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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 109/2000

New Delhi, this the 14th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Dr. Leelawathi Dawson
W/O J. E. Dawson,
R/O 311/35, Kendriya Vihar,
Sector-51, NOIDA.

... Applicant

(In person)

-versus-

1. Union of India through
Secretary, Ministry of
Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi-110029.
3. Director,
Institute of Pathology,
Safdarjung Hospital Complex,
New Delhi-110029.
4. Dr. K. R. Beena,
Research Associate,
Institute of Pathology,
Safdarjung Hospital Complex,
New Delhi-110029. ... Respondents

(Shri S. Mohd. Arif proxy for Ms. Geetanjali Goel, Adv.
along with Shri J. P. Sharma, Administrative Officer,
Departmental Representative for Respondents 1-3;
Respondent No.4 in person)

O R D E R (ORAL)

Shri V. K. Majotra, AM :

The applicant is aggrieved by the action of respondent Nos.2 and 3 by considering Dr. K. R. Beena, respondent No.4 herein, an eligible candidate for selection for the post of Senior Research Officer (for short, SRO) in the Institute of Pathology (for short, IOP) and selecting her as SRO ignoring the claim of the applicant and other candidates who applied for the post.

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2. The applicant was appointed as Research Officer (Pathology) in the Institute of Pathology w.e.f. 1.3.1993 in the pay scale of Rs.8000-13500. She claims to have seven years of experience in research and also experience in teaching. Respondent No.2 advertised in the Employment News (30th January - 5th February, 1999) [Annexure-V] the post of SRO in the scale of Rs.10000-15200 in the IOP. The qualifications and experience for this post are - (a) MBBS, and (b) 6 years' research/teaching experience in the field of Pathology (two years research/teaching experience for candidates possessing M.D. in Pathology/Ph.D.). The applicant among others, attended the personal discussion on 6.9.1999 before the ICMR, respondent No.2 herein. There were seven other candidates including the 4th respondent. According to the applicant, the 4th respondent was initially appointed as a Research Associate in the respondent No.3 Institute from 6.1.1997 to 3.9.1997 which was a "stipendiary post" carrying fixed remuneration. There was no sanctioned post of Research Associate. The applicant has alleged that respondent No.3 later on appointed respondent No.4 in an arbitrary and illegal manner giving her five advance increments as Research Assistant from 4.9.1997 downgrading the post of Works Manager without obtaining approval of DG, ICMR.

3. On a complaint, the Director General, ICMR, is reported to have ordered termination of the services of respondent No.4 as Research Assistant. Her services were terminated w.e.f. 21.7.1998 but she was reappointed as Research Associate w.e.f. 27.7.1998. According to the applicant, if there were an independent and impartial authority and a proper selection procedure for the post of SRO, respondent No.4 would not have been called even for personal discussion. She seeks a writ in the nature of quo warranto against

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respondent No.4's selection for the advertised post of SRO. The main plank of the pleadings of the applicant is that since respondent No.4 had initially been recruited through backdoor without any open advertisement or sponsorship, she cannot be selected for regular appointment. The applicant has sought selection of respondent No.4 as SRO in the IOP to be declared as illegal and void and a direction to the respondents to appoint her (the applicant) as SRO in place of respondent No.4. She has also sought directions to the respondents to constitute another independent selection body for selection to the post of SRO and other posts in the IOP.

4. On 18.1.2000, it was ordered that the appointment of respondent No.4 to the aforesaid post, if made, would be subject to further orders passed in the present O.A.

5. In their counter, respondents 1 to 3 have raised a preliminary objection that the applicant has no right to challenge the consideration and selection of respondent No.4 to the post of SRO having participated in the selection process without protest herself; the applicant, at the most, has only a right of being considered by the selection committee and does not have any vested right to be selected. If on a proper appreciation of the material before it and based on the personal discussions, the selection committee did not select the applicant for the aforesaid post, according to the respondents, the applicant cannot challenge the decision of the selection committee. The respondents have also pleaded that this Tribunal cannot reappreciate the material before an expert body like the selection committee. In response to the advertisement, 23 applications were received; 11

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candidates were found possessing the essential/desirable qualifications and experience. They were called for personal discussions on 6.9.1999. The selection committee comprised experts who are eminent and known persons in their respective fields. The committee recommended two names for appointment to the post of SRO, namely, Dr. K. Venkateswaran and Dr. K. R. Beena (respondent No.4 herein) whose name was placed in the waiting list and who was thereafter offered the post of SRO in the IOP. According to the respondents, the IOP has 8 sanctioned tenure posts out of which two are for Research Associates which have been in existence since 1986-87 and were sanctioned for a period of three years. Similar posts exist not only in ICMR Institutes but also in other Research Institutes such as ICAR, CSIR etc. The fellowship/associateship programme of the Council had been re-organised in 1974 with the main objective of attracting young and talented medical graduates/science graduates and post graduates interested in biomedical research. Such fellows/associates are known as "Intramural Tenure Staff". The duties and responsibilities attached to these posts are conduct of research in specific areas designated by the appointing authority, teaching and routine diagnostic works. As the tenure posts are of short duration and on several occasions the incumbents resign from the posts after a year or two before completion of the tenure, the appointment to the Intramural Tenure Posts are made as and when vacancies arise from the suitable applications/bio data available with the IOP by a duly constituted committee without any notifications. Since respondent No.4 had a post graduate degree in Pathology she was considered for a vacant post of Research Associate through

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a duly constituted committee in 1996, whereafter she joined the post of Research Associate w.e.f. 6.1.1997. On 4.9.1997, a DPC recommended selection of one Dr. Nandini Dey and the respondent No.4 herein, both Research Associates in service at that time, to the two posts of Research Assistants on ad hoc basis against the vacant post of Works Manager. Since the approval of the competent authority, i.e., Director General, ICMR, had not been obtained, both these ad hoc appointments were terminated on 21.7.1998. Since both the 4th respondent and Dr. Nandini were actively associated with many ongoing research projects and also taking part in teaching activities, they were reappointed as Research Associates w.e.f. 27.7.1998 as their total tenure of Research Associateship had not been completed. The respondents have stated that respondent No.4 has continued to work as Research Associate since then without any break.

6. The eligibility requirement laid down in the advertisement is of two years' research experience/under the rules. Respondent No.4 was a Senior Research Fellow in the IOP from 1.7.1993 to 30.9.1993. She has been working as Research Associate at the IOP since 7.1.1997. In this manner, she is stated to have more than two years' research experience. The respondents have further stated that in the past several persons engaged as Research Associates had been appointed as SROs on the basis of their research experience.

7. Respondent No.4 in her counter has stated that she was appointed as Research Associate in IOP and for the administrative convenience of the Institute she was shifted from the position of Research Associate to the

position of Research Assistant and back to that of Research Associate. However, throughout this period her work was related to carrying out extensive research in the fields of leprosy, tuberculosis and PKDL. She has more than two years' research experience in the IOP itself. She has research experience in the field of pathology of more than two years subsequent to the acquisition of masters degree in Pathology. According to her, the selection to the post was made on the basis of comparative merit and the selection committee, in its considered opinion, considered her in all respects having better merit than the applicant. The applicant has filed rejoinder as well.

8. We have heard the applicant and respondent No.4 themselves and examined the material on record.

9. The applicant has submitted her written arguments as well. According to her, the appointment of respondent No.4 as Research Associate from 6.1.1997 is ab initio void not being in accordance with rules and, therefore, the period of her service as Research Associate from 6.1.1997 to 3.9.1997 cannot be treated as valid experience. It has further been submitted that the 4th respondent's appointment as Research Assistant from 4.9.1997 to 20.7.1998 was again without following the recruitment/selection procedure and having been made without sanction of the competent authority her appointment was finally terminated w.e.f. 21.7.1998. The applicant has contended that the 4th respondent's service/experience as Research Assistant cannot be counted for any future appointment. The applicant has also pleaded that reappointment of respondent No.4 as Research Associate w.e.f. 27.7.1998 is also illegal as in the case of her initial appointment as

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Research Associate between 6.1.1997 and 3.9.1997. The applicant has stated that her case is covered by the ratio of the following cases :

- (1) Hon'ble Supreme Court's order dated 22.8.1996 in Civil Appeal No.11646-11724 of 1996 - Excise Superintendent Malkaptanam, Krishna District, AP vs. K.B.N. Visweshwara Rao & Ors.;
- (2) Order dated 20.5.1999 of the Chandigarh Bench of CAT in O.A. No.131-HR/1999 - Dr. Jagdish Chander Markanday vs. Union of India.

10. The summary of the contentions of the applicant is that whereas respondent No.4 had been appointed as Research Associate or Research Assistant de hors ^{the rules} the experience gained by her in such positions cannot be reckoned for considering her candidature for the advertised post of SRO. Further, that the selection committee constituted for selection to the post of SRO was not independent and impartial in the matter of selecting respondent No.4 vis-a-vis the applicant.

11. The applicant has also pointed out certain anomalies in the experience certificate of the respondent No.4. Respondent No.4 had been appointed as Research Associate through a duly constituted committee in 1996 when she joined the post w.e.f. 6.1.1997. On 4.9.1997, recommended by a DPC, she was appointed as Research Assistant on an ad hoc basis against a vacant post of Works Manager. Under the rules the approval of the Director General, ICMR is imperative for appointment against against the post of Works Manager. Since that had not been done, her ad hoc appointment as Research Assistant terminated on 21.7.1998. She was reappointed to the post of Research Associate on 27.7.1998 which was

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within the powers of the Director, IOP and did not require approval of any higher authority. Thus, whereas the 4th respondent functioned in the post of Research Associate from 6.1.1997 to 3.9.1997, again from 4.9.1997 to 26.7.1998 as Research Assistant, and then from 27.7.1998 to 12.2.1999 as Research Associate, she was not holding any position between 21.7.1997 and 27.7.1997, her appointment as Research Assistant having been terminated during that period. Whereas the post of Research Assistant is a Group 'C' post, that of Research Associate is a stipendiary post.

12. In the present O.A., no relief has been claimed against the appointment of respondent No.4 as Research Assistant and Research Associate although averments have been made that respondent No.4 was appointed as such against the rules. We cannot go into the question whether the appointment of respondent No.4 as Research Assistant or Research Associate was as per rules or not in the present proceedings. Be that as it may, respondent No.4 had worked as Research Assistant/Research Associate from 6.1.1997 onwards with a short gap for the period between 21.7.1997 and 27.7.1997. If her working as Research Assistant or Research Associate for the aforesaid period has been considered as experience for selection to the post of SRO, it cannot be faulted with.

13. We find that the selection committee is comprised of experts who are former Professors/former Directors, or present Professors/Directors/Chiefs of Divisions of ICMR. The applicant has levelled allegations of mala fide against one of the members of the committee

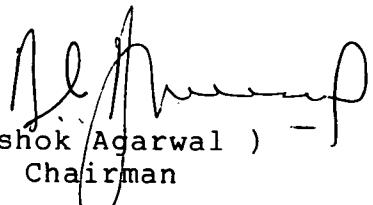
without naming him. The burden of mala fides is heavy on the person who alleges it. Allegations of mala fides are more easily made than proved and the very seriousness of such allegations demands a proof of a high order of credibility. We place reliance on **Basudeo Tiwary v. Sido Kanhu University & Ors.**, JT 1998 (6) SC 464. The allegation of mala fide by the applicant is a bald allegation with no legs to stand on. The applicant had participated in the selection process and having failed in the selection, she cannot be allowed to turn around and challenge the same. The facts of the case of **Excise Superintendent, Malkapatnam** (supra) are distinguishable from the facts of the present case. In the case before the Hon'ble Supreme Court, selection had been made without giving wide publicity to the vacancy. In the present case, the post of SRO had been given due publicity vide advertisement in the Employment News of 30th January - 5th February, 1999. In the case of **Dr. Jagdish Chander Markanday** (supra) the selection for the post of Chief Training Organiser, Trainers Training Centre, National Dairy Research Institute, was made in contravention of the prescribed qualifications. The respondent No.5 therein had been selected even though he did not possess one of the essential qualifications. Again, the facts of the present case are entirely different than those in the case of **Dr. Jagdish Chander Markanday** (supra).

14. From the above discussion, we find that the 4th respondent had adequate research experience to be eligible for consideration for selection to the post of Senior Research Officer. The Tribunal cannot play the role of the selection committee. We cannot substitute ourselves in place of the selection committee to decide

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the comparative merit of the applicant and the 4th respondent. We find that the applicant has not succeeded in bringing home the merits of her case.

15. In the ultimate analysis, we find the O.A. is devoid of merit and it is dismissed accordingly. There shall, however, be no order as to costs.


(Ashok Agarwal) -
Chairman


(V. K. Majotra)
Member (A)

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