

## **Dr. M.V. Nair vs Union Of India (Uoi) And Ors. on 22 January, 1993**

**Equivalent citations: JT1993(1)SC255, 1993LABLC1111, (1993)ILLJ347SC, 1993(1)SCALE180, (1993)2SCC429, 1993(1)SLJ111(SC), (1993)2UPLBEC833**

**Bench: L.M. Sharma, B.P. Jeevan Reddy**

### **JUDGMENT**

1. Heard counsel for the parties. Leave granted.

2. The controversy in this appeal pertains to the appointment to the post of Director in National Research Laboratory for Conservation of Cultural Property (N.R.L.C) on transfer on deputation basis. The said post was in the scale of Rs. 4500-5700 with effect from 1.1.1986.

3. On 26th June, 1989 the Deputy Education Advisor to the Government of India in Ministry of Human Resources Development (Department of Culture) addressed a letter to the Chief Secretaries of all the Suite Governments and Union Territories and all Universities and Heads of recognised research institutions intimating them that the services of a suitable officer are urgently required on transfer on deputations basis on the post of Director (N.R.L.C). It was requested that the said vacancy be circulated in all the departments and offices under the Stale Governments/Union Territories and the bio-data of suitable candidates fulfilling the requisite eligibility conditions as mentioned in Annexure (I) to the said letter be sent to the Ministry. Accordingly, six names were received including the appellant, Dr. M.V. Nair and the third respondent in the appeal, Dr. I.K. Bhatnagar. Only two persons were found to be eligible by the Union Public Service Commission viz., the appellant, Dr. Nair and another person, Dr. Tandon. Inasmuch as the service records of Dr. Tandon were not sent, he was not called for interview with the result that only Dr. Nair remained in the field. He was interviewed and selected. His selection was questioned by Dr. Bhatnagar (third respondent in this appeal) by way of an Original Application (O.A. No. 1363 of 1990) before the Central Administrative Tribunal, Principal Bench, New Delhi. The relist' sought for in the O.A. - in the words of the Tribunal - was for issuance of a "direction to the respondents to declare his entitled to be granted relaxation like Dr. Nair, in the requirement of five years service as Project Officer so as to make him eligible to be called for interview to the post of Director, N.R.L.C., to interview him and if selected, appoint him to the said post with all consequential benefits." It is evident from the very prayer in the O.A. that the third respondent, on his own showing, was not eligible for the said post and, therefore, he sought for a relaxation to make him eligible therefor. He, however, assumed that a relaxation was granted in favour of Dr. Nair to make him eligible for consideration for the said post. On that basis he prayed that he may be similarly granted a relaxation.

4. Before the Tribunal it was contended by the respondent, Union of India, that no relaxation was granted in favour of Dr. Nair since he satisfied the eligibility criteria. The Tribunal recorded the contentions of the petitioner before them (third respondent in this appeal) and those of the

respondents before them but did not record any finding on any of those contentions. At the same time, they expressed an opinion that Dr. Bhatnagar should also have been interviewed by the U.P.S.C. since in their opinion he too was equally qualified and eligible for the said post like Dr. Nair. Having so found, a direction was given to the respondents before the Tribunal to hold a fresh selection for the said post. It would be appropriate to set out the terms in which the relief was granted:

In the facts and circumstances of the case, the application is disposed of with the direction to the respondents to hold a fresh selection for the post of Director, N.R.L.C. as the applicant has by now become eligible in all respects under the recruitment rules. His suitability should be considered along with other eligible candidates. In case he is found suitable for appointment, he should be appointed to the post of Director, N.R.L.C. The respondents shall comply with the above directions as expeditiously as possible and preferably within a period of six months from the date of communication of this order.

5. It was, however, directed that till 30th September, 1992 or till a fresh selection as directed by the Tribunal is finalised, whichever is earlier, Dr. Nair will continue in the said post. It is the said order of the Tribunal which is challenged in this appeal.

6. According to the relevant recruitment Rules, the eligibility criteria for appointment by promotion/transfer on deputation to the post of Director was the following:

(1) Officers under the Central/State Govts./Universities/Recognised Research Institutions/Semi-Governments, Statutory or Autonomous Organisations:

(a)(i) holding analogous posts, or

(ii) With 5 years' service in posts in the scale of Rs. 1500-2000 or equivalent; .and

(b) Possessing the educational qualifications and experience prescribed for direct recruitments under Col. 7.

(2) The departmental Project Officer with 5 years' regular service in the grade will also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion.

(Period of deputation/contract including the period of deputation in another ex-cadre post held immediately proceeding this appointment in the same organisation/department shall not exceed 4 years).

(emphasis added)

7. In the Annexure to the letter dated 26.6.1989, calling for application from the eligible persons, the scale of pay was mentioned as "Rs. 3700-5000/- revised or equivalent" instead of "Rs. 1500-2000/- or equivalent" as stated in the Rules. It is necessary to understand this distinction. It is slated before us that the scale of Rs. 1500-2000/- obtaining in Central Government service was revised to Rs. 3700-5000/- with effect from 1.1.1986 i.e., after the framing of the Rules. It is for this reason that in the Annexure to the letter dated 26.6.1989, the scale of pay was mentioned "Rs. 3700-5000/- (revised or equivalent)". So far as Dr. Nair is concerned, he was in the service of the State Government in the scale of Rs. 1500-2065/- with effect from 1975. The said scale was revised by the State Government to Rs. 2070-3550/- on 1.11.1989 with effect from 1.7.1988. The (intention of the third respondent (petitioner before the Tribunal) was that inasmuch as Dr. Nair was not in the revised scale of Rs. 3700-5000/- he was ineligible for being considered. The reply of the respondents including Dr. Nair to the said contention was based upon the Office Memorandum dated 7.3.1984 issued by the Department of Personnel and Training, Government of India. This memorandum lays down "criteria for determining analogous posts." The said memorandum was necessitated in view of the several references received by the Ministry of Home Affairs asking for definition of the expression "analogous posts" where appointment to a post is made on transfer on deputation/transfer basis from the officers holding analogous posts under the Central/State Governments. The relevant portion of the memorandum reads thus:

(i) Though the scales of pay of the two posts which are being compared may not be identical, they should be such as to be an extension of or a segment of each other, e.g. for a post carrying the pay scale of Rs. 1200-1600, persons holding the posts in the pay scale of Rs. 1100-1600 will be eligible and for a post in the scale of Rs. 1500-2000, persons working in posts carrying pay scales of Rs. 1500-1800.

(ii) Both the posts should be falling in the same group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 21/2/74-Estt. (D) dated the 11th November, 1975.

(iii) The levels of responsibility and the duties of the two posts should also be comparable. (iv)(a) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules, (b) Where promotion is the method of filling up such posts, only those persons from other Departments may be brought on transfer on deputation whose qualifications and experience are comparable to those prescribed for direct recruitment for the feeder grade/post from which the promotion has been made.

(2) As far as the posts under the State Governments/Public Undertakings, etc. are concerned, it is quite likely that even posts with identical designations may not have comparable scales of pay and they may also differ with reference to the extent and stage of merger of DA with pay. The levels in the hierarchy and the nature of duties,

may not also be comparable. These posts may not also be classified into 4 groups as has been done under the Central Government. Taking these factors into consideration the selecting authorities may have to be guided more by the nature of duties performed by the candidates in their parent organisation vis-a-vis, those in the posts under selection and qualifications and experience required for the post under the Central Government for making selection for appointments by transfer/deputation (including short term contract) from outside the Central Government service. Since details of recruitments rules for the post under State Government/Public Undertakings etc. may not be available, bio data sheets, signed by the officers themselves and certified/countersigned by the employer indicating their qualifications, experience, assignments held in the past, contributions made by them in the fields of research, publications to their credit and any other information which the officers might consider relevant for assessing their suitability for the post in question may be obtained in the proforma (enclosed) prescribed vide the Department of Personnel and A R's OM. No. 39011/8/81-Estt. (B) dated the 18th July, 1981.

(3) The Ministries/Departments are required to keep the above guidelines in mind in examining the applications from officers holding analogous posts for making selection by the process of transfer on deputation/transfer (including short term contract).

8. The Union of India (and Dr. Nair) relied upon para 2 of the said Memorandum in particular and contended that though Dr. Nair was holding the post carrying the scale of Rs. 1500-2685/- earlier, the State Government chose to revise it only to Rs. 2070-3550/- whereas the Central Government revised the scale of Rs. 1500-2000/- to Rs. 3700-5000/-. It was their further submission that looking to the nature of the duties, qualifications and experience, the post held by him should be treated as a post "in the scale of Rs. 1500-2000/- or equivalent" within the meaning of rule 1 (a)(ii). Since Dr. Nair was thus eligible according to rules - which was also the opinion of the U.P.S.C. - there was no occasion or necessity for granting relaxation to him.

9. In the above situation, it was necessary for the Tribunal to have recorded a finding on the correctness or otherwise of the above submission of the Union of India and Dr. Nair. Without doing so, the Tribunal could not have set aside the appointment of Dr. Nair to the said post. The Tribunal was also not justified in holding that Dr. Bhatnagar was also equally qualified and eligible for the said post like Dr. Nair when Dr. Bhatnagar had himself come forward with the plea that he was not eligible and asked for grant of relaxation to make him eligible. The Tribunal, in our opinion, was also not justified in stating, in the direction granted by it, that inasmuch as Dr. Bhatnagar "has by now become eligible in all respects under the recruitment rules, his suitability should be considered along with other eligible candidates and if he is found suitable for the appointment he should be appointed to the said post." It is well settled that suitability and eligibility has to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.

10. For the above reasons, we set aside the judgment and order of the Tribunal, remit the matter back to the Tribunal for deciding the O.A. afresh, in accordance with law, after hearing the parties and on a consideration of the material on record. It is made clear that nothing said in the judgment shall be treated as an expression of opinion on the merits of the case. Whether Dr. Nair was eligible and whether Dr. Bhatnagar was entitled to an offer of relaxation are matters for the Tribunal to decide hereinafter. Whatever we have stated above constitute merely the reasons for our order. It is further directed that pending the decision of the Tribunal in pursuance of this order Dr. Nair shall continue in the post of Director. His appointment to the said post shall of course be subject to the final orders that may be passed by the Tribunal in this matter. There shall be no order as to costs.