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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1252/2004

New Delhi this the 22th day of August, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)**

Dr. R.D. Singh,
S/O Sh. Sabhajeet Singh,
Resident of AC-1/158-C,
Shalimar Bagh, Delhi
and employed as
Professor and Principal
Scientist in the Indian
Agricultural Research
Institute, Pusa, New Delhi.

..Applicant

(By Advocate Shri B.B. Raval)

VERSUS

1. Union of India through
Its Secretary,
Department of Agricultural
Research and Education, Krishi
Bhawan, New Delhi.
2. The Secretary,
Indian Council of Agricultural
Research, Krishi Bhawan,
New Delhi.
3. The Chairman,
Agricultural Scientists Recruitment
Board, Krishi Anusandhan Bhawan,
Pusa, New Delhi.
4. Dr. N.N. Singh,
Occupying the post of Project
Director (Maize), Indian
Agricultural Research Institute,
Pusa, New Delhi.

..Respondents

(By Advocate Shri Praveen Swarup
alongwith Shri R.K. Singh for respondents 1-3)
None for respondent No. 4)

O R D E R

(Hon'ble Shri S.A. Singh, Member (A)

The applicant while working as Professor for the
Discipline of Genetics, applied for the post of Project
Director (Maize) against advertisement issued by the
Agricultural Scientists Recruitment Board (ASRB). He

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was not selected and respondent No.4, who was occupying the post of Project Director (Maize), was allowed to continue after the completion of his tenure. The applicant submitted a representation against the continuation of the applicant beyond his tenure to the President, Indian Council of Agricultural Research.

2. The applicant had earlier filed OA 2857/2003 against the re-advertisement for the post of Project Director. The same was disposed of vide order dated 27.11.2003 with a direction to the respondents to dispose of the applicant's representation dated 14.10.2003 within a period of one month from the date of receipt of a copy of that order. In compliance with the direction, the respondents decided the representation rejecting the claim of the applicant vide the order dated 16.1.2004 which has been impugned in this OA.

3. Aggrieved by this rejection, the applicant has filed the present OA, praying for quashing of the impugned order and directing the respondents to order removal of respondent No.4 from the post of Project Director and to consider the appointment of the applicant as Project Director from 22.10.2002 or 1.9.2003, i.e., after superannuation of respondent No.4 as the applicant being No.2 in the select list/panel.

4. The facts of the case are not in dispute ^{and} / can conveniently be delineated. Respondent No. 4 was

initially appointed as Project Director (Maize) on tenurial basis for a period of five years w.e.f. 31.3.1997. The tenure was to end on 13.3.2002. He was, however, allowed to continue beyond 13.3.2002 for reasons of operational convenience and continuity. Subsequently he was re-appointed as Project Director (Maize) on 5.6.2003 until his superannuation on 31.8.2003. After retirement he was re-employed vide order dated 27.8.2003 for a period of six months w.e.f. 1.9.2003, which was further subsequently extended in public interest upto his attaining the age of 62 years.

5. It is the contention of the applicant that further continuance of respondent No. 4 after completion of his tenure on 13.3.2002 was in violation of all norms because his extension for a second term had been rejected by the President of ICAR. He submits that the respondents had allowed respondent no.4 to continue on the post illegally. The post had been advertised vide item No.15 of ARSB Advt. No.1/2002 and a select panel was available which included the name of the applicant. This was not published and the respondents extended the tenure of respondent No.4 despite the fact that he was to retire in three months.

6. After retirement of respondent No.4, the respondents gave him further extension upto the age of 62 years violating the conditions specified in letter dated 5.11.2003 enhancing the age of retirement of the Scientists of ICAR. This age enhancement is not

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applicable to those who have already retired in accordance with the earlier rules and those who are on extension in service/re-employed on the date of issue of these orders or those who are governed by specific rules and/or regulations. This letter was issued on 5.11.2003 whereas the applicant had retired on 31.8.2003. Hence, the re-employment of respondent no.4 upto the age of 62 years is violative of this order. In view of this illegality, the applicant has prayed for removal of respondent No. 4 from the post and other relief indicated in para 3.

7. The respondents have strongly contested the averments of the applicant. They have pleaded that as per rules, respondent No.4 is entitled for extension of his tenure as Project Director (Maize). However, it was decided as policy that a Scientist should be employed for a single tenure of five years only and if any incumbent desires to continue in that position, he should compete along with all other eligible applicants/aspirants and should get selected through the ARSB afresh. The respondent no.4 had been selected for the post against Advt.No.1/2002 (item no.15) and was thus appointed as Project Director w.e.f. 5.6.2003 for a second tenure. However, he was allowed to continue from 1.4.2002 to 4.6.2003 for reasons of operational convenience, because the question of existing tenurial policy was under indepth study/review.

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8. Respondent No.4 superannuated on 31.8.2003 and as per Rule 33 (a) outstanding Scientists may be re-employed. Respondent No.4 was initially re-employed for a period of six months and then upto 31.8.2005 i.e. till he attained the age of 62 years. This was a ~~conscious~~ decision taken by the competent authority because the retirement age has been enhanced for the Scientists of ICAR upto the age of 62 years.

9. Respondents have clarified that respondent No.4 had been selected for the said post against the advertisement No.1/2002 (item No.15) for which interview was held on 21.10.2002. Though the post was again advertised by the Board on 1.11.2003 vide advt.No.2/2003 (43)on the basis of requisition received on 3.7.2003, but same was withdrawn/cancelled by Office Order no.24.11.2003. Moreover the re-employment, of respondent No.4 has been done as per rules, which allow the Respondents to give re-employment to outstanding Scientists. The OA, as such, should be dismissed.

10. We have heard the learned counsel for the parties and have gone through the documents on record. We find that the question can be separated into two parts. First part concerns the period starting after completion of the first tenure by R-4 on 13.3.2002 and ending with his retirement on 31.8.2003. Second part concerns with his re-employment on 1.9.2003 upto the age of 62 years.

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11. We take up the second part first. It is clear that respondent No.4 had superannuated on 31.8.2003. His age of retirement was not enhanced. As such the averment of the applicant that he had been given the benefit of age enhancement as per order dated 5.11.2003 is not borne out by the facts. Respondent No.4 was re-employed for a period of six months and then the period was extended upto 31.8.2005. i.e. until he reached the age of 62 years. Rule 33 (a) reads as under:

" The age of retirement of scientific and technical personnel in the service of the Council shall be 60 years. No extension of service shall be given but where absolutely essential in the interest of research the council may re-employ outstanding Scientists on suitable terms with the prior approval of the President".

From the reading of the above rule, it is clear that the respondents have the power to re-employ outstanding Scientists. In view of this rule, we find no fault in re-employment given to respondent no.4.

12. We now come to the question of continuation beyond 13.3.2002. Rule 34 allows the extension of the tenure by another five years and reads as under:

" The Governing Body may decide from time to time which posts in the ICAR shall be tenure posts. The period of tenure will in the first instance be 5 years which may be extended up to another 5 years".

13. The respondents have indicated that the rule has not been changed and asking the incumbents to get re-selected for a second term through ASRB was a policy

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decision to avoid ARS from reducing itself to "Scientific bureaucracy". The respondent No.4 was re-selected by ARSB and hence re appointed w.e.f. 5.6.2003 for a tenure ending on the date of his superannuation i.e. 31.8.2003.

14. We have gone through the records made available to us and we find that the interview was held on 21.10.2002 against advertisement No. 1/2002 (item no.15). Respondent No.4 was the only person whose name was recommended by ASRB. Four persons had attended the interview, including the applicant. It is thus clear that respondent no.4 had been selected for a second term and office order dated 27.8.2003 was issued appointing him as Project Director w.e.f. 5.6.2003 on tenure basis upto 31.8.2003 i.e. upto the date of superannuation.

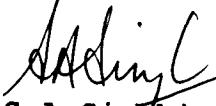
15. From the above, it is clear that respondents allowed respondent No.4 to continue beyond 31.3.2002 as Project Director (Maize) on grounds of continuity as the new policy was under discussion. However, respondent no.4 had also appeared in interview held against the Advt. No 1/2002 (15) and he was the only candidate recommended for appointment by the ARSB. He was then appointed w.e.f. 5.6.2003 for a second term ending on 31.8.2003 i.e. date of his superannuation. He superannuated in the normal course

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on 31.10.2003 and was re-employed. Re-employment is permitted vide rule 33(a).

16. In view of the above, we find no merit in the OA and it is accordingly dismissed. No costs.


(S.A. Singh)

Member (A)


(V.S. Aggarwal)
Chairman

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