

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 383 of 1991

Date of decision: 11.3.1991

Dr. C. Prasad & Others

...Applicants

Vs.

Union of India & Others

...Respondents

For the Applicants

...Shri J. N. Mukherjee, Esq.,
Counsel for
Shri S. M.
Bharticharya,
Counsel.
Shri P. B. Mukherjee
Counsel for
Applicant No. 5.

For the Respondents

...Shri Mr. Chandra Sekhara
Aren, Esq., General
General Secretary, Mr.
K. S. Kazi, Counsel
for respondent No. 1
to 6.

Shri Arup Kumar
Bhattacharya,
Counsel, with
Shri B. K. Majumdar
Counsel for
respondent No. 7.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be admitted
to see the Judgment? (Yes)
2. To be referred to the Reporters or not? (No)

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K.
Karth, Vice Chairman(J))

This is the second time that some Deputy Directors

General (DDGs) of the Indian Council of Agricultural

Research (ICAR) are before us being aggrieved by the

decision of the respondents, particularly by the

Union Public Service Commission (UPSC), of not allowing

them for personal talk to adjudge their suitability for

ICAR-a
the post of Director General/cum-Secretary, ICAR.

Q

2. The post of Secretary, Department of Agriculture & Research & Education (DARE)-cum-Director General, Indian Council of Agricultural Research (ICAR), was 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 Agriculture & Research & Education, thereafter issued a notification on 5th April, 1990 to the effect that Shri S.K. Misra, then 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.

3. Dr. R.M. Acharya and five other colleagues of ICA, who are working as Deputy Directors General in the ICAR and were the aspirants for the post of DG-ICAR & DARE, filed OA 1452 of 1990 in the Tribunal on 20.7.1991 seeking 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 (DSC) and Secretary and the proceeding be quashed which has ignored the claims of eligible senior most Scientists;

(iii) To pass and order for appointment to the posts of DG (ICAR) and Secretary (DARE) from amongst senior most Scientists by an independent and unbiased search committee from major disciplines; and

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

4. OA 1452 of 1990 was disposed by judgment dated 17.8.1990 to which both of us are parties.

5. No rule or regulation, or guideline has been laid down for selection to the post of Secretary, DARE and DG, ICAR. 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 DG, 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.
2. Shri J.D. Sethi,
Member,
Planning Commission.
3. Dr. T.N. Khosloo,
Ex-Secretary,
Department of Environment
4. Dr. S. Ramachandran,
Secretary,
Dept. of Biotechnology.
5. Dr. A.B. Joshi,
Ex.-Vice-Chancellor,
Mahatma Phule Agricultural University.

6. At the time of filing of OA 1452 of 1990, the respondents had not finalised the selection of a suitable person for appointment as DG-cum-Secretary, DARE. The ICAR 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. ICAR 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.

7. 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 ICAR of which the Director General is the functional Head. Apart from the Director General, there are Deputy Directors General, Directors, Project Directors, etc., in ICAR.

8. The scientific personnel associated with the working of the ICAR 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.

9. The persons who have occupied the post of DG, ICAR 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. O.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.

10. Two principal contentions had 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.

11. The first grievance of the applicants was that the constitution of the Search Committee was defective. In this context, they had stated that the last Director General, ICAR, 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. Harswadeep Singh has expertise in Agricultural Economics, while Shri Sethi's field of specialisation is Economics.

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

✓

13. The Tribunal observed that "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."

14. The second grievance of the applicants was that the respondents had departed from the long-established practice based on seniority-cum-merit and appointing the seniormost Scientist to the post of Secretary, DARE-cum-DG, ICAR. The respondents had, however, denied any such established practice. They had stated that of the four incumbents who have so far occupied the post of Director General, ICAR, only the last two were the senior-most Deputy Directors General and not their predecessors.

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

16. The applicants had 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 DDG (the first applicant) had crossed the upper age-limit. The subsequent enlargement of the field of choice was only an eye wash.

17. 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 ICAR, 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.

18. The Tribunal observed that 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.

19. The Tribunal did not consider it appropriate to interfere with the process of selection at that stage.

On

2.
Tribunal

The relevant observations of the ~~judgment~~ are contained in paras 29 to 35 of the judgment which are as under:-

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.

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. In 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 of the 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, we hold that it will not be just and proper to interfere with the process of selection to the post of Secretary, DARE-cum-DG, ICAR at this stage, when the matter is still pending consideration of the competent authority. We have no reason to doubt that the competent authority will duly 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-DG, 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

Q.

displace the presumption that the powers vested in the competent authority will not be exercised in a reasonable manner. If selection of the person as DG 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".

19. The present application has been filed in the above factual background.

20. Of the five applicants before us now, four were applicants in the earlier case. They have impleaded the Union of India as the first respondent, Secretary to the Government of India, Department of Agricultural Research and Cooperation as the second respondent. Secretary to the Govt. of India, Department of Personnel and Administrative Reforms is the third respondent. President, ICAR is the fourth respondent. Dr. M.S. Swaminathan, Chairman, Search Committee is the fifth respondent. The ICAR through its Secretary is the sixth respondent. The UPSC is the seventh respondent. Respondents 8 to 12 are five out of six persons who were called by the UPSC for personal talk.

21. The applicants have sought for the following reliefs:-

- (a) Issue of a writ, order or direction, particularly writ in the nature of mandamus commanding the respondents that:-
- (i) Recruitment Rules or recruitment criteria or recruitment norms/ procedure may, in the first instance, be determined with the

approval of the competent authority and be notified for information for all concerned before the recruitment to the post of Director General, ICAR and Secretary (DARE) is finalised.

- (ii) and in the absence of prescribed Recruitment Rules the post be filled only in accordance with the past established norms/procedures keeping in view the fair criteria of seniority cum-merit and management research experience.
- (b) Issue of a writ, order or Direction in the nature of certiorari directing the respondents to produce relevant records before the Hon'ble Tribunal relating to the appointment to the post of D.G. ICAR and Secretary (DARE) and to quash the proceedings of the earlier Selection Committee which has ignored the claims of the Senior Scientists;
- (c) to pass an order for consideration of the applicants by the UPSC in the current exercise of selection in force at the moment;
- (d) pass such other order/directions as this Hon'ble Tribunal may deem fit and proper.

22. The application was filed in the Tribunal on 11.2.1991 when an ex-parte interim order was passed to the effect that while the interviews which had been scheduled to be made might go on, the recommendations to be made by the UPSC might be withheld during the pendency of the application.

The interim order has been continued thereafter till the case was finally heard on 15.4.1991 and 16.4.1991.

23. Respondents 1 to 6 have filed a common affidavit. Respondent 7 (UPSC) has filed a separate counter-affidavit. Applicant No.5 has filed an additional

Q

affidavit on 7.3.1991 copy of which had been given to respondents 1 to 6 but not to respondent 7.

Shri Gopal Subramaniam, appearing for respondent 7, objected to the taking of the additional affidavit filed by applicant No.5 on the record, a copy of which was given to him only after he had concluded his arguments. Dr. R. Arockiasamy, acting Chairman, UPSC has filed an affidavit seeking exemption from production of official records.

24. We have carefully gone through the records of the case and have heard the learned counsel of both parties. We have also duly considered the case law relied upon by the learned counsel of the applicants*.

25. The applicants have stated that they had filed OA 1452 of 1990 in the Tribunal against the recommendations of the Search Committee which recommended the names of Dr. R.S. Paroda and Dr. V.L. Chopra for appointment to the post of DG-cum-Secretary DARE. This has not been controverted in the counter-affidavits filed by the respondents.

* Case law relied upon by the learned counsel of the applicants:

1983 (4) SCC 582; 1982 (2) SCR 365;
1984(2) SCC 141; SLJ 1991(1) CAT 239;
1991 (1) SLJ(SC) 56

Or

26. In the reply filed by the respondents 1 to 6, it has been stated that the recommendations of the Search Committee were submitted to the competent authority through the President, ICRAR. It was decided by the competent authority that the selection may be made by the UPSC. Accordingly, a detailed proposal was sent to the UPSC along with a list of 31 candidates considered by the Search Committee. The bio-data of 31 candidates sent to the UPSC include those of the applicants as well.

27. In the return filed by the UPSC, it has been stated that initially the matter was placed before Smt. Otima Bordia, a Member of the Union Public Service Commission for the purpose of short-listing the candidates. Thereafter Smt. Bordia was supposed to proceed with the selection. Smt. Bordia had expressed that her programme was full and further that she was not keeping well. Therefore, the matter was placed before the Chairman for nominating another Member in place of Smt. Otima Bordia ~~inasmuch~~ as the post in question was a high level post of national importance and due to the urgency of the matter as the post was lying vacant since long. Thereafter the Chairman nominated Mr. J.A. Kalyanakrishnan, Member, to preside over the selection.

28. The UPSC has further stated that the Search Committee had decided to short-list six candidates as eligible for appointment to the post of DG-cum-Secretary, DARE. The bio-data of all 31 officers were considered by the Union Public Service Commission and ultimately a short-list was prepared of six persons. While short-listing candidates for appointment to the said post, it was kept in mind that the short-listing had already been done by the Search Committee in a careful manner consisting of persons of great eminence and repute. The UPSC also noted that the Search Committee who had earlier recommended the names of two officers was also apprised of the claims of some candidates and after giving anxious consideration to the same the Search Committee recommended a revised list of candidates consisting of six scientists for the purpose of appointment to the post of Director General. Keeping all this in view, the UPSC decided to operate upon the short-list of six persons and called six persons for interview on 12.2.1991. Thus in view of the fact that the Search Committee had also undertaken such an exercise, the Commission relied upon the list prepared by the Search Committee for the purpose of proceeding further in the matter.

The short-list prepared by the Search Committee was found to be "adequate", "dependable" and "safe to act upon" by the UPSC.

29. This is the first occasion when the UPSC has been associated with the selection of a suitable candidate for appointment to the post of DG-cum-Secretary, DARE. The past practice appears to have been to forward the recommendations of the Search Committee to the Appointments Committee of the Cabinet through the President, ICAR, with his own recommendations. The UPSC accepted the task pursuant to its constitutional duty to advise on any matter referred to it by the President under Article 320 of the Constitution. The learned counsel for the applicants argued that justice should not only be done but seem to be done by the UPSC in discharging its constitutional duty. The learned Additional Solicitor General mainly relied upon our judgment dated 17.8.1990 in Dr. R.M. Acharya's case, 1991 (1) SLJ (CAT) 122. The learned counsel for the UPSC submitted that the UPSC independently considered the question of suitability of all the 31 candidates and the fact that it also reached the same conclusion as that of the Search Committee cannot be construed as non-application of mind.

30. In this context, the short-listing criteria

adopted by the UPSC has relevance and importance. The acting Chairman of the UPSC has claimed privilege under Section 123 of the Indian Evidence Act, 1872 in respect of the production of the noting portion of the relevant file on the ^{that} ~~the~~ ground ^{that} ~~its~~ disclosure will "materially affect the freedom and candour of expression of opinion of the various officers. Members and the Chairman as ^(?) enjoyed ^{under Article 320 of the Constitution"} and that it "would certainly cause injury to the Public and National interest". The claim of privilege was vehemently opposed by the learned counsel for the applicant by relying upon the pertinent observations of the Supreme Court in S.P. Gupta Vs. Union of India, AIR 1982 SC 149.

31. In a case of this kind where the suitability of the candidates for the top level post in the ICAR is under consideration, the scope for judicial review is limited unless the applicants are able to substantiate their plea of mala fides and arbitrariness on the part of the UPSC. While claiming privilege in respect of the noting portion of the relevant file, the UPSC has placed before us the relevant file to satisfy ourselves that the claim of privilege is in fact justified.

On

32. Initially, the Search Committee had limited its consideration to the candidates between the age group of 45 and 55 years but the Deputy Prime Minister, who is the President of the I.C.A.R., widened the zone of consideration by directing that all those persons who would have qualified but for ^{the} This decision was taken the age factor should also be considered by him on receipt of a representation that some very well qualified persons, who were above the age of 55 years, had not been considered by the Search Committee. The above policy decision was completely overlooked by the U.P.S.C. while short-listing the candidates for personal talk. In view of this, some very well qualified persons, including Deputy Directors General above the age of 55 years, have been kept out of consideration for short-listing. We are, therefore, of the view that in an important matter like this, the U.P.S.C. should reconsider the whole matter.

33. In the conspectus of the facts and circumstances of the case, we remit the case to respondent No.7 (UPSC) to consider it afresh in the light of the policy decision of the Government and the observations mentioned above. Thereafter, they may take an appropriate decision in consultation with the Government as regards ^{the}

the short-listing of the candidates for personal talk. They may do so as expeditiously as possible but, in any event, before 30.6.1991. The interim order passed on 11.2.1991 directing the U.P.S.C. not to act upon the recommendations on the basis of personal talk held by them on 12.2.1991, shall remain in operation till then.

There will be no order as to costs.

(Deekshabandhu) 26/4/1891
(D.K. Chakravorty)
Administrative Member

Deekshabandhu
26/4/1891
(P.K. Kartha)
Vice-Chairman (Judi.)