

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(1)

O.A./~~XXX~~ No. 695 of 1997

Decided on: 29/8/

Dr. Subhan KhanApplicant(s)

(By Shri V.S.R. Krishna Advocate)

Versus

The Director General, CSIR..Respondent(s)

and another

(By Shri V.K. Rao Advocate)

CORAM:

THE HON'BLE ~~XXX~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *y* or not?

2. Whether to be circulated to the other *Y* Benches of the Tribunal?

b
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 695 of 1997

New Delhi this the 2nd day of ~~August~~ September, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Dr. Subhan Khan

National Institute of Science Technology
and Development Studies (NISTADS)
New Delhi.

...Applicant

By Advocate Shri V.S.R. Krishna

Versus

1. The Director General
Council of Scientific & Industrial
Research (CSIR) & Secretary to Govt. of
India,
Anusandhan Bhawan,
Rafi Marg,
New Delhi-110 001.

2. The Director,
National Institute of Science Technology
and Development Studies (NISTADS),
Dr. K.S. Krishnan Marg,
New Delhi-110 012.

...Respondents

By Advocate Shri V.K. Rao

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant, a Scientist E-I (Group [iv](3)) is aggrieved that the respondents have rejected his representation for reconsideration of his work report for purpose of recommendations of the Assessment Committee for his further promotion to the next higher grade of Scientist E-2 (Grade-[iv](4)). He also alleges personal bias and prejudice against one Dr. Ashok Khosla, who had evaluated his work report for the period from 1.4.1988 to 31.3.1991 as an Expert on the panel nominated by the respondents although he was not in the list of the approved names for the Peer review for his discipline, namely, Resource Planning and Utilisation for Regional

Development. He contends that Dr. Khosla has been prejudiced against him and, therefore, has underrated his work in the Peer review in his report, which has resulted in his not making the grade for the next higher position of Scientist E-2 (Grade-[iv]{4}).

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2. Briefly stated, the respondents operate the Scheme called Merit and Normal Assessment Scheme (hereinafter referred to as 'MANAS') for promotion of Scientists/Technologists in the organisation in various grades. As per this Scheme, a copy of which has been annexed by the applicant as Annexure A-3, the merit assessment of the Scientists is done as per the Scheme in order to enable such assessment. The Research Council (RC) lays down and decide the areas for Expert Panels. The Area-wise panel will be prepared separately for each CSIR Headquarters. The Expert Panels will be valid for a period of 3 years after which they will be reconstituted. There shall be three Referees for Peer Review. Out of the list of three Referees suggested by the assessee from the Area-wise Expert Panels, one will be nominated and two other Referees are to be nominated by the Director. The work reports of the eligible Scientists are to be sent to the three experts or three referees and thereafter, on the basis of the Annual Performance Appraisal Reports and work reports and the marks given on the work reports by the referees, the Assessment Committee assesses the suitability of the candidate. The applicant's grievance are two-fold. He contends that the Assessment Committee had not been properly constituted and his work reports had been sent to Dr. Ashok Khosla although he was not to be

included in the Expert's Panel for the purpose of the review of his Work Reports during that period. He also alleges that Dr. Khosla was personally prejudiced against him and had downgraded his work. He contends that although two other experts had given him 10 out of 10 marks and 9 out of 10 marks, respectively, Dr. Khosla the third Expert, awarded him only 7.1/2 marks out of 10 and thereby he had missed the final grade by 1/2 mark on account of the mala fide attitude of the ineligible Dr. Khosla. He, therefore, prays for a direction to quash the impugned orders and the recommendations of the Assessment Committee insofar it relates to his case and for a further direction to consider his case for fresh assessment after sending his work report to the Experts (Peer) whose name existed in the Research Council (RC) panel of experts duly approved as applicable during the relevant period in question.

3. Respondents in their counter-reply have contested the claim of the applicant. They contend that the applicant was advised to select the list of experts and peers chosen from the list available with Shri M.A. Qureshi, Scientist F/Library R.3 and only after finding that his name did not find place in the select list, the applicant had filed this application only as an afterthought. The respondents contend that the modified list of experts was placed before the RC on 24.12.93. The respondents have attached final list as per Annexure R-2. They have also averred that Assessments conducted after 24.12.93 have used this list as per the decision of the

Research Council (RC) and Dr. Ashok Khosla's name appeared at page 48 in that list. Respondents assert that all the Experts and Peers chosen for the Assessment are legal and approved by the Chairman and there was no question of arbitrariness. As regards the Assessment Committee, the respondents have also stated that it was duly constituted and the applicant's grievance in this regard is totally misplaced. They assert that the Assessment Committee was duly constituted as per the RC's decision. The applicant, however, contests this and submits that the Assessment Committee had included Dr. Kamta Prasad and Shri G.S. Bhalla who were not in the panel of Experts under the discipline of the Research Council as finalised and approved Areawise Expert Panels as given in Annexure A to Item 10 of the minutes of the meeting of the RC (Core Group) constituted by Research Council in its second meeting to be held on 20.9.90 vide Annexure A-5. The respondents, however, contend that the names of these Experts were taken from the then existing Experts and name of Shri Bhalla and Dr. Kamta Prasad were very much available in the Research Council (Peer). The main contention of the applicant is that the list of Experts for both the interviewing committee and the list of Peers as Experts from India outside CSIR was not duly approved by the Research Council (RC) and, therefore, his assessment by ineligible persons has prejudiced his case besides the fact that his work report was evaluated by Dr. Khosla who could not have been in the list at the relevant point of time for the period in question and had downgraded him out of personal bias. During the hearing,

the respondents were asked to file documents, namely, Minutes of various RC meetings from time to time. In the additional affidavit filed by the respondents it is stated that the applicant was asked to submit three names from the list of Experts which were prepared on 24.12.93 and the applicant himself had selected three names from the said list and the Director had approved one of the names (Shri S.K. Puri) apart from giving two names from the said list according to the rule.

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4. The learned counsel for the applicant urged that in the matter of selection of Scientists, the period for which the assessment takes place, is of crucial importance. By the nature of such assessments, the work done during the period as reviewed by the Expert concerned at the relevant point of time, will be a significant factor. The learned counsel submitted that the grievance of the applicant is that in selecting Experts which are later on added to the list of Experts, i.e., those who are included in the panel of Experts subsequent to the period for which the assessment is to be made, could jeopardise the interest of the Scientists. He asserted that in scientific and technical field where advancement are taking place from time to time, if the Expert at the relevant point of time is not involved in the review of the work reports of the concerned Scientist, this will go against the very purpose of assessment of the work reports. The Experts who come into the picture much later may be guided by certain advancements made in the relevant field or discipline and based on that knowledge, would

attempt to review the work reports which related to some previous period. It is on this score that the applicant has been prejudiced inasmuch as, his grievance was that the Experts have been selected not out of the list relevant for the period of assessment at the particular point of time, but on subsequent lists. He also contends that even the subsequent lists have not been duly approved by the Research Council (RC). Thus, any reference to an Expert from this list, will be irregular. The learned counsel for the respondents on the other hand argued that on the basis of the additional affidavits filed by the respondents it can be seen that the Experts were taken out of the list suggested by the applicant himself and, therefore, the applicant is estopped from challenging the same as an after-thought once he came to know that he was not recommended fit for promotion.

5. We have given our careful consideration to the submissions of the learned counsel for the parties and have perused the record placed before us.

6. As pointed out above, the procedure for Expert Panels is outlined in MANAS Scheme in para 4.1. According to which, the Expert Panels would be normally valid for a period of 3 years after which they will have to be reconstituted. It is also provided that the additional names can be added with the approval of the Research Council during this period, without affecting the tenure of the panel. Admittedly, the applicant was due for assessment in 1991-92 for which purpose the work reports

for the period from 1.4.1988 to 31.3.1991 were to be considered. In the meeting of the RC (Core Group) on 20.9.90, the respondents considered inclusion of certain additional names of Experts in India and abroad in different fields and it was decided that the concurrence may be obtained from them for serving in the panel before announcing the list. In the aforesaid meeting the respondents have stated that Shri G.S. Bhalla and Dr. Kamta Prasad were available in the Experts/Peer panel whereas the applicant contends in the rejoinder that their names do not find place in the list of Experts outside the CSIR, in the discipline in question. We find that these two names do not figure in the list of Experts in the particular discipline, namely, Resource Planning and Utilisation for Regional Development, which were placed before the RC (Core Group). The recommendation of the RC (Core Group) was placed before the Research Council meeting on 22.4.1991 as seen from the additional affidavit filed by the respondents, in which it was decided as follows:-

"Area-wise list of experts for Peer Review prepared by RC Core Group in its meeting held on 20.0.90, may be rationalized as follows:

- a) Shifting the names of some experts to the areas where they suits.
- b) The category of experts in each area may be made to indicate the level of assessment of the personnel.
- c) Names of experts in the area of Global Warming * should be finalised... The following names were included in the list of experts... *(No name in the area of Resource Planning and Utilisation for Regional Development has been included)."

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7. It is also pointed out by an * in c) that no name, however, was included under the Research theme of Resource Planning and Utilization of Regional Development. From this it would appear that the contention of the applicant that the Expert Committee had included persons who were approved for serving as Experts in the relevant field for the assessment in question and to this extent, the contention of the applicant seems to be tenable.

8. As regards grievance of the applicant that his work reports were referred to one Dr. Ashok Khosla as third Expert and that he had with a mala fide motive underrated the applicant's performance, it is to be stated that the applicant has taken the following grounds against Dr. Khosla. In para 5(f) the applicant has stated that Dr. Ashok Khosla, an ineligible peer to whom the work reports of the applicant was sent is a contemporary of the applicant and had a professional jealousy against the applicant and was bent upon spoiling the carrier of the applicant because of his mala fide intention. On the above ground, the applicant contends that by sending his reports to Dr. Ashok Khosla, who was ineligible to be an Expert in this case, the respondents have violated the guidelines of the MANAS Scheme. As seen from the minutes of the Research Council in its meeting held on 4.11.1991, the Research Council had agreed that the existing list may be used for assessment and other purposes until the Director prepared a modified list. It was also decided that in any case the Director may add names as and when

held necessary. From this it would appear that Dr. Khosla's name was only placed before the list of Experts for Peer Review as recommended by the Core Group before the RC meeting on 24.12.1993 and even here in item 2(iii) and item 7 it is stated in the additional affidavit filed by the respondents that the revised panels of Experts had been discussed under Item (7) of the Agenda of Meeting and the list was yet to be finalised. In any case, there is no indication that the Experts Panel as recommended by the Core Group was approved by Research Council at any time. In the light of this, there is force in the contention of the applicant that sending his work reports to an Expert whose name has been included in the list of Experts which was not specifically approved by the Research Council, would not be in accordance with the guidelines of the MANAS Scheme. We are inclined to agree with this contention of the learned counsel for the applicant that in matters concerning assessment of Scientists, the field of discipline and the period of assessment and the relevancy of Expert for the particular period assume significance. No doubt, the respondents have the absolute discretion in nominating any Expert to the list of Experts but what is crucial is that such list of Experts should be duly approved for the relevant period of assessment by the competent authority; in this case, by the Research Council. We find that this has not been so in the present case.

9. The learned counsel for the applicant has, however, referred to some judgments, namely, Jagdish

Chander Jetli Vs. Union of India & Another, 1988 (6) ATC 283.

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This deals with the selection of Secretary to the Government of India. The facts in this case are not parimateria here and, therefore, this case is of no help. The learned counsel also relies on the decision in the case of S. Nalinakshan Vs. Chief General Manager, Telecom Kerala Circle and Others, 1992 (20) ATC 104 (CAT, Ernakulam), in which it was held that the Selection Committee constituted not in accordance with the prescribed constitution was held incompetent. In the present case also, the ratio of the above judgment will be applicable. Another similar case relied upon by the learned counsel for the applicant is K.D. Sharma Vs. Union of India & Others, 1988 (7) ATC 180 (CAT, Jabalpur), wherein it was held that the selection of the DPC which was not convened in accordance with the prescribed composition was held invalid.

10. In the conspectus of the above discussion, we are unable to agree with the stand of the respondents that the case of the applicant was duly considered and reviewed by Experts duly approved in the list of Experts, by the highest decision making authority of the respondents, namely, the Research Council and to this extent, the procedure of selection in the case of the applicant has been vitiated. We are fortified in our view by the observations of the Apex Court in Dalpat Abasahe Solunke, etc. etc. Vs. Dr. B.S. Mahajan etc. etc., AIR 1990 SC 434 wherein the Apex Court opined that while the fitness of the candidate has to be decided by the duly constituted Selection Committee which has the expertise on

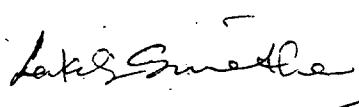
the subject, the decision of the Selection Committee can be interfered with only on the limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.

11. In the light of the above, we allow this application and quash the impugned order dated 1.11.1996 and also quash and set aside the recommendations of the Assessment Committee which met on 19.2.1996 insofar as it relates to the applicant only. We further direct as follows:-

Respondents are directed to constitute appropriate Assessment Committee of Experts from the duly approved list as will be applicable to the period of assessment in question and make a fresh assessment in respect of the applicant for consideration of his promotion to the post of Scientist E-2 (Grade-{iv}[4]). We also direct that the above review assessment may be completed within a period of 3 months from the date of receipt of a copy of this order.

In the circumstances of the case, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh