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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.NO.1752/95

Date of Decision: 23rd February 1995

Hon'ble Smt. Lakshmi Swaminathan, Member (C)
Hon'ble Shri R.K. Ahooja, Member (A)

1. Shri Jagariamudi Venkata Ramana,
s/o Shri Jagariamudi Choudhary,
2. Shri Gurjeet Kumar,
s/o Shri Sumer Singh
3. Shri Kajal Kumar Biswas,
s/o late Shri Kalipada Biswas
4. Shri Prabhudatta Sahoo,
s/o Shri Jayakrishna Sahoo
5. Shri Yedulla Venkata Reddy
s/o Shri Yedulla Linga Reddy
6. Shri Matiyar Rahaman Khan
s/o Shri Abdur Raquib Khan
7. Shri Ramesh Chand
s/o Shri Jalim Singh
8. Shri Faiza Ahmad
s/o Shri Mohammad Younus
9. Shri Ravi Pal Singh,
s/o Shri Vikram Singh
10. Shri Prakash Singh Badal
s/o Shri Nagnarayan Singh
11. Shri Kalyan Sarkar,
s/o Shri Jatindra Kumar Sarkar
12. Shri Ganpati Pandey,
s/o Shri Vaidhya Nath Sharma
13. Shri Bidhan Chandra Mandal,
s/o Shri Bipin Behari Mandal
14. Shri Dalpat Singh Malik,
s/o Shri Bhalle Ram Malik
15. Ms. Rekha
d/o Shri H.P. Tripathi

16. Shri K.M. Sreekumar
s/o Shri Nambisan
17. Shri Jiju P Alex,
s/o Shri P.C. Alexander

All C/o Room No.1
Godavari Guest House,
Indian Agricultural Research Institute,
New Delhi.

... Applicants

By Advocate: Shri Syed Hussain

Vs.

1. Union of India
through its Secretary,
Ministry of Agriculture,
Government of India,
Krishi Bhawan,
New Delhi.
2. Indian Council of Agriculture Research
Krishi Anusandhan Bhawan,
Pusa,
New Delhi.
3. Agricultural Scientists Recruitment Board
through its Secretary,
Krishi Anusandhan Bhawan,
Pusa, New Delhi.

... Respondents

By Advocate: Shri ~~Mayo~~ Chatterjee alongwith
Ms. K. Iyer

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants are research scholars

pursuing research in various disciplines of Agriculture

Sciences and other branches of science. They had appeared

in the Agriculture Research Services Examination held on 14th-16th October, 1994 and had qualified the written test and appeared for the viva-voce held between 1.2.95 and May 1995. They are aggrieved that none of them have been declared successful in the results declared on 16.6.95 (Annexure A-2). Their contention is that they have not been declared ^{not} successful/because they are less meritorious but because the respondents have followed arbitrary, illegal and unconstitutional policies and methods in selecting the candidates. They are aggrieved by the advertisement dated 4 - 10 June 1994 and rules 10 and 12 of the Agricultural Research Service (ARS) (Annexure A-1). They have, therefore, sought quashing of the results of ARS 1994 declared on 16.6.95 and for an appropriate direction to respondents to take fresh examination and to declare rules 10 and 12 of the ARS rules as ultra vires Article 14 and 15(1)(a) of the Constitution of India.

2. When the case came up for directions on interim relief on 18.10.95, it was directed that it would be sufficient if the respondents are permitted to make

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appointments not exceeding the permissible limit of reservation provisionally and subject to the outcome of the O.A. treating the reservation as subjectwise/disciplinewise and to inform the appointees accordingly.

3. The relevant facts of the case are that in July 1994 Respondent No.3 i.e. Agricultural Scientists Recruitment Board issued an advertisement for holding an All India Competitive Examination to fill up the vacancies of Scientists of the ARS in the pay scale of Rs.2200-4000 in the Indian Council of Agricultural Research Institute. This was combined with National Eligibility Test for recruitment of Lecturers and Assistant Professors by the State Agricultural Universities (SAUs) and for award of ICAR Senior Research Fellowship. These vacancies were to be filled up in various disciplines. Annexure A-1 gave the disciplinewise qualifications for ARS Examination/NET i.e. items 01 to 60 and disciplines for NET only in items 61 to 64; Annexure II gave the disciplinewise qualifications for SRF including New Disciplines from items 61 - 65. The written examination was held on 14th - 16th October 1994 at 24 centres in India. Candidates who were qualified in *✓*, the written test received the interview letters.

4. The applicants state that by the All India competitive examination, entry into ARS at one level is made and is open to any candidate with a Masters Degree or equivalent in the required discipline. The applicants state that the Interview Boards were constituted disciplinewise which interviewed the candidates, including the applicants for ARS.

5. The applicants' grievance is that in some disciplines the results showed that the ASR Board had selected 50 - 100% candidates belonging to the SC/ST and OBCs thereby defeating the fundamental rights of the general candidates in those disciplines. They further submit that in some of the disciplines the reserved candidates for ARS were more than 22.5% which was the highest reservation applicable to the reserved candidates under the rules published with the advertisement. They had made representation to the respondents which were not replied to.

6. They have also stated that even after declaring the final results and in violation of all norms of fair play and equality of opportunity in public employments, the Respondent No.3 held interviews on 23.6.95 in certain

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disciplines, for example Horticulture, Fish and Fishery Science and Veterinary Microbiology for selecting some more candidates for ASR 1994. They state that one Shri Lakshman Chandra De had received intimation to appear before the interview board on 23.6.95. Their grievance is that Shri Lakshman Chand De had already been selected as Scientist in Horticulture in ASR 1992, but he was allowed to appear again in ASR 1994 for the same post in the same discipline. This they claim is an irregularity.

7. The applicants submit that none of them who had opted for Hindi were ^{by} ~~not~~ given the question papers in that language as required under clause 10 of the advertisement. They further submit that OBCs were ^{not} ~~notified~~ ^{notified} as eligible for reservation and therefore, their inclusion was illegal.

8. The respondents have filed a reply in which they have denied the above averments. On the main contention that the reservation policy has not been properly adhered to in this case, the respondents have explained their stand in the reply as follows:

"It has been observed that there are certain disciplines where no reserved category candidate generally applies for, under such circumstances the vacant seats for the said category, if carried forward, a roster is to be maintained to monitor these vacancies. Further, the roster so maintained should be for three categories i.e. (i) SC (ii) ST (iii) OBC's and discipline wise. Moreover, the vacancy being need based a requisition for a particular post may not arise at all for several years. Again a situation may also arise that a particular department (where a roster is maintained for the vacancy)

decides not to recruit any further personnel due to certain changes in the policies of the respondents and other scientific/Research exigencies. Thus it shall not be feasible or practicable for the respondents to adopt the roster system which is likely to create more anomalies and administrative difficulties.

Where as in order to adhere to the Govt. of India reservation policy the Council is left with no other alternative but to adopt the overall reservation policy so that maximum jobs could be offered and provided to the socially and financially depressed categories as per the fact that India is a social welfare state.

In adopting the overall reservation policy apart from the above stated reasons the Council is able to avoid wrath of SC/ST Association and such other Institution who are likely to bring the issue on surface and demand adherence to the government policies.

8A. The respondents have also stated that they have to provide reservations for SC/ST /as per Govt. of India policy. They have stated that only such scientific and technical posts as satisfy the prescribed conditions as laid down in the Govt. of India can be exempted from the purview of the reservation orders by the Ministry/Department, provided that the post falls in the grade above the lowest grade in Group A of the concerned service. In the present case the Scientists are recruited

in the scale of Rs.2200-4000 and it is the lowest rung in Group 'A'. This being the admitted fact, they submit that the reservation policy is applicable to these posts. They have also clarified that the policy of the Government is to allow reservation for OBCs which has been made applicable since 1993 and therefore, such reservation had also to be made in respect of OBC candidates. They have explained SC/ST/OBC candidates do not apply for all the disciplines but opt for comparatively less arduous disciplines in which the number of applicants are large. On the other hand for certain courses there is no representation at all from these communities so that the respondents submit that it will not be possible to have discipline wise percentage for the reserved category candidates, as they will not be available in some disciplines and at the same time adhere to the reservation policy. They have, however, asserted that they have not exceeded the overall 50% limit while selecting

the reserved candidates and state that out of a total of 306 posts, 159 general candidates have been selected.

They have, therefore, submitted that the reservation policy as adopted by them on overall basis is valid.

9. Regarding the number of persons called for viva-voce, they have stated that this being a competitive examination, under clause 10 of the rules, all candidates who obtained the minimum qualifying marks in the written examination are to be called for viva-voce for ARS. They, therefore, submit that the judgement of the Supreme Court in Ashok Kumar Yadav V. State of Haryana (AIR 1987 SC 454) relied upon by the applicants, namely, that the number of candidates called for interview should not exceed 2 to 3 times the number of vacancies is not applicable to this case.

10. The respondents admit that although the results were declared on 16.6.95 but due to certain administrative errors a group of candidates who had qualified in the written examination were not called for interview and thus they were given an opportunity later on and interviewed on 28.6.95. In the circumstances, it is submitted that there was no violation of the fundamental rights of the applicants as alleged.

11. The respondents have also clarified that the ARS being an open competitive examination, there was no restriction or bar for the eligible candidates to appear in the examination more than once even if they have been selected during the previous years and failed to join the service. The ARS examination is conducted every year although it is a need based one. They also state that at the time of notifying the examination the exact number of vacancies are not readily available and hence it cannot be notified. Regarding the option of medium for answering the question as prescribed in clause 10 of the advertisement, they have submitted that the option of medium was regarding the language for answering the papers whereas the papers are prepared in English ^{only} which has been the practice from the begining. They have also clarified that

some reserved candidates in ^a particular discipline have on the basis of their own merit been placed in the general quota and they cannot be held to be appointed on the basis of reservation but because of their own ability and merit. Lastly the respondents submit that the applicants cannot challenge the vires of the ARS rules 10 and 12 and at the same time rely on these rules stating that they have been violated. For these reasons, the respondents submit that the application may be dismissed.

12. The applicants have also submitted written submissions and have also relied on the following judgements (i) Dr. Suresh Chand Verma Vs. UOI (AIR 1990 SC 2023); (ii) Ashok Kumar Yadav Vs. State of Haryana (AIR 1987 SC 454); (iii) Dr. L. Krishna Vs. State of Karnataka (1985(3) SLR Karnataka High Court 484; (iv) Dr. K.L. Narasimhan and another Vs. PG Institute of Medical Education and Research, Chandigarh (1992 (3) SLR Punjab and Haryana High Court 307.

13. We have carefully considered the pleadings, the arguments of both the learned counsel for the parties and the records.

14. From the perusal of the advertisement dated 4.10.94, including the ARS rules, it appears that the examinations have been held discipline-wise as is evident from Annexures A-1 and A-2. The subjects ^{for} which the candidates had to appear in the examination have been indicated discipline-wise. The ^{are} subjects listed discipline-wise and obviously do not belong to one common category or one general category. The educational qualifications prescribed for the candidates for the ASR, NET and Senior Research Fellowships are that they must have a Master's degree or equivalent with good academic record in the concerned subject from any Indian University or a recognised foreign university. All these factors indicate clearly that the examinations were being held discipline-wise and the reasons given by the respondents to adopt an overall reservation policy taking into account the overall vacancies and not discipline-wise does not appear to be justified.

15. In Dr. Suresh Chandra Verma and others v. the Chancellor, Nagpur University and others (AIR 1990 SC 2023) the Supreme Court has held that the number of posts reserved for reserved category candidates must be indicated subjectwise and mere mention of ^{the} total number of reserved posts in advertisement is not sufficient. In this case

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the University had issued the employment notice inviting applications for a total number of 77 posts, which included 13 posts of Professors, 29 posts of Readers and 35 posts of Lecturers in different subjects ranging from Economics, Politics and Sociology to Physics, Pharmacy and Geology. The notice mentioned total number of reservations categorywise but not subjectwise. The notice announced the posts categorywise as Professors, Readers and Lecturers in different subjects and made a blanket declaration that 6 of the posts of Professors, 12 of the posts of Readers and 16 of the posts of Lecturers would be reserved for backward castes. The Supreme Court has observed that at that time neither the University nor the candidates knew as to which of the subjects and in what number the said posts were reserved. It was further observed that the Selection Committees which were appointed to interview the candidates for the respective posts also did not know whether they were interviewing the candidates for reserved posts or not and to assess merits of the candidates from the reserved category as such candidates. In that case also it was argued based on Section 57(4)(a) of the Nagpur University Act, 1974 that this section only requires the University to state in the advertisement the total

number of posts and the number of reserved posts and not postwise, i.e., subjectwise and that the employment notice in question was, therefore, not bad in law. The Supreme Court, rejecting this argument held as under:-

"According to us, the word "post" used in the context has a relation to the faculty discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57(4)(a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e., the subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner itself defeats the purpose for which the applications are invited from the reserved category candidates and consequently negates the object of the reservation policy. That this is also the intention of the legislature is made clear by section 57(4)(d) which requires the selection committees to interview and adjudge the merits of each candidate and recommend him or her for appointment "to the general posts" and "the reserved posts", if any, advertised.

Further it was held -

"It is common knowledge that the vacancies in posts in different subjects occur from time to time according to the exigencies of the circumstances and they arise unequally in different posts. There may not be vacancies in one or some posts whereas there may be a large number of vacancies in other posts. In such circumstances, it is not possible to comply with the minimum reservation percentage of 34 vis-a-vis each post. It is for this reason that the Resolution states that although minimum percentage of reserved posts may not be filled in one or some posts, it will be enough if in that year it is filled in taking into consideration the total number of appointments in all the posts. This, however, does not absolve the appointing authority from advertising in advance the vacancies in each post and the number of posts in such vacancies meant for the reserved category, and

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inviting applications from the candidates belonging to the reserved and unreserved categories with a clear statement in that behalf. In fact, the overall minimum percentage has to be kept in mind, as stated in the Resolution, at the time of issuing the employment notice or the advertisement as the case may be." (emphasis supplied).

16. The advertisement for the ARS/NET etc. examination for 1994 has clearly recognised the fact that the examinations were to be held disciplinewise for which qualifications have been prescribed in the various subjects. This itself makes it clear that the examinations were to be held subject-wise/disciplinewise. Para 11 of the rules provides that candidates belonging to the Scheduled Castes or the Scheduled Tribes may be recommended by the Board by a relaxed standard to make up the deficiency in the reserved quota, subject to their fitness to be appointed in ARS irrespective of their ranks in order of merit at the examinations. The advertisement, however, does not indicate the reservation of the posts for SC/STs in the various disciplines which the respondents ought to have clearly indicated in the advertisement itself. A non-indication of the subjects or disciplines for which there was reservation for SC/ST candidates not only defeats the object of the reservation policy but also defeats the rights of the other general category candidates to be adjudged in the examination on their merit. The respondents ought to have clearly indicated the reservation against the subjects disciplinewise in respect of reservation policy of the Govt. of India which they have adopted, by

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inviting applications from the candidates, indicating the posts meant for the reserved category and the general category candidates.

17. Having regard to the decision of the Supreme Court in Dr. Suresh Chandra Verma's case (supra) a non-indication of the vacancies/posts in this manner is arbitrary and illegal. The overall minimum percentage for reservation of SC/STs in the manner indicated by the respondents clearly defeats the object of the reservation policy as well as the rights of the applicants who belong to the general category. The same view has also been held by the Karnataka High Court in Dr. L. Krishna Vs. State of Karnataka (1985(3) SLR 484) and Punjab Haryana High Court in Dr. K.L. Narasimhan Vs. P.G.I. of Medical Education and Research, Chandigarh (1992(3) SLR 307). The learned counsel for the respondents has submitted that the judgement in Dr. L. Krishna's case is subject matter of an appeal which is pending in the Supreme Court. However, in the light of the judgement of the Supreme Court in Dr. Suresh Chandra Verma's case, the principles laid down in these judgements equally apply to the facts in this case. We are, therefore, of the view that the respondents' action is bad in law since they have failed

to notify the reservations of the vacancies subjectwise-disciplinewise without indicating the percentage of reservation subjectwise.

18. The reasons given by the respondents as to why they had to adopt the method of overall reservation policy because they were not able to get enough SC/ST candidates in some disciplines in order to implement the Government reservation policy is not convincing. A perusal of their letter dated 5.9.95 addressed to the Ministry of Law and the DOP&T shows that they were themselves not convinced about the rationality in their own reasoning which is evident from the last paragraph. They have pointed out in this letter that sometimes the general candidates find that some disciplines of ARS are getting filled up by the reserved candidates in excess of the 50% reservation because a large number of SC/ST/OBC candidates are able to achieve the minimum qualifying marks in those disciplines. In such an event, sometimes even the candidate who has topped the examination in the specific discipline is not being selected if he/she is from the general category. In some other cases, they have observed that the selection of general candidates is much more than 50% because no one from the

reserved category was able to meet the qualifying standards in those disciplines. By merely restricting the overall selection of reserved categories candidates to below 50% alone does not satisfy a fair or equitable implementation of the Govt. of India policy on reservation. The irrationality of the method adopted by the respondents for this examination appears to have been recognised by them when they state they will adopt the guidelines for reservations for future years.

19. The respondents have on the one hand stated in their reply that they are considering the matter and hence this application is premature but on the other hand they have submitted that the application deserves to be dismissed because the applicants have failed to approach the Tribunal at the earliest opportunity because they ought to have sought the remedies on 24.7.95 instead of seeking the interim relief on 13.10.95. The stand of the respondents is not only contradictory but is without merit. The respondents themselves ought to have taken the necessary action which they have now sought by the letter dated 5.9.95 well in time before announcing the examination or processing the results which are under challenge here.

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20. Some of the applicants have taken the objection that they were not given the question papers in the language of their choice i.e. in Hindi. Para 10 of the advertisement provides that the candidates are advised to read the notice for the examination carefully and to fill in the application form indicating correctly their choice for ARS/NET/SRF, the Discipline, language for answering the papers. This indicates that there was a choice for answering the papers in Hindi and not necessarily that the question papers were also to be provided in Hindi which the respondents have indicated are prepared in English only. There is, therefore, no merit in the allegations to the contrary made by some of the applicants and this plea is, therefore, rejected.

21. Rules 10 and 12 of the ARS Rules have been challenged as being ultra vires. Rule 10 provides that all candidates who obtain such minimum qualifying marks in the written examination shall be summoned for viva-voce by the Board. According to the applicants this rule gives vast and uncanalised powers in the hands of the respondents to fix the cut off marks in the written examination for

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the purpose of calling for interview and is violative of Article 14 and 21 of the Constitution of India. We are unable to agree to this argument. The examinations are being held by the Agricultural Scientists Recruitment Board (ASRB), an expert body who has been empowered to fix the minimum qualifying marks in the written examination.

The Supreme Court has in Ashok Kumar Yadav V. State of Haryana (supra) has itself held that although normally the number of candidates to be called for interview should not exceed twice or at the highest three times the number of vacancies to be filled, that by itself does not invalidate the selections made. No mala fide motives have been alleged against the ASRB in this case. We, therefore, do not find the Board's action arbitrary nor justification to quash this rule.

22. The applicants had submitted that since the OBCs were not mentioned in the advertisement for the examination of 1994, they could not be included in the reservation category. This is rejected as the respondents have admittedly followed the policy on reservation which includes SC/ST and OBCs. We have also considered the other submissions made on behalf of the applicants and replies thereto but find that the respondents have not acted in any arbitrary or illegal manner and accordingly these are rejected.

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23. In the result, the application succeeds and is allowed. The interim order dated 18.10.95 by which the respondents who had the liberty to make appointments to vacancies in various disciplines without exceeding the permissible limit of reservation treating that reservation to be applied disciplinewise/subjectwise is confirmed. Respondents are directed to take further action for making appointments of applicants in respect of the 1994 Examination within a period of three months from the date of receipt of a copy of this order. Parties to bear their own costs.

R.K. Adooja
(R.K. ADOOJA)
MEMBER (A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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