

(2011) 09 BOM CK 0154

In the Bombay High Court

Case No : Writ Petition No. 1031 of 2011

M. Ramesh Kumar, IAS (Retd.)

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Administrative Tribunals (Procedure for appointment of Vice Chairman and Members)
Rules, 2006 — Rule 3(2), 4, 5, 5(2), 6
Constitution of India, 1950 — Article 226, 323A

Citation : (2012) 3 ALLMR 43 : (2012) 1 BomCR 602 : (2012) 1 MhLj 321

Hon'ble Judges : Nishita Mhatre, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : Janak Dwarkadas and R.R. Shetty, for the Appellant; Ravi Kadam, General, J.S. Saluja, for Respondent Nos. 1 to 3. and Mihir Desai, Advocate for Respondent No. 4., for the Respondent

Judgement

B.H. Marlapalle, J.—Heard Mr. Janak Dwarkadas with Mr. Shetty, the learned Counsel for the Petitioner, Mr. Ravi Kadam, the learned Advocate General with Mr. Saluja, A.G.P. and Mr. Mihir Desai for Respondent No. 5.

2. Rule.

3. Respondents waive service.

4. The petition is heard finally with the consent of the parties.

5. In this petition filed under Article 226 of the Constitution of India, the Petitioner had challenged the decision of the State Government communicated to the Chairman of the Maharashtra Administrative Tribunal (for short, "the MAT") vide its letter dated 9.5.2011, not to go ahead with the recommendation of the Selection Committee, in its meeting dated 25.1.2011 and inviting fresh applications from the eligible officers for the post of Member (Administration). The Petitioner has also challenged the resolution of the Selection Committee passed in its meeting dated 13.6.2011 to the extent that it recalled its earlier

recommendation dated 25.1.2011 for the post of Member (Administrative) for the MAT.

6. At the outset, it has been brought to our notice that, pursuant to the impugned decision of the State Government and the resolution passed by the Selection Committee a fresh advertisement has been released on 28.6.2011 inviting applications for the post of Member (Administrative) and 9 applications have been received. However, the issues raised in this petition and more particularly, the challenge to the decision of the State Government, raises some important issues regarding the independence of judiciary, a cherished goal of our constitutional scheme and, therefore, as protectors of the Constitution, No. technicalities should come in our way to consider the said issues.

7. The Maharashtra Administrative Tribunal has been established under the Administrative Tribunals Act, 1985 (for short, "the Act") and the appointment for the post of Member (Administrative) is required to be done by following the procedure laid down under the Administrative Tribunals (Procedure for appointment of Vice Chairman and Members) Rules, 2006 (the Rules for short), as framed u/s 36(c) of the said Act. The Act has been enacted by invoking the powers under Article 323A of the Constitution and as per its preamble, it has been enacted to provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State and for the matters connected therewith or incidental thereto. Initially, it was suggested that the Tribunal established under the Act is a substitute for the High Court but as said by the Supreme Court in the case of *L. Chandra Kumar Vs. Union of India and others*, , the idea behind establishing the Administrative Tribunals is to divest the High Courts of their onerous burden, subject to the power of judicial review under Article 226 of the Constitution being retained with a Division Bench of the High Court against the orders passed by the Tribunal. In the case of *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, , the Supreme Court has observed,

Judicial functions and judicial powers are one of the essential attributes of a sovereign State and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution, but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties."

(emphasis supplied).

The post of Member (Administrative) of the Tribunal is of the status of a Judge of the High Court and offers the same pay scale. We have recorded this

back ground only to emphasize that "independence of judiciary" is equally applicable to the Administrative Tribunals, established under the Act.

8. The relevant and admitted facts in this case are that, on 20.11.2010, the MAT released an advertisement in some of the local newspapers inviting applications for the post of Member (Admn.) and the applications were to be received by 31.12.2010. It appears that, similar advertisement was released for the post of Member (Judicial), though the said post is not a subject matter before us. The applications so received came to be circulated by the Registrar of MAT and under the orders of the Chairman, to all the four members of the Selection Committee in the form a paper-book, including the Secretary in the General Administrative Department of the State of Maharashtra, on or about 15.1.2011. The Selection Committee held its meeting on 25.1.2011 and recommended one applicant, namely, the Petitioner for the post of Member (Administrative). The Petitioner has retired as Additional Chief Secretary on 30.9.2010. He claims that one of the members of the Selection Committee, namely, the Chief Secretary, immediately after the resolution was passed by the Selection Committee on 25.1.2011, informed him about the Selection Committee's decision recommending his name and congratulated him. He was waiting for the further procedure to be completed but he came to know of the impugned decision and, therefore, he submitted representations and thereafter filed the petition, as a last resort.

9. Mr. Dwarkadas, the learned senior counsel for the Petitioner, while referring to the scheme of the Rules, submitted that the Selection Committee is a creation of the subordinate legislation and its recommendations cannot be dropped by the State Government. In other words, the State Government has No. powers to drop the recommendations of the Selection Committee though it may have the right to record a separate opinion on consideration of the name or names recommended by the Selection Committee and forward the Selection Committee recommendations along with its views or dissenting note to the Central Government for being placed before the Chief Justice of India. When the Chief Secretary himself was one of the Members of the Selection Committee, and the recommendation made for the post of Member (Administrative) was unanimous, it was not permissible for the said officer to take an about turn and claim that the procedure prescribed under Rule 5 (2) (ii) of the Rules was not followed and the Tribunal could not have prepared the list of applicants on the basis of which the Selection Committee could have finalized its recommendations. Mr. Dwarkadas alleged that the reasons set out in the impugned order/decision of the State Government are extraneous, irrelevant and it cannot be allowed to contend that till 5.4.2011 the State Government was not aware about the so called procedural lapses. In any case, these lapses would not in any way vitiate the recommendations made by the Selection Committee in its meeting held on 25.1.2011. At the most, the State Government could have recorded its opinion and forwarded it to the Central Government for necessary steps to be taken on the Selection Committee's recommendations for the appointment of Member (Administrative). The learned Counsel alleged that the State Government adopted a hidden route with a similar agenda and the Chief Secretary has adopted double standards. By referring to the scheme of Rule 8 of the Rules, it

was urged by Mr. Dwarkadas that the recommendations of the Selection Committee were required to be placed before the Chief Justice of India for his views and thereafter they were required to be submitted to the competent authority for orders. The State Government has no powers either under the Act or the Rules for nullifying the recommendations of the Selection Committee, notwithstanding its opinion when the Chief Secretary was one of the members of the Selection Committee. By way of an after thought and taking support of the alleged representation of Mr. Bhupati Prasad Pandey purportedly submitted on 5.4.2011, it was not permissible under the Rules to drop the Selection Committee's recommendations. The MAT had invited the applications and the applications received were circulated to all the members of the Selection Committee including the Chief Secretary who had enough time to satisfy himself that the Rules were followed in inviting the applications and if he had any apprehension, he could have brought the same to the notice of the other members of the Selection Committee on 25.1.2011. At no point of time till 25.1.2011 it was the case of the State Government that the procedure prescribed under Rule 5(2)(ii) for inviting the applications was not followed, inasmuch as inviting applications of IAS/IPS officers by writing to the cadre controlling authority was mandatory. The plea taken by the State Government that the selection process was vitiated because the applications were invited by MAT directly is palpably erroneous and in any case if Mr. Pandey had submitted his application to the Chief Secretary around 20.12.2010, as claimed in oral arguments, nothing stopped the Chief Secretary from bringing the said application before the Selection Committee in addition to the applications already circulated by the Registrar of the Tribunal. The Chief Secretary represented the State of Maharashtra in the Selection Committee and he being responsible for preparing the list of the candidates, nothing stopped him from adding the application of Mr. Pandey to the applications received by the Tribunal. The Chief Secretary kept mum for more than three months and suddenly on 9.5.2011 the Chairman of MAT was informed about the Government's decision not to go ahead with the recommendations of the Selection Committee. Hence, there are good grounds to conclude that the decision of the State Government lacks bona fides.

10. So far as the impugned resolution of the Selection Committee is concerned, Mr. Dwarkadas submitted that, after the recommendation was unanimously passed on 25.1.2011 by the Selection Committee, it had become functus officio and it could not have on its own reviewed its earlier recommendations. Even otherwise, if the decision reviewing the earlier recommendation is based on non-existent, irrelevant, extraneous reasons, such a decision has to be set aside under the powers of judicial review as is the settled legal position. He also submitted that the impugned resolution of the Selection Committee suffered from non application of mind and on the face of it, it was inspired by the impugned decision of the State Government to drop the Selection Committee's recommendations dated 25.1.2011.

11. Mr. Kadam, the learned Advocate General, by referring to the affidavit in reply as well as the additional affidavit in reply filed by the Chief Secretary, submitted before us that, Rule 5(2)(ii) of the Rules is mandatory and if the applications were invited by the Administrative Tribunal, the selection process was vitiated and therefore the State Government was within its powers to decide not to go ahead with the recommendations of the Selection Committee. The scheme of the Act or the Rules does not prohibit the State Government from taking such a decision. If the recommendations of the Selection Committee suffered from the failure to follow the procedure prescribed under the Rules, the State Government would be justified not to proceed with such recommendations and, therefore, the order dated 7.5.2011 does not suffer from any illegality and that the State Government has not exceeded its powers. By referring to the scheme of Rule 5 (2) (iii) of the Selection Rules, Mr. Kadam submitted that the State Government has to take into consideration all the recommendations of the Selection Committee and thereafter make a list of persons selected and send the same with its recommendations to the Central Government. The word "consideration" and "make a list of persons selected" used in Rule 5(2)(iii) would indicate that the State Government has to apply its mind to the recommendations of the Selection Committee and in that process it is entitled to disagree with the recommendations and drop the names. The process of "consideration" is not mechanical and it contemplates active consideration and application of mind and a deliberate thought process. If the State Government disagreed or could not be persuaded to agree with the recommendations forwarded by the Selection Committee, the State Government would be very much within its rights not to process the recommendations. It was urged that the Chief Secretary, when he acted as a Member of the Selection Committee, was not expected to be in the knowledge of the list of candidates prepared by the Cadre Controlling authority who is the Principal Secretary (Service) in the department of the general administration and in any case, the said Cadre Controlling authority was required to prepare the list of candidates and not the Chief Secretary. Therefore, No. fault could be found with the Chief Secretary if the Cadre Controlling authority had either not prepared the list of the candidates or belatedly brought to the notice of the Chief Secretary the application submitted by Mr. Pandey. Mr. Kadam invited our attention to the following observations made by the Supreme Court in the case of *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, , on the meaning of the words "consider".

The words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is to review tentatively, to survey, to examine, to inspect,....

12. As per Mr. Kadam, the decision of the Government as communicated to the Chairman of the Tribunal by the letter dated 7.5.2011 has been in bona fide exercise of powers and it ought to be read as an indication of the Government's

view for reconsideration of the Selection Committee's recommendations and not strictly as its decision to drop the said recommendations and in any case, the said decision does not suffer from any infirmities in law. He also submitted that the Government can always ask for a fresh exercise so as to have a large number of applicants to locate better talent and more suitable officers could be made available for being considered by the Selection Committee. In response to the fresh advertisement released on 28.6.2011, 9 applications have been received and the Petitioner is one of the applicants and, therefore, he will be considered along with the other applicants by the Selection Committee. There is No. prejudice caused to him by the impugned decision and resolution and if the Selection Committee finds him to be the most suitable candidate even in the fresh round, nothing stops the Selection Committee recommending his name once again.

13. So far as the impugned resolution of the Selection Committee is concerned, Mr. Kadam submitted that the concept of *functus officio* is not applicable to the Selection Committee as the recommendations of the said committee are administrative in nature and the Selection Committee does not perform either judicial or quasi judicial functions. In this regard, he relied upon the following observations in the case of *National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others*, :

... The Selection Committee is neither quasi judicial nor adjudicatory and does not require to give any reason in support of its recommendations. The principles of natural justice do not require the Selection Committee to record reasons for the selection or nonselection. It is entitled to review/recall such decisions subsequently on its own and the selection rules do not prevent or specifically bar from such an exercise.

If the Selection Committee was satisfied that the requirement of the Rules in inviting the applications and preparing the list of candidates was not met and if the same was brought to its notice, the Selection Committee acted rightly and passed the impugned resolution so as to recall the earlier recommendation dated 25.1.2011 and there is No. illegality whatsoever committed by the Selection Committee in doing so. Mr. Kadam, therefore, urged that the petition deserves to be dismissed.

14. Mr. Mihir Desai, the learned Counsel appearing for the Tribunal invited our attention to the letter of the Government of India dated 18.2.2009 received by the Registrar of MAT and pointed out that the Government of India had decided that in future, in order to give wide publicity, in addition to the normal circulation of the vacancy / posts for appointment of Members in the Tribunal, the vacancy position should be advertised. The State Government was, therefore, requested that in future, in addition to the usual procedure of filling vacancy of Members by writing to the various cadre authorities, departments and High Courts, etc., the same was also required to be published in leading English, Hindi and Marathi dailies in the State of Maharashtra. Accordingly, the Tribunal had released an

advertisement on 20.11.2010 and this mode may be at the most an additional made of inviting applications but not certainly in conflict with any prescribed procedure under the Rules. He also pointed out that all the applications received within the prescribed time limit were circulated to all the members of the Selection Committee well in advance by the Registrar's letter dated 15.1.2011 including to the Secretary of the General Administration Department. Mr. Pandey's application was not received by the Tribunal at any point of time till the Selection Committee met on 25.1.2011; nor was it brought to the notice of the Tribunal at any time before the impugned decision dated 9.5.2011 was communicated to the Tribunal that Mr. Pandey's application was received before the Selection Committee, or that the Cadre Controlling authority or the concerned desk could not process his application inadvertently. It was also submitted that when the Selection Committee met on 25.1.2011 the Chief Secretary did not point out that Mr. Pandey's application was received well in advance, it could not be processed because of some administrative lapses, by either Desk-10 or Desk-38 and, therefore, the Selection Committee proceeded to consider the applications received by the Tribunal.

15. Section 6 of the Act has undergone an amendment with effect from 19.2.2007 and the said section deals with the qualifications for appointment as Chairman and Members of the Tribunal. Section 6 (3) and (4) are reproduced as under:

Section 6(3):- The Chairman and every other Member of the Central Administrative Tribunal shall be appointed after consultation with the Chief Justice of India by the President.

Section 6(4):- Subject to the provision of Sub-section (3), the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

It is clear that for the selection of the Chairman and every other Member of the Tribunal for the State, the consultation with the Chief Justice of India by the President is necessary and in the same manner as is applicable for the Chairman and every other Member of the Central Administrative Tribunal. Though the Act has been amended with effect from 19.2.2007, the Selection Rules of 2006 have not undergone the consequent amendments and there is No. dispute that the said Rules are in operation as it is.

16. The relevant provisions of the Rules are reproduced as under:

Rule 3(2): For selection of Vice chairman and Members of State Administrative Tribunals:

There shall be a Selection Committee of the concerned State Government for the purpose of selection of the Vice Chairman and Members of the concerned State Administrative Tribunal, consisting the following:

(i) The Chief Justice of the High Court of the

concerned State, Chairman;

(ii) The Chief Secretary of the concerned State Government;

(iii) The Chairman of the State Administrative Tribunal of the concerned State; and

(iv) The Chairman of the State Public Service Commission of the concerned State.

Rule 4: Vacancies.- The anticipated vacancies of Vice Chairman and members shall be placed before the Selection Committee for a block of six months i.e. January to June and July to December of each calendar year. The Chairman of the Administrative Tribunal concerned shall indicate the number of vacancies of the Vice Chairman and the Members to be filled from the Judicial Stream and the Administrative Stream, respectively, whereupon the procedure to fill up the vacancies, accordingly shall be initiated by the department of Personnel and Training of the Central Government or the Department concerned of the State Government as the case may be."

Rule 5. Procedure for inviting/processing of Candidates (1) Central Administrative Tribunal -(i) The Selection Committee shall devise its own procedure or lay guidelines for inviting applications as also for the selection of Vice Chairman and Members of the Central Administrative Tribunal.

(ii):The Selection Committee shall recommend persons for appointment as Vice Chairman and Members from amongst the persons on the list of candidates prepared by the Ministry of Personnel, Public Grievances and Pensions, after writing to the various cadre controlling authorities.

The Central Government shall, after taking into consideration of the recommendations of the Selection Committee and in consultation with the Chief Justice of India in accordance with provision contained in Sub-Section 7 of the Section 6 of the said Act, make a list of persons for appointment as the Vice Chairman and Members of the Central Administrative Tribunal.

(2) State Administrative Tribunal -

(i) The Selection Committee of the concerned State Government shall devise its own procedure or lay down guidelines for inviting applications as also for the selection of the Vice Chairman and Members of the Administrative Tribunal of the State Government concerned.

(ii) The Selection Committee shall recommend persons for appointment as the Vice Chairman and Members from amongst the persons on the list of the candidates prepared by the Chief Secretary or Secretary, General Administration Department or Personnel Department of the State Government after writing to

the various cadre controlling authorities of the State.

(iii) The State Government shall, after taking into consideration of the recommendations of the Selection Committee make a list of persons selected and send the same with its recommendations to the Central Government who will in consultation with the Chief Justice of India in accordance with the provisions contained in Sub-Section 7 of Section 6 of the said Act, appoint the Vice Chairman or Members of the Administrative Tribunal of the State Government concerned."

Rule 6: Meeting of the Selection Committee -

(1) The Selection Committee will normally hold its meetings at New Delhi in the case of Central Administrative Tribunal and at the State Capital of the State concerned in the case of State Administrative Tribunal or at such place or places as may be authorized by the Chairman by recording the reasons for the change of the venue of such meetings.

(2) The Notice/Agenda, as the case may be for the meeting of the Selection Committee shall be issued in advance. The date and venue for the meeting shall be fixed with the convenience of the Chairman of the Committee.

(3) The minimum quorum for the meeting shall be the Chairman and at least one other member.

Rule 7: Criteria for Selection -

Merit in terms of suitability and not the seniority shall be the criterion in the matter of filling up the post of Vice Chairman from amongst the Members of the Administrative Tribunals.

Rule 8: Consultation with the Chief Justice of India.

(1) The recommendation of the Selection Committee shall be placed before the Chief Justice of India for his views.

(2) The recommendations of the Selection Committee, together with the views of the Chief Justice of India shall be submitted to the competent authority for orders.

17. As per the Rules, the Selection Committee consists of (i) the Chief Justice of the High Court, (ii) the Chief Secretary, (iii) the Chairman of the State Administrative Tribunal, and (iv) the Chairman of the Maharashtra Public Service Commission. The anticipated vacancies of Members shall be placed before the Selection Committee for a block of six months i.e. January to June and July to December of each calendar year. The Chairman of the Administrative Tribunal concerned shall indicate the number of vacancies of the Members to be filled as Judicial and the Administrative Members, respectively, whereupon the procedure to fill up the vacancies, shall be initiated by the department concerned of the State Government. The procedure for inviting/processing of candidates has been

set out in Rule 5(2)(ii). The Selection Committee shall devise its own procedure or lay down guidelines for finalizing applications, as also for the selection of Members, the Selection Committee shall recommend persons for appointment from the list of the candidates prepared by the Chief Secretary or the Secretary, General Administration Department of the State Government, after writing to the various Cadre Controlling authorities of the State. The State Government shall, after taking into consideration the recommendations of the Selection Committee make a list of persons selected and send the same with its recommendations to the Central Government.

As per Rule 6, the Selection Committee will normally hold its meeting at Mumbai and the notice/agenda for the meeting of the Selection Committee shall be issued in advance. The date and venue for the meeting shall be fixed with the convenience of the Chairman of the Committee i.e. the Chief Justice of the High Court of Bombay. The minimum quorum for the meeting shall be the Chairman and at least one other member. As per Rule 7, merit in terms of suitability and not the seniority shall be the criteria in the matter of filling up the post of Member of the Tribunal. Rule 8 mandates consultation with the Chief Justice of India and states that the recommendation of the Selection Committee shall be placed before the Chief Justice of India for his views.

The recommendation of the Selection Committee together with the views of the Chief Justice of India shall thereafter be submitted to the competent authority for orders. Rule 8 of the Selection Rules thus states that the Selection Committee's recommendations have to be received by the Government of India and they are required to be placed before the Chief Justice of India for his view and thereafter the recommendation of the Selection Committee are required to be placed along with the view of the Chief Justice of India to the competent authority for orders. The appointment of the Member of the Tribunal is made by the President after consultation with the Governor of Maharashtra. Thus, Rule 8 does not contemplate, by any stretch of imagination, that the State Government can claim to have the authority or power or discretion to either drop or not to proceed with the recommendations of the Selection Committee. The language of the Rule is plain and does not suffer from any ambiguity and it has to be read with Section 6(3) and (4) of the Act.

Rule 5(2)(iii) certainly does not take away the power of the State Government to have a different view on the recommendation of the Selection Committee and it is free to forward such views along with recommendations of the Selection Committee to the Government of India. The selection process as contemplated in the Rules starts from notifying the vacancies, inviting applications, list of candidates to be prepared by the Chief Secretary or

the Secretary, General Administration Department, such list is to be placed before the Selection Committee and thereafter the Selection Committee would go through the credentials of the applicants and make its recommendations keeping in mind the merit and not the seniority as the criteria. The list made by the State

Government of selected persons along with recommendations of the Selection Committee, in case the State has any difference of opinion with the recommendations of the Selection Committee, is required to be forwarded to the Central Government. We cannot read the scheme of Rule 5(2)(iii) in the manner Mr. Kadam urged before us and if it is so read, in our considered opinion, Rule 8 would become otiose. The Scheme of the Rules read in its entirety would suggest that the State Government has the choice to record its own views on the recommendations made by the Selection Committee and forward the same along with the recommendations of the Selection Committee to the Central Government. Unless the Chief Justice of India records his view on the recommendations of the Selection Committee, the recommendations are not processed further so as to be submitted to the competent authority.

18. The impugned decision of the State Government is reproduced as under for ready reference:

GOVERNMENT of MAHARASHTRA No. : MAT-2010/508/C.R.179/10/38 General Administration Department, Mantralaya, Mumbai - 400 032. Date: 9th May, 2011

To, Hon"ble Chairman, Maharashtra Administrative Tribunals, Govt. Barrack Nos. 3 & 4, Free Press Journal Road, Mumbai-21.

Subject: Filling the post of Member (Judicial) and Member (Administrative) in Maharashtra Administrative Tribunal.

Ref.: Meeting of the Selection Committee dated 25.1.2011.

Sir,

I am to state that the recommendation made for the post of Member (Judicial) and Member (Administrative) in Maharashtra Administrative Tribunal in Selection Committee meeting dated 25.1.2011 was under submission. Meanwhile your office has intimated that Hon"ble retired Justice Shri V.R. Kingaonkar had informed that he had joined as Member, National Human Rights Commission and hence he is withdrawing his candidature for the post of Member (Judicial), Maharashtra Administrative Tribunal. Therefore it has become necessary to invite fresh applications from eligible officers for the post of Member (Judicial). Also one applicant who had applied in time for the post of Member (Administrative) had submitted that the correct procedure as per concerned Rules was not followed for recommendation to the post of Member (Administrative).

2. It is found that the said applicant though having applied in time for the said post, his application was not placed before the Selection Committee by the office of Maharashtra Administrative Tribunal. As per Rule 5(2)(ii) of Administrative Tribunals (Procedure for appointment of Vice- Chairman and Members) Rules, 2006, the Chief Secretary or Secretary, General Administration Department or Personnel Department of the State Government shall have to prepare and place the list of the candidates before the Selection Committee.

3. Hence the Government has decided not to go ahead with the recommendation of Selection Committee in its meeting dated 25.1.2011 and accordingly to invite fresh applications from eligible officers for the post of Member (Judicial) and Member (Administrative). By doing that, there will be more applications and wide choice will be available for selection of the candidates. You are requested to please bring the facts in this letter to the kind notice of Hon'ble Chief Justice, High Court of Judicature at Bombay, Mumbai. You are also requested to please instruct the registry of Maharashtra Administrative Tribunal to submit the updated position of vacancies of Member (Administrative) Member (Judicial) to Government in this department.

With regards,

Yours faithfully, Sd/- (Sumit Mullick) Principal Secretary & Chief Protocol Officer to Government of Maharashtra.

Copy to -

Hon'ble the Chief Justice, High Court of Judicature at Bombay, Mumbai for kind consideration.

19. So far as the recommendation for Member (Administrative) is concerned, the State Government has given three reasons in support of the impugned decision, namely, (i) the applicant who had applied in time had represented that the correct procedure as per the concerned Rules was not followed for recommendation of the post of Member (Admn.);

(ii) it was found that the said application, though he had applied in time for the said post, was not placed before the Selection Committee by the office of the Maharashtra Administrative Tribunal; and (iii) as per Rule 5(2)(ii) of the Rules, the Chief Secretary or the Secretary, General Administrative Department, is required to prepare the list to be placed before the Selection Committee and this procedure was not followed. We do not find any substance in any of these reasons.

20. When admittedly, Mr. Pandey did not submit or forward his application to the Maharashtra Administrative Tribunal, the Registrar of the said Tribunal was not expected to place his application before the Selection Committee. It is not the case of the State Government that even if Mr. Pandey did not submit his application through the Maharashtra Administrative Tribunal, it was received by the General Administrative Department and subsequently it was forwarded to the Registrar of the Tribunal at any time before the Selection Committee met on 25.1.2011. At the same time, the date of the application submitted by Mr. Pandey or the date on which it was received, has not been stated in the impugned communication or in the affidavits filed by the Chief Secretary. The affidavit of the Chief Secretary states that, on 5.4.2011 Mr. Pandey submitted a representation and pointed out that the correct procedure as prescribed under the Rules was not followed. We are surprised that the State Government has

taken cognizance of such a vague representation and decided to accept that as a reason to drop the recommendation of the Selection Committee. At No. point of time from 25.1.2011 till 9.5.2011 did either the Chief Secretary or the Principal Secretary (Services) in the General Administration Department ever intimate to the Registrar of the Tribunal or to the Chairman that one of the applicants had submitted a representation and alleged that the correct procedure was not followed. Such a representation, in our opinion, cannot be the basis to either nullify or drop the Selection Committee's recommendations when the Selection Committee is the creation of the Rules. Its recommendations are based on the application of mind and an elaborate exercise of deciding the merit of each of the candidates and to pick up the most meritorious candidate, was undertaken. Thus, the impugned decision of the State Government is based on the non-existent and perhaps, belatedly invented reasons.

21. Now coming to the third ground set out in support of the impugned order i.e. the failure to comply with the requirement of Rule 5(2)(ii) of the Rules has vitiated the selection process. We must note that the letter dated 18.2.2009 addressed by the Department of Personnel & Training, Government of India, to the Chief Secretary, Government of Maharashtra and the Registrar of MAT. as well as the recent letter dated 20.4.2011 from the same authority to the Chief Secretary, Government of Maharashtra, had called upon them to invite applications by giving wide publicity to the post of Member (Administrative) and this appears to be an additional mode of inviting applications. Under Rule 5(2)(ii) of the Rules, the Chief Secretary or the Secretary of the General Administration Department will invite the names of the interested officers by writing to the various cadre controlling authorities of the State. The list of applicants from both these resources i.e. the response received from the various cadre controlling authorities and to the advertisement released, the Chief Secretary or the Secretary, General Administration Department is required to prepare a list of the candidates who responded and place the same before the Selection Committee. It was contended by the learned Advocate General that the applications which were placed before the Selection Committee on 25.1.2011 were the applications received in response to the advertisement by the Tribunal and there were No. applications received from the various cadre controlling authorities, as stated in Rule 5(2)(ii) of the Rules and, therefore, the Selection Committee's recommendation for the post of Member (Administrative) was vitiated. In the affidavit filed by the Chief Secretary, it has been stated that on 29.11.2010, the Secretary in the General Administration Department had written letters to various cadre controlling authorities so as to forward the applications of the interested eligible officers. Copies of these letters have been placed before us and we have noted that the Secretary, G.A.D. invited applications from the cadre controlling authorities for I.A.S. cadre as well as I.P.S. cadre by the said letter.

It is admitted across the bar that not a single application was received in response to this letter of 29.11.2010. It was in this peculiar facts situation that the list of the applicants as circulated by the Registrar of the Tribunal was placed

before the Selection Committee. It is thus clear that the Secretary, General Administration Department had circulated the vacancies to be filled in and invited the response from the interested eligible officers but there was No. response. If there are two alternative modes followed for inviting applications and one mode did not receive any applications and therefore the applications received by the additional mode were placed before the Selection Committee after due scrutiny, it cannot be accepted that the process followed for the recommendation of the Selection Committee was vitiated.

22. The Selection Committee plays a very important role in the appointment of Member of the Tribunal. A seven Judge Bench of the Supreme Court in the case of L. Chandra Kumar (Supra) stated the importance of the Selection Committee's recommendation in the following words:

....It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted.

Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases.

(emphasis supplied)

The State Government is present before the MAT in every case and invariably as a first Defendant. It cannot be, therefore, allowed to have a final say on the recommendations of the Selection Committee for appointment as Chairman or Member of the Tribunal. We must remind the State Government that it cannot treat MAT as an extension of its general administration department though it may have a nodal ministry.

23. Let us now consider the challenge to the resolution passed by the Selection Committee on 13/6/2011 and to the extent it relates to the selection of Member (Administrative). By the said resolution, the Selection Committee has withdrawn its earlier unanimous recommendation dated 25/1/2011 for the post of Member (Administrative). A copy of the minutes of the meeting held on 25/1/2011 has been placed before us and we have noted that for the post of Member (Administrative), the Selection Committee considered in all five applications. The first two applicants were senior IAS Officers and remaining three were senior IPS Officers. As required under Rule 7 of the Rules, the Committee appears to have examined the entire service record of all the applicants and decided to recommend the most suitable amongst them. The first applicant was the former

Chief Secretary of the Government of Maharashtra and senior to the Petitioner. The Committee preferred the Petitioner over the former Chief Secretary and three IPS Officers and presumably to pick up the most meritorious / suitable candidate. The minutes thus show that the unanimous recommendation was made after elaborate deliberations and on assessment of the comparative merit of all the five applicants.

The recommendations of the Selection Committee for the appointment of Member may not be strictly quasi judicial in nature but they are certainly by a body/authority created under the subordinate legislation. In the case of *State Bank of India and Others Vs. S.N. Goyal*, , the Supreme Court considered the question as to when the appointing authority became *functus officio*. Obviously, the appointing authority is created under the Service Rules framed by the bank. The Supreme Court did not hold that the concept of "*functus officio*" is not applicable to the decisions/orders of the disciplinary authority/appointing authority. As per the Black's Law Dictionary "*functus officio*" means,

Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of No. further force or authority.

Having regard to the scheme of the Rules, in our considered opinion, the Selection Committee once having forwarded its recommendations for the appointment of a Member / Chairman of the State Tribunal lacks power to recall or nullify its recommendations on its own and undoubtedly it may reconsider its recommendations, if so requested by the Chief Justice of India or the Competent Authority. Having said so, let us examine whether the resolution dated 13/6/2011 to the extent it pertains to the post of Member (Administrative) is otherwise sustainable.

24. On the scope of judicial review of the administrative decisions and the decisions taken after review of such administrative decisions, it would be appropriate to refer to the following observations made by the Supreme Court in the case of *R.R. Verma and Others Vs. Union of India (UOI) and Others*, :

We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to the decisions purely of and administrative nature. To extend the principles to pure administrative decisions would indeed lead to untoward and startling results. Surely, any Government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration, they cannot be hide-bound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be effected. Here again, we emphasize that, if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court."

(emphasis supplied).

In the case of National Institute of Mental Health and Neuro Sciences v. K.K.Raman (supra), the Supreme Court set out the grounds on which the resolution of the Selection Committee could be interfered or said to be unsustainable. The Supreme Court stated thus,

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 without being guided by extraneous or irrelevant consideration."

(emphasis supplied).

The Selection Committee in the impugned resolution dated 13.6.2011 stated that though Shri Bhupati Prasad Pandey had applied in time for the post of Member (Administrative), his application was not placed before the Selection Committee in its meeting held on 25.1.2011 and over and above, the list of candidates was not prepared in accordance with Rule 5(2)(ii) of the Rules. So far as the list of candidates under Rule 5(2)(ii) of the Rules is concerned, we have already stated in the earlier paragraph that the said reason is unsustainable. At the same time, we must also advert to some other facts. Mr. Pandey retired from service on 31.7.2010. The Secretary, General Administration Department wrote to the cadre controlling authorities i.e. the Principal Secretary (Service) and Additional Chief Secretary (Home) on 29.11.2010 and on this date he was not in service. Hence the only choice for him was to respond to the advertisement published on 20.11.2010. There is No. dispute that he did not respond to the said advertisement and the Registrar of the Tribunal did not receive any application from Mr. Pandey. The cadre controlling authority also did not forward his application either to the Secretary General Administration Department or to the Principal Secretary.

25. In these circumstances, it cannot be accepted that the list of candidates placed before the Selection Committee was not prepared in accordance with Rule 5(2)(ii) of the Rules and there was No. reason to vitiate the unanimous recommendations made on 25/1/2011 for selection to the post of Member (Administrative). In the affidavits filed by the Chief Secretary, as has been noted hereinabove, there is No. mention as to when Mr. Pandey submitted his application and if he had not applied either in response to the advertisement released by the Registrar of the Tribunal or his application was not forwarded by any of the Cadre Controlling authorities, namely, the Principal Secretary (Service) and the Additional Chief Secretary (Home) to the Secretary, General Administration Department, it cannot be said that Mr. Pandey had applied for the post of Member (Administrative) which was due to fall vacant on 8/5/2011 and which was advertised on 20/11/2010. We are, therefore, satisfied that the impugned resolution passed by the Selection Committee on 13/6/2011 and

withdrawing its earlier unanimous recommendations for the selection of Member (Administrative) is based on irrelevant and almost non-existent grounds. Even otherwise, the alleged failure to place the application of Mr. Pandey before the Selection Committee on 25/1/2011 cannot vitiate the unanimous recommendations made by the Selection Committee after considering in all five candidates for the post of Member (Administrative). With great respect and humility at our command, we hold that the impugned resolution dated 13/6/2011 of the Selection Committee is not sustainable on any of the grounds and, therefore, it deserves to be quashed and set aside.

26. In these premises, this petition succeeds and the same is hereby allowed.

The impugned communication dated 9/5/2011 addressed by the Principal Secretary to the State Government as well as the Resolution dated 13/6/2011 of the Selection Committee and to the extent it pertains to recall of the unanimous recommendations made for selection to the post of Member (Administrative), are hereby quashed and set aside.

We direct the State Government to process the Selection Committee's recommendation dated 25/1/2011 for the post of Member (Administrative) for further action as required under the Rules. As the post of Member (Administrative) has fallen vacant on 8/5/2011, it is expedient that the Selection Committee's recommendations are forwarded by the State Government, after consideration, to the Central Government expeditiously.

27. We clarify that the State Government is not precluded from recording its own views on the said recommendations while forwarding it to the Central Government. We also clarify that this order will not, in any way, affect the fresh process for selection to the post of Member (Judicial) pursuant to the advertisement released on 28/6/2011.

28. Rule is made absolute in terms of the above directions, but without any order as to costs.

29. At this stage, Mr. Saluja, the learned AGP, submitted an oral application to stay the operation of this order for a period of four weeks. The learned Counsel for the Petitioner has opposed the said prayer.

30. The prayer is hereby granted and the operation of this order is stayed for a period of four weeks from today, subject to the condition to maintain status quo in respect of the fresh process initiated by the advertisement released on 28/6/2011 for appointment to the post of Member (Administrative) for MAT, for a period of four weeks.