

Dr. Bir Singh Vs. All India Institute of Medical Sciences

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Court : Delhi

Decided On : May-22-1998

Reported in : 73(1998)DLT830; 1998(46)DRJ143

Judge : M.K. Sharma, J.

Acts : Service Law

Appeal No. : C.W. No. 1217/1998

Appellant : Dr. Bir Singh

Respondent : All India Institute of Medical Sciences

Advocate for Def. : D.D. Thakur, Senior Adv., ; Mukta Gupta and ; Mukul Gupta

Advocate for Pet/Ap. : Geeta Luthra and; D.N. Goburdhun, Advs

Disposition : Petition dismissed

Judgement :

M.K. Sharma, J.

1. In the present writ petition the petitioner has prayed for quashing of the action of the respondents for filling up 7 posts in the level of Additional Professor and Associate Professor through the process of direct recruitment and also for quashing the interviews held on 16th, 17th and 18th of March, 1998 for selection

to the said posts.

2. The respondent Institute was established and incorporated under Section 3 of the All India Institute of Medical Sciences Act (hereinafter called the Act). Section 5 of the Act declares the Institute to be an Institution of National importance. Section 4 sets out the composition of the Institute. Section 10 of the said Act deals with constitution of the Governing Body and other Committees of the Institute. The Governing Body is the Executive Committee of the Institute and is empowered to exercise such powers and such functions as the Institute may by regulations made in that behalf confer or impose upon it. Section 11 of the Act deals with the provisions of staff of the Institute. The Director of the Institute is the Chief Executive Officer of the Institute and he is empowered to exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute by the President of the Institute or by the Governing Body or by the Chairman of the Governing Body. Functions of the Institute are set out in Section 14 of the Act. Clause (i) of Section 14 empowers the Institute to appoint persons to Professorship, Readership, Lectureship and posts of any description in accordance with the Regulations. The rule making power is set out in Section 28 whereas the power to frame regulations is provided for also in Section 29. In pursuance of the provisions of Section 28 of the Act the Central Government has promulgated a set of rules called 'All India Institute of Medical Sciences Rules' (hereinafter called the Rules). Rule 6 provides that there shall be a Standing Finance Committee, and it is provided that matters relating to all proposals for creation of new posts shall be referred to the Standing Finance Committee which shall consider them and make its recommendations thereon. Rule 7 of the Rules lays down that the Institute may create posts subject to the specific provision in the budget, on scales of pay applicable to similar post under the Government or on scales of pay approved by the Government, classify them into grades and specify their designations. Under the powers vested for framing regulations a set of regulations called 'All India Institute of Medical Sciences Regulations, 1958' was made. Regulation 4 provides for holding of meetings of the Institute at least once a year and all proceedings of meetings of the Institute are required to be entered into a Minutes Book maintained by the Secretary for the purpose and each minute shall be signed by the President of that meeting after the

same is duly confirmed.

The procedure and mode of constitution of the Governing Body is set out in regulation 5 and powers and functions of the Governing Body have been enumerated in regulation 6, wherein it is stated that the Governing Body shall exercise such powers and discharge such functions as are laid down in the regulations and in Schedule 1 as the powers and functions of the Governing Body. Regulation 12 provides for constitution of other Standing Committees apart from the Standing Finance Committee of which Academic Committee may be one of such other standing committees. It is 'provided that Standing Committee called the Academic Committee shall be constituted for the purpose of considering the matters specified in Clauses (a) to (m) of Section 14. Regulation 24 lays down the qualifications for appointment when it states that the age, experience and other qualifications for appointment to a post under the Institute shall be prescribed by the appointing authority keeping in view the qualifications and experience prescribed by the Central Government for similar posts. It is further provided that the Director shall, in filling vacancies in posts and services, either by direct or by promotion under the Institute make such reservations in favor of the Scheduled Castes and Scheduled Tribes as may be made by the Central Government from time to time in filling vacancies and posts in services under the Central Government. In pursuance of the aforesaid provisions an Institute Body, a Governing Body, a Finance Committee and an Academic Committee exist in respect of respondent No. 1.

3. The respondent Institute at present has four levels of Faculty positions which are as under :-

Level I is designated as Assistant Professor;

Level II is designated as Associate Professor;

Level III is designated as Additional Professor;

Level IV is designated as Professor.

The mode of selection to the aforesaid levels IT & III is through Assessment Promotion Scheme on principle of merit-cum-seniority. At levels I and IV recruitment is always through the process of direct recruitment whereas at other two levels appointments are also made at times through direct recruitment.

4. The grievance of the petitioner as raised in the present writ petition is mainly against the practice and mode of appointment at levels II & III posts through direct/open selection. According to the petitioner, the direct/open selection although is possible at levels I & IV, the same is not open at levels of II & III namely - for the posts of Associate Professor and Additional Professor. Since the respondents have issued two advertisements - one in April, 1997 and second in July, 1997 wherein 5 posts of Additional Professor and 5 posts of Associate Professors were advertised Along with 19 posts of Professors in pursuance of which interviews have been held on 16th, 17th and 18th March, 1998, the petitioner has approached this court through the present writ petition challenging the proposed appointment mainly in respect of the 7 posts at levels II & III namely at the level of Associate Professor and Additional Professor.

5. Before entering into the real controversies as raised in the present petition and argued before me some of the basic facts on which there could be no dispute, may be stated. The Institute Body at their meetings held on 9.1.1979 and 17.3.1979 constituted an ad hoc committee under the Chairmanship of Dr. M.L. Dhar for rationalisation of pay structure and career prospects in respect of faculty members and other staff, in accordance with Section 29(B) of the Act. The recommendations of the said ad hoc committee were considered by the Academic Committee/Finance Committee/Governing Body/Institute Body regarding pay scales and Assessment Promotion Scheme. The said recommendations were approved by the Institute Body and the matter was referred to the Government of India as the same involved additional financial implications with regard to Assessment Promotion of the faculty of the Institute. On 28.5.1983 the Government of India approved the pay scales as well as the Assessment Promotion Scheme for promotion of faculty members from level I to level II and from level II to level III. So far level IV is concerned the same is always through open selection. On 29.7.1983 the matter was again placed before the Institute

Body for implementation of Assessment Promotion Scheme, in which the Institute Body approved the said scheme for implementation w.e.f. 1.7.1983. The Institute Body also took a conscious decision to give effect to the decision of the Government of India in respect of the Assessment Promotion Scheme i.e. faculty promotion from Lecturer to Assistant Professor for 75% and from Assistant Professor to Associate Professor to 50% after completion of 5 years regular service in the grade. With effect from 1.1.1986 the Lecturer's post came to be re-designated as Assistant Professor. The Institute Body while giving effect to the Assessment Promotion Scheme as approved by the Government of India, decided that vacancies arising as a result of promotion from the post of Assistant Professor to the post of Associate Professor shall be converted to the post of Lecturer in the same department and filled in as such. In other words, when the post of Assistant Professor became available due to promotion of the incumbent to the post of Associate Professor the resultant post of Assistant Professor was required to be filled in at the level of Lecturer while the post of Associate Professor was continued to be filled in at that level only without conversion or down gradation of the post to that of Lecturer.

Another important decision taken by the Institute Body at the same meeting was that the faculty post would be created at the levels of Lecturer and Professors, but in exceptional cases the posts of Assistant Professors and Associate Professors may also be created. The aforesaid Assessment Promotion Scheme as approved by the Government of India on 28.5.1983 and adopted by the Institute Body on 29.7.1983 continued to be operative till 1.7.1988. During the aforesaid period the posts of Associate Professors were filled in through direct recruitment while the posts of Assistant Professors were filled in at the level of Lecturers.

On the basis of the report submitted by the 4th Pay Commission, the pay scales of faculty were revised w.e.f. 1.1.1986 for which the orders were issued by the Government of India on 16.1.1989, which were implemented w.e.f. 1.1.1986 and the faculty posts were re-designated when Lecturer became Assistant Professor, Assistant Professor became Associate Professor and Associate Professor became Additional Professor, and therefore, the posts of Lecturers were abolished w.e.f. 1.1.1986.

There was however, a demand from the members of the faculty of the Institute for better promotional avenues and in order to appreciate and consider the same meetings of the Finance Committee and Governing Body were held from time to time. On 8.3.1990 the Governing Body while considering the promotional avenues and amendment of recruitment rules in respect of faculty posts at the respondent Institute regarding filling up the vacancies at levels II and III decided that when a post falls vacant at any level due to any reason, it will be filled in at the same level at which it was originally sanctioned/created.

Pursuant to the aforesaid decision of the Governing Body taken on 8.3.1990, 32 faculty posts of Additional Professors and Associate Professors were advertised. However, in the meeting of the Governing Body/Institute Body held on 24.11.1991 the alteration in the Assessment Promotion Scheme with regard to certain matters were considered. Interviews for 32 faculty posts of Associate Professors and Additional Professors besides the Assistant Professors and Professors with Assessment Promotion Scheme batches were held in the month of February and April 1992, and the recommendations of the Selection Committee were placed before the Governing Body on 25.4.1992. In the said meeting the Governing Body decided that the said 32 posts in respect of which proposals have been made to have direct entry be offered to the selected candidates at the level of Assistant Professors. The Governing Body also decided that the faculty posts at levels II & III may be operated at level I, but if there be any compelling functional requirement those posts may be operated at level II or level III. It was also made clear that if such a course of action is desired the same could be taken only with the prior approval of the Governing Body. As against the aforesaid decision of the Governing Body there were many representations of the candidates selected to the posts at levels II & III but were offered the posts of Assistant Professors, as also from the members of the Governing Body and also from outside. The Governing Body on 9.6.1992 considered again the matter relating to filling up of 32 lateral entry faculty posts and on such consideration decided that the posts may be offered to the selected candidates as against which they were selected but subsequent thereto whenever the faculty posts at levels II & III become available the same may be operated at level I i.e. at the level of Assistant Professor. The Governing Body also decided that in case of critical gap the Director can refer the

matter to the Governing Body for selection at levels II & III by direct selection.

The Governing Body however, on 28.12.1995 considered a proposal, which was submitted by the Head of the Department of Urology, to retain the post of Additional Professor of Urology at the same level. The Governing Body however, did not take any decision and the same was deferred. On 19.8.1998 the Governing Body again considered the aforesaid matter as deferred item and approved the filling up of the post of Additional Professor of Urology at the same level. After the approval of the Governing Body the post of Additional Professor of Urology was advertised in April, 1997 Along with 15 posts of Professors in various disciplines, for which the last date for receipt of applications was 30.5.1997.

On 4.4.1997, the Governing Body approved and decided to upgrade the posts of Assistant Professor of Nuclear Medicine to that of Associate Professor of Nuclear Medicine and filling up the same as Associate Professor of Nuclear Medicine after considering the detailed justification submitted by the Head of the Department, and also considering that the financial implications in taking such action would be only Rs.14.500/- which could be met out of the sanctioned budget of the Institute under 'non-plan'. The Governing Body also approved the re-conversion of the post of Additional Medicine Superintendent for CTNS to that of Additional Professor of Hospital Administration for CTNS. The Governing Body also authorised the Director to take decision with regard to the matter relating to the direct/lateral entry at levels II & III in faculty posts against the core/sanctioned strength of the department.

In pursuance of the aforesaid decision of the Governing Body the Heads of Departments of Neurology, Neuro Radiology, Neuro Surgery, Medicine and Surgery submitted detailed justifications to the Director for filling up the faculty posts in the concerned departments at levels II & III. The Director, after taking into consideration the justification submitted by the aforesaid Heads of the Departments and after going through the core/sanctioned strength of the concerned departments took a decision that these posts namely - Associate Professor - 4 posts and Additional Professor 3 posts, may be filled in at the level of II & III respectively. Accordingly, the said seven faculty posts are:

1 post - Additional Professor of Neuro Surgery;

1 post - Associate Professor of Neuro Radiology;

1 post - Associate Professor of Clinical Neuro- Physiology;

1 post - Associate Professor of Neurology;

1 post - Associate Professor of Medicine;

2 posts - Additional Professor of Surgery;

and one post of Additional Professor of Hospital Administration for CTNS and one post of Associate Professor of Nuclear Medicine. The aforesaid posts Along with some other posts were advertised in June 1997 for which the last date for receipt of the application was 30.8.1997. After publication of the aforesaid advertisement representations including those of the petitioners were received wherein the contention of the petitioners was that the faculty posts at levels II & III should not be filled in through direct/lateral entry as the Assessment Promotion Scheme is in existence. As against the said representations some other representations were also received from faculty members to fill up those faculty posts at levels II & III for which advertisement had been made. The Institute Body took note of the entire matter in its meeting held on 18.9.1997 and discussed the issue of direct recruitment to faculty posts at levels II & III and the Assessment Promotion Scheme and the Institute Body decided that a Committee be constituted to frame guidelines for direct/ lateral entry at levels II & III. As per the aforesaid decision of the Institute Body, a Committee was constituted by the President of the Institute under the Chairmanship of Prof. P.N. Srivastava.

In view of the aforesaid position the interviews scheduled for filling up the aforesaid posts were postponed. Prof. P.N. Srivastava submitted his report on 19.12.1997. The Institute Body/Governing Body considered once again the matter regarding 10 direct/lateral entry faculty posts and it was decided that the matter regarding filling up said 10 posts through direct entry may be first considered by the Academic Committee. In pursuance of the aforesaid decision the Academic Committee met on 23.1.1998 and considered the agenda items in detail for each

post and approved the process/mode of direct entry to the post of Additional Professor of Urology, Additional Professor of Neuro Surgery, Additional Professor of Hospital Administration and Associate Professor of Clinical Neuro Physiology and also recommended for creation of one post of Assistant Professor of Nuclear Medicine and one post of Assistant Professor of Neuro Radiology. The Academic Committee however, did not approve two posts of Additional Professor of Surgery and one post of Associate Professor of Medicine for direct entry. The aforesaid recommendation of the Academic Committee was placed before the Governing Body/Institute Body which met on 23.1.1998 in continuation of its earlier meeting dated 14.1.1998. However, no final decision was taken in that meeting, when it was adjourned. The said meeting of the Governing Body/Institute Body was accordingly reconvened on 27.2.1998 when the Governing Body/Institute Body approved filling up 7 faculty posts at the level of II & III i.e. at the level of Associate Professor and Additional Professor. While giving its approval the Governing Body/Institute Body also considered the recommendation of Prof. P.N. Srivastava Committee's report. Pursuant thereto the Standing Selection Committee met from 16th to 19th March, 1998 for recommending the names of selected candidates for filling up the said 7 faculty posts amongst others.

6. Learned counsel appearing for the respondent Institute submitted before this court on 31.3.1998 that there was no possibility of convening a meeting of the Governing Body till 15.4.1998 and therefore, the question of making any appointment till the next date did not arise. The aforesaid statement of the counsel for the respondent was recorded and in that view of the matter no interim order was passed. During the course of arguments learned counsel for the respondent stated that appointment to the said post in pursuance of the recommendation of the Selection Committee has not been made in view of the pendency of the writ petition and also in the light of the statement made by the counsel for the respondent to this court.

7. Ms. Geeta Luthra, appearing for the petitioner forcefully argued the case of the petitioner and submitted that the policy of having direct/ lateral entry at levels II & III was superseded and such entry is permissible only in very exceptional circumstances. According to her, so far the aforesaid 7 posts are concerned no

such exceptional case is made out and therefore, the respondent is not competent to fill up the said 7 posts through the mode of lateral entry/direct recruitment. She further submitted that in case of lateral entry necessarily the question of creation of posts would crop up and therefore the same has to go through the process of being so recommended by the Standing Finance Committee, Academic Committee, and only when the said two committees make recommendation the Governing Body and the Institute Body could create a post and appoint a person against the said post, since financial implication is involved. According to her in case of a lateral entry at levels II & III approval of Central Government is also necessary and no approval of Central Government having been obtained the proposed action of the respondent for filling up the aforesaid 7 posts through direct entry is not justified. She also submitted that minutes of each of the meetings of the Governing Body/Institute Body is to be recorded separately and that in the present case the minutes of three meetings came to be recorded only on the conclusion of the last meeting and therefore, the said minutes cannot be given effect to and cannot be said to be valid in the eye of law. Counsel for the petitioner also submitted that the respondent has failed to justify creation of and/or the action of respondent in filling up the aforesaid 7 posts through direct entry, and in support of her contention she called upon the court to minutely look into the minutes of the Academic Committee as also the Minutes of the Governing Body/Institute Body to scrutinise the reasons recorded by the said Committees and Bodies. She submitted that this court is empowered to look into the rationale of the decision of each of the Committees and the Governing Body as also the Institute Body and the reasons be scrutinised so as to arrive at a finding as to whether the same is not arbitrary or irrational.

8. Mr. D.D. Thakur, learned counsel appearing for the respondent on the other hand submitted that no right of the petitioner is violated inasmuch as the right to get promotion through the Assessment Promotion Scheme is in no way affected in spite of the decision to have direct/lateral entry in respect of aforesaid 7 posts at the levels II & III. He further submitted that all candidates who fulfilled the eligibility criteria could apply as against the aforesaid 7 posts and the same being an open entry the petitioner or any of his associates fulfilling the criteria could also apply as against such open entry. He also placed before me the minutes of the various

meetings of the Academic Committee as also of the Governing Body and the Institute Body and urged upon me to see the reasons recorded by the said Committees for taking the decision for having direct/lateral entry to the aforesaid posts and satisfy as to whether the same could be said to be unreasonable or arbitrary. He submitted that the court is empowered only to scrutinise the decision making process and not the decision. According to him there is no violation of any procedural law in the decision making process and therefore, no interference is called for in the present case.

9. In view of the contentious, issues raised before me I deem it appropriate to examine and refer to the records and in the light of the same scrutinise the merit of the contentions of the counsel appearing for the parties.

10. Learned counsel appearing for the petitioner, during the course of arguments made a submission that the petitioner has no grievance as against the post of Additional Professor, Hospital Administration. In the light of the aforesaid submission, therefore, I am required to restrict my enquiry and investigation in the present case in respect of 6 posts which are - 1 post of Additional Professor Urology, 1 post of Additional Professor of Neuro- Surgery, 1 post of Associate Professor of Neuro Radiology, 1 post of Associate Professor of Clinical Neuro Physiology, 1 post of Associate Professor of Nuclear Medicine, 1 post of Associate Professor of Neurology.

11. Regulation 24(2), of the Regulations, reference to which has been made above empowers appointment by promotion as also by direct recruitment. therefore, the Institute Body, which is the supreme Body of the Institute, as also held by the Division Bench of this court in Dr. S.M. Bose v. All India Institute of Medical Sciences and Ors.; : 1993(26)DRJ544 , is empowered and could take a decision to fill up any post through direct recruitment.

12. The Governing Body in its meeting held on 9.6.1992 with regard to filling up 32 lateral entry faculty posts including posts at levels II & III also decided that the posts may be offered to selected candidates as against which they were selected but thereafter whenever the faculty posts at levels II & III become available the same should be operated at level I only. Still however, the Governing Body also

decided that in case of critical gap the Director could refer the matter to the Governing Body for filling up the posts at levels II & III by direct recruitment.

13. On 28.12.1995 the Governing Body considered the proposal which was submitted by the Head of the Department of Urology to retain the post of Additional Professor of Urology at level III only and allowed filling up the said post at the same level by its decision dated 19.8.1996. On 4.4.1997 as indicated above, the Governing Body authorised the Director to take decision with regard to the matter relating to direct/lateral entry at levels II & III in faculty posts as against the core/ sanctioned strength of the department. Such authorisation is also permissible under Section 11(3) of the Act. The heads of the departments of Neurology, Neuro Radiology, Neuro Surgery, Medicine and Surgery submitted detailed justifications to the Director for filling up the faculty posts in the concerned departments at levels II & III. In pursuance of the justifications submitted by the Heads of the Departments and after going through the sanctioned strength of the concerned department, the Director took a decision that 7 posts (4 posts of Associate Professors and 3 posts of Additional Professors) could be filled up at levels II & III respectively. In terms thereof and being vested with the power by the Governing Body the Director decided to advertise the posts and accordingly, the advertisement was published in June, 1997 for filling up the said posts. However, before the Selection Committee could meet to scrutinise and assess the merits, of the candidates who had applied as against the said advertisement the Governing Body/Institute Body again considered the matter of making direct recruitment/lateral entry at levels II & HI and in its wisdom decided that the matter be looked into afresh by the Administrative Committee.

14. I have scrutinised the records placed before me relating to the decision to fill up each of the aforesaid 7 posts at the levels for which advertisement was published and I propose to discuss them one by one hereunder:

For the post of Additional Professor of Urology, it appears from the record that the said post was originally created/sanctioned on 6.11.1980 with the prior approval of the Academic Committee/ Finance Committee/Governing Body. Detailed justification for retaining the post at the level of Additional Professor of Urology

was submitted by the Head of the Department of Urology which is on record. The Governing Body in its meeting held on 19.8.1996 approved retention of the said post at the level of Additional Professor of Urology in terms of which the said post was advertised. However, on the directions of the Governing Body/Institute Body in its meeting held on 14.1.1998 the matter was again placed before the Academic Committee on 23.1.1998 in which approval for such retention of the post at the level of Additional Professor of Urology was given by the Academic Committee. The justification given by the Head of the Department of Urology for maintaining the core post at the level of Additional Professor is that in terms of urgent need for such level selection of faculty the requirement and placement has become imperative and acute. It is also stated that newer areas (Sub specialities) in the field of Urology are being developed in the department and all that without doubt require experienced, skilled, professionally mature faculty consultants from among those available in the country at senior level in order to fulfill the mandate of patient care, teaching, training and research at the Institute which is always in public eye and subject of peer review. Since there was already provision of budget for payment of salary for the post of Additional Professor as the same was vacated by Dr. N.P. Gupta, the same did not also entail any financial implications.

The Governing Body/Institute Body in its meeting dated 27.2.1998, after considering the report of the Srivastava Committee and the reasons for retention of the post at the level of Additional Professor gave its approval. Thus the reasons cited for retention of the said post at the level of Additional Professor and filling up the said post through direct recruitment appear to be reasonable and sound and cannot be termed either as arbitrary or irrational.

15. So far the post of Associate Professorship of Nuclear Medicine is concerned, it is found from the record that a post of Assistant Professor of Nuclear Medicine was created on 8.8.1993 with the prior approval of the Finance Committee/Institute Body/Governing Body. The Governing Body was informed that there was a need to upgrade the said post of Assistant Professor of Nuclear Medicine to the post of Associate Professor and reason for such upgradation was indicated by the Head of the Department of Nuclear Medicine in his recommendation for such upgradation of the post of Assistant Professor of Nuclear Medicine to that of the

Associate Professor of Nuclear Medicine. In his recommendation he had stated that the Nuclear Medicine is rapidly expanding speciality with imaging and therapeutic Sub-divisions and that the diagnostic Sub specialities like Nuclear Cardiology, Nuclear Neurology, Nuclear Oncology and Nuclear Nephro Urology etc. are emerging modalities in medical investigations. He also stated that the department has also started the M.D. programme in Nuclear Medicine, which is unique in the country. The said recommendation of the Head of the Department giving his justification for upgradation of the post to the level of Associate Professor was placed before the meeting of the Governing Body held on 4.4.1997 in which the Governing Body on consideration of the justification given by the Head of the Department approved the upgradation of the post from Assistant Professor to that of the Associate Professor. The said post was accordingly, advertised in June, 1997. The Governing Body/Institute Body however, in its meeting held on 14.1.1998 decided that the matter be looked into again by the Academic Committee before the post of Associate Professor in Nuclear Medicine was filled in through direct recruitment. The Academic Committee in its meeting held on 23.1.1998 did not approve the aforesaid proposal which was placed before the Governing Body/Institute Body in meeting held on 22.1.1998. The Institute Body/Governing Body felt that since the said upgradation of the post of Assistant Professor to the level of Associate Professor of Nuclear Medicine was earlier approved by the Governing Body it should be retained at that level and filled up at the level of Associate Professor of Nuclear Medicine. The reasons for upgradation of the post to the level of Associate Professor and filling up the same through the process of lateral entry/direct recruitment are spelt out and the said reasons also appear to be justified and reasonable. The academic Committee is a recommendatory body whereas the Institute Body is the Supreme Body.

16. With regard to the post of Additional Professor of Neuro Surgery such a post was created/sanctioned on 15.5.1971 with the prior approval of the Academic Committee/Finance Committee/Governing Body. A proposal to fill up the said post through direct entry was submitted by the Head of the Department of Neuro Surgery. The said proposal was examined in terms of the justification and financial requirements submitted by the Head of the Department of Neuro Surgery and approved by the Director as empowered by the decision taken by the Governing

Body in its meeting held on 4.4.1997 in terms of which the advertisement was published in June, 1997. The Head of the Department of Neuro Surgery had submitted his reasons justifying such an appointment at that level. Since the post was available at that level no financial implication was involved since the same was already created/sanctioned post. The Academic Committee in its meeting held on 23.1.1998 approved the proposal to retain the post of Additional Professor of Neuro Surgery. Thus with the aforesaid justification and recommendation the matter when placed before the Institute Body/Governing Body the said body took a conscious decision of retaining the post at that level and to fill up the same through the process of direct recruitment/lateral entry. There is no flaw in the decision making process of the respondent in taking the aforesaid decision and the decision itself does not suffer from unreasonableness or irrationality.

17. Similarly, one post of Associate Professor of Neurology was created and sanctioned on 25.3.1968 and another post of Associate Professor of Clinical Neuro Physiology was created on 6.6.1981. A proposal was submitted by the Head of the Department of Neurology giving justification for such proposal. The aforesaid proposal was examined and approved by the Director in accordance with the power vested on him by the Governing Body in its meeting held on 4.4.1997 and with his approval the said two posts were advertised. On 4.4.1997 the Governing Body noted that a detailed justification was submitted by the Head of the Department of Neurology to fill up the posts of Associate Professor of Neurology and Associate Professor of Clinical-Neuro Physiology and found the basis given for retention of the post at that level to be justified and accordingly approved the said proposal. There is no budgetary implication also as both the posts were created/sanctioned at that level only. However, in its meeting dated 14.1.1998 the Governing Body/Institute Body decided that the matter for filling up the said post should be again looked into by the Academic Committee, in pursuance of which the Academic Committee considered the matter and a proposal to fill up the post of Associate Professor of Neurology was not approved, but the proposal to fill up one post of Associate Professor of Clinical Neuro Physiology was approved. The Institute Body took into consideration the entire facts and circumstances and on consideration of the justification given for such retention approved filling up the said two posts of Associate Professor of

Neurology and Associate Professor of Clinical-Neuro Physiology through the process of direct recruitment/lateral entry. On consideration of the records no infirmity is found in the said decision nor is there any flaw in the decision making process since the aforesaid decision did not involve creation of any new post and there was no financial implication in the said decision.

18. One post of Additional Professor of Neuro Radiology was created on 27.12.1978 which became available in 1987 as the incumbent to this post was appointed to the post of Professor of Neuro Radiology. A proposal to fill up the said post at the level of Associate Professor of Neuro- Radiology by the Head of the Department of Neuro Radiology in the Neurosciences Centre was submitted by the Head of the Department of Neuro Radiology. The justification given by the Head of the Department of Neuro Radiology was that the discipline of Neuro Radiology was a fast developing discipline in medicine. The current practice of Neuro Radiology includes not only diagnostic, but also therapeutic aspects and both these components are fast evolving to meet the challenges of critical care in Neurosciences. In view of these developments the workload in the department has increased manifold. The justification is contained in the letter written to the Director of the Institute by the Head of the Department of Neuro Radiology which gives detailed reasons for his proposal which was considered by the Director and approved by him in terms of the power vested on him by the Governing Body in its meeting held on 4.4.1997 and the said post was accordingly, advertised in June, 1997 Along with other faculty posts for making direct appointment through open selection.

The Governing Body/Institute Body in its meeting. held on 14.2.1998 decided to refer the matter to the Academic Committee for looking into the matter afresh. The Academic Committee however, did not approve for retention of the post at the level of Associate Professor of Neuro Radiology. The Governing Body/Institute Body at their meeting held on 27.2.1998 however, on consideration of the facts and circumstances given for retention of the said post at the level of Associate Professor took a conscious decision giving its approval for retention of the post at the level of Associate Professor and approved filling up the said post through the process of direct recruitment/lateral entry. The reasons given towards justification

for retention of the said post at that level are spell out on the records of the case and it cannot be said that the said reasons are irrational or arbitrary. No infirmity is found in respect of the said decision of the Institute Body for retention of the post at that level.

19. The aforesaid discussion thus, makes it crystal clear that the justification for filling up the said posts at the level for which the same are advertised has been given. They are found to be reasonable, just and proper. The Institute Body being the Supreme Body also has taken the conscious decision of filling up the said post at the level for which they are advertised through the process of direct recruitment, which process is also one of the permitted modes as envisaged under regulation 24(2) of the Regulations. The relevant portion of the decision of the Governing Body/Institute Body is extracted below: -

'Regarding 10 posts to be filled in at level II & III, which have been deliberated upon by the Academic Committee on 23rd January, 1998, the Institute Body decided that 3 posts viz. Additional Professor Urology, Additional Professor of Hospital Administration (CTNS) and Associate Professor of Nuclear Medicine, earlier approved by the Governing Body, may be retained and filled up at these levels.

The Institute Body also took note of the requirements of Super speciality Departments like Neuro Sciences Centre and decided that the posts of Additional Professor of Neuro Surgery, Associate Professor of Neurology, Associate Professor of Neuro Physiology and Associate Professor of Neuro Radiology may also be filled up at these levels. It was noted that the requirements, of Centres with regard to filling up of the posts at level II & III are different than other departments of the Institute keeping in view the requirements and needs of the centres.'

The reasons for such decision are apparent on the face of the record and when read Along with the background materials discussed above, no illegality or infirmity is found either in respect of the decision making process or the decision. This court also should not sit as an appellate authority over the decision of the Institute Body to examine the sufficiency of the reasons minutely. The Institute Body is the best Judge of the operational necessity and functional requirement of the Institute.

The Courts can not have expertise knowledge on such matters. Need and requirement therefore, is to be left to the domain of such authorities.

20. Learned counsel for the petitioner submitted that an illegality has been committed in the decision making process inasmuch as the matter in respect of filling up the said six posts at the level at which they are intended to be filled up was not routed through the Finance Committee, although the scheme of the Act, Rules and the Regulations have been considered above by me and on perusal thereof I find that a matter is required to be sent to the Finance Committee only when the same involves creation of a new post. In my considered opinion, none of the posts which is subject matter of the present writ petition involves and requires creation of a fresh post. But for two posts, one of which is upgraded and the other is down-graded the other four posts existed at that level. Where the post is filled up at the level in which it is created, it is not necessary to get it routed through the Finance Committee, since it did not involve any financial implications. Same is the case where the post is downgraded. In case of the post where it was upgraded reason has been indicated that financial involvement is only to the extent of Rs. 14,500/- which would be met from the non-plan fund. Thus, in my considered opinion it was not necessary and/or mandatory to get the aforesaid matter routed through the Finance Committee. The matter was looked into by the Academic Committee and also by the Governing Body as also by the Institute Body which is the supreme authority. The supreme authority namely - the Institute Body having considered and having found justification for filling up the said post at the levels II & III of the aforesaid 7 posts through the process of direct selection gave its approval thereto. On perusal of the records I also find that the very same members of the Finance Committee are also members of the Governing Body/Institute Body and therefore, when the decision was approved by the Institute Body it could be said to be a decision of the Finance Committee as well. Besides, as held by the Division Bench of this Court in Dr. Bose's case (*supra*) the said Committee is only a recommendatory body and the final decision is to be taken by the Institute Body, and in the present case such final decision having been taken by the Institute Body the submission of the Counsel for the petitioner is found to be without any merit.

21. Detailed discussion herein, particularly reference made to the various meetings of the Governing Body and the Institute Body also indicate that the matter for filling up the said 7 posts through direct recruitment was considered at the highest level by the Institute Body, supreme authority and that the said supreme authority took a conscious decision to have the posts filled in through the process of direct recruitment and therefore, it cannot be said that the process of direct/lateral entry stood superseded. The said submission is also without merit in view of the fact that regulation 24(2) permits appointment also through direct recruitment.

22. Submission was also made on behalf of the petitioner that delegation of power to the Director by the Governing Body was without jurisdiction. However, in view of the provisions of Section 11(3) of the Act, the submission is without force.

23. There is also force in the argument of Mr. Thakur, learned counsel for the respondent that no right of the petitioner is violated as none of the posts which is being filled in through the aforesaid process could be said to be posts exclusively earmarked for Assessment Promotion Scheme. It is more so because any candidate who is eligible and fulfills the criteria for appointment to any of the aforesaid posts through the aforesaid open selection could apply and be considered for such appointment.

24. On an overall appreciation of the records made available to me and on the facts and circumstances of the case I do not find any merit in this writ petition and the same stands dismissed, but without any costs.

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