

(2020) 02 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 29546 Of 2019 (O&M)

Sanjay Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

National Institute Of Solar Energy (Scientific, Technical And Administrative Posts)
Recruitment Rules, 2015 — Rule 7, 7(iv), 12(ii)
Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2020) 02 P&H CK 0099

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : D.S. Patwalia, A.S. Chadha, Inder Pal Goyat, Satya Pal Jain, Arun Gosain, Rakesh Shrouti, Rohan Mittal

Final Decision : Allowed

Judgement

Sanjay Kumar, J

By Speaking Order dated 04.10.2019, the Under Secretary to the Government of India, NSM Division, Ministry of New and Renewable Energy,

Government of India, informed the petitioner that his request for absorption in National Institute of Solar Energy (hereinafter, referred to as 'NISE')

was not agreed to. In tandem, NISE issued Office Order dated 04.10.2019 informing the petitioner that, upon completion of the tenure of his

deputation, he would stand relieved from NISE on 04.10.2019 (AN) and that he may report to his parent organization. These two orders are subjected

to challenge in this writ petition.

The petitioner also assails Corrigendum No. 2 dated 19.03.2019 issued by NISE, whereby its Advertisement dated 01.03.2019 was modified and the

post of Deputy Director General (Solar Photovoltaic) was added. This was the post held by the petitioner in which he had sought absorption, in terms

of his letter of appointment read with the National Institute of Solar Energy (Scientific, Technical and Administrative Posts) Recruitment Rules, 2015

(hereinafter, referred to as 'the Recruitment Rules of 2015'). He also challenges Corrigendum No. 3 dated 26.03.2019 relating to the same

advertisement on the ground that the tailor-made qualification of 'Material Science/Nano Technology' had been prescribed as the requisite

qualification, contrary to the Recruitment Rules of 2015, so as to appoint the 7th respondent. A consequential direction was sought to NISE to absorb

him as a Deputy Director General/Scientist 'F' on permanent basis as per Rule 7 of the Recruitment Rules of 2015.

This writ petition was filed on 09.10.2019. It came up for hearing on 10.10.2019 and was adjourned to 15.10.2019. On that day, this Court ordered

notice of motion returnable on 01.11.2019 and directed status quo to be maintained qua the services of the petitioner till the next date of hearing.

Perusal of the said order reflects that this Court proceeded on the understanding that the petitioner was still continuing in the service of NISE and that

his services ought not to be disturbed pending the recruitment to be made to the post under the impugned advertisement.

The petitioner thereupon filed CM-16122-CWP-2019 in this writ petition seeking modification of the order dated 15.10.2019. This application was filed

on 23.10.2019. Therein, the petitioner stated that when he approached NISE with the status quo order dated 15.10.2019, he was informed that as he

had already been relieved from the post, vide the impugned Office Order dated 04.10.2019, he would not be allowed to rejoin the post. The petitioner

claimed that he had been relieved by a cryptic non-speaking order, without giving him an opportunity of hearing, and that he had not even been granted

time to join his parent organization, viz., Central Electronics Limited. He asserted that the formalities of relieving him from the post had not been

completed till date and that he had been shunted out after rendering more than two years of dedicated service. He accordingly sought modification of

the interim order dated 15.10.2019 to the effect that NISE should maintain status quo ante, as existing prior to the passing of the Office Order dated

04.10.2019, qua his services. When this application came up for hearing before this Court on 24.10.2019, Mr. Arun Gosain, Senior Panel Counsel for

the Union of India, accepted notice on its behalf. This Court opined that, keeping in view the contents of the application and in order to resolve the controversy, it would be necessary to peruse the service record of the petitioner qua his being relieved from the post of Deputy Director General in NISE. The case was accordingly adjourned to 01.11.2019.

On 01.11.2019, the learned Judge noted that a status quo order had been passed qua the services of the petitioner, as the relinquishment of charge had not taken place on that day, but a controversy had arisen with regard to the petitioner's continuation in the post as it was the stand of NISE that he stood automatically relieved/ divested of his charge on 04.10.2019, upon the passing of the relieving order. The learned Judge further noted that nothing had been produced to show that the petitioner had either relinquished his charge or that his successor had formally taken over the same from him. The learned Judge accordingly opined that the contention of the learned counsel for NISE that the petitioner stood automatically relieved, on the face of it, was made to overreach the status quo order dated 15.10.2019. On that premise, the learned Judge passed a specific order directing the respondents in the writ petition not to give effect to the order dated 04.10.2019 till the next date of hearing and that the petitioner should be allowed to continue as a Deputy Director General in NISE.

Aggrieved by this interim order dated 01.11.2019, NISE and its Director General preferred an appeal in LPA-1846-2019. Therein, stay of the operation of the order under appeal was granted on 8.11.2019. Thereafter, by order dated 09.12.2019, the said appeal itself was disposed of, granting liberty to take steps in the writ petition for vacating of the interim order dated 01.11.2019. Till a decision in that regard was passed, the Division Bench directed that the interim order granted in the appeal should remain in operation.

In the meanwhile, aggrieved by the stay order granted in the appeal on 08.11.2019, the petitioner approached the Supreme Court of India by way of Petition for Special Leave to Appeal (Civil) No. 27416 of 2019. This petition was disposed of by the Supreme Court on 18.12.2019. Taking note of the final order passed in LPA-1846-2019 and observing that the petition had virtually become infructuous, the Supreme Court directed this Court to ensure that the main writ petition itself was decided on or before 31.01.2020. The Supreme Court further observed that in the event the petitioner joined his

place of posting in the parent department, the same would be subject to the final result of this writ petition.

This chain of events led to the conclusion of the hearing of this writ petition on 30.01.2020. In consequence, this final order.

NISE was set up by the Ministry of New and Renewable Energy, Government of India, as an autonomous Institute in the year 2013. The first

Governing Council of this Institute was constituted by the Ministry. The Institute was registered as a Society on 28.10.2013, under the provisions of

the Haryana Registration and Regulation of Societies Act, 2012. The Governing Council, at its 3rd meeting held on 06.04.2015, approved the

Recruitment Rules of 2015 which prescribed, inter alia, the number of posts, their classification and pay scales, the method of recruitment, the required

academic qualifications and experience.

NISE then published an open advertisement on 06.05.2016 proposing to fill up the post of Deputy Director General/Scientist 'F' on deputation (short-

term contract) basis. In response thereto, the petitioner, who was a regularly appointed Deputy Engineer in the service of the Central Electronics

Limited, a Public Sector Enterprise, applied for the post. He was selected after due process and was issued the Offer of Appointment dated

15.09.2016 in PB-4 - ` 37400-67000 plus Grade Pay of ` 8900/-. Perusal of this offer letter reflects that he was appointed on deputation (short-term

contract) basis and his deputation was to be initially for a period of two years, subject to the condition that he would make efforts to increase the

income of NISE and would achieve the target of getting additional revenue to the tune of ten times his gross salary during the said period. It was

further stated that his deputation could be extended and depending upon his performance, he could even be absorbed in NISE. This Offer of

Appointment letter was signed by the Director General of NISE. The petitioner accordingly joined the service of NISE on deputation on 07.10.2016.

Thereafter, the petitioner submitted representation dated 24.08.2017 highlighting his performance and achievements, including the accomplishment of

the revenue target, and requested that his case be considered for permanent absorption. However, by letter dated 18.12.2017, the Director General of

NISE informed him that it was premature to consider his request for permanent absorption as his period of deputation was still ongoing.

The petitioner again made a representation on 16.07.2018 reiterating his request for absorption. Thereupon, a proposal was put up for approval before the Director General of NISE, recommending that the request of the petitioner for such absorption may be considered by the competent authority. The proposal further stated that, as NISE was facing shortage of manpower and the proposal for revival of the post had already been submitted to the Ministry, one year extension should be permitted for the smooth functioning of NISE. This proposal was dated 14.09.2018 and was made under the signature of the Consultant (Administration) and also bore the endorsement of one Dr. Chandan Banerjee, Deputy Director General of NISE. A separate proposal was submitted on 19/20.09.2018 by the same officers, pointing out that the deputation of the petitioner was going to expire on 06.10.2018 and proposing that the same should be extended for a further period of six months. Thereupon, by Office Order dated 06.10.2018, NISE extended the deputation of the petitioner for a 'period of six months, i.e., up to 06.03.2019' (as stated in the order). Again, by Office Order dated 10.05.2019, NISE extended his deputation by a period of six months or till such time the vacant post was filled up, whichever was earlier.

The petitioner's case is that he had generated revenue which was more than ten times his gross salary over the 3 years that he served in NISE. His claim is that his total gross salary for these 3 years was approximately `72 lakh and the income/revenue generated during that period was `17.08 crore. He projected these figures in support of his contention that NISE was also positively inclined to consider his request for absorption in the first instance and that is the reason why it published the Advertisement dated 01.03.2019 notifying only the post of Deputy Director General (Solar Thermal Technology), which had nothing to do with the post held by him. It is his specific case that, at that point of time, there was interference at the level of the Ministry so as to favour the 7th respondent, who was working as a Senior Consultant in NISE. According to the petitioner, Sujit Pillai, the 7th respondent, is the son of one G.K. Pillai, former Secretary, Home Department, Government of India, and one Sudha Pillai, an I.A.S. officer, and Anand Kumar, I.A.S., the present Secretary of the Ministry of New and Renewable Energy, impleaded by name as the 5th respondent, worked as their subordinate officer at one point of time. The petitioner alleged that, basing on this interference, Corrigendum No. 2 dated 19.03.2019 came to be

issued including the post of Deputy Director General (Solar Photovoltaic) also. This Corrigendum spelled out the essential qualifications required for

the post as follows:-

'Essential:

(i) Doctorate Degree in the relevant subject of Physics / Chemistry / Renewable Energy / Energy or Master's Degree in Engineering / Technology in

Mechanical / Electrical / Electronics / Chemical from a recognized University or Institute.'

The petitioner further alleged that after issuance of Corrigendum No. 2, it was realized that the 7th respondent did not possess the requisite

educational qualification prescribed for the post, as his B.Tech./MS was in the field of Material Science. This, per the petitioner, led to issuance of

Corrigendum No. 3 on 26.03.2019, whereby a tailor-made qualification was added for him, by including Material Science. This discipline, according to

the petitioner, did not even find mention in the Recruitment Rules of 2015. The petitioner admitted that he also applied for the post conditionally,

reserving his right to seek absorption. His letter dated 29.04.2019 bears out this fact. The petitioner then made further correspondence with the

authorities canvassing his right to be absorbed. Aggrieved by the lack of response thereto, he filed CWP- 26496-2019 before this Court. The said writ

petition was disposed of on 18.09.2019, directing the respondents therein to objectively consider the grievance of the petitioner, by treating the writ

petition as a representation, and to pass appropriate orders thereon in accordance with law. This led to the Under Secretary to the Government of

India passing the impugned Speaking Order dated 04.10.2019, rejecting the petitioner's claim for permanent absorption. In tune, NISE passed an

Office Order on the very same day, relieving him. These orders are subjected to challenge in the present writ petition.

Mr. D.S.Patwalia, learned senior counsel, would point out that the petitioner's claim for absorption was rejected on three grounds â?

(1) the Advertisement dated 06.05.2016 did not speak of any such absorption;
(2) his claim as to generating revenue that was ten times his salary

remained unsubstantiated; and (3) his performance was never 'outstanding', as reflected in his CPARs. Learned senior counsel would assert that all

the three grounds are without basis.

The written statement filed by NISE and its officers, arrayed as respondents No. 2, 4 and 6, reads thus: The petitioner suppressed material facts and the same disentitled him from seeking relief from this Court. The petitioner stood relieved from the post on 04.10.2019 and he himself applied for grant of leave in his parent organization on 05.10.2019. As regards his claim for absorption, it was stated that he was not found suitable as his CPARs for the years 2016-17, 2017-18 and 2018-19 only reflected gradings of 'C (Good)', 'B (Very Good)' and 'C (Good)'. He was stated to have failed miserably in so far as generation of revenue was concerned. It was further stated that, in any event, the achievements of the Institute would be through collective efforts and therefore, there was nothing much to write about the petitioner separately. It was contended that the documents relied upon by the petitioner did not substantiate that the so-called revenue generation was his single-handed achievement and that there was no scale to calculate such revenue generation. The petitioner's averments about Corrigendum No. 2 dated 19.03.2019 were stated to contain wild and indiscreet allegations of nepotism and favouritism, though these two specific words had not been named but the facts mentioned pointed towards the same. Reference was made to a document titled 'Thrust Areas with Action Plan for RD&D For Technology Development in New and Renewable Energy' brought out by the Ministry of New and Renewable Energy and a document titled 'Clean Energy Research Initiative', in support of the contention that inclusion of the qualification in Material Science was justified and above board. In his replication to the aforesaid written statement, the petitioner set out the details of the revenue generation during the period October, 2016 to September, 2019. He quantified the same and juxtaposed it with his gross salary during that period, in proof of such revenues being more than ten times his salary income. He pointed out that, had his performance not been up to the mark, his deputation would not have been extended twice. As regards reliance on his CPAR for the year 2018-19, the petitioner stated that he had not been communicated the same and asserted that it could not be taken into account. He further stated that he had submitted a representation on 14.08.2018 expressing his grievance about the 'C' grading that he had received for the period 2016-17, but the same was turned down on 20.03.2019 on the ground that his grievance had not been submitted within 30

days. According to the petitioner, he received this CPAR only on 03.08.2018 and his representation dated 14.08.2018 was well within the stipulated 30

days, but despite the same, his request for review was turned down unjustly. He again asserted that he was relieved prematurely from the post,

contrary to the guidelines.

The Union of India and the officers of the Ministry of New and Renewable Energy, arrayed as respondents No. 1, 3 and 5, filed a separate written

statement. Therein, they alleged that the petitioner had withheld material information and that the writ petition merited dismissal on that ground.

Justification was offered for turning down the petitioner's request for absorption under the Speaking Order dated 04.10.2019. They asserted that the

petitioner's deputation was up to 06.10.2019 and contended that a deputationist had neither a legal right to be absorbed in the borrowing organization

nor a vested right to continue on deputation.

Despite service of notice, Sujit Pillai, the 7th respondent, did not choose to enter appearance before this Court and put forth his case.

As regards the preliminary objection raised by the answering respondents as to the maintainability of this writ petition on the ground of the petitioner's

alleged lack of bonafides, it may be noted that the petitioner disclosed the contents of both the impugned orders dated 04.10.2019 in his writ petition

and filed copies thereof. NISE's Office Order dated 04.10.2019 clearly recorded that the petitioner would stand relieved on that day afternoon.

Therefore, even if the petitioner stated in his petition that he had not been relieved, the said order spoke for itself. In this regard, it may also be noted

that it is a settled principle of service jurisprudence that an employee who is being relieved from a post would be required to go through certain

formalities, including the process of handing over charge, along with the records and other incidents of his office, to the new incumbent or his

successor-in-charge. Protocols of accountability require that this process should be gone through before a person stands relieved from the job and

another person enters in his place. In the present case, admittedly, there is no evidence whatsoever of such a relieving process having taken place, be

it on 04.10.2019 or any later date. The petitioner, who was holding the senior post of Deputy Director General in a Central Government Undertaking,

which admittedly involved financial ramifications, cannot simply walk out of the

office without accounting for all that was in his control. In the absence of any process of the petitioner being relieved from office, it is not open to a responsible Central Government organization, such as NISE, to claim that he is deemed to have been relieved without any record thereof.

That apart, there seems to be no clarity as to when the petitioner's deputation actually came to an end. The impugned Speaking Order dated 04.10.2019 of the Ministry of New and Renewable Energy, Government of India, records that the petitioner's deputation would come to an end on 06.10.2019. The note file of the Ministry, pertaining to this subject, also speaks to the same effect. The notion of NISE that his deputation came to an end on 04.10.2019 itself, was therefore opposed to the Ministry's understanding. One argument that was advanced was that, in terms of the Office Order dated 06.10.2018, the period of deputation of the petitioner was extended up to 06.03.2019, and therefore, the later Office Order dated 10.05.2019 must be construed as having extended his deputation for a further period of six months from that date. It was therefore contended that the last deputation period of the petitioner ended in September, 2019, itself, and was not up to 06.10.2019. Surprisingly, this argument was advanced by Mr. Satya Pal Jain, learned Additional Solicitor General, appearing for the Union of India, contrary to the stand of the Ministry, as reflected in the impugned Speaking Order and the written statement! That apart, on facts, it may be noted that the petitioner's initial deputation under the Offer of Appointment letter dated 15.09.2016 was for a period of two years and he joined service pursuant thereto on 07.10.2016. The period of deputation would commence from the date of joining. His initial deputation was therefore up to 06.10.2018. The first extension under Office Order dated 06.10.2018 was for six months, i.e., it would be up to 06.04.2019 and not up to 06.03.2019, as wrongly mentioned in the order. The second extension of six months under the Office Order dated 10.05.2019, if taken from 06.04.2019, would mean that it ended on 05/06.10.2019 and not in September, 2019. This was clearly the understanding of the Ministry also. All in all, there is no clarity whatsoever as to when the petitioner's deputation came to an end. The lack of mathematical skills on the part of the officials of NISE, as reflected in the Office Order dated 06.10.2018, added to this confusion.

In such circumstances, the petitioner was not unjustified in claiming that he had

not been relieved from the post on 04.10.2019.

That being said, the petitioner ought not to have suppressed the fact that he had sought leave in his parent organization on 05.10.2019 or projected the

illusion that he was actually continuing to work in NISE even as on 15.10.2019. However, given the totality of the circumstances of the case, which

will be adverted to at length hereinafter, this Court is not inclined to hold against him on this solitary ground. In effect, this Court does not find any

abuse of process on the part of the petitioner, warranting his being non-suited on that ground. Further, this case beseeches adjudication on merits and

cannot be brushed aside on mere technicalities.

Two core issues arise for consideration in the context of the facts set out supra :â?" (1) Whether the petitioner is entitled to seek absorption in the post

of Deputy Director General (Photovoltaic) in NISE and if so, whether rejection of his request for such absorption, vide Speaking Order dated

04.10.2019, is valid and justified? and (2) Whether the action of NISE in issuing Corrigendum No. 2 dated 19.03.2019 and Corrigendum No. 3 dated

26.03.2019, in the context of its Advertisement dated 01.03.2019, is lawful and valid?

Insofar as the first issue is concerned, this Court must note at the outset that the petitioner has no indefeasible right to be absorbed in the service of

NISE. Further, any such absorption necessarily has to be with the willingness and consent of his parent organization. However, at this stage, the issue

is whether NISE is justified in rejecting his claim for absorption at the threshold whereby, the occasion did not even arise for the parent organization to

be addressed for consent. In this regard, it may be noted that Rule 7 (iv) of the Recruitment Rules of 2015 provides that the post of Deputy Director

General could be filled either by promotion or by direct recruitment or by deputation (including short-term contract) or by absorption. The Appointing

Authority for the post of Deputy Director General, in terms of Rule 12(ii) of the Recruitment Rules of 2015, is the Minister- in-charge of the Ministry

of New and Renewable Energy, Government of India. It may also be noted that NISE is not averse to effecting recruitments through absorption. The

petitioner cited five such cases over the past ten years. No post in Scientist 'F' category was filled up by such absorption but there is no reason as to

why there cannot be a first instance in this regard, given the fact that Rule 7 (iv)

of the Recruitment Rules of 2015 provides for such mode of recruitment. No doubt, the Advertisement dated 06.05.2016 issued by NISE proposing to fill up the said post on deputation basis did not indicate that such deputationist would be considered for absorption at a later date. However, the Offer of Appointment letter dated 15.09.2016 specifically held out a promise to the petitioner in this regard. Mr. Rakesh Shrouti, learned counsel for NISE, contended that the promise made to the petitioner in the Offer of Appointment letter dated 15.09.2016 was a feeble one. However, this Court is not persuaded to agree. When no less than the Director General of NISE made such a promise on its behalf, it cannot be treated as either a feeble or a passing remark. In terms thereof and in terms of Rule 7 (iv) of the Recruitment Rules of 2015, NISE was duty-bound to objectively consider the candidature of the petitioner for such absorption.

This promise of consideration for absorption was conditional upon the performance of the petitioner. The Offer letter indicated that the petitioner would have to achieve the target of raising additional revenue for NISE to the tune of ten times his gross salary during the period of deputation. In this regard, the petitioner furnished specific details of how he achieved this target. Attempting to counter the same, NISE as well as Union of India faltered with feeble denials. On the one hand, it was contended that the petitioner could not single-handedly take the credit for such revenue generation and on the other, it was asserted that he failed miserably to generate such revenue. In the same breath, it was also asserted that there was no scale for assessing such revenue generation. In the light of the specific figures cited by the petitioner, time and again, in proof of his having achieved the required financial targets and in the absence of any categorical and convincing rebuttal thereof, this Court finds no reason to discard or reject the figures put forth by the petitioner.

Be it noted that the petitioner, being the Deputy Director General (Solar Photovoltaic), a fairly superior position, would necessarily have to take the assistance of his subordinates in the discharge of his duties and functions. The following major functions were allotted to the petitioner in the capacity of Deputy Director General: â?

'Safety Qualification Test Lab and its Development, Inverter Test Lab, Solar Water Pump Test Lab, Battery Test Lab, Solar PV Design Lab,

Procurement of Scientific/ Laboratory Items/ Lab Equipment etc., Consultancy, Co-ordination and Lab related training, Applied R&D, Project

Development and Projects (National and International), Lab Infrastructure Development, Quality Control Management of all labs Calibration of Lab

Equipment, Labs Accreditation, Calibration of lab equipment, Data Centre, IT, Monitoring and Evaluation, CPIO for related RTIs, Planning and

Coordination Work, Standing Committee on Energy, Official Language and any other work assigned from time to time.'

Therefore, it is meaningless to say that any achievement of his department under his supervision cannot be credited to his efforts. It is equally

meaningless to say that the petitioner had to single-handedly generate revenues without the assistance of his subordinates. Given the varied functions

that the petitioner discharged, this argument requires to be mentioned only to be rejected.

Thus, in the light of the unrebutted figures put forth by the petitioner and the frantic but faulty arguments of the other side, this Court is inclined to

accept that he passed the test of generating the requisite revenue in terms of the expectation envisioned by the Offer of Appointment letter dated

15.09.2016.

Lastly, the performance of the petitioner was categorized as below par on the strength of his CPARs. Perusal of the Confidential Performance

Appraisal Report for the period 07.10.2016 to 31.03.2017 indicates that the overall grading of the petitioner therein was 'C (Good)'. He was stated to

be hard-working with good knowledge of Photovoltaics but was required to widen his knowledge and understanding about all aspects of solar energy,

which included solar resource, solar thermal, etc. The Confidential Performance Appraisal Report for the period 2017-18 indicates his overall grading

was 'B (Very Good)'. The contention of the petitioner is that his CPAR for 2018-19 was not even communicated to him and therefore, the same could

not be relied upon by NISE at this stage. In *Dev Dutt v/s. Union of India and others* [2008 (8) SCC 725], the Supreme Court held that every entry

relating to an employee under the State or an instrumentality of the State must be communicated to him within a reasonable period, as such an entry

may adversely affect his chance of promotion or getting some other benefit. In any event, the petitioner's Confidential Performance Appraisal Report

for 2018-19, even if it could be looked into, again graded him as 'C (Good)'. Thus, the petitioner was graded as 'Good', 'Very Good' and 'Good' for the three periods of his deputation. Further, perusal of the CPARs, which have been produced by the respondents, do not indicate any actual adverse entry therein, discrediting the candidature of the petitioner to be considered for absorption.

Significantly, there is no material placed before this Court in support of a 'Good' grading being inadequate or being adverse to the candidature of the employee concerned. Be it noted that there was never an insistence that the performance of the petitioner should be 'Outstanding' for him to seek absorption against the deputation post. In this regard, it is also interesting to note that the Director General of NISE issued Certificate dated 30.04.2018 to the petitioner in recognition of his contribution and for his 'outstanding' performance. It may also be noted that the deputation of the petitioner was extended twice after the initial period of two years. Had his performance been substandard, such extensions would not have occurred.

This ground of rejection with regard to his performance being substandard is therefore equally uninspiring. The law in this regard was summed up by the Supreme Court in *Rameshwar Prasad v/s. Managing Director, U.P. Rajkiya Nirman Nigam Ltd.* [1999 (8) SCC 381] to the effect that whether a deputationist should be absorbed in service or not is a policy matter but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting an application, there must be justifiable reasons. It was further pointed out that the power of absorption, no doubt, is discretionary but it is coupled with the duty not to act arbitrarily or at whim or caprice of any individual.

Applying these standards, this Court finds that consideration of the petitioner's claim for absorption in NISE, as embodied in the impugned Speaking Order dated 04.10.2019, falls woefully short and is wholly inadequate. Admittedly, the petitioner joined his parent organization on 17.01.2020, but the observation of the Supreme Court was that doing so would be subject to further orders in this writ petition. Notwithstanding this development, the petitioner's case for absorption would therefore have to be considered afresh in an objective and transparent manner by the Minister-in-charge of the Ministry of New and Renewable Energy with particular regard being had to whether his performance over the past three years entitles him to such

absorption.

As regards the second issue, it may be noted that the Recruitment Rules of 2015 specifically speak of the qualifications required for appointment as a

Deputy Director General. Schedule II appended to the said Rules relates to 'Recruitment for the posts of Deputy Director, Director and Deputy

Director General (Scientist 'C' to Scientist 'F')' and sub-clause 3(A)(a) details the essential qualifications for Deputy Director General (Scientist 'F')

thus:

'(a) Essential

(i) Doctorate Degree in the relevant subject of Physics / Chemistry / Renewable Energy / Energy / Environmental Science or Master's Degree in

Engineering / Technology in the discipline / subject to the job requirements.'

The Governing Council of NISE therefore could not have meddled with or modified the aforesaid qualifications prescribed by the rules. Be it noted

that this was not an instance of relaxation of the rules but of rewriting the rules. The Recruitment Rules of 2015 appear to have been framed in

exercise of executive power but once such rules have been put in place, they could not be overridden by passing of a resolution by the Governing

Council. Necessary steps had to be taken to amend the Recruitment Rules of 2015 as per due procedure before any such modification could be given

effect to. It is the admitted case that no such process was undertaken and new disciplines were added in the qualifications straightaway.

Certain norms of transparency and fair play must be adhered to while making recruitments to posts in State instrumentalities and NISE cannot be

permitted to fight shy of it. It would be apposite to recall the observations of the Supreme Court in UPSC v/s. Girish Lal Vaghela [2006 (2) SCC 482]

in this regard, which read as follows:

'12. ... appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible

candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written

examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement

made ... appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without

holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.'

In *Secretary, State of Karnataka and others v/s. Umadevi and others* [2006 (4) SCC 1], the Supreme Court observed that regular appointment must

be the rule and a regular process of recruitment or appointment has to be resorted to when regular vacancies in posts, at a particular point of time, are

to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations.

More recently, in *Renu and others v/s. District and Sessions Judge, Tis Hazari Courts, Delhi and another* [2014 (14) SCC 50], the Supreme Court

observed thus:

'16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts

available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of

recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be

made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to

avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.'

The Supreme Court observed that binding earlier decisions were clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in

the process of public employment. The Supreme Court held that adherence to the rule of equality in public employment is a basic feature of our

Constitution and the role of the High Court under Article 226 of the Constitution would be that of a sentinel on the qui vive.

This being the settled legal position, the manner in which NISE initiated steps to make recruitment to the subject post and its machinations during that

process do not augur well. It may be noted that there is no explanation forthcoming as to why the sudden inclusion of a new qualification was

warranted after addition of the post with prescribed qualifications, vide Corrigendum No. 2 dated 19.03.2019. Though certain documents were relied

upon by NISE to justify the introduction of this new qualification, there is no

indication in these documents as to how this new qualification is relevant to the subject of Solar Energy and more particularly, Solar Photovoltaics. Notably, there is not even a mention of 'Material Science' in either of these documents.

That apart, this new qualification was included after the notification of the post, vide Corrigendum No.2 dated 19.03.2019. In effect, the process of

selection for the said post was already set in motion. In the light of the law laid down by the Supreme Court in K.Manjusree v/s. State of Andhra

Pradesh and another [2008 (3) SCC 512], to the effect that the rules of the game, meaning thereby, the criteria for selection, cannot be altered by the

authorities concerned in the middle or after the process of selection has commenced, the action of NISE in altering the qualifications, after advertizing to

the same in Corrigendum No. 2 dated 19.03.2019, falls foul of settled law.

The petitioner specifically alleged that all this was done at the behest of the 5th respondent to favour the 7th respondent. He also set out the nexus

between them. In spite of being served notice, Sujit Pillai, the 7th respondent, did not even choose to come forward to defend his case. Further,

Anand Kumar, the Secretary, Ministry of New and Renewable Energy, Government of India, despite being made the 5th respondent eo nomine and

despite specific adverse allegations having been made against him, to the effect that the parents of the 7th respondent were his superior officers at

one time and that he favoured him on that ground, did not choose to counter the same by way of a separate written statement and meekly took shelter

under the common written statement filed by his Administrative Officer. The silence of these respondents speaks volumes. Be that as it may.

In any event, as already pointed out supra, no material has been placed before this Court to demonstrate as to how Material Science has anything to

do with the discipline of Solar Photovoltaics. The documents pressed into service by Mr. Rakesh Shrouti, learned counsel, are of no avail in this

regard. Further, such inclusion, even if presumed to be above board by a leap of imagination, still cannot be sustained as it altered the rules of the

game after it had begun.

On the above analysis, the writ petition is allowed to the extent indicated hereunder. The Corrigenda dated 19.03.2019 and 26.03.2019 issued by NISE

in relation to the Advertisement dated 01.03.2019, apropos the post of Deputy

Director General (Solar Photovoltaic), are set aside. The process of recruitment already initiated in this regard, be it at whatever stage, shall stand nullified. Further, the Speaking Order dated 04.10.2019 passed by the Ministry of New and Renewable Energy, Government of India, and the Office Order dated 04.10.2019 passed by NISE, are also set aside. However, as the petitioner's deputation would admittedly have come to an end on 06.10.2019 and there was no extension thereafter, he cannot be permitted to continue in the service of NISE at this stage. The same would, however, not impact his claim to be considered for absorption in the service of NISE under Rule 7 (iv) of the Recruitment Rules of 2015, read with his Offer of Appointment letter dated 15.09.2016. This exercise shall be undertaken afresh by the Minister-in-charge of the Ministry of New and Renewable Energy, Government of India, and upon an objective analysis of his claim, a reasoned order shall be passed and communicated to him. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order. In the event he is found fit to be absorbed, NISE shall initiate the process of obtaining approval from his parent organization so as to absorb the petitioner in its service in accordance with due procedure. It is only after conclusion of this exercise that NISE would be at liberty to initiate the process of direct recruitment, if warranted. Such process shall be strictly in accordance with the Recruitment Rules of 2015 and it would not be open to NISE to add or modify the qualifications prescribed for the post without bonafide amendment of the rules as per due procedure.

Given the circumstances of the case, though most deserving, this Court deems it appropriate not to impose costs.