

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

O.A.No.1166/88

Date of decision: 21/2/92

Shri D.P.Kathuria

...Applicant

Versus

The Director-General,
I.C.A.R., & Others.

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE-CHAIRMAN.
THE HON'BLE MR. I.P. GUPTA, MEMBER(A).

Counsel:

Shri M.M.Sudan

...Counsel for the applicant.

Shri N.C.Sikri with
Shri V.K.Rao

...Counsel for the respondents.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not?

JUDGMENT

(HON'BLE MR. I.P.GUPTA, MEMBER(A)) :

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is a Scientist and head, Division of Sample Survey methodology and analysis of survey data in the Indian Agricultural Research Institute(IASRI) which is an institute of I.C.A.R., a registered society and all

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the service regulations applicable to Government employees mutatis mutandis apply to staff, employees and officers of ICAR. The Minister of Agriculture is the President of the ICAR and the Director-General is the administrative head.

2. An advertisement dated 6-7-85 was issued by Agricultural Scientist Recruitment Board (ASRB) for a post of Joint Director. Amongst the essential qualifications, a qualification was Doctorate in Agricultural Statistics. Interviews were held on 19-9-86 pursuant to the above advertisement. The applicant alleges that he was selected by the Board. Seven persons had applied and four persons were called for the interview. One Dr. S.K. Raheja (respondent no.4) had also appeared at the interview on 19.9.86 along with the applicant. Dr. Raheja submitted a representation dated 3-10-86 mainly on the ground that seniority in the selection for Joint Director should not be ignored. He also stated that he had worked as head of unit and handled administrative work and responsibilities whereas the applicant had only 3 years' experience as head of division.

3. The applicant sent a representation dated 18-6-87 requesting for upholding of selection

consequent upon interview of 19-9-86. The selection results were, however, not published. On 27-2-88, the applicant represented against cancellation of the selection and on 15-4-88, he requested for a review of his case. Meanwhile, the post was re-advertised on 18-7-87 and the essential qualification prescribed was Doctorate in Agricultural Statistics/Statistics. The applicant represented on 2-5-88 to withhold interviews as a result of re-advertisement. Another undated communication from the applicant mentioned that in the absence of any reply, he had perforce to attend the interview. The interview was held on 24-5-88 and respondent no.4 (Dr. Raheja) was selected.

4. The relief sought by the applicant is for issue of directions to quash re-advertisement of the post of Joint Director vide advertisement dated 18-7-87 and the selection proceedings held on 24-5-88 and for appointment of the applicant as per his selection by the Board held on 19-9-86.

5. The learned counsel for the applicant contended that :

(i) The selection held on 19-9-86 was perfectly valid and should be acted upon.

(ii) The ground on which the selection was not given

(9)

effect to was extraneous, namely, that essential qualification of Ph.D.in Statistics was not mentioned in the advertisement and no prejudice was caused thereby to any of the applicants since even Dr. Raheja (Respondent no.4) who had Doctorate in Statistics was interviewed.

(iii) Mala fides have been alleged against Director (Personnel) and the Member, Agricultural Scientist Recruitment Board (Respondent no.5).

(iv) Seniority was not the criteria since it was a selection post.

(v) The Chairman, namely, the Minister was misled by his P.A.

6. The learned counsel for the respondents mentioned that there was a mistake in the first advertisement of 6-7-85, in that, the essential qualification was mentioned as Doctorate in Agricultural Statistics. The qualification should have been Doctorate in Agricultural Statistics/Statistics and on 26-8-85, the Secretary, ICAR, was advised to modify the advertisement. The advertisement, however, remained unmodified by mistake and interviews were held on 19-9-86. The modification was advised well before the holding of the interviews but was not acted upon. A bona fide error can always

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be corrected. (1987(4) SLR 675 : M. Rajamanickam vs. Govt. of India). The learned counsel further contended that prescribing of qualification is the prerogative of the management/employer. (AIR 1988 SC p.1348). Further where it has been detected that there was some defect/mistake in respect of qualification, even if a person has been selected, the Government is competent not to give appointment and such action of the Government cannot be challenged. (1990 (2) LLJ 153). Still further, mere qualifying in the selection test does not confer any legal right for appointment. The learned counsel for the respondents further argued that when mala fides were attributed to, they should be proved. Director (Personnel) (respondent no.3) was not the final authority. He had expressed his opinion on the file but the final orders were passed by the Minister himself by a speaking minute. The Minister had passed the order after due application of mind.

7. The learned counsel for the respondents further argued that respondent no.4 had appeared in interview on 19-9-86 but he was primarily not selected because of the pertinent aspect that the qualification mentioned in the first advertisement was Doctorate of Agricultural

Statistics and not Doctorate in Statistics. Therefore, the applicant was preferred. The mistake was rectified by due application of mind by the I.C.A.R. at the top level and a second advertisement issued, whereafter selections were made with due process of law. The applicant had participated in the second selection process.

8. In the conspectus of the aforesaid facts and issues in this case, we find that the mala fides against the respondent no.3 and 5 have not been established. Respondent no.3 had only put up a note and the final orders, as were seen by us, were passed by the Minister himself who recorded a minute in a full paragraph. It was a speaking order. As regards mala fides against respondent no.5, who was the Chairman of the second Selection Board, it would ^{/not} be enough just to say that he had bias in ^{/assessing} respondent no.5 and he had not conducted any interview. The selection process pursuant to first advertisement had not been completed and no select list had been approved. Even if the applicant had qualified in the selection test, any legal

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right for appointment did not ensue. The essential qualification as Doctorate in Agricultural Statistics/ Statistics was advised on 26-8-85, i.e., well before the interview of 19-9-86, but the advertisement dated 6-7-85 remained uncorrected, by mistake. As mentioned earlier, a bona fide error can always be corrected.

In the above view of the matter, the application is dismissed, with no order as to costs.

/PKK/

I. P. Gupta
(I.P.GUPTA) 21/2/92
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH) 21.2.92
VICE-CHAIRMAN (J)