

IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH
SHILLONG BENCH

WP(C) No. (SH) 284 of 2010

Dr. Rajeshwar Singh
s/o (L) Ram Lakhan Singh
Lecturer (Sr Scale)
Department of Statistic, NEHU
District East Khasi Hills
Meghalaya, Shillong : Petitioner

-vs-

1. University Grants Commission
New Delhi

2. North Eastern Hill University
represented by Registrar
Permanent Campus
District East Khasi Hills, Shillong.

3. The Deputy Registrar
North Eastern Hill University
Permanent Campus
District East Khasi Hills, Shillong. : Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioner : Mr K Khan, Adv.

For the Respondents : Mr S Sen, Adv

Date of hearing : 16.09.2011

Date of Judgment & Order : 22.11.2011.

JUDGMENT AND ORDER

The petitioner, in this writ petition, is aggrieved by the denial of promotion to the post of Reader under the Career Advancement Scheme (CAS) in the North-

Eastern Hill University (NEHU) since 2003, and seeks the intervention of this Court for appropriate relief.

2. The facts giving rise to this writ petition, as projected by the petitioner, may be briefly noticed at the outset. He was initially appointed on 25-7-1990 to the post of Lecturer in Pachhunga University College under the NEHU and was subsequently promoted to the post of Lecturer in the Senior Scale in the Department of Statistics between 25-7-1990 and 30-11-2004. During his tenure at Pachhunga University College, he was called for interview on 10-12-2002 for promotion to the post of Reader under the CAS, but the Selection Committee did not recommend him for the promotion. He was, however, assured that his case for the promotion would be considered again in accordance with the guidelines after the expiry of one year from the date of the last interview, for which he was required to apply afresh. His case for promotion was again duly forwarded by the College to the NEHU for consideration by the Selection Committee. In the meantime, he was on 10-11-2004 transferred to the Permanent Campus of NEHU, Shillong under the Common Pool created for the time being by an exercise of option. He accordingly joined the Campus on 22-2-2005 by assuming the charge of Computer Centre and thereafter joined the Department of Statistics as final placement with the same designation of Lecturer in the Senior Scale. After joining the NEHU at Shillong, the Mizoram University forwarded his Self Appraisal Report to the NEHU for considering his promotion to the post of Reader under the CAS vide the letter dated 16-2-2005. No action was, however, taken in this connection nor was he ever intimated about the fate of his application. He again vide his letter dated 5-12-2005 requested the NEHU authorities to consider his case for promotion to Reader in Statistics under CAS, but nothing was forthcoming till 2008 whereupon he again on 8-4-2008 wrote to the Vice-Chancellor, NEHU complaining about his non-promotion since 2003, but this also turned a cropper.

3. It is also the case of the petitioner that he on 2-3-2009 received a communication from the Deputy Registrar (Estt. II) informing him that the interview for promotion as Reader under CAS was scheduled to be held on 13-3-2009. He duly appeared in the interview, but was again not recommended for the promotion vide the letter dated 20-4-2009 issued by the Deputy Registrar (Estt. II). No reason was assigned therein for not recommending him for the promotion. This led him to file an application under the RTI Act on 15-6-2010 to the Public Information Officer, NEHU seeking certified copies of the records for pre-selection and selection of the candidates called for and appeared in the interview for the posts of Readers/Selection Grade Lecturers for all Departments and Centres in March, 2009. On receipt of the information, he came to learn that as per the letter dated 15-1-2008, the three expert evaluators who were all specialized in Econometrics, namely, Professor Manoranjan Pal, Professor A.K. Nigam and Professor Sanaullah Khan (Retd.) had recommended to the Vice-Chancellor vide their letters dated 7-2-2008, dated 12-2-2008 and 19-4-2008 respectively that the he duly fulfilled all the criteria for promotion to the post of Reader in the Department of Statistics. He also came to learn from the RTI papers that the experts who had evaluated his self-appraisal report were not the same experts who had been recommended by the Vice-Chancellor, NEHU while constituting the Selection Committee for conducting his interview and that the members of the Selection Committee were experts from different fields and specialization i.e. Probability & Measure Theory & Stochastic Processes and not from econometrics, which is contrary to the rules and guidelines issued by the University Grants Commission (UGC) and the NEHU Act.

4. The further case of the petitioner is that he also came to learn from the RTI papers that the Selection Committee in the minutes dated 13-3-2009 stated that he was "Not found suitable", which is inconsistent with the recommendation of the

earlier three external experts who had already recommended him for the post of Reader: no reason was assigned for disagreeing with the recommendation of the earlier external experts. It is also disclosed by the RTI Officer in his reply dated 9-8-2010 that **“Apart from minutes of the Selection Committee, there are no other written documents to speak on the procedure adopted by the Selection Committee to assess the performance of the candidates”**. It is, therefore, contended by the petitioner that the decision of the Selection Committee in not recommending him for promotion to the post of Reader by overlooking the earlier recommendations of the three external experts is illegal, arbitrary and discriminatory. According to the petitioner, in his first application under the CAS in the year 2001, the refusal to promote him was done within a year from the date of the application, but the result of his second application remained undisclosed whereas his third attempt in 2005 for getting promotion duly recommended by the three external experts was not considered for more than four years. He had completed the qualifying service of five years of service in the post of Lecturer in the Senior Scale in 1995, completed his first refresher course from Gauhati University in the year 1997 and also completed his second refresher course from International Institute of Population Studies, Mumbai in the year 2001. It is submitted that though the petitioner is duly qualified and is eligible under the rules for promotion to the post of Reader, he has been time and again illegally deprived of the promotion. It is also contended that though the three experts who had evaluated his self-appraisal report application were specialized in Econometrics, yet he was interviewed by the Selection Committee not comprising of experts who had no specialization in Econometric and who belonged to different specializations, which is contrary to the technical conditions provided for in the relevant rules. As the Vice-Chancellor himself is the Ad-hoc Chairman of the Executive Committee, the petitioner has no effective forum for redressal of his

grievance and is, therefore, approaching this Court for justice. This is how the writ petition has been filed.

5. The writ petition is opposed by the University-respondents, who have filed their affidavit-in-opposition. The case of the respondents is that after the petitioner was not recommended for promotion in 2002, he was asked to submit a fresh application after the lapse of one year, but he did not do so. The self-appraisal report forwarded by the Mizoram University vide their letter dated 16-2-2005 was processed on 18-3-2005, but the same could not be finalized as cases of all repatriated teachers from Mizoram Campus had been kept in abeyance till finalization of their postings. The case of the petitioner was ultimately put up in the file on 14-12-2007 for nomination of external experts and his self-appraisal report was dispatched to the external experts on 15-1-2008 for evaluation. However, in the meantime, one of the external experts was out of the country while another had retired from service and in this circumstance, the Vice-Chancellor had to nominate another two external experts for evaluation. The Selection Committee ultimately constituted by the Vice-Chancellor for considering the promotion interviewed the petitioner in March, 2009 but did not find him suitable. The Executive Committee in its 136th meeting held on 25-3-2009, therefore, decided not to promote the petitioner to the post of Reader, which was conveyed to him by the letter dated 20-4-2009. The University-respondents claim that the report of the three external experts on self appraisal report is only a requisite qualification as provided for in OE-15 of NEHU Ordinance, which cannot be equated with the recommendation of the Selection Committee. However, the Selection Committee also took into consideration of the report of the external experts as well as other criteria, but found him unsuitable. There is no guideline of the UGC governing CAS of Teachers stipulating that the experts who have evaluated the self-appraisal report should also be the experts in the Selection

Committee. On the contrary, it is categorically mentioned by the UGC that the experts who have evaluated the self-appraisal report of Reader for promotion to the post of Professor under the CAS should not be the subject experts in the Selection Committee. The Selection Committee comprised of experts in the relevant field and such expert used their specialized knowledge and skill in the field to assess the suitability of the candidate: the evaluation of self-appraisal report of the petitioner by external expert cannot be treated as selection but is merely a prescribed criteria to be taken into consideration by the duly constituted Selection Committee. The University-respondents deny that the recommendation of the Selection Committee is arbitrary and discriminatory, and in any case, making such allegation against the members of the Selection Committee without impleading them as party-respondents in the writ petition renders the writ petition defective and liable to be dismissed on this sole ground. The answering respondents also deny that the experts in the Selection Committee did not belong to the concerned field of specialization: there was no violation of any notification or instruction/direction or guidelines or scheme of UGC while considering the case of the petitioner. No interference is, therefore, called for. These are the sum and substance of the case of the answering respondents.

6. The petitioner in his reply affidavit reiterates that the University-respondents took an inordinately long time i.e. from 2001 to 2009 to process the application of the petitioner for promotion under the CAS without any apparent reason: they, in fact, deliberately tried to give incorrect statement to this Court by stating that cases pertaining to repatriated teachers from Mizoram had been kept in abeyance. It is thus pointed out by the petitioner that two teachers, namely, Dr. Bishnupada Roy from the Department of Zoology and Dr. D.V. Kumar from the Department of Sociology, who had also been repatriated from Mizoram University, were promoted to the posts of Readers under CAS on 7-7-2006. According to the

petitioner, experts nominated for the Selection committee were to be nominated by the Executive Council and not by the Vice-Chancellor, and such experts should be the same who were nominated to evaluate the self-appraisal report of the petitioner. An additional affidavit was filed by the University-respondents in reply to the reply affidavit of the petitioner. It is contended therein that the petitioner, who had participated in the selection process without any protest, is now estopped from questioning the legality of the selection proceeding after he was not selected. They reiterate that there was no delay in processing the case of the petitioner.

7. After hearing the submissions of Mr. K. Khan, the learned counsel for the petitioner, and Mr. S. Sen, the learned counsel for the University-respondents, the first point for consideration is, whether there was an inordinate delay in considering the promotion of the petitioner to the post of Reader under the CAS? There is no dispute that he was found to be eligible for promotion to the post of Reader with effect from 1995 when he had completed five years of service in the post of Lecturer in the Senior Scale. The University-respondent did consider him for such promotion in the year 2002, but was not promoted and he was, however, asked to apply for the same afresh after the expiry of one year of the interview last held. The petitioner did not admittedly make any grievance in this behalf. Secondly, the case of the University-respondent that he did not apply afresh for such promotion after the expiry of one year of the last interview; that his second application was received only on 15-3-2005 and that it was after completing the necessary formalities that his self-appraisal report came to be forwarded to the external experts for evaluation on 15-1-2008, has not been denied by the petitioner. Thus, in my opinion, the petitioner has no case for interference by this Court for the denial of promotion to the post of Reader to him prior to 15-3-2005. It is interesting to note that the averment made by the petitioner to the effect that two teachers, namely, Dr. Bishnupada Roy in the Department of Zoology and Dr.

D.V. Kumar in the Department of Sociology were promoted to the posts of Readers under the CAS on 7-7-2006 even though they were also, like him, repatriated from Mizoram, has not been denied by the respondents. Under the law of pleadings, the respondent authorities are required to specifically deny this categorical allegation made by the petitioner if they dispute such allegation: evasive denial is not permissible even in a writ petition. Failure to deny specifically such material averment made by the petitioner in the writ petition will be taken to be admitted. Therefore, there is force in contention of the petitioner that his case for promotion to the post of Reader in terms of the application received by the University-respondents on 15-3-2005 was not duly considered. More so, when cases of similarly situated teachers like the said Dr. Bishnupada Roy and Dr. D.V. Kumar were considered and were then eventually promoted to the posts of Readers on 7-7-2006. The action of the University-respondents in promoting the said Dr. Bishnupada Roy and Dr. D.V. Kumar to the posts of Readers by overlooking the case of the petitioner without proper justification amounts to hostile discrimination, and is, therefore, arbitrary.

8. Coming now to the next question, namely, whether the non-promotion of the petitioner to the post of Reader on 25-3-2009 is illegal, it must be noted that the Selection Committee did not assign any reason for finding him to be not suitable for the post of Reader. As already indicated, the Selection Committee simply recorded in the minutes of their meeting dated 13-3-2009 that he was **“[N]ot found suitable”** (Annexure-18). There is, however, no dispute that the three external experts, namely, Professor Manoranjan Pal of Economic Research Unit, Indian Statistical Institute, Professor A.K. Nigam of Institute of Applied Statistics & Development Studies and Professor Sanaullah Khan (Rtd.), Department of Statistics & Operation Research, A.M.U. vide their separate letters dated 7-2-2008 (Annexures-16), dated 12-2-2008 and dated 19-4-2008 respectively have certified

that the petitioner was suitable for promotion to the post of Reader. It is, however, the case of the respondent authorities that “[T]he report of the three external experts on self-appraisal report is only a requisite qualification as provided in regulation OE-15 of NEHU Ordinance for the purpose of promotion to the post of Reader and the same cannot be said to be a recommendation of the Selection Committee. In fact, the Selection Committee took into consideration the report of the External Experts as well as other criteria/qualification of the Writ Petitioner but found him to be unsuitable”. Thus, the Selection Committee did not find the petitioner suitable for the promotion even though the three external experts constituted by the Vice-Chancellor found him to be fit for promotion. True, the recommendation of these three external experts cannot be held to be binding upon the Selection Committee, but then could the opinions of these experts be ignored without assigning any reason? On my query, Mr. S. Sen, the learned counsel for the University-respondents, concedes that there are no detailed procedures for regulating the manner in which the merits of a candidate for the post of Readers are to be assessed as in the case of government servants. In my judgment, the opinions of the external experts constituted by no less an official than the Vice-Chancellor himself are entitled to weightage and cannot be simply brushed without any rhyme or reason. The Selection Committee must give its reason, which need not be a detailed one, for not accepting the recommendation of such experts so that their decision does not suffer from the vice of arbitrariness or non-application of mind.

9 Article 14 of the Constitution of India strikes at arbitrariness in State action and its instrumentalities, and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of

equality before law. The principle of reasonableness and rationality which is legally an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every action of the public authorities. The following observations of Lord Denning in ***Padfield v. Minister of Agriculture Fisheries and Food, [1968] ALL ER 694***, though rendered in a different context, should guide writ courts in dealing with an arbitrary exercise of powers by the executive authorities:

“It is said that the decision of the Minister is administrative and not judicial. But that does not mean that he can do as he likes, regardless of right or wrong. Nor does it mean that the courts are powerless to correct him. Good administration requires that complaints should be investigated and that grievances should be remedied. When Parliament has set up machinery for that purpose, it is not for the Minister to brush it on one side. He should not refuse to have a complaint investigated without good reason.

“But it is said that the Minister is not bound to give any reason at all. And that, if he gives no reason, his refusal cannot be questioned. So why does it matter if he gives bad reasons? I do not agree. This is the only remedy available to a person aggrieved. Save, of course, for questions in the House which Parliament itself did not consider suitable. Else why did it set up a committee of investigation? If the Minister is to deny the complainant a hearing – and a remedy – he should at least have good reasons for his refusal: and, if asked, he should give them. If he does not do so, the court may infer that he has no good reason. If it appears to the court that the Minister has been, or must have been, influenced by extraneous considerations which ought not to have influenced him –or,

conversely, has failed, or must have failed, to take into account considerations which ought to have influenced him — the court has power to interfere. It can issue a mandamus to compel him to consider the complaint properly.”

(Underlined for emphasis)

10. If the recommendation of the three external experts could be simply brushed aside by the Selection Committee without any rhyme or reason as in this case, what was then the need for constituting such a Committee in the first place? In my considered view, the Selection Committee was obliged to properly consider the recommendations of the three external experts and had it decided to reject such recommendations also, it was obligatory upon it to give reason or reasons therefor. The learned counsel for the University-respondents, however, would like to argue that this Court in exercise of its writ jurisdiction should not sit in appeal over the judgment of academicians when the dispute relates to educational affairs or substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. To fortify his submissions, he places heavy reliance upon the decision of the Apex Court in ***Basavaiah (Dr) v. Dr. H.L. Ramesh, (2010) 8 SCC 381*** and a host of other related decisions of the Apex Court, all which, for the sake of avoiding repetition, need not be referred to herein. Undoubtedly, as held therein, in academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts

must realise and appreciate its constraints and limitations in academic matters. Having said that, one cannot, however, overlook the equally valid legal principle that every decision of executive authorities must be informed by reason so as to avoid any arbitrariness in their decision-making process. I, however, hasten to add that even if the Selection Committee does not give any reason, if such reason can be gathered from the materials produced by the respondent authorities as in **Basavaiah case** (*supra*), this Court shall certainly take into account such reason for adjudicating the case set up by the petitioner. In **Basavaiah case** (*supra*), though no reason was apparently given by the Selection Committee, yet the affidavit-in-opposition filed by the respondent authorities did disclose that the appellants therein were found to be eligible for promotion to the post of Reader in terms of the advertisement contrary to the contention of the writ petitioners. In the instant case, three external experts constituted by the Vice-Chancellor in accordance with the prescribed rules had recommended the petitioner for promotion to the post of Reader, but the Selection Committee, for reason which cannot be found, chose to ignore such recommendation and proceeded to hold that he was not found suitable and did not recommend him for the promotion. In my judgment, arbitrariness looms large in the impugned selection process of the Selection Committee, which cannot be sustained in law: the fundamental rights of equality guaranteed to the petitioner under Articles 14 and 16 of the Constitution have been violated, which warrants the interference of this Court.

11. For what has been stated in the foregoing, this writ petition succeeds. The impugned Memo No. F. 15-46/Estt.II/02-642 dated 20-4-2009 (Annexure-16) and the minutes of the Selection Committee dated 13-3-2009 (Annexure-18) are hereby quashed. Consequently, the University-respondents are directed to reconstitute forthwith a Selection Committee to consider the case of the petitioner for promotion to the post of Reader under CAS as per the recommendations of the

three external experts dated 7-2-2008, 12-2-2008 and 19-4-2008 with effect from the date when Dr. Bishnupada Roy and Dr. D.V. Kumar were promoted to the posts of Readers with consequential benefits except financial benefits on the principle of “no work, no pay”. The entire exercise shall be completed within a period of two months from the date of receipt of this judgment. No costs.

JUDGE

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