

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2236/97
T.A. No.

199

27.4.98

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DATE OF DECISION

Dr. Gopal Krishna

Petitioner

Sh. S. K. Gupta

Advocate for the Petitioner(s)

Versus

UOI M/O Agriculture

Respondent

Sh. N. S. Dalal

Advocate for the Respondent

CORAM

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

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? YES

2. Whether it needs to be circulated to other Benches of the ~~Central~~ Tribunal
Tribunal No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2236/97

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New Delhi this the 27 th day of April, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member (J).
Hon'ble Shri K. Muthukumar, Member (A).

Dr. Gopal Krishna,
S/o Shri Om Prakash Gupta,
R/o 9/38, Old Campus,
HAU, Hissar. Applicant.

By Advocate Shri S.K. Gupta.

Versus

1. Agriculture Scientist Recruitment Board,
through its Chairman,
Krishi Anusandhan Bhawan,
Pusa, New Delhi-12.
2. Director,
Indian Veterinary Research Institute,
Izzat Nagar, Bareilly-243122 (UP).
3. Dr. A.L. Chaudhary,
Chairman,
A.S.R.B.,
Krishi Anusandhan Bhawan,
Pusa, New Delhi-110 012.
4. Shri O.S. Tomar,
Director,
Indian Veterinary Research Institute,
Izzat Nagar, Bareilly-243122 (UP).
5. Director General,
ICAR, Krishi Bhawan,
New Delhi.
6. Shri S.K. Bhanja,
Director,
CIBT, National Institute of
Rural Development,
Rajinder Nagar,
Hyderabad (AP). Respondents.

By Advocate Shri N.S. Dalal.

O R D E R

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

The applicant has impugned the selection held by Respondent 11 for the post of Joint Director (Extension Education) (for short 'JD (EE)') in the office of Respondent

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2 in which Respondent 3 acted as a Chairman of the Selection Board. The applicant has alleged that Respondent 3 has personal enmity with the applicant who appeared before the Selection Board and, therefore, he cannot expect justice as there is a criminal litigation pending between the applicant and Respondent 3.

2. The brief facts of the case are that the office of Respondent 1 advertised a/number of posts, including the post of JD (EE) for the office of Respondent 2 on 29.3.1997. The applicant claims that he was fully eligible and he was called for interview which was to be held on 5.9.1997. During the course of hearing, Shri S.K. Gupta, learned counsel, submitted that he is no longer pressing grievance against Respondent 4 on any ground. The applicant states that when he came to Delhi on 5.9.1997 he came to know that Respondent 3 was sitting as Chairman of the Selection Board. Therefore, even before appearing at the interview he lodged a complaint stating that Respondent 3 should not sit in the Selection Committee for the reasons mentioned in the letter dated 5.9.1997, namely, that summons have been issued in the name of Dr. A.L. Chaudhary, Respondent 3, by the Addl. Chief Judicial Magistrate, Hissar in a criminal complaint filed by the applicant and this criminal case was pending before the District and Sessions Judge, Hissar and was fixed for arguments on 29.11.1997.

3. The background of the criminal case is that when the applicant's name was considered for the post of Professor on 18.9.1990 in the Meeting Nos. 134-135 of the Board of Management of C.C.S.H.A.U., Hissar, Respondent 3 who was Chairman of the Board is alleged to have produced certain

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tampered documents. He has referred to the order of the Civil Judge, Hissar dated 16.1.1996 and revision order of the Court of Sessions Judge, Hissar dated 11.6.1997 (copies placed on record) in which the name of Respondent 3 figures alleging that he was responsible for tampering of the documents for which criminal proceedings are pending before the competent court. The learned counsel has submitted that the criminal case is pending against a number of accused persons, including Respondent 3 which is based on the complaint filed by the applicant on a serious offence of tampering with records which had the effect of spoiling applicant's career even earlier. Therefore, he has submitted that the Selection Board held on 5.9.1997 chaired by Respondent 3 in which the applicant was also interviewed would not do justice to the applicant and the settled position is that justice should not only be done but should also be seen to be done. He has relied on **A.K. Kraipak and Ors. Vs. Union of India & Ors.** (1970(1) SCR 457) and **E.P. Royappa Vs. State of Tamil Nadu** (1974 (1) SLR 497).

4. The respondents have filed their reply and we have also heard Shri N.S. Dalal, learned counsel, who have stoutly controverted the above averments. Respondent 3 who has acted as Chairman of the Selection Board has stated that he has no professional rivalry against the applicant, as alleged by him. The learned counsel also vehemently submitted that the allegations of enmity against Respondent 3 are entirely unjustified, if the facts and evidence as produced before the criminal court is gone into. They have also stated that the applicant had filed earlier Suit No. 900/1988 and the learned counsel has argued that at that time Respondent 3 was nowhere in the picture. They have stated

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that the Selection Board in which Respondent 3 was Chairman had the duty to select the best talent and they consisted of experts who had unanimously made the selections and, therefore, there was no question of the Chairman influencing the experts who came from different Universities and Institutions. Learned counsel also submitted that the applicant having appeared before the Selection Committee, knowing that Respondent 3 was Chairman, applicant cannot later challenge the constitution of the Committee. He also states that there is no proof of mala fides, and being a body of experts, there was no question of the Chairman influencing the other Committee Members in the Selection. He relies on the judgements of the Supreme Court in **State of M.P. Vs. Ganekar Motghare** (1990(1) SLR 711), **G.V. Unkule Vs. High Court, Bombay and Ors.** (1997(1) SLR 89), **Neelima Misra Vs. Narinder Kaur Paintal** (AIR 1990 SC 1402), **E.N. Srinivasa Vs. Bangalore University and Ors.** (1996 (4) SLR 807).

5. We have carefully considered the submissions made by the learned counsel for the parties and the pleadings including the rejoinder.

6. The issue in this case is whether the applicant who had appeared for selection to the post of JO (EE) before a Selection Board in which Respondent 3 was a Chairman against whom a criminal litigation was pending on his complaint can now turn round and question the selection. Nodoubt, he had appeared in the interview on 5.9.1997 and was not successful. In a number of cases, the Supreme Court has laid down that where a person has voluntarily appeared for interview before a Selection Committee and taken a chance of favourable recommendations for him, it is not open to him to

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turn round and question the constitution of the Committee when he finds that he is unsuccessful (See. *G. Sarana Vs. Lucknow University* (AIR 1976 SC 2428 - Para 15). In this case, the Supreme Court has held that he (the applicant) seems to have voluntarily appeared for interview and taken a chance of having a favourable recommendation. In the case before us, however, Shri S.K. Gupta, learned counsel has submitted that when the applicant came to know on arrival for the interview that the Selection Board was presided over by Respondent 3 as Chairman, he had lodged a complaint in the office stating that Respondent 3 should not sit in the Selection Committee for the reasons mentioned therein. Shri N.S. Dalal, learned counsel, has, on the other hand, submitted that the applicant had come armed with the copy of the summons issued by the Addl. Chief Judicial Magistrate, Hissar, in the name of Respondent 3 in the pending case filed on the complaint by the applicant and, therefore, he was well aware that Respondent 3 would be the Chairman of the Selection Board. This fact was, however, disputed by the learned counsel for the applicant who submitted that it is not uncommon for any other Member of the Board to act as Chairman in some cases, and it was only when the applicant actually entered the room that he knew for certain that the interview Board was presided over by Respondent 3, at which stage he did not think it proper to leave. The point which he stressed was that since the applicant had lodged a protest before the interview that Respondent 3 should not sit in the Selection Committee, his participation in the selection cannot be termed to be "voluntary" but under protest. He had contended that even if Respondent 3 had left the room at the time of the interview he would not have any case. Normally, the settled position is that when the applicant has appeared

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before the Selection Committee for appointment to the post and has not been selected, he is estopped from challenging the constitution of the Committee (See G.V. Unkule's case (*supra*)). However, in the background of the criminal case pending in the criminal court, Hissar, in which one of the accused persons is Respondent 3 which has been initiated on the complaint by the applicant, and his protest lodged before ^{the interview} cannot be totally ignored. The situation might have been different if the criminal case, on a serious charge of tampering with documents, was not pending against Respondent 3 at the time of the Interview held on 5.9.1997. The mere denial by Respondent 3 that he had no professional rivalry against the applicant when he presided over the Selection Board would not appear to be sufficient in the facts and circumstances of the case. The reasonable apprehension of bias against the applicant cannot be ruled out, as this is not just a case of professional rivalry in the academic circles but a more rare case of criminal prosecution pending against the Chairman of the Selection Board.

7. In the landmark judgement of the Supreme Court in *A.K. Kraipak's case (supra)*, the Apex Court has held as follows:

"In the present case, at the time of selection, the other members of the Board did not know that the appeal of the superseded conservator was pending before the State Government and hence there was no occasion for them to distrust the opinion of the Acting Chief Conservator. There was a conflict between his interest and duty and he was a judge in his own cause. Taking into consideration human probabilities and the ordinary course of human conduct, there was reasonable ground for believing that the Acting Chief Conservator was likely to have been biased. He did not participate in some of the deliberations of the Board, but the facts that he was a member of the Board and that he participated in the

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deliberations when the claims of his rivals were considered and in the preparation of the list, must have had its impact on the selection, as the Board, in making the selection, must necessarily have been given weight to his opinion. In judging the suitability of the candidates the members of the Board must have had mutual discussion and though the other members filed affidavits stating that the Acting Chief Conservator in no manner influenced their decision in group discussions, each member was bound to influence the others in a subtle manner and without their being aware of such influence.

2. In the circumstances of the case, the selection of the Board could not be considered to have been taken fairly and justly as it was influenced by a member who was biased".

8. In E.P. Royappa's case (*supra*), the Supreme Court has held that the burden of establishing malafides lies heavily on the person who alleges it and such allegations are more often easily made than proved. However, keeping in view the decisions of the Supreme Court in this case as well as in *Kraipak's case (supra)* and the facts and circumstances of the present case, we cannot but observe that there is a reasonable probability that Respondent 3 who was the Chairman of the Selection Board was likely to be biased against the applicant. The respondents have not denied the fact that criminal case against Respondent 3 is pending adjudication in the criminal court on a complaint made by applicant. It is also relevant to note that the interview in question was held on 5.9.1997 and the District and Sessions Judge, Hissar before whom the criminal case was pending had fixed the case for arguments on 29.11.1997. Therefore, it is not possible to categorically state that considering human conduct and probabilities Respondent 3 would not be biased or that there was no possibility of mala fide in the present case. We are also not impressed by the arguments advanced by the learned counsel for the respondents that the presence of Respondent 3 in the selection Board as Chairman cannot vitiate the

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recommendations of the Committee as the Members were Experts who have come from different Universities/Institutions and have made independent selections. Here again, it is not possible to rule out that the Chairman of the Selection Board would not have had any influence on the other expert Members in a "subtle manner". It is also relevant to mention here that in the cases relied upon by the learned counsel for the respondents, the allegations of bias or mala fide made against one of the Members of the Selection Boards have not been based on any criminal complaint which is a serious matter as in the present case and the cases are distinguishable on this ground. It is also relevant to note that the applicant had raised objection to Respondent 3 being in the Selection Committee before the interview.

9. Therefore taking into account the totality of the facts and circumstances of the case and for the reasons given above, we are of the view that it cannot be held that the interview Board held on 5.9.1997 was free from bias or mala fide on the part of the Chairman - Respondent 3 in respect of the applicant. We, therefore, quash and set aside the impugned selection held on 5.9.1997 for the post of JD (EE) in the office of Respondent 2 in respect of the applicant. *are directed by* Respondents to conduct a fresh selection for the post, including the applicant as a candidate, within three months from the date of receipt of a copy of this order in accordance with law and keeping in view the observations made above.

Y.S. O.A. allowed as above. No order as to costs.

Y.S.
(K. Muthukumar)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)