



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 2nd August, 2023**
+ **W.P.(C) 6540/2022 CM APPL. 19825/2022 & CM APPL.20408/2022**

DR J THULASEEDHARA KURUP

..... Petitioner

Through: Mr. Anunaya Mehta, Mr. Deepak
Prakash, Mr. Vishnu Priya, Mr. Rahul
Lakhera Mr. Shyam Nair, Mr.
Vardaan Kapoor and Ms. Divyanka
Malik, Advocates

versus

**APPOINTMENTS COMMITTEE OF THE CABINET THROUGH
ITS SECRETARY & ORS.**

..... Respondent

Through: Ms. Monika Arora, CGSC with
Mr.Yash Tyagi and Mr. Subhrodeep,
Advocates for UOI with Ms. Anjana,
Under Secretary, Ministry of Culture
Ms. Tamali Wad and Ms. Aditi
Chaudhary, Advocates for R-3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been preferred by the petitioner seeking *inter alia* the following reliefs:



“(i) Issue an appropriate writ in the nature of mandamus or any other Writ, Order or direction, to quash and set aside the Government Order dated 29.01.2022 bearing No. 4/15/2018-E.O (SM-II) issued by the Ministry of personnel, Public Grievances & Pensions, Department of personnel & Training, Secretariat of the appointments Committee of the Cabinet and all its consequential orders and notifications thereof, owing to its arbitrariness, perversity and illegality violative of Article 14, 19 and 21 of the Constitution of India; and/or,

(ii) Issue an appropriate writ in the nature of mandamus or any other Writ, Order or direction, to quash and set aside the Notification dated 20.04.2022 issued by the Respondent No. 3, titled as “Invitation of application for the post of Director”; and/or,

(iii) Issue an appropriate writ in the nature of mandamus or any other Writ, Order or direction, to summon the records pertaining to issuance of Government Order dated 29.01.2022 bearing No. 4/15/2018-E.O (SM-II) issued by the Ministry of personnel, Public Grievances & Pensions, Department of personnel & Training, Secretariat of the appointments Committee of the Cabinet; and/or,

(iv) Issue an appropriate writ in the nature of mandamus or any other Writ, Order or direction, thereby directing the Respondents to appoint the Petitioner as Director, National School of Drama, as per the Selection process ongoing since 2018, in a time bound manner; and/or,



(v) Issue an appropriate writ in the nature of mandamus or any other Writ, Order or direction, thereby directing the Respondents to pay the legal expenses incurred by the Petitioner; and/or,”

2. The record before this Court suggests that the petitioner had applied for the post of Director with respondent no. 3/National School of Drama (hereinafter “NSD”) in pursuance of their Advertisement issued on 28th July 2018. The petitioner was called for interaction with the Search-cum-Selection Committee on 24th October 2018 vide letter dated 6th October 2018. After the interview the petitioner did not receive any call or intimation and accordingly, he filed an application under the Right to Information Act, 2005 (hereinafter “RTI”).

3. It is the case of the petitioner that he received the response to the RTI application whereby it was stated that petitioner was ranked no. 1 on merit for the candidature for the post of Director. Being aggrieved by the same, the petitioner approached this Court and preferred a Civil Writ Petition bearing W.P. (C) No. 5177/2019 seeking directions for consideration of his candidature. On 13th May 2019, the Coordinate Bench of this Court directed the Appointments Committee of the Cabinet (hereinafter “ACC”) to get the approval for the candidature of the petitioner for the post of Director at NSD.

4. In the meantime, the respondents re-notified the vacancy for the post of Director. Subsequently, the petitioner, being aggrieved of the inaction in pursuance of his application, renotification of vacancies and in view of the



directions of the Coordinate Bench of this Court passed in W.P. (C) No. 5177/2019, filed another Writ Petition bearing W.P.(C) No. 517/2020 seeking relief against the respondent. In the said matter, the Coordinate Bench of this Court directed the ACC not to publish the result or issue and appointment letters for the post in question and thereafter, also directed the ACC to consider the candidature of the petitioner vide its order dated 23rd June 2021 and 16th November 2021, respectively.

5. Ultimately, vide order bearing Ref No. 4/15/2018-EO (SM-II) dated 29th January 2022, the Department of Personnel and Training (hereinafter “DoPT”) rejected the proposal for appointment of the petitioner. The petitioner, hence, approached this Court, by way filing the matter at hand.

6. During the course of proceedings in the instant matter, learned counsel for the petitioner submitted that the concerned Departments violated the orders of this Court and did not consider and approve the candidature of the petitioner for the post of Director at the NSD. The ACC was to consider and grant approval for the appointment of the petitioner, however, vide the impugned order, the candidature of the petitioner was rejected. It is submitted that there were no justifiable or substantial reasons provided by the respondents while rejecting the candidature of the petitioner.

7. The learned counsel for the petitioner further submitted that petitioner, despite being eligible and fit for the position, has not been accepted for the post of Director and hence, it is prayed that the impugned Order dated 29th January 2022 be set aside and petitioner may be appointed on the post in



question.

8. The learned counsel for the respondents, on the other hand, submitted that in pursuance of order dated 16th November, 2021 passed in W.P.(C) No. 517/2020, the Ministry of Culture made a detailed note mentioning therein the direction given by the Coordinate Bench of this Court as well as other inputs regarding the petitioner whose name was placed before the ACC.

9. The learned counsel for the respondents submitted that the Committee considered the notes prepared and sent by the Ministry of Culture and on the basis of the reasons given in the notes, the ACC rejected the approval of the name of the petitioner and the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training issued the impugned order bearing No.4/15/2018-EO dated 29th January, 2022. The ACC, thus, came to the conclusion of rejection of the proposal to appoint the petitioner only after considering all the intervening circumstances before it.

10. It is further submitted that respondent no. 3 acted upon the advice and recommendations of the Ministry of Culture received by it vide reference file No. Akd-15/5/2018-Akad/73 dated 8th February 2022, whereby the NSD was advised to start the selection process for the appointment of the post of Director afresh. Hence, there is no illegality, arbitrariness or error in the order dated 29th January 2022.

11. This Court has also been informed that the Predecessor Bench had also called upon the records pertaining to the decision of the ACC regarding the appointment of the petitioner, and it is prayed that such records may be



perused by this Court for proper adjudication of the matter.

12. Heard the learned counsel for the parties and perused the record.

13. On 19th May 2023, the Predecessor Bench of this Court passed directions for bringing before the Court the records of ACC in a sealed cover. Pursuant to the order dated 19th May, 2023, Ms. Anjana, Under Secretary, Ministry of Culture, has appeared today with the records of ACC in a sealed cover for perusal of this Court. The seal of the records of ACC has been opened in the Court. The record has been perused and after perusal, all files have been re-sealed and returned to the concerned officer.

14. The documents placed before this Court in sealed cover reveal the reasons for which the petitioner's candidature was not considered. The document in question also bears detailed noting dated 22nd December 2021 by the Ministry of Culture pertaining to the case of the petitioner. The issue before this Court raised on behalf of the petitioner, regarding the record in question, is that pursuant to the orders of the Coordinate Bench of this Court the candidature of the petitioner was to be considered by the Cabinet Committee, i.e., the ACC, which passed the impugned order without providing any reasons.

15. Comprising of the Hon'ble Prime Minister and the Minister of Home Affairs, the ACC is a Cabinet Committee that plays a pivotal role of taking decisions in respect of the appointments specified in the Government of India (Transaction of Business) Rules, 1961. While carrying out its functions, the Appointments Committee ensures that only the most suited



and qualified personnel is appointed to hold the offices of the Government that are of grave importance and significance. The role of Cabinet Committees has been explicitly laid down, based on the guiding principles of division of labour, as an aiding arm to the Cabinet to reduce its burden and workload, and to facilitate meticulous, painstaking and in-depth examination of any policy or other decision. There is no room for pardon when the most significant and integral positions in the hierarchy of officers of the Ministries, Governmental Departments and its instrumentalities is in question.

16. The decisions by the ACC as well as other Cabinet Committees form the basis of policy formulation and decision making and are fundamental for governance. Cabinet Notes, the instruments to policy making, prepared by the Ministries/Departments facilitate such decision making. Such notes hold substantial worth for consideration on issues being deliberated upon and decided by the Cabinet and Secretariat. Recently, efforts have also been made to ensure that such Cabinet Notes are of an impeccable quality, are conceptually clear, encapsulating all necessary information, lucid and well organised.

17. The Cabinet Secretariat issued guidelines in the year 2011 and then in 2018 for preparation of Cabinet Notes. One of the relevant points to be noted in the same is reproduced hereunder, which lays down the procedure of recommendation/proposal flowing from the Ministry to the Cabinet:



“8. *Procedurally, therefore, the Minister-in-Charge of the Department would be within his right to bring the matters before the Cabinet in all cases of difference of opinion with the Ministries whose business is impacted. However, in all cases of differences between Ministries, it is incumbent upon the sponsoring Ministries to honestly reflect the views/comments of the consulted Ministries/Departments along with their counter views, if any. The sponsoring Department should not cursorily brush aside the views of the consulted Department.*”

18. It is apparent that the intention of the making and providing Cabinet Notes is to put forth the views of the proposing Ministries/Departments in the most honest, authentic and candid manner so as to properly facilitate the decision-making process of the Cabinet.

19. In the matter at hand as well, the petitioner’s candidature was being considered for the post of Director of the National School of Drama, which falls under the list of business of the Ministry of Culture/*Sanskriti Mantralaya*, at Item 47. The Ministry of Culture made a proposal to the ACC regarding the candidature of the petitioner herein and it was for the ACC to finally decide, approve or disapprove, the proposal so forwarded by the Ministry of Culture. It was then for the ACC to make a decision upon the proposal while considering all the material as well as the inputs, views, suggestions and forwarded by the Ministry of Culture.

20. The ACC, being one of the most esteemed Committees playing key role in governance, in all its wisdom made a decision based on recommendations of the Ministry of Culture. All the relevant facts and



material as well as inputs were provided to the Committee. The requirement of such material is also specified in the proforma of recommendations of ACC, which requires details of the Ministry making the proposal, details of the proposal, the relevant recruitment rules applicable, details as to whether the proposal has been approved by the Minister-in-charge, personal details of the person/officer being recommended including his qualifications, experience and other relevant details. The proforma in itself is comprehensive enough to contain every necessary detail of the person/officer being recommended so as to ascertain his/her eligibility for the post he/she is being considered for. There is no reason for this Court to speculate or come to the conclusion that in the case of the petitioner before this Court, the rules or procedure were followed any differently.

21. Upon perusal of the records placed before this Court, it is evident that sufficient grounds were considered by the ACC while reaching to the conclusion that the candidature of the petitioner deserved to be rejected. The detailed Notes given by the Ministry of Culture also elaborated its recommendations, suggestions and all relevant details that were deemed necessary and essential for making a decision *qua* the petitioner's candidature. There is nothing in the records produced before this Court to suggest that the ACC passed the order without any justifiable reasons.

22. Moreover, merely because the impugned Office Order, in its contents, did not prescribe the reasons for the decision in bare language, it cannot be inferred that while passing the order the ACC did not deliberate or reflect



upon the relevant considerations necessary to arrive at the decision. The position has also been settled by the Hon'ble Supreme Court that while passing orders of administrative nature regarding matters pertaining to selection/recruitment, there is no obligation on the authorities to record reasons for its decision, unless there is a provision in place mandating so. The role of the Selection Committee is neither judicial nor adjudicatory. In the absence of any rule, regulation or procedure, there was no obligation on the ACC for providing reasons while making a decision and passing the order regarding approval or non-approval of a candidate. Furthermore, the Courts need not interfere in administrative decision making so long as the principles of natural justice are observed and there is no gross illegality in the decision made by a Committee making decisions regarding services.

23. In the case of *Union of India and Others vs. N.P. Dhamania and Others*, 1995 Supp (1) SCC 1, the Hon'ble Supreme Court, while discussing the procedure to be followed at the time of consideration of promotion of an Officer by the ACC, observed that the ACC need to record reasons while differing from the recommendations of the Departmental Promotion Committee but need not communicate the same to the Officer concerned. From the judgment it can be derived that as long as the file of the Officer concerned specifies the reasons for approval or disapproval for a proposal there is no reason to set the decision aside the decision or direct the ACC to reconsider. Moreover, these reasons need also not be communicated to the Officer. In the said judgment, the Hon'ble Supreme Court was of the



view that the ACC had failed to record the reasons in the file of the Officer and only for that reason the ACC was directed to reconsider the case of the Officer concerned therein. However, in the instant case, this Court has taken a close view of the file and records of the petitioner produced at the time of hearing in sealed cover, which show that sufficient reasons and comments have been noted in the proposal made by the Ministry for the ACC to reach the decision of non-approval.

24. In *Union of India and Another vs. Samar Singh and Others*, (1996) 10 SCC 555, the facts of the case were that a Special Committee, consisting of the Cabinet Secretary, the Principal Secretary to the Prime Minister and the Home Secretary, prepared a panel of IAS Officer of Batch of 1962 for appointment as Secretaries to the Government of India and equivalent post and the said panel was considered by the ACC, where appointments were made, but the respondent therein for not considered for the empanelment. While addressing the grievances of the party aggrieved, the Hon'ble Supreme Court held as under:

“11. This would show that the Committee, keeping in view the record and experience including the conceptual and leadership abilities, achievements and potential for general management positions, had recommended 19 IAS officers for holding the post of Secretaries and 7 IAS officers for holding a non-secretarial post. Merely because the minutes of the Committee do not contain the reason for non-selection of the respondent does not mean that there has been no proper consideration of the merits and suitability of the



respondent and as a result the selection is vitiated. From the minutes of the Special Committee it is evident that in the matter of empanelment of officers the Special Committee has taken into account the criteria that are laid down for holding such selection in para 14 of the Central Staffing Scheme and, therefore, it cannot be said that the said selection is vitiated on account of non-inclusion of the name of the respondent in the panel.

12. Shri Ashok Grover, learned Senior Counsel appearing for the respondent, has laid emphasis on the remarks in ACRs about appraisal of the performance of the respondent subsequent to his promotion on the post of Additional Secretary to which reference has been made by the Tribunal in the impugned judgment. The learned counsel has submitted that since the performance has been rated as outstanding and excellent, the Tribunal was justified in holding that there is no proper consideration of the case of the respondent by the Special Committee. We are unable to agree. As is evident from para 14 of the Central Staffing Scheme record is one of the matters which has to be taken into consideration by the Special Committee while making the selection. Apart from the record there are other matters that have to be considered, namely, merit, competence, leadership and flair for participating in the policy-making process and the need of the Central Government which is the paramount consideration. We are unable to hold that since the performance of the respondent after his promotion as Additional Secretary had been found to be excellent and outstanding, the non-inclusion of his name from the panel by the Special Committee must lead to the inference that there was no proper consideration of the merit and suitability of the



respondent for empanelment by the Special Committee.”

25. The aforementioned reflects the view that reasons need not be penned down while a Committee is considering the candidature or eligibility of appointments as long as all the relevant facts, circumstances and material are before such Committee and are considered and deliberated upon by it before reaching to a conclusion.

26. In ***National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman and Others, 1992 Supp (2) SCC 481***, the Hon’ble Supreme Court, while adjudicating upon the question of whether reasons were to be recorded by a Selection Committee while rejecting the candidature for the Professor at the National Institute of Mental Health and Neuro Sciences (NIMHANS), Government of India, an institute of national importance recognised by the Central Government, held as under:

“7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault



with. The High Court in support of its reasoning has however, referred to the decision of this Court in Union of India v. Mohan Lal Capoor. That decision proceeded on a statutory requirement. Regulation 5(5) which was considered in that case required the Selection Committee to record its reasons for superseding a senior member in the State Civil Service. The decision in Capoor case was rendered on September 26, 1973. In June 1977, Regulation 5(5) was amended deleting the requirement of recording reasons for the supersession of senior officers of the State Civil Services. The Capoor case cannot, therefore, be construed as an authority for the proposition that there should be reason formulation for administrative decision. Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in R.S. Dass v. Union of India in which Capoor Case was also distinguished.

8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection Committee did anything to the contrary. The High Court however,



observed, that Dr Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of objections dated February 18, 1980 filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was somewhat extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, to have stated that he did not satisfy the minimum qualifications prescribed for eligibility. According to the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and reassurance as to the related equality and justness of an effective consideration of this case. It is true that selection of the petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all, are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr Kalyana Raman. The fact that he was placed second in the panel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion.”



27. Therefore, it is apparent that the view of the Hon'ble Supreme Court is that in the cases of promotion, selections, and appointments etc. the Committee in question need not necessarily record the reasons for its decision so long as the due consideration is given to the merits of the candidature of the person/officer concerned and where there is no intervening rule in place.

28. In the instant case, although there was no statutory, or any other, obligation on the ACC to record the reasons for non-approval of the petitioner's candidature, the record produced before this Court shows that the reasons were in fact noted in the file of the candidate, i.e., the petitioner. Hence, apart from the position settled by the Hon'ble Supreme Court, the fact remains that in the instant case, the ACC was informed about all the relevant factors and considerations necessary for deciding the case of the petitioner. There were sufficient reasons recorded in the detailed note placed before the ACC by the Ministry of Culture. Therefore, this Court does not find any force in the arguments advanced on behalf of the petitioner that there were no justifiable reasons for non-approval of the petitioner's candidature.

29. Moreover, the reliefs which the petitioner has been seeking before the Courts have already been granted to him to the effect that his candidature has been considered by the competent and highest authority for appointment.

30. Hence, considering the entirety of the matter, the facts, circumstances, submissions, objections, the contents of the impugned order and, most



importantly, the contents of the original files as placed before this Court by Ms. Anjana, Under Secretary, Ministry of Culture, this Court does not find any reason to interfere with the impugned order dated 29th January 2022. There were adequate reasons for the ACC for not accepting the proposal for consideration of the petitioner's candidature for the post of Director at respondent no. 3/NSD.

31. Accordingly, the instant petition along with accompanying applications stands dismissed.

32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 2, 2023
SV/MS

Click here to check corrigendum, if any