

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 400/99

New Delhi: this the 28th day of AUGUST, 2001

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI MEMBER (J)

Dr. M. A. Ansari
Dy. Director (Selection Grade),
Malaria Research Centre (MRC),

20 Madhuban,

Delhi-92

.....Applicant.

(By Advocate: Shri B. S. Banthia)

Versus

1. Union of India,
through
Secretary,
Ministry of Health and Family Welfare,
(Department of Health),
Nirman Bhawan,
New Delhi.

2. Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi.

3. Dr. (Mrs) S. K. Subbarao,
Director,
Malaria Research Centre,
22, Sham Nath Marg,
Delhi-54

.....Respondents.

(By Advocate: Shri V. K. Rao for R-1 & 2,
Ms. Geeta Mittal with Ms. Arti Bansal for R-3).

ORDER

S. R. Adige, VC(A):

Applicant challenges the appointment of Respondent No. 3 Dr. (Mrs) S. K. Subha Rao to the post of Director, Malaria Research Centre, Delhi, and seeks consideration of his own claim for appointment as such w.e.f. 1.5.98.

2. Consequent to the post of Director, MRC falling vacant w.e.f. 1.5.98 owing to the retirement on superannuation of its incumbent respondents advertised the vacancy and invited applications. 16 applications were received in ICMR, out of which 12 were found eligible by the Screening Committee and were called

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for personal discussions. 10 candidates including applicant and Respondent No. 3 appeared for personal discussions before the Selection Committee who interviewed the candidates and duly considered their academic qualifications, experience, research publications, confidential reports etc. The Selection Committee found Respondent No. 3 more meritorious, and recommended her name for appointment as Director, MRC, which was approved by the appointing authority, namely the Executive Committee of the council on 25.9.98. The minutes of the Executive Committee were subsequently ratified by the Governing Body of the Council.

3. Two grounds have been mainly raised by applicants' counsel to challenge the appointment of Respondent No. 3 as Director, MRC. Firstly, it is contended that Respondent No. 3 was overaged at the time applications were invited, and secondly she did not attach postal order of Rs. 8/- with her application form.

4. In so far as Respondent No. 3 being overaged is concerned, her DOB is 11.4.43. The last date for submission of application forms for the post was 20.3.98. As per Recruitment Rules (copy taken on record) the maximum age limit for appointment as Director, MRC was 50 years, but in terms of GOI's OM dated 9.4.81 read with OM dated 15.10.87 (Annexure-R1) upper age relaxation up to a maximum of 5 years is admissible to departmental candidates for recruitment to Group 'A' and Group 'B' posts. It is not denied that applicant as well as Respondent No. 3 ^{were} ~~was~~ ICMR employees at the time they applied for the post of Director, MRC and it is also not denied that Govt. rules/instructions *arumutatis mutandi* applicable in ICMC. Hence this ground

fails.

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5. In so far as the second ground is concerned, namely that Respondent No. 3 did not attach Postal Order of Rs. 8/- with her application form. From the photocopy of the procedure to be followed for making appointments on posts under ICMR, a copy of which is taken on record, it is clear that ICMR employees are not required to be charged this fee. Hence this ground also fails.

6. During hearing, applicants' counsel tried to argue that the post of Director, MRC was not to be filled by direct recruitment, but by promotion and when ~~his~~ attention was drawn to the approval given by the Executive Committee of ICMR at its meeting held on 30.5.96 to amendment to Schedule II (as referred to in Rule 6 ICMR Research Cadre Rules, 1965) providing for posts of Directors of Institution under ICMR to be filled by direct recruitment, contended that this amendment had not received the approval of the Governing Body of ICMR. This assertion was denied by respondents' counsel. We have prima facie no reason to doubt that the amendments to the ICMR Research Cadre Rules providing for the post of Directors of Institutions to be filled through direct recruitment were validly made, because indeed if they were invalid, applicant has not satisfactorily explained why he himself submitted his application in response to the advertisement issued calling for applications from eligible candidates for filling up the post through direct recruitment.

7. It is settled law that applicant had no enforceable legal right to be appointed as Director, MRC and this legal position remains unshaken, even if, as

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it happened in the present case, applicant was holding charge of the post of Director MRC on stop gap basis pending regular appointment, at the time the selection was held. Applicant had at best only a right to be considered for appointment as Director, MRC if he fulfilled the eligibility qualification, and it is not denied that in the instant case he was considered. If someone else was found more suitable for the post by the Selection Committee after interview, applicant has to make way for that person. It is also clear that the Tribunal cannot set itself up as an appellate authority to go into the recommendations of the Selection Committee which have received the approval of the competent authority.

8. The OA therefore warrants no interference. It is dismissed. No costs.

A. Kedaravalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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