

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.207/2020

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)

HON'BLE MR. TARUN SHRIDHAR, MEMBER(A)

Nitish Kumar Swain, aged about 27 years, S/o Sri Nishanka Kumar Swain, At-Bidyadhanpur, PO-Nayabazar, Dist-Cuttack, Pin-753004.

.....Applicant

VERSUS

1. Union of India represented through its Director General –cum-Secretary, Indian Council of Agricultural Research, DARE Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi-001.
2. Director Indian Veterinary Research Institute, At-Izatnagar, PO-Barrelly-243122 (UP).

.....Respondents.

For the applicant : Mr. A. Mishra

For the respondents: Mr. S.B. Jena

Heard & reserved on : 04.12.2020

Order on :

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

The applicant has approached this Tribunal seeking the following relief(s):-

“Under these circumstances it is most humbly prayed therefore that this Hon'ble Tribunal may graciously be pleased to direct the respondents to issue letter of appointment to the applicant in the post of T-3 (Technical Assistant) in Dairy Technology in Indian Veterinary Research Institute, Izatnagar for which he has been duly selected being the only candidate pursuant to advertisement at annexure-A/1 immediately.

Or

In the alternative pass any other order/orders as this Hon'ble Tribunal deem fit and proper in this case.

Allow this Original Application with cost.”

2. The facts of the present O.A. are that pursuant to the advertisement No.1/2016/MRDPC (Annexure-A/1) issued by respondents the applicant applied for the post of Technical Assistant (T-3), Dairy Technology. Thereafter another advertisement was issued for the same post by National Dairy Research Institute, Karnal vide Advertisement No.02-10/2015 tectt/E.II(T) in 2016 for which the applicant applied. It is submitted that even though both the above mentioned advertisements were issued by respective institute i.e., Indian Veterinary Research Institute (IVRI) and National Dairy Research Institute (NDRI), Karnal, the written test was conducted by Agricultural Scientists Recruitment Board (ASRB), New Delhi, a Centralized Independent Recruitment Agency of ICAR for the post of T-3 for the first time.

3. It is further submitted that both IVRI and NDRI accepted the applications of the applicant and issued admission certificate for written test vide Roll No.020100155 for IVRI and No.140110370 for NDRI for attending the examination in two different centers i.e Kendriya Bidyalaya IVRI, Itanagar and S.D. Model Senior Secondary School, Karnal. It is submitted that as per the instructions mentioned in the admission certificates (Annexure-A/2 and A/3), "The examination shall be objective type (multiple choice questions) of 100 marks. The question papers shall have four sections. The first three sections shall have 20 questions each (1 mark each) of General Knowledge, General English & Quantitative Aptitude. The fourth section will have 25 questions (1 mark each) from Agriculture and 15 questions (1 mark each) for each functional group (viz. Agricultural related subjects, library and Eng./Workshop), except for the post of Hindi Translators where there shall be a passage for translation from English to Hindi of 15 marks." It is further submitted that above mentioned facts about functional group (Code No) was first time mentioned in the Admission Certificate but the same was never mentioned in the Advertisement. The applicant was to

appear in the same written test in two different centers in two different States, the ASRB published a notice saying such candidates like the applicant may prefer to sit in the examination in any one of the Centers. Accordingly the applicant appeared in the written examination in S.B. Model Senior Secondary School, Karnal and obtained the post of IVRI in preference proforma which was submitted at the examination center at NDRI.

4. It is further submitted that as per the instructions in the admission certificate the applicant was to answer the questions in code-1 but could find that the questions relating to the subject of the applicant i.e. Dairy Technology were placed in code 3 under the heading Eng/Workshop and Code-1 was containing the questions relating to subject Agriculture. The applicant brought this fact to the knowledge of the invigilator who advised the applicant to answer the questions relating to his subject and mention the same group on the OMR sheet. The applicant being instructed by the Supervisor, attended Group Code 3 questions and mentioned the same on the OMR sheet which was signed by the supervisor. It is further submitted that at Serial No.4 of the Advertisement the essential qualifications for the post was mentioned as Bachelor Degree in Agriculture and similarly at Serial No.9 Bachelor Degree in Library Science, At Serial No.7 & 8 Bachelor Degree in Civil/Mechanical Engineering, Serial No.11 Bachelor Degree in Hindi, at Serial No.5 Bachelor Degree in Dairy Technology and at Serial No.10 Bachelor Degree in Radiography but surprisingly it was found in the question paper that there were core codes in addition to compulsory questions which were to be answered by candidates belonging to the said codes. It is submitted that total marks for which a candidate will answer one code among four codes were mentioned to be 15 marks.

5. It is worthwhile to mention herein that even though 6 category of T-3 posts were advertised with different essential qualifications, only four codes were available in question papers which are as follows:-

A. Agriculture related	Code-1
B. Library Science	Code-2
C. Eng./Workshop	Code-3
D. Hindi Translator	Code-4

It is submitted that even though the applicant had applied for the post of T-3 Diary Technology, there was no specific code for Diary Technology and applicant found questions relating to Diary Technology at code 3. After the written test was over a merit list for post of Tech. Assistt. (Diary Techn.) (T-3) was published vide Annexure-A/5 where the applicant was placed at Serial No.1 scoring 61 marks and was Provisionally Selected for the said post. Thereafter, vide letter dated 20.02.2018 Indian Veterinary Research Institute, Izatnagar, Respondent No.2 called the applicant for Original document verification which was scheduled to be held on or before 08.03.2018, pursuant to which the applicant appeared before respondent No.2 and got his Original documents verified. When the applicant was eagerly waiting for the appointment letter from Respondent No.2, surprisingly final selection list was published by respondent No.2 on 31.08.2018 (Annexure-A/7) where the name of the applicant as well as the post of Tech. Asst. (Diary Techn.) (T-3) was missing.

6. Thereafter, the applicant approached the respondents by filing representations and respondent No.2 vide its letter dated 07.06.2019 (Annexure-A/8) intimated the applicant that result for the post of T-3 (Technical Assistant) in Diary Technology has been uploaded in the Institute's website on 31.08.2018 and no applicant has been found suitable for the post of T-3 (Technical Assistant) in Diary Technology. It was also mentioned in the said letter that so far as the

applicant is concerned, the Institute had notified in its advertisement for the post of T-3 (Technical Assistant) in Diary Technology as Field/Farm Technician group (Category-2), but while appearing in the examination, the applicant has mentioned Functional Group Engineering Workshop (Code-3) in the OMR sheet in the place of Field/Farm (Code-1) and as a result of which ASRB, New Delhi has rejected his selection for the post of T-3 (Technical Assistant) in Diary Technology. Thereafter, applicant came across one reply of Agricultural Scientists Recruitment Board given to one application on RTI Act, where it was said that the marks of the Technical Assistant (T-3) Examination 2016 have been forwarded to the concerned Institutes with directions to upload the marks of all the candidates who applied for the exam from their Institute on the Institute's website and further asked to obtain the marks from IVRI Izatnagar.

7. It is further submitted that in reply to the information asked to IVRI, Izatnagar, vide mail dated 27.01.2020 it was replied that from among two candidates who applied for the post of T-3 (Diary Technology) the present applicant has scored 61 marks in total and one Deepa Saini has secured 45 marks in total, whereas qualifying mark for the said post is 50 marks. Therefore, respondent No.2 called the applicant for original document verification without issuing letter of appointment to the applicant. The respondents are harassing the applicant till date which is not sustainable in the eye of law and hence the applicant has filed the present O.A. with prayer for direction to respondents to issue letter of appointment to the applicant for the post of T-3 (Technical Assistant) in Diary Technology in Indian Veterinary Research Institute, Izatnagar for which he has been duly selected immediately.

8. The respondents have filed their counter, wherein it is mentioned that the applicant has applied for the post of T-3 (Technical Assistant) in Diary Technology as per Institute's advertisement No.1/2016MRDPC dated 13/19 February, 2016.

This post falls under functional group Field/Farm/Lab (Code-01). It is submitted that the applicant's qualification is B.Tech (Diary Technology) which makes him eligible for the post. The relevant code No. i.e.. Code No.1 was clearly mentioned in the Admit Card which was issued to him under Annexure-A/2, even though Shri Swain filed the code No.03 in his OMR sheet at the time of examination which is related to workshop functional group for which eligibility was Bachelor Degree in Civil/Electrical Engineering. He attempted set of questions related to this group for which he does not has the requisite qualification, instead of attempting questions related to functional group of Code No.01. It is also relevant to mention here that the post at Sl. No.5 i.e. T-3 (Technical Assistant) (Diary Technology) for which Shri Swain applied falls under Field/Farm Technical Group which is related to Agriculture and the same was also clearly mentioned in his admit card. The questions related to this post were given under Code No.1 and not under Code No.03.

9. It is submitted that in the covering notice of provisional select list under Annexure-A/5 it has been clearly mentioned that it is once again informed to all the concerned that this is purely provisional draft select/reserve list. This does not constitute an offer of employment and depend on subsequent verification of original documents/certificates/testimonials in respect of essential qualifications etc as given in detailed advertisement, disposal of representations if any, received upto 28.02.2018 and final vetting of ASRB. In case it is noticed at any stage that candidates shown in Select/Reserve list do not fulfil the eligibility norms and /or that he/she has furnished any incorrect/doctored/false information/certificate/documents or has suppressed any material fact(s), his/her candidature will stand cancelled.”

10. It is further submitted by the respondents that in the notice dated 09.02.2018 it has clearly been mentioned that this is purely provisional draft

select/reserve list. This does not constitute an offer of employment and depend on subsequent verification of original documents/certificates/testimonials in respect of essential qualifications etc as given in details Advertisement, disposal of representations if any received up to 28.02.2018 and final vetting of ASRB, it was found that Shri N.K. Swain had not attempted the questions for which he had applied for or for which post, admit card was issued to him. After getting instructions from ASRB his candidature was declared as cancelled and he was intimated suitably. It is further submitted that the applicant's justification of wrong filling code no. in his OMR sheet and appearing against different functional group has no merit. It is submitted here that the applicant should have filled correct code no. in his OMR which was also clearly mentioned in his Admit Card.

11. It is submitted that the applicant was clarified regarding cancellation of his candidature against his first representation i.e. 07.03.2019. Appointment cannot be offered to candidate who had not appeared for the exam for which he had applied. It was clearly mentioned in the notice dated 09.02.2018 that any discrepancy found against essential qualification will lead to cancellation of candidature and Shri Swain appeared against workshop group, for which he does not have the essential qualification nor submitted any application. It is submitted that the applicant was not a selected candidate rather he was provisionally selected and the provisional selection depends upon different subsequent verifications. His name was reflected provisionally selected but after verification he was found to be disqualified, hence no question arises to publish his name as a selected candidate.

12. It is further submitted by the respondents that the applicant is eligible as per his essential qualification for the post of Technical Assistant (T-3), but neither he attempted the set of questions given in question paper nor he was declared as selected candidate by this office. It is not mandatory to include the name of an

applicant who had been selected provisionally. There are many steps of verification in process which are required to be completed before selecting a candidate finally, for which the provisional list was issued. The applicant was only a provisionally selected candidate who has been found disqualified on subsequent verification and for that the post has been left unfilled due to non-availability of eligible candidate. Hence, his claim is not sustained in any way. In view of the above mentioned facts and circumstances of the case, the respondents have prayed that this Original Application being devoid of merit may be dismissed with costs.

13. The applicant has filed the rejoinder to the counter filed by the respondents. It is submitted that in the advertisement at Annexure-A/1, no where it was mentioned that the applicant who appears for the examination for the post of T-3 (Diary Technology) has to answer the Code-01 and the same came in only while issuing admit card to the applicant. It is further submitted that the subject Diary Technology is an engineering subject and for which the questions relating to the subject Diary Technology were placed under Code-3 not in Code-1 and after being instructed by the invigilator, the applicant answered Code-3 where questions relating to his subjects were placed. On bare reading of the questions in both the codes it can be ascertained by a layman that questions placed in Code-1 does not relate to Diary Technology whereas the questions placed in code-3 clearly relates and the same has been annexed to the original application at Annexure-A/4. The respondents can never deny the fact that the subject Diary Technology is an engineering subject and not an agriculture related subject where he can be forced to answer the questions meant for agriculture related subjects.

14. It is submitted that mere categorization of posts basing on ignorance does not give a legal right to the respondents to force the applicant to answer the questions which does not belong to his subject. It is submitted that the subject

Diary Technology is an engineering subject and it is clear from the reply given by the respondents in this paragraph that the subject Diary Technology is an Agricultural subject is enough to get the conclusion that the respondents are trying to mis-lead this Hon'ble Tribunal filling false statements. It is submitted that the applicant was sponsored by ICAR after being selected in ICAR's All India Entrance Examination for Admission to under graduate Degree programme in Agriculture and Allied Subjects and Award of National talent Scholarship for the Academic Session 2010-2011 and he completed his degree of Bachelor of Technology (Diary Technology) in the year 2014 from East Bengal University of Animal & Fishery Sciences. Further it is crystal clear from All India Council for Technical Education Approval Process Handbook 2016-17 Annexure-A/12 that the Subject Diary Technology is an Engineering Subject and not an Agriculture related subject. Further the respondents have not replied how the candidates appearing for the post of Radiography were asked to answer the questions relating to agricultural subjects placed at Code-1. Therefore, as the questions relating to the subject Diary Technology were placed at Code-3, the applicant has answered the after being instructed by the invigilator and for which the original applicant may be allowed with heavy cost for attempts made by the respondents to mis-lead this Tribunal.

15. It is submitted that the applicant is the candidate who has scored 61 marks which is highest for the said post and the same is much higher than the minimum marks required for being selected for the post as per Annexure-A/1 and the respondents have failed to reply how the applicant can be denied to get appointment getting 61 marks in total even after attempting questions which was not meant for him and in this instant case it clear from the face of the record that the respondents are not in a position to differentiate between an engineering subject

and an agricultural related subject and further at no point of time they have denied the fact that the questions placed in Code-3 relates to Diary Technology subject.

16. It is further submitted that the respondents have taken all attempts to mislead this Tribunal filing counter and saying Diary Technology is not an engineering subject even though it is crystal clear from annexure-A/12 that Diary Technology is an engineering subject and furthermore where Director General, Indian Council of Agricultural Research is a member of All India Council for Technical Education which says so. Further as it is clear from the question paper at Annexure-A/4 that the questions placed in Code-3 relates to the subject Diary Technology and the applicant has rightly answered Code-3 after being instructed by the invigilator and more particularly as the applicant has secured 61 marks in out of 100 marks which is much higher than minimum marks required for being selected for the post of T-3 (Diary Technology), the original application is liable to be allowed with heavy cost further directing the respondents to issue letter of appointment to the applicant for the post of T-3 (Diary Technology) pursuant to advertisement at Annexure-A/1 in an early date.

17. We have heard learned counsels for the parties and perused the materials placed on record. The applicant had submitted his application for the post of Technical Assistant (T-3), Diary Technology. It was submitted by him that in the examination hall he was asked to answer the question on agriculture subject, although he was supposed to answer the question on dairy technology. He had secured mark 61 out of 100 (Annexure A/5) and his name was sent by ICAR in the provisional draft select list (Annexure A/6) for verification of original certificate. Thereafter in the final merit list vide Annexure A/7 his name was not mentioned. In this regard learned counsel for the respondent submitted that the applicant being a highly qualified person would not have been forced to answer any such question and he should have applied his own mind and discretion in giving answer for the

subject which he had applied for. There is much force in the submission of learned counsel for respondents since in the admit card itself it was clearly mentioned that he was supposed to answer the question as per code number 1. It appears from the pleadings and material on record that the applicant has wrongly attempted the questions for code no. 3. It also appears that he is a talented person because he could secure 61 marks out of 100 even though he answered the question of code no. 3 instead of code no. 1.

18. We have all sympathy for the applicant being a talented person and having secured so much marks, but this Tribunal is unable to accept his claim that he was forced to attempt the questions of subject for code no. 1 taking into consideration his qualification and age. He having participated in the examination process in question is escrowed from challenging the recruitment process. Just because his name was mentioned in the provisional draft list does not entitle him as a matter of right for appointment or for consideration for appointment to the said post since it was detected by the higher authorities that he had wrongly attempted the question sets for code no. 3 instead of code no. 1. The very fact that such a mistake was committed by the applicant also tells upon his competency since it was expected that he should have taken all precautions to see that he should have answered the question sets for the post for which he had applied for i.e. for code no. 1 as mentioned in the admit card issued to him. Therefore this Tribunal cannot go beyond the rules of the examination to come to the rescue merely on the ground of sympathy as it appears that he was not careful enough to answer the question set of code no. 1.

19. We also accept the stand of learned counsel for the respondent that due to mistake the ICAR authorities had mentioned the name of the applicant in the provisional draft selection list and subsequently the higher authorities could verify

and detect the mistake. The applicant cannot take advantage of said mistake as he himself has committed a serious mistake by answering questions for code no. 3 instead of code no.1. Besides that we have already discussed that the mentioning of his name in the provisional draft selection list does not confer any right on him to claim the post in question. ICAR was not the final authority for selection but were only empowered to send the provisional draft selection list which was to be finally scrutinized and considered for issue of final selection list.

20. Accordingly we do not find any merit in this case for the applicant to give a direction that the applicant should have been selected and appointed to the post in question. However, the fact that the applicant was able to secure 61 mark out of 100 in spite of answering questions in code no. 3 which was not meant for him, the authorities can give sympathetic consideration of the case of the applicant for the purpose of appointing him to any suitable post for which he is eligible in pursuance to the advertisement for which he had applied for if the rule permits to do so.

Accordingly with the above observations the OA is disposed of but in the circumstances without any order as to cost.

(TARUN SHRIDHAR)
MEBER (A)

(SWARUP KUMAR MISHRA)
MEMBER(J)

K.B.