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**Central Administrative Tribunal
Principal Bench**

OA No. 2054/2004

New Delhi, this the 9th day of July, 2007

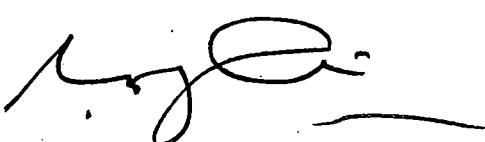
Hon'ble Mr. Mukesh Kumar Gupta, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

1. Shri Davinder Kumar, | Deleted as per order
R/o D-15/197, Sector-3, | of this Tribunal dated
Rohini, Delhi - 110 085. | 24.04.06 in MA 711/06.
2. Shri Mukesh Chand,
Village Katheda, P.O. Dadri,
Distt. Gautambudh Nagar, UP.
3. Shri Rajeev Kumar Sharma,
C-56, New Deelam Pur,
Delhi - 110 053. ...Applicants

(By Advocate: Shri ASN Murti proxy for Sh. V.S.R. Krishna)

Versus

1. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
2. Chairman,
Agricultural Scientist Recruitment Board,
(ICAR), Krishi Anusandhan Bhawan,
Pusa, New Delhi.
3. The Under Secretary (Admn.),
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
4. Shri Tejinder Pathak, UDC
(now Assistant),
ICAR, Krishi Bhawan,
New Delhi.



5. Rajesh Kumra,
(now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
6. Ashok Kumar-II,
(now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
7. Hari Dass,
UDC (now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
8. Shalini Jayaraj,
UDC (now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
9. Vijay Kumar,
UDC (now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
10. Rajesh Kumar,
UDC (now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
11. Ramesh Kumar,
UDC (now Assistant),
ICAR. Krishi Bhawan.
New Delhi.
12. Zacharias Bar,
UDC (now Assistant),
ICAR. Krishi Bhawan.
New Delhi.

...Respondents

(By Advocate: Shri Bharat Ram proxy for Sh. Praveen Swarup
for R-1 to R-3.

Sh. C.B. Pillai, counsel for R-6 & R-8



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ORDER**By Mr. V.K. Agnihotri, Member (A):**

In this OA the applicants have challenged the procedure adopted by the respondents for the conduct of Limited Departmental Competitive Examination (LDCE, for short) in 2002 and filling up of the posts of Assistants thereafter on the basis of the result of that Examination.

2. The brief facts of the case are that the respondents issued a Notice dated 06.08.2001 inviting applications from eligible candidates (Upper Division Clerks) [UDC, for short] for the LDCE scheduled to be held during 2001 for filling up of 9 posts of Assistants, of which 1 was reserved for Scheduled Tribe. One of the conditions prescribed was that the applicants should have completed not less than 3 years of approved and continuous service in the grade of UDC as on 01.01.2001. The applicants were directed to send their applications in the prescribed form so as to reach respondent no. 2 by 30.08.2001. Thereafter on 5.11.2001, respondent no. 2 issued a Circular, in modification of the earlier Notice dated 06.08.2001 (which has perhaps incorrectly been referred to as Notice dated 08.06.2001), informing that condition relating to 3 years regular service had to be fulfilled as on 30.08.2001 (instead of as on 01.01.2001, as notified earlier) and the date



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of submission of applications was also extended to 23.11.2001. On 19.11.2001, another Circular was issued further extending the date of fulfilling the eligibility criterion of 3 years of regular service to 23.11.2001, while the last date of submission of applications remained unchanged as 23.11.2001. The applicants, along with others, appeared in the LDCE, which was held from 08.10.2002 to 12.10.2002. On 20.06.2003, respondent no. 1 issued an Office Order by which 9 persons were appointed to the post of Assistants, comprising 8 General Category and 1 Scheduled Tribe candidates. On 05.08.2003, respondent no.1 issued another list of 9 persons, who were appointed to the post of Assistants, comprising 6 General Category, 2 Scheduled Caste and 1 Schedule Tribe candidates. Both these orders of appointment of Assistants were based on the LDCE conducted between from 08.10.2002 to 12.10.2002. The applicants did not figure in either of lists of persons who were appointed as Assistants. Hence the OA.

3. On 28.02.2006, when the matter came up for hearing, the learned counsel for the applicants stated at the bar that the applicants had no grievance with regard to the selection of 9 persons, who were appointed in the first instance. However, the appointment of additional 9 persons as Assistants, was



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contrary to law. He, therefore, sought permission to implead those 9 persons in the array of respondents. In the meanwhile, applicant no. 1 (Sh. Davinder Kumar) filed MA No. 711/2006 on 19.04.2006 seeking withdrawal of his name from the OA, with liberty to file a fresh OA before the Tribunal if he was not granted the desired relief by the official respondents. M.A. No. 711/2006 (supra) was allowed, vide order of this Tribunal dated 24.04.2006. An amended Memo of Parties was filed by the remaining applicants on 26.04.2006 and notices were ordered to be issued to the newly impleaded respondents, vide order of this Tribunal dated 01.05.2006. After all the respondents had filed their counter replies, on 19.04.2007 this Tribunal directed as follows:-

“On the request of learned proxy counsel for applicant, who states that Sh. V.S.R. Krishna, learned counsel for applicant is out of station, adjourned to 10.05.2007. It is made clear that no further adjournment will be granted to applicant this being a case of 2004.”

On 10.05.2007, this Tribunal recorded as follows:-

“List on 24.05.2007 to enable the applicants’ counsel to seek instructions whether applicants 2 & 3 are still interested to pursue their claim in OA-2054/2004.



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Pleadings may be exchanged during this interregnum."

On 03.07.2007, this Tribunal ordered as follows:-

"Learned proxy counsel for applicant seeks adjournment. It is seen vide order-sheet dated 19.4.2007 that the matter was adjourned to 10.5.2007 making it clear that no further adjournment will be granted this being the case of 2004. Thereafter matter has been adjourned twice. As a matter of indulgence, matter to remain on Board."

On 04.07.2007, the Tribunal issued the following order:-

"Both sides are represented by proxy counsel except respondent no. 6 & 8 who are represented by Sh. C.B. Pillai, learned counsel.

Since this matter has been adjourned time and again and counsel are not prepared to argue the matter despite grant of number of opportunities. It had been made clear even on 19.4.2007 that no further adjournment will be granted to the parties this being the case of 2004. **Reserved for orders."**

4. The applicants have, *inter alia*, challenged the action of the official respondents with regard to the LDCE conducted in 2002 on the following grounds:-

- (i) Although, as per original Notice dated 06.08.2001, the LDCE was to be conducted in 2001, official



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respondents delayed the conduct of the said LDCE by more than one year without any valid reason. This was primarily done to enable some of the candidates to obtain favourable ACRs for the period subsequent to the announcement of the examination, i.e. upto March, 2003, which then formed part of the overall assessment.

- (ii) Although originally Notice dated 06.08.2001 (supra) was issued for drawing up a select panel for filling up of 9 posts of Assistants, ultimately the official respondents appointed 18 candidates on the basis of the said LDCE. Once the number of vacancies for a particular examination had been specified in the Notice, the respondents had no power to alter it without issuing any notice in that regard.
- (iii) In the original Notice dated 06.08.2001 (supra) only one reserved category vacancy (ST) was notified. The official respondents, however, ultimately selected 2 SC and 1 additional ST candidates, without any amendment to the advertisement and without inviting any applications for the reserved posts in the category of SC.



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(iv) The action of official respondents in clubbing the vacancies for the years 2002 and 2001 is illegal. Separate LDCEs for the vacancies for the years of 2002 and 2001 should have been held.

(v) The applicants had submitted a representation in this regard, on which no action was taken by the respondents even after a lapse of almost 11 months.

5. The official respondents (respondent nos. 1 to 3) have stated that Indian Council of Agriculture Research (ICAR, for short) is a Society registered under the Societies Registration Act, 1860 and it has its own Rules and Bye-laws for governance. Bye-law 30 (a) states that "Except in regard to matters for which specific provision has been made in the Rules, Bye-laws, Regulations or Orders made or issued by the Society, the service and financial Rules framed by the Government of India and such other Rules and Orders issued by the Government of India from time to time, shall apply *mutatis mutandis* to the employees of the Society in regard to matters concerning their service conditions". In view of this, where respondents have not made their own Rules, order etc., Government of India order/rules/instructions are being followed by the respondents. In the present case, Order No. 1-2/88 Per IV dated 11.05.1988 was issued by the respondents





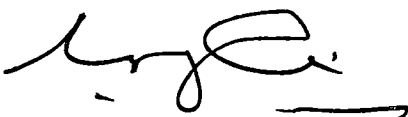
and subsequently modified by order dated 31.07.1989, which is, therefore, applicable to the facts of the case.

6. The official respondents have, therefore, contended that according to Order dated 11.05.1988 (supra) a 'Select List' based on the number of vacancies actually available on the date of declaration of the result is to be prepared for filling up of vacancies through LDCE. The procedure regarding the 'Reserve List' contained in the aforesaid office order was modified to a certain extent by Order dated 31.07.1989 (supra). As per this Order dated 31.07.1989, a Reserve List has to be prepared and the said 'Reserve List' may remain valid for a period of one year from the date of interview or declaration of the result, so that if a few vacancies arise within one year of the date of interview they may be filled up without delay, in the larger interest of the work of the ICAR. In other words, ICAR can appoint successful candidates in the order of merit from the Select/Reserve List of a LDCE within one year from the date of declaration of the result. Therefore, in the light of the above two Orders, the concept of 'notified vacancy' has no relevance and only the actual vacancy at the time of declaration of result (for Select List) and vacancies occurring after declaration of result but before

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one year (for Reserve List) are relevant for the filling up of posts through LDCE.

7. The official respondents have further contended that in the present case 9 vacancies (UR-08 & ST-1) were notified to Agricultural Scientists Recruitment Board (ASRB, for short) and accordingly the ASRB issued notification inviting applications for LDCE with closing date as 30.08.2001. However, in response to the representations from some UDCs, ASRB was advised to re-circulate the notification inviting applications from those UDCs who had completed 3 years approved and continuous service in the grade at ICAR Headquarters as on 30.08.2001 and, later, as on 23.11.2001. The ASRB, vide Circular dated 05.11.2001 and 19.11.2001, invited fresh applications accordingly. The ASRB conducted the LDCE from 8th to 12th October, 2002. Meanwhile, 9 additional vacancies arose. The total number of vacancies thus became 18, out of which 14 were for General Category, 02 for SC and 02 for ST categories. The revised position was communicated to ASRB, vide letter dated 25.02.2003. Although when 9 vacancies were initially reported to ASRB, no vacancy was earmarked for SC category. Notwithstanding this, a large number of officials belonging to SC category had also applied. Subsequently, 9 more vacancies arose before the



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declaration of result, out of which 5 vacancies were for UR category, 01 for ST and 02 for SC category. As per ICAR Order dated 31.07.1989 (supra) even vacancies arising after the declaration of result could be filled up from the Reserve List under certain circumstances as aforementioned. From this it is clear that any vacancies including those falling under reserved category, occurring before the date of declaration of the result could be filled up from the Select List. Accordingly, the ASRB declared the result with respect to 09 vacancies initially. ASRB was subsequently requested to issue a fresh select panel of 18 candidates by way of modification of the result already declared. Consequently, the ASRB issued a revised Select List in view of the latest vacancy position of 18 candidates.

8. As regards the representation submitted by the applicants, the official respondents have stated that the matter was examined in consultation with ASRB. However, nothing was found in their said presentation that would merit an inquiry into the conduct of the LDCE for the post of Assistants conducted by ASRB from 8 to 12 October, 2002. This was communicated to the applicants, vide letter No. 6 (4)/2003-Estt.II dated 08.06.2004.



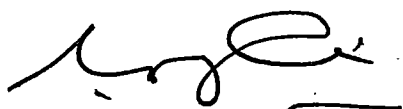
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9. The official respondents have further averred that the ACRs of the candidates were called for after October, 2002, because the examination process was completed only then. The contention of the applicants that their ACRs have not been considered properly does not stand to reason and has no factual basis. Since the case of all the eligible candidates have been considered by the Department, no case is made out and the OA deserves to be dismissed.

10. Private respondent nos. 6 & 8, in addition to reiterating some of the averments made by the official respondents, have stated that there is nothing in the Rules which prohibit holding of the Examination in 2002 taking into account the vacancies arising till then. The Examination could actually be held only in 2002, as the last date of receipt of applications was extended up to 23.11.2001 on account of representations from those who were appointed as UDCs on 10.11.1998, including the applicants.

11. It has been further contended that the applicants had appeared in the LDCE held in 2002 without any protest and have challenged the Examination only when they found that the result was not favourable to them. In **Madan Lal & Ors. v.**

State of Jammu & Kashmir & Ors., AIR 1995 SC 1088, the



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Hon'ble Supreme Court laid down as follows:

✓ "It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*, AIR 1986 SC 1043, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioners appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

✓ 12. The remaining private respondents (respondent nos. 4, 5, 7, 9 to 12) have, in particular, reiterated the judgment of the Hon'ble Supreme Court in the case of **Madan Lal & Ors.** (supra), cited by private respondent nos. 6 & 8.

13. No rejoinder has been filed by the applicants in spite of opportunities having been given to them. As already noted, it was decided to reserve this OA for orders without giving further opportunity to the counsel for the parties to argue the matter.



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14. From the pleadings, it can be gathered that the official respondents, time and again, postponed the last date of submission of applications and also extended the date of meeting the eligibility criteria of 3 years regular service as UDC. However, the fact remains that the applicants became eligible to participate in the recruitment process as a result of the last of these extensions, since they were promoted as UDC only on 13.11.1998. Moreover, we find merit in the averment of the respondents that the applicants, having participated in the selection process willingly and without protest, cannot now turn around and challenge it, either on the ground of delay in holding the LDCE or on the ground of evaluation of ACRs [**Madan Lal & Ors.** (supra)].

15. As regards the contention of the applicants that clubbing of vacancies for the years 2001 and 2002 was not permissible as per rules and, hence, on the basis of the LDCE held in 2002, only the vacancies notified by Notice dated 06.08.2001 should have been filled, we find that the official respondents have satisfactorily explained the position by way of their letter dated 11.05.1988 (supra), as amended by letter dated 31.07.1989 (supra). With a view to expedite filling up of vacancies, the official respondents had taken a decision that the Reserve List prepared on the basis of LDCE would remain



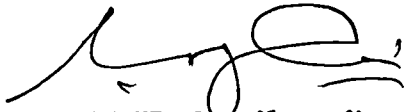
valid for a period of one year from the date of interview or declaration of result for filling up of future vacancies. In any case, the applicants have not challenged the vires of the two letters of the official respondents aforementioned, which have been issued by virtue of respondents' rule-making authority as an autonomous registered Society.

16. As regards the contention of the applicants that 2 SC persons were appointed as Assistants from out of the candidates, who appeared for the LDCE, even though the Notice did not mention any vacancy in respect of SC category, in the first place, we note that the respondents have stated that a large number of officials belonging to the SC category had applied for the post. Moreover, insofar as applicant no. 1, the only SC candidate among the applicants, has chosen to withdraw from this OA, there is no need for any further discussion of this contention on merits.

17. Taking the totality of facts and circumstances of the case into consideration, we come to the inevitable conclusion that the applicants have failed to establish the merits of the various claims made by them with regard to irregularities relating to the LDCE conducted by the official respondents.

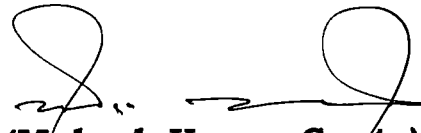


18. In the result, the OA is devoid of merit and is, therefore, dismissed. In the peculiar circumstances of this case, there will be no order as to costs.



(V.K. Agnihotri)
Member (A)

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(Mukesh Kumar Gupta)
Member (J)