

(101)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI.

O.A. No. 1814/87  
T.A. No.

DATE OF DECISION 13-4-1994

1. Shri G C Roy & Another  
son of late Shri K C Roy,  
409, Kamla Nehru Nagar, Ghaziabad(U.P.)

2. Shri A Basak Applicant(s)  
s/o late Shri A.C. Basak, 231, Kamla Nehru Nagar, Ghaziabad(U.P.)

By Shri GD Gupta Advocate Versus

Union of India through  
1. Secretary, Govt of India, Ministry of Health & Family Welfare,  
New Delhi. Respondent(s)

2. Union Public Service Commission, Shahjehan Road, New Delhi.

3. Dr. Jagabhadu Chakravarty, Technical Assistant, Central Food  
Laboratory, (For Instructions)  
Calcutta.

By Shri NS Mehta - Advocate

1. Whether it be referred to the Reporter or not? *Yes*
2. Whether it be circulated to all the Benches of  
the Central Administrative Tribunal or not?

*P. T. Thiruvengadam*  
(P.T. THIRUVENGADAM)  
Member (A)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A.No.1814/87

New Delhi, this the 13<sup>th</sup> day of April, 1994.

HON'BLE SHRI N.DHARMADAN, MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

- (1) Shri G.C.Roy & Another  
son of late Shri K.C.Roy,  
409, Kamla Nehru Nagar,  
Ghaziabad (U.P).
  - (2) Shri A.Basak son of  
late Shri A.C.Basak,  
231, Kamla Nehru Nagar,  
Ghaziabad (U.P).
- (By Shri G.D.Gupta, Advocate)

..Applicants.

Vs.

Union of India: through

- (1) Secretary,  
Govt. of India,  
Ministry of Health &  
Family Welfare,  
New Delhi.
  - (2) Union Public Service Commission,  
Shahjehan Road,  
New Delhi.
  - (3) Dr.Jagabandhu Chakravarty,  
Technical Assistant,  
Central Food Laboratory,  
Calcutta.
- (By Shri N.S.Mehta, Advocate)

..Respondents.

ORDER

HON'BLE SHRI N.DHARMADAN, M(J).

Two applicants have jointly filed this application under section 19 of the Central Administrative Tribunal Act, 1985 challenging the selection and appointment of the third respondent, Dr.Jagabandhu Chakravarty, Central Food Laboratory (CFL-in short) Calcutta as Chief Technical Officer pursuant to An.B Notification and An.C advertisement No.23 dated 6-6-87 issued by the second respondent, Union Public Service Commission (UPSC-in short).

2. The facts are not disputed. They are as follows:-

The applicants are Lab. Assistants drawing the scale of Rs.2000-3200. They have worked in the

Lab for the analysis of organic materials particularly food products and gained vast experience in the field. An.A is the chart of duties performed by the applicants in different posts. It is extracted below:

Sr. No.	Name & Designation	Qualification.	Experience.	Scale of pay
1.	Shri G.C.Roy, Junior Analyst.	AIC (Equivalent to M.Sc.)	i) Lab.Assistant in DMI from 31-10-63 to 16-9-70.  ii) Jr.Chemist in Regional Agmark Laboratory from 17-9-70 to 26-5-79.  iii) Junior Analyst in FRSL from 30-5-79 till today.	2000-3200
2.	Shri A.Basak, Junior Analyst.	AIC (Equivalent to M.Sc.)	i) Lab. Assistant in CFL, Calcutta from 29-3-63 to 16-10-66.  ii) Technical Assistant in CFL, Calcutta from 17-10-66 to 7-7-71.  iii) Jr.Analyst in CFL, Calcutta from 8-7-71 to 25-3-77.  iv) Technical Assistant in CFL, Calcutta from 26-3-77 to 31-12-80.  v) Jr.Analyst, FRSL, Ghaziabad from 12-1-81 till date."	2000-3200

An.B Notification is the Recruitment Rules for the post of Chief Technical Officer carrying the scale of pay of Rs.3000-4500. The qualifications for the post prescribed under this Recruitment Rules as per the Notification An.C including the duties thereof are shown below:-

"QUALIFICATIONS: ESSENTIAL

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**"QUALIFICATIONS: ESSENTIAL**

- (i) M.Sc.degree in Chemistry/Bio Chemistry/  
Chemistry of Foods & Drugs & Water.

OR

Degree in Food Technology/Technical  
Chemistry of a recognised University  
or equivalent.

- (ii) Five years experience of analysis of  
Organiz materials particulrly food  
products.

- (iii) Intimate knowledge of food standards  
and food composition.

(Qualifications are relaxable at  
Commission's discretion in case of  
candidates otherwise well qualified).

**DESIRABLE**

Teaching/Research experience in  
Good analysis food composition or  
allied subjects.

**DUTIES:**

- (i) To supervise and guide the working  
of the analysts.
- (ii) To check and compile the analytical  
results/data.
- (iii) To plan and guide investigations/  
research work for fixation of  
standards of any article of food  
and for standardising/evolving  
newer methods of analysis of foods.
- (iv) To teach the trainees of different  
courses.
- (v) To assist the Director in technical/  
administrative matters."

The applicants as well as the third Respondent:  
alongwith few others applied for the post. The  
applicants submitted a comparative statement of  
the qualifications and merits of the candidates  
who appeared before the Board in the interview  
held on 31-8-1987. It is extracted below:-

Sr.No.	Name & Designation	Qualification	Experience	Scale of pay
1	2	3	4	5
1.	Dr.Jagbandhu Chakrabarty Technical Assistant.	M.Sc. Ph.D	Working as Technial Assistant in Pesticide Section in CFL Calcutta since 22-1-73 till today.  i) Earlier details not known.	1400-2300

1	2	3	4	5
			ii) Working last five years as Public Analyst, Delhi in the same scale in which post is advertised.	3000-4500
3.	Shri I.Chakrabarty Senior Analyst.	AIC (Equivalent to M.Sc.)	i) Jr.Analyst in FRSL, Ghaziabad from 14-11-72 to 11-6-79.  ii) Sr.Analyst in FRSL, Ghaziabad from 12-6-79 till today.	2200-4000
4.	Shri G.C.Roy, Junior Analyst.	-do-	i) Lab.Assistant in DMI from 31-10-63 to 16-9-70.  ii) Jr.Chemist in Regional Agmark Laboratory from 17-9-70 to 26-5-79.  iii) Junior Analyst in FRSL from 30-5-79 - till today.	2000-3200
5.	Shri A.Basak, Junior Analyst.	-do-	i) Lab.Assistant in CFL, Calcutta from 29-3-63 to 16-10-66.  ii) Technical Assistant in CFL, Calcutta from 17-10-66 to 7-7-71.  iii) Jr.Analyst in CFL, Calcutta from 8-7-71 to 25-3-77.  iv) Technical Assistant in CFL, Calcutta from 26-3-77 to 31-12-80.  v) Jr.Analyst, FRSL, Ghaziabad from 12-1-81 till date.	2000-3200
6.	Shri Kali Prasad Banarji, Junior Analyst.	-do-	i) 11 years experience as Assistant Analyst in Calcutta Municipal Corporation.  ii) 11 years experience as Junior Analyst.	2000-3200
7.	Shri J.K.Sarkar, Junior Analyst.	B.Sc. (Hons.)  AIC (Equivalent to M.Sc.)	i) 11 years experience as Assistant (Food) in Calcutta Municipal Corporation.  ii) 11 years experience as Junior Analyst.	2000-3200
8.	Shri Kanto Sil, Technical Assistant.	AIC (equivalent to M.Sc.)	Joined in CFL on 29-9-67 as Laboratory Assistant.	1400-2300
9.	Dr.Ajit Kumar Roy Sr.Technical Assistant.	AIC Ph.D.	Joined in Central Food Laboratory Calcutta on 9-11-62 as Laboratory Assistant.	1640-2900

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1	2	3	4	5
10.	Dr.Tara Sankar, Research Officer, West Bengal.	M.Sc. Ph.D.	i) Joined as Technical Assistant in CFL on 2-9-71.  ii) Joined as Research Officer, West Bengal Govt. in 1986."	1100-1900

The Board for interview consisted of the following persons:

- (a) Shri Quazi Muktar Ahmed, Chairman.
- (b) Dr. D.S.Bhatia.
- (c) Dr.B.R.Roy (Ex-Director, Central Food Laboratory, Calcutta).
- (d) Shri J.C.Jaisani, ADG (P&A) DGHS.

The 3rd respondent was selected. The applicants submitted that to their knowledge the 3rd respondent had not been called for the interview by the Board for he was working in a scale two steps lower than the scale which the applicants were drawing at that time. He did not possess five years of experience of analysis of organic materials particularly the food products. He had no knowledge about the same for he had never performed the duties regarding the analysis of food products. The duties of the Chief Technical Officer are to arrange plan and guide investigation, research work for fixation of standards of articles of food materials. He had only worked in the area of pesticide and his Ph.D thesis was also related to the same subject. Hence, 3rd respondent is not qualified. But he was selected presumably because of his relation with the expert member on UPSC, Shri Dr.BR Roy, who has close association with the third respondent for a long period. According to the applicants, he was not only a Guide to the third respondent for preparing

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thesis for Ph.D but also co-author for 29 publications enumerated in An.V ranging <sup>over a</sup> long period from 1974 to 1986. Hence his influence in the Board according to the applicants, had been the result of the selection of 3rd respondent. He further submitted that if a fair and proper selection uninfluenced by any other extraneous considerations which is likely to weigh with the Board, only the applicants would have been selected.

3. Though the respondents 2 & 3 have filed separate reply statements, the specific allegations against the selection of the 3rd respondent in paras 20 and 21 of the O.A. are not answered with specific details or supporting materials.

Allegations are extracted below:-

"20- That it is further note-worthy that Miss N.Ghosh who is now Senior Scientific Assistant who fulfilled all the qualifications and who had joined the CFL Calcutta as Laboratory Assistant on 11-1-67 had not been called for the interview. She had a total experience of 20 years, but her claim was also ignored without any rhyme or reason. She also had a foreign training and was three steps above than Dr.Chakravarty, respondent No.3 herein.

21.- That it is evident that Dr.Chakravarty respondent No.3 has been selected since he had certain approach with the Selection Committee. The decision was taken by the Selection Committee with malafides and with motives. It is a well known fact that one of the members of the Selection Committee Dr.B.R.Roy, Ex-Director, Central Food

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Laboratory, Calcutta was guide of Dr. Chakravarty for the Ph.D.thesis and, thus, he was directly interested for the appointment of respondent No.3 on the post of Chief Technical Officer. It appears that it is for that reason and for that reason alone that the respondent No.3 has been selected for the post of Chief Technical Officer."

In the statement filed by the 2nd respondent, UPSC has stated as follows:-

"6(17).- The facts stated in the para are not admitted. The Commission do not admit the petitioner's contention that respondent No.3 had never performed the duties regarding food products or had no knowledge of the same. The facts before the Commission as given in the application of the respondent No.3 are that as a Technical Assistant in the Central Food Laboratory, Calcutta, he had been working on research and standardisation work on food with the use of modern Technology, besides other allied works, as evident from the entries under "Nature of Duties" in the said application (Roll No.89)."

Similarly the 3rd respondent in his reply stated as follows:-

"17.- The averments made in para 17 are false and hence denied. The duties of the Junior Analysts are:

- (a) To analyse food samples and other samples received from various sources under the provisions of the P.F.A. Act



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or for other purposes.

- (b) To carry out the research work in the analysis of foods for the purpose of standardisation of methods.
- (c) To carry out research studies with regard to food standards.

The answering respondent has performed all the above duties under the direct supervision of his officers and to their entire satisfaction. The answering respondent has a long experience in the analysis of food and other organic materials for the last many years and he thus fulfils the essential and desirable qualifications under the relevant Rules for the selection post of the Chief Technical Officer, Central Food Laboratory, Calcutta."

The 3rd respondent has given the duties of a junior analyst and stated that he had performed those duties. This is a wrong statement. There was no occasion for him to perform the duties of a junior analyst for he never worked in that post. In fact, he actually worked as a Technical Assistant having no experience in food analysis. This itself is an attempt to persuade this Tribunal that he had experience in food analysis when the fact remains that he had no such experience.

4. This case was heard on an earlier occasion by a different Bench and the Tribunal directed the 3rd respondent to file an affidavit answering the allegations made by the applicant in the

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rejoinder and An.A5 indicating that the 3rd respondent <sup>was</sup> closely associated with Dr.Roy in the publication of 29 publications during the period from 1974 to 1986. Accordingly the 3rd respondent has filed an affidavit on 10-8-93. In the affidavit, instead of giving straight forward reply he has stated as follows:-

"I am neither the author nor the co-author of publications mentioned in Sl.Nos.23,24,25,26, 27 and 29."

"Dr.BR Roy is not the co-author of the publications at Sl.No. 17,18,21 and 22."

Then he admitted that:

"I am, however, the co-author of the said publications at Sl.No.3, 7,6 and 1 alongwith Dr.BR Roy".

"The publications in my name and that of Dr.BR Roy and the year they were published are as follows, the year of publication being shown in the paranthesis:-

Sl.No.1	(1974)
2.	(1975)
3.	(1982)
4.	(1983)
5.	(1983)
6.	(1984)
7.	(1986)
8.	(1979)
9.	(1979)
10.	(1976)
12.	(1979)
13.	(1980)
14.	(1979)
15.	(1980)"

Though Dr. Roy retired in the year 1982, the joint endeavour and publications continued. It is seen from the publications that they were published from 1974 to 1986, <sup>under these circumstances</sup> and long and continued association of Dr.Roy with the 3rd respondent cannot be ruled out in the light of the statements in the affidavit.

5. On the basis of the affidavit the ld.counsel for the applicants contended that the 3rd respondent has admitted the averments made in the rejoinder

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and a presumption can be drawn that the selection of the 3rd respondent, was due to the influence of Dr. Roy who was the expert member who mainly conducted the interview. It is true that there was also one another expert member. But it is common knowledge that the long and close association of the person who interviews the candidates-with a particular candidate- will definitely give room for suspicion even if that person who interviews is cent per cent above board and not amenable to any other extraneous consideration. Such suspicious circumstances ought to have been avoided by the UPSC on the facts and circumstances of this case.

6. Invariably the Commission at the time of nominations of experts would write:-

"You are probably aware of the convention that a member of interview board should not have any relative or any one less in whom he may be interested appearing at the particular interview. It is presumed that there will be no such difficulty in your case".

It is an admitted fact, as indicated above, that Dr. Roy and 3rd respondent had close association for a long period even after the retirement of the former in 1982. The 3rd respondent had done his Ph.D. directed<sup>ed</sup> under the guidance and supervision of Dr. Roy. This relation should be <sup>ess</sup> ~~ass~~ <sup>u</sup> with the further fact that the 3rd respondent was not at all specialist in the food analysis and he has not produced any material to show that he has got experience in the analysing work of organic materials particularly food products. On the other hand, his specialisation is pesticide and allied matter unconnected with food analysis. Moreover, he was two steps below that of the

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scale of most of others who contested in the interview. Even though in the original application the applicant has averred that the 3rd respondent should produce certificate if he has got some experience in the food analysis, he has not produced any such certificate. As the 3rd respondent has not produced any certificate, it is clear that he has not got any experience in food analysis.

7. In this background we may examine the legal position and the decisions placed by the Id. counsel for our perusal. He has relied on the following decisions in support of the contention that the 3rd respondent's selection is not a fair one to be upheld by this Tribunal:-

1. 1957 AIR 425 Manaklal Vs. Dr.Prem Chand Singhvi & Ors.
2. AIR (1970) SC 150 AK Kriapak Vs. UOI
3. (1976) 2 SLR 509 G Sarana Vs. Univ. of Lucknow.
4. (1974) 3 SCC 459 S.Parthasarthy Vs. State of AP.
5. (1989) 2 SLJ 518 KM Agrahari Vs. Chief Secy. Delhi Admin.
6. (1976) SLJ 325 Smt Swaran Lata & Ors. Vs. UOI.
7. 1971 CAT
8. 1973 1 SLR page 80 Dr.Khanna V UOI
9. (1993) 4 SCC 10 Rattan Lal sharma Vs. Managing Committee.

8. We have gone through these decisions relied by the applicants. The Supreme Court in the Manak Lal Vs. Dr.Prem Chand Singhvi and Ors. AIR 1957 SC 425 considered the issue of bias against a member in a 'Tribunal' specially constituted for the inquiry against the allegation of the appellant and observed "it often becomes

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necessary to consider whether there is reasonable ground for assuming the possibility of bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about fairness of the administration of justice".<sup>(emphasis supplied)</sup> The court also held that in judicial and quasi-judicial proceedings the decisions must be fair and impartial and it should be taken objectively without any bias. The court finally observed that "it is in this sense that it is often said that justice must not only be done but also appear to be done". The said principles would apply to this case.

9. In another celebrated case, 1970 AIR page 150, Shri AK Kraipak Vs. UOI the Supreme Court held that "It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had <sup>its</sup> ~~his~~ own impact on the decision of the selection board".....Para 16"

x                      x                      x                      x

"In a group deliberation, each member of the group is bound to influence the others, more so, if the member concerned is a person with a special knowledge. His bias is likely to operate in a subtle manner- we are unable to accept the contention that in adjudging the suitability of the candidates the members of the Board did not have any <sup>material</sup> ~~neutral~~ discussions". This principle and observations of the Supreme Court squarely apply to the facts of this case.

10. The Supreme Court in a subsequent case G.Sarana Vs. University of Lucknow 1976 (2) SLR 509, following Kriapak's case laid down the test



to be applied to the cases of selection by administrative authorities. According to the court the question to be examined is "whether there is substantial possibility of bias animating the mind of the member against the aggrieved party" (emphasis supplied). The court also held "...the real question is not whether a member of an administrative Board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove that the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or Board is bound to influence the others, more so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner".

11. As indicated by the Supreme Court in S.Parthasarthy's case AIR 1974 (3) SCC, 459 the likelihood of bias in a given case can also be inferred from the circumstances. The court in that case held as follows:- (paras 14 & 15 at p.465 of AIR 1974 (3) SCC.

"14.- The test of likelihood of bias which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The Courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R.v. Huggins- (1895)1 QB 563-; R. v.Sussex,

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JJ., ex. p. Mc.Carthy; Cottle v. Gottle;  
R. v. Abingdon, JJ. ex. p. Cousins.  
But in R. v. Camborne, JJ. ex. p.  
Pearce, the Court, after a review  
of the relevant cases held that  
real likelihood of bias was the  
proper test and that a real likelihood  
of bias had to be made to appear  
not only from the materials in fact  
ascertained by the party complaining,  
but from such further facts as he  
might readily have ascertained and  
easily verified in the course of  
his inquiries."

x x x

"15. The question then is: whether  
a real likelihood of bias existed  
is to be determined on the probabilities  
to be inferred from the circumstances  
by court objectively, or, upon the  
basis of the impressions that might  
reasonably be left on the minds of  
the party aggrieved or the public  
at large".

The cardinal principal of administrative law is  
that the deciding authority must be impartial and  
decisions should be taken in a fair manner without  
any bias. Lord Denning in Breer Vs. Amalgamated  
Engineering Union (1971) 1 411 ER 1148 (CA) said  
that statutory body is required to act fairly  
in functions whether administrative or judicial  
or quasi-judicial. This was followed by the Supreme  
Court in a recent decision Rattan Lal Sharma Vs.  
Managing Committee (1993) 4 SCC 10 and held as  
follows:-

"One of the cardinal principles  
of natural justice is nemo debet  
esse iudex in propria causa (no  
man shall be a judge in his own  
cause). The deciding authority  
must be impartial and without  
bias. It has been held by this  
Court in Secretary to Government,

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Transport Department v. Manuswamy Mudaliar that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias."

12. In the instant case it is an admitted fact that Shri Roy, who was an expert member of the Selection Board had a long, close and continuous association with the 3rd respondent. He was the guide of the 3rd respondent in preparing his thesis for the Ph.D. He closely associated with the 3rd respondent for a good number of publications as referred to in An.V and was co-author from 1972 to 1986. These facts are sufficient enough to create a doubt in a reasonable man's mind when there is specific allegation of malafides. The respondent's failure to deny all the above allegations lead us to the conclusion that the selection made by the UPSC is not fair and impartial. It cannot be sustained. The learned counsel for the respondents relied on the direction of the Supreme Court in Dalpat Abasaheb Solunke Vs. B.S.Mahajan(1990) 1 SCC 305 and submitted that simply because Shri Roy happened to be a guide in Ph.D thesis prepared by the 3rd respondent and a co-author with him for publishing some articles no inference can be drawn that there is bias for vitiating the selection. As indicated above, the association of Shri Roy and the 3rd respondent cannot be taken in a light manner. It is very close and the facts and circumstances available in this case make us to feel that there is all possibility of bias. Any reasonable man assuming



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the facts in this case impartially would feel that fairness required that Shri Roy should not have associated himself in the interview particularly when the 3rd respondent was one of the candidates in the selection. In this view of the matter we are satisfied that the above decision relied on by the respondents is distinguishable and according to us it would not support the 3rd respondent.

13. At the time when this application was admitted this Tribunal passed an interim order on 18-12-87 to the effect that the appointment of the 3rd respondent as Chief Technical Officer would be subject to the outcome of the original application. Hence he cannot lay a claim that he was continuously attending from 1987 and it would be inequitable to disturb him even if all the contentions of the applicants are accepted. In the view that we have taken in this case, we have no other alternative but to set aside the selection and consequent appointment of the 3rd respondent as Chief Technical Officer.

14. In the result having regard to the facts and circumstances we are of the view that the selection of 3rd respondent as Chief Technical Officer cannot be sustained. Accordingly we set aside the selection and direct the second respondent to conduct a fresh selection in accordance with law after due intimation to all the candidates who appeared for the selection including the applicants and the 3rd respondent. Till the fresh selection as per the aforesaid direction the status quo as on the date of interim order shall

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be maintained. This direction should be complied within a period of six months from the date of receipt of this order. The O.A. is accordingly allowed. No costs.

P. T. Thiruvengadam

(P.T.THIRUVENGADAM)  
Member(A).

N. D. Dharmadan

(N.DHARMADAN)  
Member (J)

13.4.94.

LCP