

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 201/2015, C.M. APPL.4629/2016

NARENDRA SINGH RANA Appellant
Through : Sh. C. Hari Shankar, Sr. Advocate with
Sh. Sanjiv Joshi, Advocate.

versus

DIRECTOR NEHRU MEMORIAL MUSEUM & LIBRARY
..... Respondent

Through : Sh. Kailash Vasdev, Sr. Advocate with
Sh. Chetan Gupta, Sh. Shreejans Singh and Sh.
Sumer Singh, Advocates.
Sh. Shadan Farasat and Sh. Rahul Kripalani,
Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

% **ORDER**
08.02.2016

1. This appeal is directed against a judgment in the writ petition by which the aggrieved writ petitioner challenged the process initiated for recruitment/selection to the post of Senior Technical Assistant (STA) in the respondent organization.

2. The brief facts are that the first respondent (hereafter referred to as "the museum") is a registered society under the control of the Central Government under whose directions it functions. The appellant was appointed as a Guide in 1999; he continues to occupy that post. Under the recruitment rules applicable to the museum's employees, the next promotional avenue for Guides is to the post of

Senior Guide which can be filled after five years of service in the feeder cadre. The museum advertised one vacancy in the position of STA on 22/28.06.2013 to the members of the public. Concededly, the appellant also applied for the said post.

3. After participating in the written test forming part of the recruitment process held on 29.03.2014, he approached this Court, contending that it was contrary to the rules. The appellant's position before the Court in the writ petition was that the position of STA is a 100% promotional post to be filled from amongst the Guides. He contended *inter alia* that without necessary amendment in the recruitment rules, the post of STA could not have been filled through direct recruitment.

4. The museum, in its counter affidavit and before the Court as well relied upon an amendment said to have been carried out on 19.02.2013 in furtherance of an Agenda Note, having regard to a previous direction of 01.07.2013. The proposal was contained in Item No.7 of the Agenda Note in the meeting held later in the day. It clearly proposed an amendment to the recruitment rules to enable a quota for direct recruitment to the extent of 50% in the STA. The museum's case before this Court was that the amendment was made in a meeting held later that day. It was contended that the Executive Council in fact implemented its previous decisions and noted that the recruitment rules – *inter alia* so far as the post of STA was concerned, stood amended.

5. Learned Single Judge considered the submissions of the parties, including the arguments with respect to absence of any amendment,

and consequent infirmity in the recruitment process. He also considered the argument that since the vacancy advertised related to the year 2011, on an application of the rule enunciated in *Y.V. Rangaiah v. J. Sreenivasa Rao and Ors.* 1983 (3) SCC 284, direct recruitment could not have been resorted to as such a course was available only after the existing vacancies were filled in accordance with the rules. This contention too was rejected.

6. Sh. C. Hari Shankar, learned senior counsel took this Court through the Executive Council's Resolution of 19.02.2013 and the subsequent resolution of 01.07.2013; he argued that the actual Resolution placed on the record nowhere indicated that the Executive Council of the museum had accepted the proposal made to amend the recruitment rules for STA on 19.02.2013. It could not, therefore, be inferred that the Executive Council had approved, so to speak, an implied amendment, which it did not expressly consent to. Learned senior counsel also highlighted that the latter part of the 01.07.2013 resolution in fact showed the drift of the Executive Council's mind with the need to undertake fresh recruitment to fill up vacancies in respect of 10 specified posts of which the post of STA did not form part.

7. Sh. C. Hari Shankar, learned senior counsel urged that the decision in *Rangaiah (supra)* is squarely applicable to the facts of the present case. The vacancies advertised in the impugned selection process admittedly related to a previous year and had existed ever since 2011. In these circumstances, on a fair application of the rule in *Rangaiah (supra)*, they could not have been filled up by applying the

norms created through the amendments.

8. This Court noticed at the very outset that even according to the unamended regulations – if *arguendo* accepting the appellant's contention for the moment, requires that the feeder cadre for STA is Senior Guide with five years' experience. It is not and it never was the appellant's case that he held the post of Senior Guide. In the circumstances, he could not have impeached the selection process on the ground that he was entitled and eligible to seek promotion. His participation is in fact premised on the existence of the amendment because that did not require the incumbent to pass a trade test but rather distinguishes the eligibility on the basis of qualification and general experience. So far as the issue of whether the amendments were carried out, the Court is not inclined to accept the appellant's contention. The Agenda Note (Item No.7) clearly lists the rationale for listing STA as the post for which direct recruitment component of 50% was sought to be introduced. Apparently, the museum approved the amendment; the minutes mooted ruled it as such. It is here that the subsequent resolution of 01.07.2013 is rather important. It clearly records:

“.....In the meeting of the Executive Council held on 19th February 2013, we revised the Recruitment Rules for the post of Head, Research and Publications Division, Senior Technical Assistant (Museum).....”

The latter part emphasized by the appellant reads as follows:

“The Institution was able to achieve world-class status primarily because of the hard and devoted work done by the staff recruited in the seventies and eighties. Almost all of

them have retired now and the Institution has now to recruit competent people and bring in fresh blood to sustain its pre-eminent position. Accordingly it is stated that the following ten posts require revisions for enabling the Institution to get highly suitable candidates to carry out the duties and responsibilities of the posts:

- 1. Library and Information Officer*
- 2. Research Officer*
- 3. Administrative Officer*
- 4. Curator*
- 5. Senior Reprography Officer*
- 6. Reprography Officer*
- 7. Private Secretary*
- 8. Office Superintendent*
- 9. Stenographer*
- 10. Staff Car Driver.”*

9. The above extract was followed by a list of ten posts. This list did not contain the post of STA. Furthermore, the Executive Council later noted that out of 72 vacant posts, one post of STA (Museum) had been notified. Given all these circumstances, and the petitioner's primary ineligibility, even if the Court were to accept his contention that the amendment had not been carried out apparently, this Court is of the opinion that the challenge to the rule on the ground that a valid amendment had not taken place cannot be sustained.

10. As far as the applicability of *Rangaiah (supra)* is concerned, here again, the Court is of the opinion that there are limits to which such submissions can be advanced. The *Rangaiah (supra)* rule was evolved in the context of bifurcation of an existing cadre and the introduction of an intermediate class of posts when the hierarchy of posts contained only two sources, i.e. feeder and promotional posts.

Here, no such classification was attempted by the amendment which was a step forward towards segregation of the existing source of recruitment into 50% by direct recruitment and the rest by promotion.

11. Having regard to these circumstances and the appellant's basic ineligibility to have such promotion, even if he were to succeed on the basis of the unamended rules, the Court is of the opinion that the learned Single Judge's observations cannot be interfered with. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 08, 2016

'ajk'