

CWP-35554-2019

CWP-5511-2020 (O&M)

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2023:PHHC:157498

**125+259 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1)

CWP-35554-2019

Date of Decision:07.12.2023

MINATI BARAL

..... Petitioner

Versus

**NATIONAL INSTITUTE OF TECHNOLOGY (NIT)
KURUKSHETRA AND ANOTHER**

..... Respondents

2)

CWP-5511-2020 (O&M)

PURAN CHAND TEWARI AND ANR

....Petitioners

Versus

**NATIONAL INSTITUTE OF TECHNOLOGY (NIT)
KURUKSHETRA AND OTHERS**

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Digvijay Singh, Advocate
for the petitioner in CWP-35554-2019.

Mr. Govind Mor, Advocate for
Mr. Jasbir Mor, Advocate
for the petitioners in CWP-5511-2020.

Mr. A.S.Virk, Advocate for the respondents-NIT.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-5511-2020 and CWP-35554-2019 are disposed of since issue involved in both the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-35554-2019.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to respondents to grant Higher Administrative Grade (for short 'HAG').

3. The petitioners are working with respondent institute as Professors. The petitioners were appointed on the post of Lecturer in

Mechanical Engineering in May' 1988. The petitioners were promoted to the post of Assistant Professor in September' 2004 and thereafter, on 01.01.2006, they were promoted to the post of Associate Professor. The petitioners came to be promoted to the post of Professor on 01.01.2010 and since then they are working on the said post.

4. The respondent vide notification dated 11.09.2018 invited applications from Professors of the institute to award HAG. The petitioners being eligible applied for HAG. There were 24 candidates who submitted their applications. The matter came up for consideration before Advisory Committee for Faculty Recruitment. The said Committee scrutinized claim of all the candidates and found 18 candidates eligible. The Advisory Committee put up its report before respective Selection Committee. It is apt to mention here that Advisory Committee found 18 candidates eligible for HAG, however, Selection Committees recommended only 10 candidates for HAG. The matter was put up before Board of Governors which in its meeting dated 20.06.2019, approved recommendation of the Selection Committee. In the meeting of Board of Governors held on 21.09.2023, it was observed that Selection Committee has not given reasons for recommending/not recommending the names of applicants in the selection.

5. Learned counsels for the petitioners submit that as per applicable rules and instructions, 40% of sanctioned posts of professors, who fulfill the eligibility criteria, can be awarded HAG, on the basis of recommendation of the Selection Committee. As per eligibility criteria, a candidate has to secure 150 credit points. The petitioners secured more

than 150 credit points and the Advisory Committee found petitioners eligible, however, Selection Committee without assigning any reason did not recommend their names. As noted in the meeting of the Board of Governors held on 21.09.2023, the Selection Committee did not assign reason for recommending/not recommending names of the applicants for the selection. 16 professors could be awarded HAG, however, Selection Committee acting in an arbitrary manner recommended the names of only 10 candidates. The petitioners have secured more credit points than selected candidates still they have not been awarded HAG.

6. Per contra, learned counsel for the respondent-NIT submits that instructions have prescribed eligibility criteria as well as procedure for awarding of HAG. If a candidate secures 150 credit points, he will not automatically become entitled to HAG. The Advisory Committee has to scrutinize eligibility of the applicants and forward its report to Selection Committee. It is the Selection Committee which has to consider case of each and every eligible candidate. The Selection Committee is not bound to award HAG to every eligible candidate. Eligibility is a step towards the selection process, however, eligibility does not confer absolute entitlement. The Selection Committee, in the case in hand, did not find petitioners suitable for HAG even though they had secured minimum credit points. By circular dated 22.03.2013 issued by Ministry of Human Resources Development, Department of Higher Education, the guidelines for implementation of HAG scale for professor in NIT have been clearly laid down.

7. Learned counsel for the respondents produced record of

meetings of Selection Committee. From the perusal of the record of meetings of Selection Committee, it comes out that Committee has not expressed its view with respect to parameters laid down in the instructions. The Committee has simply recommended few candidates for HAG. The original record returned to learned counsel for the respondents.

Faced with this, learned counsel for the respondents submits that as per law laid down by Supreme Court in *National Institute of Mental Health and Neuro Science Vs. Dr. K. Kalyana Raman, 1992 Supp. (2) SCC 481*, the scope of interference by High Court in Selection matter is very limited and Selection Committee being purely administrative authority is not required to record reasons. It is prerogative of the Selection Committee to select one candidate and reject another.

8. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

9. From the perusal of record, it comes out that Ministry of Human Resources Development, Department of Higher Education has issued guidelines dated 22.03.2023 with respect to implementation of HAG scale. The relevant extracts of the guidelines dated 22.03.2023 read as:

“2. To implement HAG scales among the Professors of NITs, guidelines were issued vide para no. 2(d) of this Ministry's letter no. F-23-1/2008-TS-II dated 18th August 2009 and 15th September 2010. The criteria to be adopted for award of such upgradation to HAG was approved by NIT Council in its third meeting held

on 18.11.2011 as a part of Recruitment Rules for faculty and non-faculty. MHRD vide letter no. 33-7/2011-TS-III of 14th March 2012 has conveyed that personal interview for such upgradation will not be held.

3. A maximum of 20% of the sanctioned post of Professors who have 6 years of regular service, can be awarded HAG scales on the basis of recommendations of committee 'I' (given in para 3(c) below) to the Board by adopting the following procedure.

a) Chairman Advisory Committee for Faculty Recruitment (ACoFaR) should invite, from all eligible and interested professors, the Bio-data incorporating their scholastic and administrative contributions since their appointment as regular Professor. It should prepare the list of candidates fulfilling all the minimum requisite conditions as prescribed by the Board.

b) A committee (Called Committee 'II') consisting of Director or his nominee from the HAG Professors of the Institutes, two eminent subject experts approved by the Board. One Nominee of the Senate should evaluate objectively the claim made by the applicant.

c) The recommendations of the committee 'II' should be placed before another committee consisting of the Director, as Chairman two Dean faculty welfare one each from NIT & IIT and Visitors Nominee (called Committee 'I') for final recommendations to be forwarded to the Board for its consideration and award of HAG scale. The Dean, Faculty Welfare shall act as Convener of this committee 'I' provided he/she is not a candidate for HAG, otherwise Dean Research and Development in case Dean Faculty Development

(FD) excuse himself.”

10. The aforesaid guidelines have been considered and partially modified in the meeting dated 18.07.2018 of the Council of National Institute of Technology. The relevant extracts of the meeting are reproduced as below:

“2. To implement the HAG scales among the Professors of NITs, the issue relating to upgradation of Professors to HAG was discussed and guidelines / criteria were approved by the Council of NITSER in its 3rd meeting held on 18th November, 2011. Following the provisions under 6th CPC as implemented in CFTIs, the provisions for HAG in NITs were communicated vide our letter dated 14th March, 2012 [Annexure -IV (pages 85 to 88)] as reproduced hereunder:-

"In case of upgradation of AGP of Professors to HAG scale, personal interview shall be dispensed with. The selection Committees constituted as per the Statutes for the selection of faculty, shall make their recommendations on the strength of published work, patents, sponsored projects, consultancy, continuing and distance education, Ph.D. guidance and contribution to the administration of the Institute, including service in other comparable Institutions if on sanctioned leave, etc. as submitted by the candidates"

4. Vide our letter dated 18th March, 2013 [Annexure -V (pages 89 to 90)], it was communicated that "when Selection Committees are called upon to consider HAG scale for senior Professors, only eminent people already in HAG or comparable scale of pay, or

fellows of national academics, be appointed to Selection Committee". Subsequently, the guidelines for hassle free implementation of HAG scales in NITs were issued on 22nd March, 2013 [Annexure -VI (pages 91 to 93)] according to which, 20% Professors including those on deputation as Directors in other CFTIs and fulfilling the eligibility conditions given in the guidelines were to be considered for HAG upgradations.

5. *Later on the Ministry vide letter 23rd August, 2013 [Annexure -VII (pages 94 to 96)] conveyed the approval for switching over to a Four-Tier Flexible Faculty structure for adoption by the respect Board of Governors of NITs. Under the approved Four-Tier norms, upto a maximum 40% of the sanctioned posts of Professors after regular service of 6 years as Professor can be awarded HAG scale of Rs.67000-79000/- without any Grade Pay in all NITs after fulfilling the eligibility conditions given in the guidelines for implementation of HAG scales in this Ministry's letter dated 22nd March, 2013 [Annexure-VII (pages 91 to 93)]. The same norms were reiterated in our letter dated 15th January, 2014 [Annexure -VIII (pages 97 to 100)] wherein the final norms for implementation of Four-Tier Flexible Faculty structure were issued.*

6. *The Council of National Institutes of Technology, Science Education Research (NITSER) in its 10th meeting held on 26th May, 2017 under the Chairmanship of Hon'ble HRM approved the new Recruitment Rules (RRs) for faculty staff of NITs and IEST, Shibpur. As approved by the Council, the new RR's have been incorporated in the Statutes by way of*

suitable amendments, which have been notified on 24th July, 2017 [Annexure -IX (pages 101 to 107)].

7. *Though the eligibility criteria for granting HAG scale to the Professors of NITs and IEST has been prescribed in the new RRs, however, the guidelines and the procedure for selection (as clarified on 14th March 2012, 18th March 2013, 22nd March 2013, 23rd August 2013 & 15th January, 2014) needs to be reiterated by the Ministry under the new RRs so as to avoid ambiguity and ensure hassle free implementation of HAG scale under the new RRs. It is, therefore, proposed to reiterate the earlier norms with certain consequential amendments as per following details:*

(i) A maximum of 40% of the sanctioned post of Professors who fulfill the eligibility criteria as prescribed in Schedule E of the Statutes notified on 24th July, 2017 can be awarded HAG scales on the basis of the recommendations of Selection Committee as prescribed in Statute 23 (5)

(a) of the Statutes of NITs and IEST, Shibpur, respectively.

(ii) Chairman Advisory Committee for Faculty Recruitment (ACoFaR) should invite, from all eligible and interested Professors, the Bio-data incorporating their scholastic and administrative contributions since their appointment as regular Professor. It should prepare the list of candidates fulfilling all the minimum requisite conditions as prescribed by the Board.

(iii) In case of upgradation of AGP of Professors to HAG scale, personal interview shall be dispensed with.

(iv) The exercise will be carried out by the Institute once in an academic year with a cut off as 30th June.”

11. From the perusal of extracts of the meetings dated 18.07.2018 of Council of National Institute of Technology, it is quite evident that there is no need of interview for awarding HAG scale, however, Selection Committee is required to make recommendation on the strength of published work, patents, sponsored projects, consistency, continuing and distance education, Ph.D. guidelines and contribution to the administration of the Institute, including service in other comparable Institutions. These instructions make it clear that Selection Committee is required to consider aforesaid criteria before making recommendation. It is Eligibility Committee which has to consider eligibility of the applicants. A candidate who has secured 150 credit points is eligible for HAG scale. The Eligibility Committee is entrusted with a duty to calculate credit points and thereafter recommend names of all those applicants who have secured 150 credit points. The Selection Committee is not bound to recommend every candidate found eligible for HAG scale. The instructions have prescribed a maximum limit of Professors for HAG scale i.e. 40% of sanctioned strength. Every candidate who has secured 150 credit points and is found eligible by Eligibility Committee cannot claim HAG scale as a vested or legal right. It is the responsibility as well as prerogative of the Selection Committee to select and thereafter recommend candidates for HAG scales. The Selection Committee is not supposed to make relative or comparative assessment. Normally, a Selection Committee selects candidates on the basis of relative and

comparative assessment, however, the present case is entirely different. In the present case, the Selection Committee was required to recommend candidates for HAG scale from the candidates found eligible by Advisory Committee.

12. Learned Counsel for the respondents has heavily relied upon judgment of Supreme Court in *Dr. K. Kalyana Raman* (supra). The said judgment is not supporting cause of the respondent. In the said case, there were no rules and regulations laying down parameters which the Selection Committee was required to follow while making selection. The Selection Committee was further making comparative assessment whereas in the case in hand, there are specific instructions and as per those instructions, the Selection Committee was required to consider criterias as prescribed in the instructions.

13. Concededly, from the perusal of minutes of meeting of Selection Committee, it cannot be concluded that the Selection Committee had considered the laid down parameters. There was no question of comparative assessment. The Selection Committee could accept or reject all the candidates. The Committee was supposed to apply its own mind. The application of mind does not mean that Committee was not supposed to bring on record their subjective or objective satisfaction. As there were prescribed parameters, this Court is of the considered opinion that Committee was supposed to look into the parameters and apply them in case of every candidate before rejecting his/her case. The Committee was not considering question of appointment or promotion, whereas, it was considering only the question

of eligibility of HAG scale. The petitioners admittedly fulfilled the eligibility criteria. The eligibility of the petitioners was determined by the Advisory Committee which recommended the names of the petitioners to Selection Committee.

14. With respect to objection of respondent regarding maintainability of writ petition, this Court finds that Supreme Court has not held that there is absolute bar *qua* interference of High Court in Selection matters. Considering the laid down parameters by respondents, eligibility criteria, opinion of Advisory Committee and record of meeting of Selection Committee, this Court is of the considered opinion that this is a fit case for interference.

15. In the wake of above discussion and findings, this Court is of the considered opinion that Selection Committee has turned down candidature of the petitioners without applying laid down parameters and has further not disclosed basis of its opinion. Therefore, the respondents are directed to re-consider case of the petitioners for HAG scale. It is made clear that re-consideration of case of the petitioners would not effect case of those candidates who have already been granted benefit of HAG scales because sufficient posts are available. The needful shall be done within 3 months from today.

16. Pending misc. application, if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

07.12.2023
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>

