

11.12.2023
24-27
Court No. 35
Tudu (p.a)

WPA 14690 of 2019
CAN 1 of 2020 (Old No: CAN 89 of 2020)
Dr. Ranjan Kumar Mitra
Vs.
Union of India & Ors.

With

WPA 14691 of 2019
CAN 1 of 2020 (Old No: CAN 88 of 2020)
Dr. Shantanu Pramanik
Vs.
Union of India & Ors.

With

WPA 14693 of 2019
CAN 1 of 2020 (Old No: CAN 91 of 2020)
Dr. Rabindra Nath Barman
Vs.
Union of India & Ors.

With

WPA 14709 of 2019
CAN 1 of 2020 (Old No: CAN 87 of 2020)
Dr. Sujit Karmakar
Vs.
Union of India & Ors.

Mr. Kallol Bose,
Mr. Rudra Prasad Matilal.

... for the Petitioners

Ms. Rajashree Venket Kundalia,
Ms. Shivika Raisinghani,
Ms. Darshika Tahlani

... for the respondent nos. 2-4

Ms. Sumitra Das.

... for the respondent nos.5-6

The writ petition nos. WPA 14690 of 2019, WPA 14691 of 2019, WPA 14693 of 2019 and WPA 14709 of 2019 are taken up together for hearing and disposal by dint of a single order, as follows:-

The writ petitioners are aggrieved with the process undertaken by the respondent authority for promotion of the departmental candidates, regarding which the writ petitioners have alleged of exercise of discrimination and arbitrariness. The writ petitioners are aggrieved that they have been unjustly deprived of the due promotion, in so far as they are the persons, in exclusion of any other, to have obtained the qualifying marks and accumulative credit points, to be promoted. They have further expressed grievance that selection of the respondent nos. 5 and 6, to the promotional post, by the authorities is only dehors the settled rules and regulations. That enormous irregularities have been made while allowing marks and accumulative credit points to the said respondents and that they are the sufferers of the discrimination and arbitrariness, exercised by the respondent authorities. The petitioners have come up with the case that the entire selection process has been an eye wash and farce.

Their further contention is that in view of the respondent nos. 5 and 6 not having qualified the settled criteria for promotion, though granted promotion, the said orders of promotion of respondent nos. 5 and 6 would be liable to be nullified where as the petitioners having been qualified in accordance with the applicable

norms, would be entitled that the respondent authorities consider their cases for promotion in a favourable way and grant them the promotion.

Thus the petitioners have come up in these writ petitions, with the prayer *inter alia* that writ of mandamus be issued directing the respondent authorities to designate the writ petitioners as 'Associate Professor' with academic grade pay of Rs. 9,500/-. A direction has been sought for that the petitioners may be designated as above with effect from October 15, 2018, and also may be directed to be paid all the arrear, salary and incidental benefits, with interest. A further prayer is made that the panel of selected candidates (both the posts of Professor and Associate Professor) prepared by the selection committee and the entire selection process which led to the interview which was held on July 15, 2018, for selection of faculty position in Mechanical Engineer Department, NIT Durgapur, be canceled. The petitioners have also prayed for writ of mandamus to be issued directing the respondents to cancel the appointment of the respondent nos. 5 and 6 in the post of 'Associate Professor' in OBC category at Mechanical Engineering Department, National Institute of Technology, Durgapur.

The Petitioners are "Assistant Professors" (Academic Grade Pay of Rs. 8000/-) of Mechanical Engineering Department in National Institute of Technology, Durgapur. Allegedly, the Petitioners were deprived of appointment to the post of 'Associate Professors' (Academic Grade

Pay of Rs. 9500/-) with effect from 15.10.2018. The highest educational qualification of the petitioners is Doctor of Philosophy in Engineering.

An advertisement was published on 25th September 2017 (Advt. No. NITD/Estt./02/09/2017, for appointment/promotion in the post of “Associate Professors”. An office order (No. NITD/Estt./Report-Anomaly-committee/2017) was also published on 6th November 2017 asking for applications for recruitment of faculty members in various departments of NIT Durgapur. Petitioners applied as an internal candidate for the post of ‘Associate Professor’ at the department of Mechanical Engineering in NIT Durgapur. While holding the present office, the petitioners had all along performed duties with due diligence and never received any complaints from any quarter.

The Petitioners state that they possess all the requisite qualifications and are otherwise eligible for being appointed as “Associate Professors” (Academic Grade Pay Rs. 9500/-) in terms of the advertisement. That, all of them have scored cumulative credit points which is above the bench mark and more than the required minimum cumulative credit points of 50.

Government of India has issued clarifications regarding one-time relaxation in the recruitment rules to remove stagnations at the level of “Assistant Professors” and “Associate

Professors” in respect of existing faculty of NIT and IEST vide F. No. 33-9/2011 – TS.III dated 6th December 2017. Petitioners had the requisite qualification to be considered for the post of “Associate Professor” by applying one-time relaxation in the recruitment” rules.

Pursuant to a Letter Ref No. NITD/04/ME/IN/GEN-05/9/17-18 dated 29th June 2018, the petitioners were called for interview and they appeared for the same. The interview call letter mentioned clearly that the interview would be followed by 7 to 10 mins of presentation covering academic achievements, teaching vision and plan and research contribution and plan before the Selection Committee. However, allegedly, this process of interview was not maintained with consistency or precision for each candidate, thereby causing discrimination and prejudice to the present writ petitioners.

On the basis of the documents obtained by the writ petitioners, in reply to their application under the RTI Act, they have pleaded that gross discrimination has been exercised, to render the writ petitioners disentitled to the promotion.

Mr. Bose, represents the writ petitioners and submits as regards the alleged arbitrariness of the respondent authorities in the process of selection of the candidates for promotion as discussed above. He says in particular with respect to respondent no. 5 that the cumulative credit points claimed and subsequently verified by Advisory Committee on Faculty Recruitment

(ACoFAR) was 55.6. However, as per the particular Gazette of India notifications, the actual accumulative credit points earned will be 39.6, that is below the bench mark of 50 cumulative credit points. Furthermore, Respondent no. 5 did not satisfy the minimum cumulative credit points (50) as per Recruitment Rules. So far as respondent no. 6 is concerned, according to Mr. Bose the cumulative credit points claimed and subsequently verified by ACoFAR was 63.0, which was an erroneous calculation. According to notifications, the actual accumulative credit points earned will be 55.0.

According to the petitioners in spite of all these discrepancies and errors in result, grant of promotion to the respondent nos. 5 and 6 as “Associate Professor” is only illegal and done in contravention of due process of law.

Mr. Bose has further submitted that in the recommendations of the selection committee, appropriate distribution of the marks, across various sections could not be seen to have been followed. Furthermore, Selection Committee did not employ any yard stick to evaluate all candidates for the post or Academic Grade Pay-external, internal and did not prepare any common panel of recommended candidates obtaining signature of every member present in the Interview Board. Though following the Guidelines for Faculty Selection in NIT and IEST (Notification of MHRD, GOI, F.No 33-9/2011-TS.III dated 30.11.2017 page no. 15 of 18 serial no. 20). The said process would have been proper to fill the vacant posts without

consideration of external and internal candidates. Moreover, on completion of the interview, the Selection Committee did not record its final recommendation, that should have been prepared by the Director, NIT Durgapur as the Chairman of the Selection Committee, as per Guidelines with signature of every member present in the Interview Board, which was required to be followed for faculty selection in NIT and IEST (Notification of MHRD, GOI, F.No 33-9/2011-TS.III dated 30.11.2017 page no. 15 of 18 serial no. 19).

Thus petitioners submit, that the entire selection process suffers from gross irregularity and is in contravention with the prescribed rules and norms.

The writ petitioners having ventilated their grievance, have demanded justice through a letter of the learned lawyer dated April 2, 2019. Their further grievance is that the same has also been ignored by the respondent authorities and not have been addressed as yet.

Last but not the least, the lack of transparency in the alleged process of promotion as undertaken by the respondent authority would reveal, allegedly, from the fact that the concerned respondent nos. 2 and 3 did not even publish the final list of candidates or displayed name of the selected candidates for public circulation in the institution's website.

Ms. Das appears on behalf of the respondent authorities. She has taken this

Court to elaborately go through the relevant governing rules of procedure. According to the respondent authorities, the prescribed rules and procedure has been duly applied for selecting the eligible candidate and granting him promotion. Ms. Das has submitted on the basis of the documents she relies on in this case, that the decision of the authorities in promoting the respondent nos. 5 and 6 was right and in due compliance with the stipulated norms of promotion. She has out right denied the allegations of wrong calculation of the marks of the accumulative credit points, as envisaged on behalf of the petitioners. She has also specifically mentioned about the fact that the selection committee possessed discretion and the discretionary power of the selection committee, in case of necessity, has been exercise with due application of mind. While representing respondent authorities, Ms. Das has specifically denied any involvement of the authorities to exercise discrimination and arbitrariness as alleged by the petitioners in this case. Contrarily, she has emphasized that the entire process has been in terms of the settled norms and thus absolutely lawful and unblemished.

It has further been submitted that the rule itself provide that the qualifications and other terms and conditions of appointment notified in the gazette are bare minimum and the Board of Governors, if they so think fit and proper, can fix higher bench marks, than the prescribed.

A process of selection for promotion to the post of “Associate Professor” in terms of the recruitment notification dated September 2, 2017, is under challenge in this writ petition. According to the notification there would be the external as well as the internal candidates inducted to the post as advertised. The writ petitioners are comprised within the internal/ departmental candidates who underwent the process of selection pursuant to the said notification.

For the purpose of recruitment the prescribed qualification and other terms and conditions would be as follows:-

“Schedule ‘E’

[See Statute 23 (5) (a)]

Qualification and other terms and conditions of appointment of Academic Staff

Sl no	Designation, Pay Band and Academic Grade Pay	Essential Qualification	Essential Requirements	Cumul -ative Essent i-al Credit Points
(1)	(2)	(3)	(4)	(5)
4.	Associate Professor Pay Band-4 with Grade Pay of Rs. 9500 with a minimum pay of Rs. 42800	Ph.D.	Six years after Ph.D. of which at least three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000, Or Nine years total working experience, of which three years should be after Ph.D., with at least three years at the level of Assistant Professor with Academic Grade Pay of Rs. 8000.	50

Sl No.	Activity	Credit points
6.	Head of the Department, Dean, Chief Warden, Professor Incharge (training and Placement), Advisor (Estate), Chief Vigilance Officer, PI (Exam), TEQJP (Coordinator)	2 points per semester up to a max of 16 credits points since the last promotion.

Subsequently the following amendment
was introduced:

Sl No.	Issues/Anomalies	Recommendations approved
(i)	Regarding promotion of existing Assistant Professor to Associate Professor.	The following one time relaxations in the relevant Recruitment Rules for existing faculty members are approved:- <u>Schedule E (Sl.No.4 – pertaining to Associate Professor)</u> (i) Six years after Ph.d. of which at least three years at the level of Assistant Professor with Academic Grade Pay of Rs. 8,000/- may be read as Six years after Ph.D. at the level of Assistant Professor. (ii) An existing faculty member with 09 years total working experience, of which three years should be after Ph.D., with at least three years at the level of Assistant Professor with Academic Grade Pay of Rs. 8,000/- may be read as Nine years of total working experience with Ph.D at the level of Assistant Professor.

So far as the submission made on behalf
of the respondents regarding the discretion
available to the Board of, setting higher bench
marks than as prescribed in the recruitment
rules, is concerned, it can be said that the

exercise of discretion to allow higher bench marks should justify the tenets of reasonableness and non-arbitrariness. In this particular case firstly the respondent is unable to show any specific document of the Board, coming to any decision to vary the fixed bench mark. There is also no iota of corroboration of any fact that the change of bench mark, if any at all, has ever been circulated and announced for knowledge of all concerned. Under such circumstances the writ petitioners are ever seen to have been guided by the stipulations made in the advisement dated July 4, 2014, and consequently by the existing rules and regulations of recruitment.

In this case, there is practically no dispute as regards the eligibility criterion of the writ petitioners. Therefore, the process by dint of which all the candidates have been evaluated, should be a transparent process, sufficiently justifying elimination of some, who are placed similarly with the selected ones, in terms of the eligibility criterion. Unless the same, that would amount to unequal treatment by a model employer, to the persons placed at par.

The respondents have denied that there has been any error in calculation, with respect to the accumulative cumulative points etc. For this however they have not yet made any endeavor to address the petitioners' grievances through their letter dated April 2, 2019.

For the reasons as discussed above, it is necessary that the grievance of the writ

petitioners be visited by an authority, independent of any direct involvement with the affairs and day to day functioning of respondent nos.2 to 4.

Let the writ petitioners submit a --
*comprehensive written representation to the respondent no.1 and / or any person authorised by it. Such comprehensive written representation shall be submitted by the writ petitioners, within a period of 6 weeks, from this order.

The concerned authority shall consider the said representation and dispose it of, within a period of 6 weeks, from the date of its submission. In doing so, the concerned authority shall extend sufficient opportunity of hearing to the writ petitioners, and to all other persons, as it would deem fit and proper.

The concerned authority shall dispose of the same, with a reasoned order.

The respondent nos.2 to 4, shall take adequate and appropriate steps, if necessary, in terms of the said reasoned order, of the respondent no.1, within a period of 2 weeks, from the date of communication of the same.

The instant writ petition is disposed of, with the directions as above.

(Rai Chattopadhyay, J.)