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**(2008) 09 AP CK 0004**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 24176 of 2006**

Government of India and Another

APPELLANT

Vs

K. Manohar Reddy

RESPONDENT

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**Date of Decision : 02-09-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2009) 2 ALD 98 : (2009) 1 ALT 94

**Hon'ble Judges :** Ghulam Mohammed, J;G. Bhavani Prasad, J

**Bench :** Division Bench

**Advocate :** Rajeeva Reddy and C.V. Vinitha Reddy, for the Appellant; S. Lakshma Reddy, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Ghulam Mohammed, J.—This writ petition has been filed by the Government of India seeking to issue a Writ of Certiorari calling for the records relating to the order dated 26-6-2006 rendered in O.A. No. 672 of 2003 on the file of Central Administrative Tribunal (for short "the Tribunal), Hyderabad Bench, and quash the same.

2. The respondent herein is the applicant before the Tribunal and the status of the parties will be referred to as arrayed before the Tribunal for the sake of convenience.

3. The facts of the case, in a nutshell, are that the applicant was appointed initially as Lecturer with M.Sc (Chemistry), B.Ed., qualifications on 27-1-1984 and he was granted later Senior Scale on completion of 6 years of service with effect from 27-1-1990. As per 5th Pay Commission recommendations, the Career Advancement Scheme will come into force with effect from 27-1-1995 and the Pay Scale applicable to the post of Selection Grade Lecturer is Rs. 12,000-420-18,300. The respondents have granted Selection Grade to 16 Lecturers, who were similarly situated persons by virtue of the letter dated

11-3-2003 excluding the applicant, against which, he made a representation on 18-3-2003, and there was no response. Hence, he approached the Tribunal, which passed the impugned order directing the respondents to consider the case of the applicant by duly constituting a Committee. Aggrieved by the same, the present writ petition is filed by the respondents.

4. Heard Sri C.V. Rajeeva Reddy, learned standing Counsel for the writ petitioners and Sri S. Lakshma Reddy, learned Counsel for the respondent-applicant.

5. While reiterating respective contentions raised in the writ petition, the learned standing Counsel for the respondents-writ petitioners submitted that the Departmental Promotion Committee (for short "DPC") constituted was in accordance with the provisions of University Grants Commission Regulations as well as Indian Railway Establishment Code and the DPC after considering the Annual Confidential Reports and the material placed before it, recommended that the applicant is not fit to be given Selection Grade. Therefore, he contends that the placement or otherwise in Selection Grade involves a positive act of selection on merit coupled with the entries in Annual Confidential Reports relating to the conduct of the officers during the relevant period.

6. In support of his contentions, he relied on various precedents reported. In *G. Sarana Vs. University of Lucknow and Others*, relevant para-15 reads as under:

...We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew at the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in *Manak Lal Vs. Dr. Prem Chand*, where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

7. In *Dr. (Mrs.) M. Thaha and Anr. v. National Institute of Rural Development and Ors.* 1992 (2) An.W.R. 547 (D.B), relevant paras-29 and 30 read as under:

The appellants were well aware who are the members of the Committee were. They also knew that the appointment will be by direct recruitment. They appeared for interview before the Committee and submitted themselves to its jurisdiction for the purpose of selection. When they failed to get selected and

some other person was selected, they filed the writ petitions questioning the selection. The appellants did not raise any objection before the Committee against its composition though they knew fully well who are the members of the Committee were. They appeared voluntarily before the Committee and had taken a chance of having a favourable recommendation. In such a case, as was held by the Supreme Court in *G. Sarana Vs. University of Lucknow and Others*, , it was not open to the appellants to turn round question the constitution or composition of the Committee.

One of the principal contentions advanced in *Swaran Lata Vs. Union of India and Others*, was that the post of Principal in the Government Central Crafts Institute for Women, Chandigarh was a deputation post which had to be filled in by appointing a person on deputation from the State of Haryana and therefore, Chandigarh administration could not have advertised the post for direct recruitment and that the relaxation of the essential qualifications of the candidates called for interview by the Union Public Service Commission was wholly arbitrary and illegal. Repelling that contention, the Supreme Court observed:

In any event, the appellant cannot approbate and reprobate. She had willingly, of her own accord, and without any persuasion by anyone, applied for the post, in response to the advertisement issued by the Union Public Service Commission for direct recruitment. She, therefore, took her chance and simply because the Selection Committee did not find her suitable for appointment, she cannot be heard to say that the selection of respondent 6, by direct recruitment through the Commission was invalid, as being contrary to the directions issued by the Central Government u/s 84 of the Act or that the Commission had exceeded its powers by usurping the functions of the Chandigarh Administration, in relaxing the essential qualifications of the candidates called for interview or that respondent 6 was not eligible for appointment inasmuch as she did not possess the requisite essential qualifications. She fully knew that under the terms of the advertisement, the Commission had reserved to itself the power to relax any of the essential qualifications. With this full knowledge, she applied for the post and she appeared at the interview. We are clearly of the opinion that the appellant is precluded from urging these grounds.

8. Similarly, in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , it was observed:

Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus, the petitioners took a chance to get themselves selected at the said oral

interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, , it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such petitioner.

9. Like wise, in *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, the relevant portion in para 8 reads as under:

...in the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

and *Swaran Lata Vs. Union of India and Others*, is similar.

10. Placing reliance on the above decisions, learned standing Counsel submitted that the DPC cannot be constituted for an individual alone and apart from that, the applicant has failed to implead 16 lecturers, who have been given Selection Grade and did not challenge the letter as well as the recommendations of the DPC. Therefore, the order of the Tribunal is not justified and thereby, the same is liable to be set aside.

11. On the contrary, learned Counsel for the applicant strenuously contended that the proceedings dated 11-3-2003 issued by the Railway Board placing 16 Lecturers in Selection Grade excluding the respondent is without any basis and is vitiated, as the DPC was not constituted as per UGC Rules, which mandates that there must be subject experts in DPC. In this connection, he has invited our attention to para 3.1.0 of the UGC Notification, wherein it was mentioned that the direct recruitment to the post of Lecturers, Readers and Professors in the Universities and Colleges shall be on the basis of merit, through all India advertisement, and selections made by the duly constituted Selection Committee to be set up under the Statutes/Ordinances of the concerned University, and such Committees should have a minimum of three experts; the Head of the concerned Department and the Principal of the concerned College (in case of selection of college teachers), and also to para 7.1.4, wherein it was mentioned that the Selection Committees for Career Advancement shall be the same as those for

direct recruitment for each category. In support of his contention that the constitution of DPC itself is bad, he relied on a decision reported in *Surya Dev Rai v. Ram Chander Rai and Ors.* (2006) 6 SCC 675 : 2003 (5) ALT 35.1 (DNSC) in which the Apex Court, while dealing with the Writ of Certiorari, held that Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

12. Learned Counsel for the applicant further argued that the scope of Writ of Certiorari is very narrow and limited and that the Tribunal has not committed an error or exceeded its jurisdiction, and hence, there is no irrationality or illegality in the order under challenge.

13. Before dealing with the rival contentions of both the Counsel, it is appropriate to refer to relevant paras-3.1.0., 7.1.4., 7.3.0, 7.4.2 of UGC Notification including the provision of (5) (D) of 209 of Indian Railway Establishment Code, on which both the Counsel have relied in support of their respective contentions.

14. Para 3.1.0 specifies about recruitment to the post of Lecturers, Readers, and Professors in the Universities and Colleges on the basis of merit through advertisement and selection by duly constituted Selection Committee to be set up under the Statutes/Ordinances of the concerned University consisting of three experts, the Head of the concerned Department and the Principal of the concerned College.

15. Para 7.1.4 together with Para 7.3.0 prescribes about placing of a candidate into Selection Grade on fulfillment of the criteria stipulated for the posts provided herein subject to recommendations of the Selection Committee, which is the same as that of promotion to the post of Reader.

16. Para 7.4.2 mandates that promotion to the Post of Reader will be through a process of selection by a Selection Committee to be set up under the Statutes/Ordinances of the concerned University or other similar Committees set up by the appointing authorities.

17. Be that as it may, at this stage, it would be necessary to refer to the Notification, dated 27-1-2006 for better appreciation of rival contentions. A perusal of the notification issued by the Ministry of Railways dated 27-1-2006, makes it clear that the Selection Committee, which was constituted for direct recruitment, consists of the Chief Personnel Officer, South Central Railway as Chariman; Director, Railway Degree College, Secunderabad as Member; and Head of Department of any other Department, South Central Railway as Member.

18. Whereas in the same notification, the Selection Committee, which was

constituted for promotion to Selection Grade, consists of Chairman, Railway Board as Chairman; Financial Commissioner (Railways) as Member; and Other Members of Railway Board as Members.

19. Thus, two different Committees are sought to be constituted for two purposes viz., Selection Committees for direct recruitment and for granting Selection Grade to the eligible candidates. In the circumstances, it can be said that both the committees are quite different and distinct and act in their respective sphere. Therefore, the contention of the learned Counsel for the applicant that the Selection Committee constituted for the recruitment shall be the same for the process of the promotion and the procedure adopted by the authorities is discriminative and arbitrary, cannot be accepted. Apart from that, the provisions of (5) (D) of 209 of Indian Railway Establishment Code also do not support the contention raised by the learned Counsel for the applicant.

20. Whatever be the reason, the fact remains that the letter issued by the authorities promoting the 16 lecturers by the prescribed Selection Committee, has not been questioned nor the said 16 lecturers have been impleaded as parties to the lis, at the time of questioning the action of the respondents-writ petitioners, before the Tribunal.

21. Having regard to the facts and circumstances of the case, coupled with the notification in question as well as the provisions of the Railway Establishment Code, and in view of the fact that the Selection Committee for the recruitment as well as the Selection Committee for selection grade and promotion, are different, distinct and independent and in view of the fact that the applicant did not question the letter promoting 16 lectures and also failed to implead them as necessary parties to the lis, we have no hesitation to hold that the procedure adopted by the authorities cannot be said to be irregular or illegal. Therefore, the Tribunal is not justified in passing the impugned order and thereby, the same is liable to be set aside.

22. Accordingly, the writ petition is allowed setting aside the order of the Tribunal dated 26-6-2006 in O.A. No. 672 of 2003 on the file of Central Administrative Tribunal, Hyderabad Bench.