

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1452/90  
T.A. No.

199

DATE OF DECISION 17.8.1990.

Dr. R.M. Acharya & Others	<del>xxxxxx</del> Petitioner Applicants
Shri Gobind Mukhouthy, Senior	Advocate for the Petitioner(s) Applicants
Versus	
Union of India & Others	Respondent
Shri Arun Jaitley, Addl.	Advocate for the Respondent(s)
Solicitor Genl. with Shri A.K. Sikri, Advocate	

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

(Judgement of the Bench delivered by Mr. P.K. Kartha, V.C.)

The post of Secretary, Department of Agricultural Research & Education (DARE)-cum-Director General, Indian Council of Agricultural Research (ICAR), fell vacant with the retirement of Dr. N.S. Randhawa, the last incumbent of the post, w.e.f. 31.3.1990. The Ministry of Agriculture, Department of Agricultural Research & Education, thereafter has issued a notification on 5th April, 1990, to the effect that Shri S.K. Misra, Secretary, Department of Agriculture & Cooperation, will hold the additional charge of the post of Secretary, Department of Agricultural Research & Education and Director General, I.C.A.R., in addition to his own duties w.e.f. 5.4.1990 until further orders. The said notification was issued with the approval of the

Appointments Committee of the Cabinet. The six applicants before us, who are working as Deputy Directors General in the I.C.A.R., are the aspirants for the post of Secretary, D.A.R.E. and D.G., I.C.A.R., which has not yet been filled up.

2. Dr. R.M. Acharya, who is the first applicant, was appointed as Deputy Director General on 12.6.1981. Dr. C. Prasad, the second applicant, was appointed as D.D.G. on 30.10.1984. Dr. I.P. Abrol, the third applicant, was appointed as D.D.G. on 29.9.1986. Dr. K.L. Chadha, the fourth applicant, was appointed as the D.D.G. on 14.9.1987. Dr. T.P. Dja, the fifth applicant, was appointed as D.D.G. on 27.11.1989. Dr. P.V. Dehadrai, the last applicant, was appointed as D.D.G. on 29.9.1987. The apprehension of the applicants is that the respondents have proceeded in the matter with a view to favouring Dr. R.S. Paroda who is working as Deputy Director General from 21.11.1987. He has not, however, been impleaded as one of the respondents.

3. No rule or regulation, or guideline has been laid down for selection to the post of Secretary, DARE and D.G., I.C.A.R. The practice hitherto followed is to constitute a Search Committee consisting of eminent persons in the field to recommend a suitable person for appointment as Secretary, DARE and D.G., ICAR. The process for selecting a suitable person began in October, 1989 and a Search Committee was constituted in January, 1990 with Dr. M.S. Swaminathan, former Director General, International Rice Research Institute, Manila, as its Chairman and the following persons as Members:-

1. Dr. Harswaroop Singh,  
Member (Agriculture)  
Planning Commission.
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2. Shri J.D. Sethi,  
Member,  
Planning Commission
3. Dr. T.N. Khoshoo,  
Ex-Secretary,  
Department of Environment
4. Dr. S. Ramachandran,  
Secretary,  
Deptt. of Biotechnology
5. Dr. A.B. Joshi,  
Ex-Vice-Chancellor,  
Mahatma Phule Agricultural  
University.

4. The applicants have sought the following reliefs:-

- (i) Issue of a writ, order or direction more particularly a writ in the nature of mandamus commanding the Respondents that the post of Director General (ICAR) and Secretary (DARE) to be made only in accordance with past established/norms keeping in view the seniority, merits, research and management experience of Scientists;
- (ii) Issue of a writ order or direction in the nature of certiorari directing the respondents to produce the records before the Hon'ble Tribunal relating to appointment to the post of (DG) and Secretary and the proceeding be quashed which has ignored the claims of eligible senior most Scientists;
- (iii) To pass an order for appointment to the post of D.G.(I.C.A.R.) and Secretary (DARE) from amongst senior most Scientists by an independent and broad-based search committee from major disciplines; and

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(iv) pass such other order/directions as this Hon'ble Tribunal may deem fit and proper.

5. The applicants have also prayed for the following interim relief:-

- (i) Ex-parte stay the proceedings of the Respondents regarding the appointment to the post of D.G. (ICAR) and Secretary (DARE) till disposal of this original application and to restrain the Respondents to proceed further with the aforesaid arbitrary recommendations for appointment to the post.
- (ii) Pending regular appointment to the post in question the respondents be directed to give charge of D.G. (ICAR) and Secretary (DARE) to the senior most Deputy Director General available in the I.C.A.R.

6. The application was filed in the Tribunal on 20th July, 1990. It was admitted on 25.7.1990, when notice was directed to be issued to the respondents on the prayer for interim relief, returnable on 8th August, 1990. The learned counsel for the Q applicants stated that applicant No. 6 Q was not interested to pursue the present application, and that his name might be deleted from the array of applicants. Accordingly, this was allowed by the Tribunal. The Tribunal also directed that any appointment that may be made during the pendency of the application to the post of Secretary, DARE and D.G., ICAR, will be subject to the outcome of this application.

7. The application came up before us on 8.8.1990, when we heard the learned counsel for both the parties on the question of interim relief. We have also gone through the records of the case carefully.

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8. As has been stated above, the respondents have not finalised the selection of a suitable person for appointment as Secretary, DARE and D.G., ICAR. In other words, there is no order passed by the respondents with which the applicants can be said to have been aggrieved at the time of filing of the application. Section 19(1) of the Administrative Tribunals Act, 1985 provides that "subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal, may make an application to the Tribunal for the redressal of his grievance." The respondents have stated in their reply affidavit on the question of interim relief sought by the applicants that the application is premature and untenable, and that the applicants cannot be deemed to have availed of the remedies under Section 20 of the Administrative Tribunals Act, 1985, inasmuch as no order has been made by the competent authority so far and the period of six months has not expired from the dates the representations were made.

9. As against the above, the learned counsel for the applicants urged that the application is maintainable at this stage itself in view of the threat to their Fundamental Right under Articles 14 and 16 of the Constitution, and that they need not wait till the breach thereof actually takes place. In this context, he relied upon the decision of the Supreme Court in K.K. Kochunni Vs. State of Madras, A.I.R. 1959 S.C. 725.

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10. There is some force in the aforesaid contention of the applicants. There is only one post of Secretary, DARE-cum-D.G., ICAR and if the applicants were to move this Tribunal immediately after appointment of a person to the said post, it may cause administrative difficulties and complications. The proposal of appointment to such a high level post requires not only recommendation by a Search Committee but also consideration and approval by the Appointments Committee of the Cabinet. In exceptional cases of this kind, the Tribunal can entertain an application even before the exhaustion of departmental remedies. Therefore, we reject the preliminary objections raised by the respondents on this score and proceed to consider the merits of the case.

11. The respondents have only filed their counter-affidavit opposing the grant of interim relief sought by the applicants. During the hearing, the learned Additional Solicitor General, however, stated that the respondents have no objection to the case being finally decided on the basis of the pleadings filed before us.

12. Before we consider the merits of the rival contentions, it may be useful to refer to the organisational set-up of the I.C.A.R. The I.C.A.R. is a society registered under the Societies Registration Act. It is entrusted with the responsibility of managing research institutions in agriculture, animal husbandry and fisheries. It is also entrusted with the responsibility of fostering and supporting the growth and development of the agricultural universities. I.C.A.R. administers 73 research institutes, 4 deemed Universities, 70 All India Coordination Research projects and a vast network of on-going research schemes throughout the country. It also maintains close collaboration with 26 agricultural universities.

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13. Each research institute is headed by a Director, who is the administrative head of the institute. All the institutes are under the administrative control of the I.C.A.R. of which the Director General is the functional Head. Apart from the Director General, there are Deputy Directors General, Directors, Project Directors, etc., in I.C.A.R.

14. The scientific personnel associated with the working of the I.C.A.R. fall under two broad categories, namely, Agricultural Research Services (ARS) and Research Management Position (RMP). The Agricultural Sciences Recruitment Board (ASRB) is in charge of recruitment of Scientists. It also recommends persons for appointment to research management positions except that of the Director General. All Research Management Positions are filled on tenurial basis.

15. The persons who have occupied the post of D.G., I.C.A.R. in the past are (1) Dr. B.P. Pal, who concurrently held the post of Additional Secretary to the Government of India, (2) Dr. M.S. Swaminathan, who concurrently held the post of Secretary to the Government of India, (3) Dr. D.P. Gautam, and (4) Dr. N.S. Randhawa. Dr. Gautam and Dr. Randhawa were the senior-most Deputy Directors General immediately before their elevation as Director General and they held the post of Secretary (DARE) concurrently. a

16. Two principal contentions have been advanced on behalf of the applicants which concern the proper constitution of the Search Committee and the manner of selection of a suitable person for appointment as Director General. a

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17. The grievance of the applicants is that the constitution of the Search Committee is defective. In this context, they have stated that the last Director General, I.C.A.R., before his retirement, had suggested a broad-based Search Committee comprising eminent Scientists from different major disciplines. The Committee constituted by the Government does not measure up to his suggestion. Dr. Swaminathan, who is the Chairman of the Committee, and Shri Joshi, Member, belong to the discipline of 'Plant Breeding'. Dr. Khoshoo and Dr. Ramachandran, Members, belong to the discipline of 'Plant Scientists'. Dr. Harswaroop Singh has expertise in Agricultural Economics, while Shri Sethi's field of specialisation is Economics.

18. The applicants have stated that the above composition of the Committee has been tailor-made to <sup>suit a</sup> particular candidate, namely, Dr. R.S. Paroda. In this context, the applicants have relied upon some newspaper reports in the 'Indian Express', 'National Herald', 'Times of India', 'Hindu' and 'The Patriot'.

19. To our mind, the credentials of the Search Committee cannot be called in question, as the Chairman and the Members of the Committee are eminent persons. What should be the size of the Committee and to which disciplines they may belong, are matters to be left to be decided by the executive in its wisdom and keeping in view the overall policy considerations.

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20. The second basic grievance of the applicants is that the respondents have departed from the long-established practice based on seniority-cum-merit and appointing the senior-most Scientist to the post of Secretary, DARE-cum-D.G., ICAR. The respondents have, however, denied any such established practice. They have stated that of the four incumbents who have so far occupied the post of Director General, I.C.A.R., only the last two were the senior-most Deputy Directors General and not their predecessors.

21. The admitted factual position is that initially the consideration was limited to the candidates between the age group of 45 and 55 years, but the President, I.C.A.R. widened the zone of consideration by directing that the officials/candidates beyond 55 years of age also be considered.

22. The applicants have contended that the initial fixation of the zone of consideration being restricted to the age-group of 45 and 55 years, was not in consonance with the earlier practice and was done with the ulterior motive of favouring Dr. Parada who falls within the said age-group, while the senior-most D.D.G. (the first applicant) had crossed the upper age-limit. The subsequent enlargement of the field of choice was only an eye wash.

23. According to the respondents, the Search Committee evolved its own criteria for determining the field of talented agricultural scientists to be included in the panel. All the applicants who are Deputy Directors General in the I.C.A.R., have been considered by the Search Committee along with other candidates. The Committee's recommendations are now before the competent authority to take final decision in the matter.

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24. In our opinion, the appointment under consideration being to a top level post, the fixation of a field of choice initially and its subsequent enlargement or the delay in finalising the selection, cannot be called in question merely on the ground of alleged ulterior motives or considerations.

25. In Maheshwar Prasad Srivastava Vs. Suresh Singh, 1977 S.C.C. (L&S) 212, the Supreme Court has observed that the question whether a particular candidate is qualified for a particular post, is to be considered on the basis of expert opinion and Courts should hesitate to interfere with the discretion of the appointing authority, so long as it is exercised bona fide.

26. In R.S. Dass Vs. Union of India, 1988 (supp.) S.C.C. 617 at 638 and 639, the Supreme Court has observed that it is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that does not justify presumption regarding arbitrary exercise of power. The Supreme Court had before it the cases of promotion of persons to All India Services and preparation of Select List. Provision has been made for constituting a Selection Committee by high ranking responsible officers presided over by a Chairman, or Member of the Union Public Service Commission. In this context, it was observed that "There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has power to refer the matter to the Commission with its recommendations. The Commission is

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under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the Select List. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power."

27. The learned counsel for the applicants heavily relied upon the decisions of the Supreme Court in K.I. Shephard Vs. Union of India, 1987 (4) SCC 431 and in Management of M/s M.S. Nally Bharat Engineering Company Ltd. Vs. State of Bihar, 1990 (2) S.C.C. 48, in support of his contention that the State functionaries must act fairly and reasonably. He also relied upon the decision of the Supreme Court in H.L. Trehan Vs. Union of India, 1989 (1) SCC 764 in support of his contention that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

28. The legal position enunciated by the Supreme Court in the aforesaid cases is unexceptionable.

29. Having regard to the facts and circumstances of the instant case and the legal position mentioned above, we are of the opinion that at this stage, no one can hazard any conclusion that the Search Committee or the competent authority will not act in a fair and reasonable manner.

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30. During the arguments, a reference was made to the allegation in the application that the then Deputy Prime Minister and Agriculture Minister had taken undue interest in the candidature of Dr. Paroda, who is stated to be a Jat. This allegation has been denied by the respondents. An allegation has also been made that Shri Joshi, one of the members of the Search Committee, "happened to be a major adviser for Ph.D. Degree for Dr. R.S. Paroda."

31. In our opinion, the aforesaid allegations are not sufficient to establish a case of mala fides against the respondents. Incidentally, it is a matter of public knowledge that the Agriculture Ministry is now headed by another incumbent.

32. The learned counsel for the applicants submitted that the Tribunal may call for the records to satisfy itself as to the fairness and objectivity with which the matter has been processed by the respondents.

33. We do not, however, consider it appropriate to call for the records of the selection at this stage, when the matter is pending finalisation. The power of the Court in the matter of calling for the record, though wide, has to be exercised judicially and judiciously, having regard to the totality of circumstances. In the facts and circumstances of the instant case, we do not consider it necessary to call for the records of the selection.

34. In the light of the foregoing discussion, we hold that it will not be just and proper to interfere with the process of selection to the post of Secretary, DARE-CUM-D.G., ICAR at this stage, when the matter is still pending consideration of the competent authority. We have no

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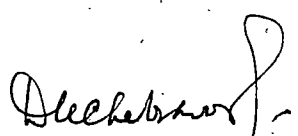
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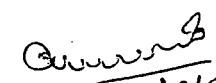
reason to doubt that the competent authority will not proceed in the matter in a fair and objective manner. We also do not see any impropriety in entrusting the charge of the post of Secretary, DARE-cum-D.G., ICAR to the Secretary, Department of Agriculture and Cooperation pending the selection of a suitable candidate by the competent authority as a stopgap arrangement.

35. There is nothing on record before us to displace the presumption that the powers vested in the competent authority will not be exercised in a reasonable manner.

*a* If selection of the person as D.G. and Secretary(DARE) is made on extraneous considerations or in an arbitrary manner, the aggrieved persons can agitate the matter before us by filing a fresh application.

36. The application is disposed of at the admission stage itself with the above observations. The parties will bear their respective costs.

  
(D.K. Chakravorty)  
Administrative Member  
17/8/90

  
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(P.K. Kartha)  
Vice-Chairman(Judl.)