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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
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O.A.No. 1565/94.

Date of decision: 20.1.1995

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

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

Dr. Manjula Maheshwari,  
W/o Shri A.K. Maheshwari,  
224, Sidhartha Enclave,  
New Delhi-110 014. ... Applicant

(By Advocate Shri K.K. Rai)

versus:

1. Centre for Bio-Chemical Technology,  
through its Director,  
Mall Road, Delhi-110 007.
2. Council of Scientific & Industrial Research,  
through its Director General,  
Rafi Marg, New Delhi-110 001.
3. Dr. S.V. Gangal,  
Director,  
Centre for Bio-Chemical Technology,  
Mall Road, Delhi-110 007.
4. Dr. Navin Arora,  
National Institute of Health,  
NIAZD, LCI Building-10,  
Room No. 11-C-208,  
Bethesda, Mary Land 20992  
U.S.A. ... Respondents

(By Advocate Shri A.K. Sikri)

O\_R\_D\_E\_R

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

The applicant, who is a Scientist Fellow with Respondent No. 1 i.e. Centre for Bio-Chemical Technology, has challenged the appointment of Respondent No. 4 as Scientist 'C' in that Organization, which, according to her, is dehors the rules and contrary to the advertisement for the said post.

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2. The brief facts of the case are that the applicant, who joined Respondent No.1 as a Pool Officer on 7.3.1991, is working on a temporary post of Scientist Fellow u.s.f. 23.3.1994. Respondent No. 1 had advertised for the posts of Scientists E-I/E-II/Scientists 'C' and Junior Technical Assistants vide Advertisement No. 1/1994 (Annexure B). The applicant was a candidate for selection to the single post of Scientist 'C'. Para 10 of the advertisement provided for shortlisting of the applicants by the Screening Committee for the purpose of interview. Clause 11 of the advertisement provided that shortlisted candidates called for interview shall be paid single second class to and fro rail fare. She was called for interview by the Selection Committee vide letter dated 1.6.1994 to be held on 28.6.1994 (Annexure 'C'). According to the applicant, Respondent No. 4 had also applied for the post of Scientist 'C' and had been short-listed for interview but inspite of not appearing for the interview, he had been selected for the post of Scientist 'C'. The applicant has, therefore, prayed for quashing the appointment of Respondent No. 4 to the post of Scientist 'C' and a further direction to the Respondents to make such appointment to the post in accordance with law.

3. The respondents have contested the O.A. and state as follows :-

(1) That the application is mis-conceived and untenable;

- (2) That although the jurisdiction of the Tribunal is not disputed, since the applicant has not even filed the representation against the appointment of Respondent No. 4 to Respondents Nos. 1 and 2, the O.A. is premature;
- (3) The applicant, who had joined originally as Pool Officer with Respondent No. 1 and later given the position as Scientist Fellow with Respondent No. 1 is not holding any appointment in that post and she has been accommodated as Scientist Fellow till she is able to find a suitable job;
- (4) With regard to paragraphs 10 and 11 of the Advertisement, the Respondents state in their reply that the advertisement nowhere lays down the criteria of selection which is to be decided by the Selection Committee under the provisions of erstwhile bye-law 66. The Respondents contend that the Selection Committee has a right either to interview all or any of the candidates short-listed by the Screening Committee or even consider any other suitable candidate for the post advertised. However, in the reply to paragraph 4.11, the Respondents have stated as follows :-
- ".. Merely having more experience after Ph.D. does not entitle a candidate for selection as selection depends on many other factors:-
- (a) Experience in the related field for which candidate is required.
  - (b) Other scientific achievements reflected through publications, publication of papers in the name of the candidate, and the quality of such papers with reference to the publications in important journals.
  - (c) Specific job requirement provided for the post.
  - (d) Performance before the Selection Committee.

4. In the rejoinder, the applicant has contended that the department has acted contrary to the rules by considering Respondent No. 4, that is a person who has not applied for the post of Scientist 'C' and who had been found unfit for Scientist 'E' post.

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5. The main grounds taken by the learned counsel for the applicant, Shri K.K. Rai, are that -

- (i) the respondent No. 4 was not a candidate for Scientist 'C' post as he had only applied for the post of Scientist E-I for which he was qualified;
- (ii) Respondent No. 4 cannot be selected without an interview for the post as required under Bye-law 66 of the C.S.I.R. (Annexure 1A). Mr. Rai submits that no selection can be made in absentia without judging the performance of Respondent 4 before the Selection Committee and reference has been made to Respondent 1's own averments in para 4.11 of the Reply that it is one of the factors for selection of candidates.
- (iii) The applicant and Respondent 4 have the same qualifications and it was only because the Director, Respondent 3 had shown undue favours to Respondent 4 as his student that she was not selected. The counsel asserts that the entire selection process was a sham because the Director of the Centre for Bio-Chemical Technology, Dr. S.V. Gangal, was a Guide of Respondent No. 4, who did his Ph.D. under him. He has relied on the judgment of the Hon'ble Supreme Court in District Collector and Chairman, Vijayanagar v. M. Tripura Sunderi Devi (JT 1990 (2) SC 169) in which it has been held as under :-

\* It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Courts should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.\*

6. It was also mentioned by Shri Rai that in case the applicant succeeds and she is found fit to be appointed in preference to Respondent No. 4, she should be given the

benefit of age relaxation as she was within the age-limit at the time when she applied for this post in response to the advertisement No. 1/1994.

7. The learned counsel for the respondents, Shri A.K. Sikri, contends that this application is untenable. He states that the applicant as Pool Officer or later as Scientist Fellow with the respondents is not holding any appointment against any post, but she was accommodated in these positions till she gets a suitable job.

8. Under the general purposes of the Scientist Pool Scheme (Annexure R-1), persons who are suitably qualified in sciences were accommodated as Pool Officers in a temporary/stop gap arrangement till he/she is able to find a suitable job. The applicant has been appointed as a Pool Officer under this Scheme on 26.6.1990 (Annexure R-2) and further as a Scientist Fellow on 3.5.1994 on a contract basis for a period of one year w.e.f. 23.3.1994 (Annexure R-3). During this period, the applicant has not been able to get any appropriate job at any place.

9. The respondents have filed a copy of the application dated 7.2.1994 addressed by Respondent No. 4 from U.S.A. where he was working, to the Director of the Centre for Bio-chemical Technology which was <sup>in</sup> response to the advertisement No. 1/1994 (Annexure R-4). He had applied for the post of Scientist E-I. However, in the copy of the application placed at page 56 of the Paper Book, a note is added which reads -

\*Screening Committee has recommended Dr.

Maveen (Annexure R-4) for the post of Scientist 'C' 12

Respondent No. 4 was also sent an interview letter dated 1.6.1994 for the post of Scientist 'C' to which he had replied that since he was involved in certain projects he could not come for the interview, and his application may be considered in absentia (P.63). According to the Respondents, neither paragraphs 10 or 11 of the advertisement lay down the criteria of selection which is to be decided by the Selection Committee.

9. The erstwhile Bye-law 66 of the Memorandum of Association Rules and Regulations of CSIR on which both the parties rely read as follows :-

\* The Executive Committee/DGSIR as the case may be referred to in Byelaw 65, shall constitute a Screening Committee from amongst the members of the Selection Committee. The Screening Committee shall examine the credentials of all candidates who have appeared and draw up a panel of candidates to be interviewed by the Selection Committee.

The Selection Committee may interview any or all the candidates and may also consider other suitable names, if any, as it thinks fit and shall make its recommendations to the Director/D.G.S.I.R. as the case may be (emphasis added).\*

10. Taking grounds (i) and (ii) together, the contention of the Respondents is that under the above Bye-law it was not necessary to conduct the interview of all the candidates. The Selection Committee had the right of either interviewing all or any of the candidates short-listed by the Screening Committee or even consider any

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other suitable names for the post as it thinks fit. According to them, therefore, there was no illegality in selecting respondent No. 4 to the post of Scientist 'C' without the Selection Committee interviewing him. In fact, Shri Sikri submits that it is within the discretion of the Selection Committee to interview any or all the candidates who might have applied for any post and also consider other suitable 'names' as it thinks fit and make suitable recommendations. He makes a point that the use of the expression 'names' in Bye-law 66 juxtaposed with the expression 'candidates' shows that while candidates are those who might have applied for a post in reply to an advertisement, the Selection Committee is also free to consider other suitable names/persons for any suitable post, even if the person had not applied for the same. In this case, the respondent No. 4 had applied for the post of Scientist E-I and not for Scientist 'C' and it was, therefore, open to the Selection Committee to consider his name in absentia for the post of Scientist 'C' as he was not a 'candidate' who had applied for that post.

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11. Regarding the second ground taken by the applicant that Dr. S.V. Gangal, Director of the Centre for Bio-chemical Technology had shown undue favouritism in selecting respondent No. 4, who was his Ph.D. student, the respondents have strongly refuted the same on the

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following pleas :-

- (i) That having regard to Bye-law 65, the Director of the Centre is only an ex-officio Member of the Selection Committee which consists of other senior persons, chaired by a nominee of the DG, CSIR, as such the allegations of malafide are misconceived and untenable as the selection had been done by the committee in accordance with the Bye-law; and
- (ii) Merely because Dr. S.V. Gangal has supervised the work of respondent No.4 as a Guide for his Ph.D. Programme, does not vitiate the selection of respondent No. 4 by the duly constituted Selection Committee. On this, he relies on the observations of the Supreme Court in Dalpat Abasaheb Solunke v. B.S. Mahajan /AIR 1990 SC 434/. In this case the Supreme Court has held as follows :-

\* The fourth and the last ground given by the High Court to set aside the appointment of the appellant in OA No. 3507/89 is that the fourth and the fifth respondents to the Writ Petition were guides of the appellant when he was doing his M.Sc. by Research. We are unable to understand as to how the fact that they were his guides when the appellant was doing his M.Sc. would influence their decision in selecting him, or vitiate the selection made. They must have been guides to many who had appeared for the interview. As senior teachers in the Faculty in question, it is one of their duties to guide the students. In fact, very often the experts on the Selection Committee have to be drawn from the teaching faculty and most of them have to interview candidates who were at one or the other time their students. That cannot disqualify them from being the members of the Selection Committee. In fact, as stated by the 4th respondent in his affidavit before the High Court, even the 2nd respondent, the aggrieved candidate was also his student.\*

Shri A.K. Sikri, therefore, submits that the role of Dr. S.V. Gangal, who was guide to respondent No. 4, is similar to that of a Professor or Member of the Teaching Faculty and as observed by the Supreme Court in the above referred to case, he being one of the Members of the Selection Committee does not vitiate the proceedings of the Selection Committee.



12. We have carefully considered the arguments of counsel of both the parties and perused the records of the case.

13. The preliminary objection taken by the Respondents is without any force as prior representation is not a statutory requirement.

14. On a plain reading of para 1 of Bye-law 66, quoted above and relied upon by both the parties, it is seen that it is the duty of the Screening Committee to examine the credentials of "all candidates who have applied and draw up a panel of candidates to be interviewed by the Selection Committee". This shows that the reference to the expression "candidates" is to those who have applied for a post against an advertisement. The second para to this bye-law provides that the Selection Committee may interview any or all of the candidates. In the context in which this power is given to the Selection Committee, it appears that they can further short-list the panel prepared by the Screening Committee for the purpose of interview. It is not for us to consider here as to how this should be done.

15. We are concerned with the other provisions therein viz. that the Selection Committee may also consider other suitable names, if any, and make its recommendations. It is clear from this provision that the Selection Committee has a discretion to also 'consider' other suitable names/ persons who have not applied. In their case only 'consideration' is needed and not an interview. In this case, admittedly, respondent No. 4 applied only for the post of Scientist E-I and not for the post of Scientist 'C'.

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The Selection Committee did not consider him fit for appointment as Scientist E-1 but screened him for the post of Scientist 'C' as it probably felt that he was a well qualified candidate for consideration after considering his suitability on the basis of his curriculum vitae available with them. In respect of such persons who are not "candidates" no interview is prescribed. We, therefore, find that the action of the Selection Committee to recommend the appointment of respondent No. 4 to the post of Scientist 'C' without holding an interview for him is not ultra vires the provisions of Bye-law No. 66. On the other hand, <sup>only</sup> in the case of a 'candidate' who is interviewed by the Selection Committee, his/her performance before the Committee is one of the relevant factors for the selection, in addition to the fulfilment of the other qualifications and job requirements.

16. The other contention of Shri K.K. Rai that the selection is a sham because respondent No. 4 had done his Ph.D. under the supervision and guidance of the present Director of the Centre for Bio-Chemical Technology, who was also one of the Members of the Selection Committee, is also without any basis in the light of the judgment of the Supreme Court in Dalpat Abasaheb Solunke's case (Supra). Dr. Gangal was only an ex-officio Member of the Committee constituted by the Executive Committee under Bye-law 65. The Selection Committee consisted of very senior and highly placed persons with Dr. V.C. Vohra,

Chairman, Research Council, CBT (nominated by DG, CSIR) as their Chairman. The members are as under :-

1. Dr. Alok Bhattacharya, Prof., JNU, Delhi.
2. Dr. A.P. Joshi, Emeritus Scientist, NCL, Pune.
3. Dr. Amit Ghosh, Sci. 'F', IMT, Chandigarh.
4. Dr. S.V. Gangal, Director, CBT, Delhi.

It is totally inconceivable that merely because Dr. Gangal was the Guide of Respondent No. 4, he has shown undue favour to Respondent 4 in selecting him, considering that it was not his personal selection but that of a High Powered Committee consisting of very senior and highly placed persons. Similarly, we are also not persuaded by the arguments of the learned counsel for the applicant that because the respondent No. 4 had published a number of research papers with Dr. S.V. Gangal, Director, the latter had shown him undue favour.

17. The decision of the Supreme Court in District Collector and Chairman, Vijayanagaram v. Tripura Sunderi Devi (Supra) relied upon by the applicant is not relevant to the facts of this case, because it is not the case of the applicant that the respondent No. 4 did not have necessary qualifications as given in the advertisement No. 1/1994. Admittedly, respondent No. 4 has not been appointed in disregard of the essential qualifications and hence this judgment is distinguishable.

18. We are informed that an offer is yet to go to respondent No. 4. If, per chance, he is not interested in the post of Scientist 'C' and the applicant happens to be the next candidate eligible for appointment, the respondents

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should consider her case for appointment and in that event age should not be a bar to such appointment, as admittedly, she satisfied the age qualification when she applied for the post. With this observation, we see no merit in the O.A. and it is dismissed. There will be no order as to costs.

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

*(N.V. Krishnan)*  
(N.V. Krishnan)  
Vice-Chairman (A)