013 for not appointing the petitioner.

(iii) The second reason for rejecting the appointment of the petitioner urged is that the period of two years given has expired. However this argument is fallacious because the period of two years with respect to the panel is only a recommendation by the Selection Committee in this case, and the panel for a period of two years is actually prepared only thereafter in terms of the Rule 3(6) of the Rules, by the government. The period of two years of the panel thus commences not from two years of recommendation by the Selection Committee but from two years of

preparation of the panel by the government.

(iv) In the present case, the petitioner had admittedly approached this Court by means of the earlier W.P.(C) 3660/2007 within two years of the government preparing the panel in terms of Rule 3(6) of the Rules, and which is not disputed before this Court. Therefore even on merits, argument of the panel being valid for two years and having since expired has no legs to stand upon because if within the period of validity of the panel, a person applies for implementation of the recommendation, and thereafter time is taken in judicial proceedings, the same cannot mean that the validity of the period of two years expiring in the meanwhile disentitles the appointment of a person to a post which has to be made in terms of a select panel. If I accept this argument of the respondent, then what would happen in most of the cases is that the delay in deciding a case by the court will simply defeat the right of the petitioner and the reliefs claimed through the judicial proceedings will become infructuous, but this is not the legal position.

13. Learned counsel for the petitioner has argued and prayed that writ of *mandamus* for appointing the petitioner be issued and in support has placed reliance upon a judgment of the Division Bench of this Court in the case of ***A.K.Kapur, VSM (Major General) Vs. Union of India & Ors. 163 (2009)***

DLT 606, in which a writ of *mandamus* was issued for the appointment of the petitioner in that case as a Lieutenant General by setting aside the decision of the ACC in illegally not appointing the petitioner in that case. The relevant para of the judgment is para 33, and which para reads as under:-

“ If the petitioner had been promoted, nothing precluded the respondents at the appropriate stage to take action against him. The Army authorities have deemed fit that during all this period of time when the petitioner had not been promoted, he continues to occupy the most important post *i.e.* Major General Army Ordnance Corps (MGAOC), HQ, South Western Command, Jaipur and the petitioner is dealing with purchases. Thus, the petitioner had been found fit to perform important duties dealing with financial ramifications and yet promotion has been denied to him. The origin of all this is what is stated to be sourced information received just prior to the petitioner being considered for promotion by the SSB. We do feel that this is one of the exceptional cases which fall within the category of cases as mentioned in *Badrinath v. Government of Tamil Nadu and Ors.*’s case (supra) where there is a clear case of legal bias against the petitioner, who is sought to be denied promotion on one count or the other though none of the counts can come in the way of his promotion. Once we are of the view that this is one of those rare cases as referred in para 41 of *Badrinath v. Government of Tamil Nadu and Ors.*’ case (supra), we should not hesitate in giving the relief to the petitioner as prayed for by learned Senior Counsel for the petitioner that the petitioner should be treated as having been promoted to the post of Lieutenant General with all consequential benefits and a *mandamus* is accordingly issued. We, however, make it clear that noting observed here still prevents the respondents from taking any action against the petitioner in accordance with law hereafter on account of any subsequent development including any subsequent conduct of the petitioner, if such a course is permissible as per law including the policy decisions of the respondents.”

14. At this stage, I would like to note that in terms of the Rule 3(6) of the Rules pertaining to the appointment of the Presiding Officer of the Tribunal,

the government is in fact bound by the recommendation of the Selection Committee, and therefore the ACC is ordinarily bound by the decision of the Selection Committee and ACC cannot set aside the appointment to be made in terms of the panel prepared by the Selection Committee, much less for wholly arbitrary/unjustified reasons, and which reason now given is more unjustified inasmuch as it has already been held against the respondent by the judgment of a learned single judge of this Court dated 06.8.2012 in W.P.(C) No.3660/2007.

15. In view of the above, the present petition is allowed. A writ of *mandamus* is issued against the respondent whereby the petitioner will be appointed as the Presiding Officer of the Tribunal in terms of the recommendations dated 18.9.2003 made by the Selection Committee constituted in terms of the Rule 3(6) of the Rules. Necessary appointment letter, after completion of requisite formalities, be issued for appointment of the petitioner as the Presiding Officer of the Tribunal at a particular bench as deemed appropriate by the respondent, within a period of six weeks from today.

16. The writ petition is allowed and disposed of in terms of the aforesaid observations.

VALMIKI J. MEHTA, J

JANUARY 07, 2015, KA