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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-2246/90 Date of decision: 18.12.1992

Dr. V.D. Mudgal	Applicant
<u>Versus</u>		
Union of India & Ors.	Respondents
For the Applicant	Shri Gobind Mukhoty, Sr. Counsel with Shri R.B. Misra and Mrs. Meera Chhibber, Counsel
For the Respondents	Shri A.K. Sikri, Advocate

CORAM:

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

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *Yes*

JUDGMENT
(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who is a Scientist belonging to the Indian Council of Agricultural Research ('ICAR' for short), is aggrieved by the non-renewal of his tenure in the post of Director, Central Institute for Research on Buffaloes, Hissar, for a further period of five years after the expiry of the first spell of five years tenure. On 31.10.90, the Tribunal passed an interim order directing the respondents

that status quo as of that date as regards the continuance of the applicant in the post of Project Director, Project Directorate on Cattle, Meerut, be maintained. The interim order has thereafter been continued till the case was finally heard on 16.11.1992.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. We have also perused the ^{*}case law relied upon by both the parties.

3. The applicant was appointed as Director, Central Institute for Research on Buffaloes, Hissar vide order dated 5.7.1985 on tenurial basis for a period of five years, subject to renewal by another term not exceeding five years. His tenure of five years would end on 5.7.1990. Before his tenure expired, the respondents issued an office order on 30.5.1989, whereby he was transferred to the post of Officer on Special Duty at ICAR, New Delhi, and it was also ordered that Dr. P.K. Uppal, Director, National Research Centre for Equine shall take over the charge of the post of Director from the applicant. In partial modification of the order dated 30.5.1989, the respondents issued another office order dated 14.6.89, transferring him again to the post of Project Director, Project Directorate on Cattle, Military Dairy Farm, Meerut. At the time of the filing of the application, he was working in the post of Project Director

* Case law relied upon by the learned counsel for the Applicant:
1986 (3) SCC 156; 1990 (2) SCC 48; 1989(1) SCC 764;

Case law relied upon by the Respondents:

Judgement of this Tribunal dt. 14.5.90 in Dr. R.L.Nagarjankar ~~et al.~~ Vs. Union of India & Ors., 1990 (3) SLJ, CAT 347; AIR 1981 SC 1495; AIR 1974 SC 89; 1979 (54) FJR 409; 1968 SLR 422; AIR 1974 SC 555; and 1972 SLR 112.

at Meerut.

4. On 3.7.1990, the applicant applied for renewal of his term for a period of five years. On 23.10.1990, the respondents passed an office order to the effect that on completion of his tenure, it has been decided with the approval of the competent authority to place the applicant as Principal Scientist in the N.D.R.I., Karnal, with immediate effect till further orders. This office order has been challenged in the present proceedings. On the same date, the respondents passed another office order to the effect that the President, I.C.A.R., has been pleased to appoint Dr. C.L. Arora as Officiating Project Director at Meerut in place of the applicant with immediate effect without any additional financial benefit. Dr. Arora was to hold the officiating appointment till the post of Project Director, Project Directorate on Cattle, Meerut, was filled up on a regular basis or until further orders, whichever was earlier. The applicant has challenged the validity of the said office order as well.

5. The applicant has alleged mala fides on the part of the respondent No.5 (Dr. R.M. Acharya), Deputy Director General (Animal Science), I.C.A.R. According to him, Dr. Acharya had tried his best to ruin the career of the

applicant by harassing him in various ways. This has been denied by the respondents in their counter-affidavit.

6. On 12.7.1990, the Tenure Committee met to consider the renewal of the tenure of the Research Management Scientists, including that of the applicant. Shri S.K. Misra, Secretary, DARE and D.G., ICAR, was the Chairman of the said Committee. The other Members were, Shri J.C. Pant, Addl. Secy., Deptt. of Agriculture & Cooperation, Dr. R.M. Acharya, D.D.G. (Animal Science), ICAR, Dr. K.L. Chandra, D.D.G. (Hort.), ICAR, Dr. P.V. Dehadrai, D.D.G. (Crop Sciences), ICAR, Dr. T.V. Sampath, Agricultural Commissioner, Department of Agriculture and Cooperation, and Shri S. Parthasarthy, Joint Secretary (Dairy Development), Department of Agriculture and Cooperation. Dr. G.C. Srivastava, Secretary, I.C.A.R., functioned as the Member-Secretary. After going through the note prepared by the Personnel Division for considering cases of renewal of the tenure of 14 Research Management Scientists of the I.C.A.R., the Committee took up individual cases. The Deputy Directors General concerned presented the cases relating to the Scientists belonging to their Divisions. Keeping in view the record of each officer as reflected in their annual assessment reports, their published papers and their performance during the last five years as Research Managers,

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the Committee recommended extension of tenure for another five years (or till the retirement, whichever was earlier) in respect of 9 persons. In the case of Dr. C.L. Arora and the applicant, the Committee did not recommend the renewal of the tenure. The cases of three others were kept pending.

7. The applicant has argued that respondent No.5 was one of the Members of the Tenurial Committee and he had influenced the decision of the Committee. The case of the applicant was sent to the President, ICAR on 29.8.1990, who in turn decided not to renew his term for another period of five years.

8. The applicant has contended that the respondents did not act fairly, and impartially in his case. According to him, the Tenure Committee was not properly constituted. The respondents have contended in their counter-affidavit that the applicant has only a right to be considered and his case was duly considered. The appointing authority has the discretion to extend or not to extend the tenure. They have also stated that there is no inter se seniority among the Directors for the purpose of promotion.

9. The applicant has stated that after his transfer to the post of Director, Project Directorate on Cattle, Meerut,

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the I.C.A.R. had directed on 9.6.1989 to enquire about the activities and performance of the applicant in order to find adverse material against him with a view to justifying his transfer to Meerut. On 29.9.1989, an O.M. was issued to him indicating the alleged irregularities, to which he sent a reply on 20.12.1989. The respondents have, however, denied this allegation. According to them, a Section Officer of the I.C.A.R. visited C.I.R.B., Hissar, on 21.6.1989. After examining the files relating to the recruitment of administrative and technical staff in the Institute and also relating to the engagement of casual labour, he submitted a report. Based on the said report, O.M. dated 29.9.1989 was issued to the applicant. The reply received from him was under examination.

10. On 21.5.1991, Shri Acharya (Respondent No.5) issued a memorandum to the applicant wherein he was intimated that while the overall rating in his annual assessment report for the period from 1.1.1988 to 31.3.1989 is average, the following observations contained therein are considered to be adverse and he was given an opportunity to make a representation against the same:-

"Part III"

(A) Nature and quality of work

1. Please comment on Part II as filled in by the Scientists and specifically state whether you agree with the statements relating to targets, I do not agree with the targets and achievements given by the Director. There are hardly one or two scientists in each discipline

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objectives, achievements and shortfalls. Also specify constraints, if any, in achieving the objectives, etc.

except Nutrition. Therefore, there is no question of establishing divisions. Hardly any progress in capital works as sanctioned in 7th Plan has been made. The progress of agricultural farm development and buffalo herd development has not been upto the mark. Finances have been spent on equipment not provided for and far in excess of the needs of the Institute, still under initial stage of developments.

2. Quality of Output

Please comment on the Scientist's quality of performance having regard to standard of work and programme objectives and constraints, if any.

As a Scientist, he has done well as reflected by reviews and other scientific publications, but as research manager he has not been able to provide necessary input in planning and execution of research programmes and development of infrastructure facilities.

3. Knowledge of Sphere of Work

Please comment specifically on the scientist's level of

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knowledge of:-

(i) Functions

Has not the proper knowledge of rules and regulations and official procedures.

(ii) Related instructions and their application

Has to learn to fully apply the instructions and rules and regulations in the implementation of programmes of the Institute.

(B) Quality of Scientific/Technical Achievements

Quality of his personal scientific achievement can be rated as very good but not his research management capabilities and achievements. Perhaps, he concentrated more on his personal scientific development rather than of the Institute.

(C) Attributes

1. Attribute as work:

Please comment on the extent to which the Scientist is dedicated and motivated and on his/her willingness and initiative to learn and systematise his/her work.

Has not shown the desired dedication and motivation in development and execution of the Institute research programmes and development of infrastructural facilities.

2. Decision-making Ability:

Please comment on the quality of decision-making and on ability to weigh pros and cons of alternatives.

Requires better appreciation of the rules and regulations in decision-making. Has been slow in decision-making relating to development of research programmes and infrastructural facilities.

6. Inter-personal Relations and Team Work:

Please comment on the quality of relationship with superiors, colleagues and subordinates, and on the ability to appreciate other point of view and take advice in the proper spirit.

Please also comment on his/her capacity to work as a member of a team and to promote team spirit and optimise the output of the team.

The relationship has generally been satisfactory but had not the required ability to appreciate his superiors' advice and take it in the proper spirit.

(D) Additional Attributes:

1. Planning Ability:

Please comment whether the scientist anticipates problems, work-needs and plans accordingly and is able to provide for contingencies.

Needs further improvement, especially for research planning and execution and infrastructure development.

2. Supervisory Ability:

Please comment on the scientist's ability relating to:

(iii) Guidance in the performance of tasks.

Needs further improvement.

(iv) Review of performance.

Needs further improvement.

3. Coordination Ability:

Please comment on the extent to which the scientist is able to achieve coordination in formulation and implementation of task and

Has not been able to plan, formulate and implement the research programmes of the Institute as satisfactorily as required and take up

programmes by different functionaries involved.

various development activities.

Part IV

3. General Assessment:

Please give an overall assessment of the scientist with reference to his/her strength and shortcomings and also by drawing attention to the qualities, if any, not covered by the entries above.

As a scientist, he is capable but as Research Manager, he has not been able to show the required capability.

11. The applicant submitted a representation against the same on 17.6.1991. The competent authority considered the representation and decided to expunge ~~xxxxx~~ the adverse remarks and communicated the same vide their letter dated 19.11.1992.

12. The applicant has relied upon the correspondence exchanged between him and respondent No.5, starting from 22.12.1989, a perusal of which indicates that the relationship between the two had been somewhat strained. Respondent No.5 was also a Member of the Tenure Committee which considered the question of renewal of the term of the applicant. During the hearing of the case, we were informed that Respondent No.5 has since retired on attaining the age of superannuation. The recommendation of the Tenure Committee was based on the presentation of the case of the Deputy

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Director General concerned which, in the case of the applicant, was Respondent No.5. The Tenure Committee also took into account the record of each officer as reflected in their annual assessment reports, their published papers and their performance during the last five years as Research Managers.

13. Ordinarily, the Tribunal cannot sit in judgement over the evaluation made by a High Power Committee like the Tenure Committee in the instant case. However, the learned counsel for the applicant vehemently argued that the very presence of Respondent No.5 at the deliberations of the Tenure Committee would have influenced the decision of the said Committee in relation to the case of the applicant. He relied upon the decision of the Supreme Court in Management of M/s M. S. Nally Bharat Engineering Company Ltd. Vs. State of Bihar and Others, 1990 (2) SCC 48 in which the Supreme Court has observed that it is a fundamental principle of good administration that justice must not only be done but be seen to be done. The Supreme Court referred to the decision of Hegde J. in A.K. Kraipak Vs. Union of India, 1969 (2) SCC 262 and observed that "What is thus important in the modern administration is the fairness of procedure with elimination of element of arbitrariness. The State functionaries must act fairly and reasonably".

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14. We are inclined to agree with the aforesaid submission made by the learned counsel for the applicant. In the instant case, even though the allegation of mala fides has not been fully substantiated against Respondent No.5, he should not have participated in the deliberations of the Tenure Committee when the case of the applicant came up for consideration. Apart from this, it is not known whether the Tenure Committee had taken into account the memorandum issued to the applicant on 29.9.1989 relating to the alleged irregularities committed by him and the adverse remarks contained in the annual assessment report of the applicant for the period from 1.1.1988 to 31.3.1989. In case, these were brought to the notice of the Tenure Committee, that would also vitiate the decision taken by it.

15. In the conspectus of the facts and circumstances of the case, we are of the opinion that the case of the applicant should be placed before the Tenure Committee afresh to consider the same on merits without taking into account the memorandum dated 29.9.1989 and the adverse remarks for the period from 1.1.1988 to 31.3.1989 which have since been expunged. We, accordingly, set aside and quash the impugned office order dated 23.10.1990, whereby the respondents have ordered to place the applicant as Principal Scientist in the N.D.R.I., Karnal, and the

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office order dated 23.10.1990, whereby they decided to appoint Dr. C.L. Arora as Officiating Project Director, Project Directorate on Cattle, Meerut, in place of the applicant. The applicant shall be continued in the post of Project Director, Project Directorate on Cattle, Meerut, till the Tenure Committee considers his case afresh, as directed above, and a decision is taken by it.

16. The respondents shall comply with the above directions as expeditiously as possible and preferably, within a period of six months from the date of receipt of this order. The interim order passed on 31.10.1990 is made absolute with the aforesaid observations. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 18/12/92
Administrative Member

P.K. Kartha
18/12/92
(P.K. Kartha)
Vice-Chairman(Judl.)