

**Central Administrative Tribunal
Principal Bench**



OA No. 3893/2018
MA No. 4716/2018

Order reserved on : 02.03.2020
Order pronounced on: 21.10.2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Dr. Birendra Kumar,
Aged about 39 years,
Group-B,
Working as Junior Scientist
S/o Sh. Dhaneshwar Paswan,
R/o National Institute of Biologicals
Sector-62, Noida, U.P.

... Applicant

(By Advocate: Sh. Krishna Kant Sharma with Sh. Bankey Bihari)

VERSUS

1. National Institute of Biologicals
Through its Chairman,
A-32, Sector-32, Institutional Area,
Phase-II, Noida, District Gautam Budh Nagar,
U.P.201309.

2. Ministry of Health & Family Welfare,
Government of India,
Through its Secretary,
Nirman Bhawan,
New Delhi-110011.

... Respondents

(By Advocate: Sh. Shaswat Sharma and Sh. R.K.Sharma
Sh. Rajinder Nischal)

ORDER**By Hon'ble Mr. Pradeep Kumar, Member (A)**

Applicant herein is a Scheduled Caste (SC) candidate and is presently posted as Junior Scientist in National Institute of Biologicals, which is an autonomous Institute under Ministry of Health and Family Welfare, Government of India.

2. This Institute issued two advertisements to fill up certain other posts. One post is for Scientist Grade-I for which last date for submission of application forms was 07.05.2018 wherein there was one vacancy which was reserved for SC candidates. The other advertisement was for the post of Scientist Grade-II where there were 6 vacancies out of which one was reserved for SC, 2 for OBC and 3 for General. The last date for submission of application was 28.05.2018.

3. Applicant applied against both these posts. However, his candidature was rejected. Feeling aggrieved, he has preferred the instant OA.

4. The written examination for both these posts was held on 09.09.2018. The result of the examination for Scientist Grade-I was issued wherein candidate was not selected.

The result for Scientist Grade-II was yet to be issued when the OA came up for hearing on 06.11.2018. Interim stay not to declare the result for one post of reserved category in Scientist

Grade-II was ordered. This interim stay was subsequently vacated vide order dated 17.01.2019.



4.1 The applicant has subsequently filed MA No.4716/2018 for seeking to pass an interim order in favour of the applicant.

5. During arguments, applicant pleaded that he is not pressing consideration for the post of Scientist Grade-I and he is pressing only for Scientist Grade-II. The matter has, therefore, been adjudicated for Scientist Grade-II only.

6. This post could be filled by candidates from Medical as well as non-medical fields. Applicant is from Non-Medical field. The essential qualification prescribed for non-medical field is M. Sc. with 60% marks and a minimum of 07 years of relevant experience. Alternatively, Ph.D in any of the discipline mentioned alongwith 03 years of relevant experience has been specified.

For this purpose, Ph.D. needs to be in any of the discipline out of Microbiology, Clinical Microbiology, Biotechnology, Bioinformatics, Biochemistry, Bacteriology, Physiology, Pharmacology, Serology or Molecular Biology.

The relevant experience needs to be in any of the fields out of (a) Quality Control Testing of Biologicals and Biotherapeutics; (b) Review of Technical Dossiers of Biologicals



and Biotheraperutics including Vaccines in respect of Chemistry Manufacturing Control (CMC), non-clinical trial data on Animal Pharmacology/Animal Toxicology, Clinical Trial data; (c) Review of Technical Dossiers of 'In Vitro Diagnostic (IVD) Medical Devices' in respect of conformation to the Essential Principles of Safety and Performance of Medical Devices which include Product Description, Design and Manufacturing information, Product Evaluation & Review of Adverse Events (i) Following immunization (AEFI) (ii) Associated with Biologicals and Biotheraperutics (Pharmacovigilance), (iii) Associated with blood transfusion and blood products administration (Haemovigilance); (iv) Due to indirect harm associated with IVD Medical Devices (Materiovigilance) (e) Management of Quality System with application of ISO : 17025 and ISO : 34 with Total Quality Management approach (f) Research in Biologicals and Biotheraperutics.

The applicant pleads that he is a Ph. D. in the relevant field where topic of his Thesis broadly falls in "Molecular Biology Discipline under Biotechnology subject. Applicant claims to have requisite experience also, and yet his candidature has been rejected on account of lack of qualification.



7. *Per contra*, the respondents opposed the OA. It was pleaded that the applicant has been awarded Ph. D. by Chaudhary Charan Singh University Meerut on 30.06.2012 in “Zoology” with the thesis title being “Expression of PTEN Gene in different Cancer cell lines - a comparative analysis.”

8. The respondents drew attention to an expert committee report comprising of outside experts which was constituted by the approval of the competent authority to evaluate the qualifications vis-à-vis specified eligibility requirement. This expert committee was appointed by the Institute after receipt of applications to evaluate the same in an objective manner.

This expert committee comprised of Dr. Chander Shekhar, Additional DG, Indian Council of Medical Research (ICMR), New Delhi and Prof. Dr. S.K. Bansal, Head of Department of Biochemistry, V.V. Chest Institute, Delhi University, Delhi. This committee had considered two applicants, namely, Dr. Rajesh Kumar Sharma and Dr. Birendra Kumar (applicant herein). The recommendations by the said committee dated 12.04.2018, read as under:

“3. The Members of the Committee went through the advertisement, the Recruitment Rules of Scientist Grade-II posts and also the applications of the above candidates placed before them.

4. The Committee observed that the above candidates do not fulfill the minimum essential qualification as per the Advertisement and the Recruitment Rules.”



9. Since the outside expert committee did not find the two officials including the applicant, eligible for the post of Scientist Grade-II, the candidature of the applicant was rejected.

10. It was also brought out that the applicant herein had also approached National Commission for Scheduled Castes (NCSC) also for his grievance relating to rejection of candidature. He could not be given any relief by NCSC. Attention was drawn to a letter written by NCSC on 17.10.2018 which was replied to the applicant. This letter reads as under:

“I am directed to forward a record note of hearing held on 15.10.2018 before Dr. Yogender Pawan, Hon’ble Member of the Commission for your information.

The Commission has issued its recommendation after considering all the facts on record and the Commission has decided to close this case.”

11. The respondents also drew attention to a judgment by Hon’ble Apex Court in **University Grants Commission & Anr. v. Neha Anil Bobde (Gadekar)**, [2013 (11) SCALE 593] wherein the Hon’ble Apex Court has ruled as under in respect of expert committee’s recommendations:

“29. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall kept their hands off since those issues fall within the domain of the experts....”



12. The respondents further mentioned that all the said posts have since been filled already and the present OA is without any merit.

13. The applicant however pleaded that even though the Ph. D. is in the subject of "Zoology" which is admittedly not one of the specified field but the topic of his Ph.D. thesis "Expression of the PTEN GENE in different Cancer Cell lines: A comparative study", essentially covers the essential fields of Molecular Biology.

In support of his claim, the applicant was granted liberty during hearing of 02.02.2020 to produce any judgment in support of his contentions.

14. Applicant submitted this additional affidavit on 06.03.2020. However, he only annexed his representations made to respondents on 21.03.2018, 23.03.2018, 18.04.2018 and 13.08.2018. No judgment was submitted.

15. Matter has been heard. Sh. Krishna Kant Sharma with Sh. Bankey Bihari, learned counsel represented the applicants and Sh. Shaswat Sharma, Sh. R.K.Sharma and Sh. Rajinder Nischal, learned counsel represented the respondents.

16. This OA pertains to recruitment of Scientist in a highly specialized field. Certain eligibility conditions were specified. This being so, there was a need to evaluate the applications for



their eligibility vis-à-vis the eligibility conditions. With a view to avoid any bias, respondents nominated a committee of expert from outside. This committee evaluated the applicant's case and found it ineligible (para 8 supra).

17. Applicant has pleaded that expert report does not spell reasons for rejection and is made out in non-speaking manner. Another reason alluded is that applicant belongs to SC community and there is bias against him. He has thus pleaded that this expert committee report needs to be discarded.

18. Tribunal has considered the contentions put forth by applicant in para 17 supra. Both these reasons are not acceptable. Firstly, one more application was rejected by this committee and that is of an unreserved candidate (para 8 supra).

Moreover, the applicant had also annexed a list of 197 candidates, who were shortlisted to write the competitive exam for the post of Scientist Grade-II, along with his rejoinder. This list contains 141 UR, 36 OBC and 20 SC candidates. Thus there does not appear to be any institutional bias.

It is also noteworthy here that the applicant's petition to NCSC has also not borne fruit (para 10 supra).

In view of foregoing, Tribunal has no reason to disbelieve this rejection report.



19. Further, in keeping with the ratio of Hon'ble Apex Court judgment (para 11 supra), there is no reason to interfere with the decision of rejection since no other supporting material calling for such interference by Tribunal, has been adduced by applicant.

20. In view of foregoing, Tribunal finds no merit in OA. Same is dismissed. No costs.

21. In view of the above, MA No.4716/2018 is also dismissed.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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