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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1752/2004

NEW DELHI... 23rd DAY OF NOVEMBER 2004

HON'BLE SHRI KULDIP SINGH, VICE CHAIRMAN (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Dr. B S Dhillon, Director,
National Bureau of Plant Genetic Resources (NGPGR)
Pusa Campus, New Delhi -110052

.....Applicant

(By Shri V S R Krishna, Advocate)

VERSUS

Indian Council of Agricultural Research

Through

1. The Director General,
Indian Council of Agricultural Research,
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. The Secretary,
Agricultural Scientists Recruitment Board,
Krishi Anusandhan Bhawan, Pusa, New Delhi
5. The Deputy Secretary (P)
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi

(By Shri M N Krishnamani, Sr. Counsels with Shri V K Rao
and PK Arya, Advocates)

ORDER

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

The applicant, who is a Director in the National Bureau
of Plant Genetic Resources (NBPGR) with Indian Council of

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Agricultural Research (ICAR), is aggrieved by the impugned order dated 18.5.2004 of the respondents wherein they have not accepted the recommendations of the Agricultural Scientists Recruitment Board (ASRB) for the post of Dy. Director General (Crop Sciences) and asked ASRB to re-advertise the post, with same duties and qualifications mentioned in their letter dated 1.10.2003.

2. The case of the applicant is that he applied against the advertised post of Dy. Director General(Crop Sciences), and was selected for the post by ASRB after an interview. The ASRB forwarded their recommendations to the respondents but the selection was cancelled on extraneous considerations.

3. The applicant pleaded that he was called for interview and was selected by a high level selection committee as per norms, procedure and rules. This selection committee (apart from other members) included two ex-officio members namely DG, ICAR who is also Secretary (DARE) and Secretary (A&C). Both these ex - officio members attended the interview and participated in the selection proceedings till the end. However, finding that they were not in a position to influence the other members of the selection committee in selecting their preferred candidate walked out without signing the proceedings or appending a dissent note . However, they recommended through notings on the file, cancellation of the selection to the Agriculture Minister, claiming lack of

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transparency in the score card system. On the basis of the notings of these two ex - officio members the selection was cancelled through a non speaking order. The applicant further added that with a view to stalling the appointment of the applicant and justifying their actions the respondents constituted a committee for the purported purposes of refining the score card system of ASRB.

4. The applicant filed OA 1082/2004 against constituting the committee for changing the score card system after the selection process for the post of Dy. Director General (Crop Sciences) had been completed. The Tribunal passed interim direction dated 29.4.2004, staying the order. The matter was listed for hearing on 14.5.2004. The respondents becoming aware of the order passed by the Tribunal passed the present impugned order canceling the selection and directing the ASRB to re-advertise the post, with the same duties and qualifications.

5. The applicant also contended that after the interim orders dated 29.4.2004 were passed by the Tribunal against constitution of the committee, the respondents passed order dated 19.5.2004 for immediate reversion of the applicant to his parent department, as a measure of punishment, even though the appointment of the applicant was for a fixed tenure. This reversion was challenged by the applicant in OA No. 1258/2004 and the Tribunal vide order dated 2.6.2004 quashed the illegal repatriation order. The respondents having failed to get rid of

the applicant have now cancelled the entire selection process. The so called dissent notes were not recorded by the respondents at the time of interview but written outside the selection process and submitted to the Minister of Agriculture. At no time issues indicated in the noting on the file were raised during the selection proceeding. Their objections only arose after the selection was complete, when it became apparent, that their preferred candidate was not selected.

6. Respondent No. 1 & 2 claim to represent all the five respondents. However, respondent No. 3 and 4 contested this and were represented through their own counsel. Respondents 1 & 2 vehemently contested the pleas made by the applicant stating that the decision of the respondents for canceling the selection was proper as the same has been arrived at after taking into consideration the totality of the facts, including the note of dissent submitted by two ex officio members of the Selection Committee regarding lack of transparency, objectivity and fair play.

7. The respondents 1 & 2 also pleaded that the Tribunal can not interfere in appointments as this has to be left to the administration. In the present case the recommendations of the selection committee were not accepted by the competent authority and there is no illegality in re-advertising the post. The applicant is not precluded from applying again so there is no prejudice caused to him in the matter.

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8. The respondent No. 3 & 4 pleaded that they have honestly followed the score card system and there was no malafide in the selection. They stated that ASRB is following the duly approved, by competent authority, score card system for direct recruitment from Sr. Scientist level up to the DDG/National Director Level. The recruitment process carries 100 marks . 75 marks are set aside for the Score Card System and 25 marks for the interview. The information furnished by the candidates in the application form is screened by a committee which awards marks under the score card system, as per guidelines developed for this method . Different score cards have been developed by an expert Committee and approved by the President of ICAR Society for the different posts e.g. National Director / DDG / Directors of the Institute and Head/Principal Scientist and Sr. Scientists.

9. Respondent No. 3 pleaded that ASRB screening committee for awarding the marks under the score card system held its meeting for the post in question on 26/27.2.2004. All eligible candidates scoring the minimum qualifying marks were called for interview. 8 out of 12 qualified candidates (including the applicant) attended the interview held on 16.4.2004. According to the respondents all members of the selection committee (including Secretary A&C and DG, ICAR) interviewed all candidates and awarded marks. However, the two ex-officio members i.e. Secretary (A&C) and DG, ICAR, left the meeting without signing the

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proceedings or recording the dissent note. The remaining members of the Selection Committee signed the proceedings and as the quorum of six members was complete the recommendations were forwarded to Secretary ICAR vide letter dated 16.4.2004.

10. Respondent No. 4 also stated that score card system has done very well and the committee constituted by the President ICAR by order dated 20.4.2004 for reviewing the system was not constituted at the instance of the ASRB nor had the , Chairman ASRB nominated any member from the ASRB on the aforesaid committee as required under Rule 73 of the Rules & Bye laws of the ICAR Society. They added that the score card system was approved by the competent authority vide ICAR letter dated 12.6.2002 and was introduced vide letter dated 31.7.2003.

11. The respondents pointed out that at note No. 10(2) forming part of the procedure laid down in the guide lines for the score card system the score of the candidates should not be made available to the members of selection committee at the time of interview. However, the same will be made available to the members after interview is over for tabulation of the total marks and finalizing the selection. In view of this the score secured by the candidates in the score card were made available to the members of the selection committee after interviews were complete for purposes of tabulation.



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12. We have heard the learned counsel for the parties and have gone through the documents placed on records. We have also gone through the file No.-III "Recruitment to the post of DDG(CS), ICAR" and proceedings of selection committee made available to us by the respondents.

13. It is the contention of the respondents that the Tribunal cannot go into the question of the selection of individuals as that power is vested with the selection committee and the accepting authority. We are in agreement with the contention of the respondents that the Tribunal cannot substitute its judgment in place of the selection committee and accepting authority. However, when bias or extraneous considerations are alleged in the selection process than the Tribunal has to see that the selection was made under the relevant rules and that the selection process has not been influenced against the applicant on the basis of bias.

14. The basic facts are not contested. The applicant had applied for the post of DDG(CS) against an advertisement issued by the respondent on 27.12.2003. Eight candidates including the applicant were called for the interview by the ASRB on 16.4.2004. Respondent No. 1 and Secretary (Agriculture and Cooperation), Government of Indian along with six others were members of the selection committee. Both these members interviewed all the candidates and awarded interview marks. After completion of the interview respondent No. 1 and Secretary (Agriculture and Cooperation) walked out of the selection proceedings without signing the proceedings or recording dissent notes.

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15. Subsequently, DG, ICAR who is also Secretary (DARE) (Respondent No.1) and Secretary (A&C) recorded separate notes marked to the Agriculture Minister who is also President ICAR giving their reasons for walking out of selection committee meeting. The operative part of the notes recorded by DG, ICAR and Secretary (DARE) is as under:-.

- “2. At the outset, we were asked, by the Chairman to grade candidates out of 25 marks based on their performance in the Board. Once, interview as over of all the candidates who appeared, the Chairman took slips from each one of us, made some tabulation and mentioned the average marks obtained by candidates. When we requested to know the details, he did not agree to disclose them.
3. He did mention that the average of these 25 marks would be added to the marks, which the Screening Committee constituted by the Board have provided. Based on the total, Board would take suitable decision and would make recommendations.
4. At this point of time sit was brought to the kind attention of the Chairman that the Selection Committee had been duly constituted as per the ARS Rules approved by the cabinet and as per the stipulated ICAR Rules and Bye-laws, and as approved by the President ICAR and Minister for Agriculture. It is absolutely essential that it is the Selection Committee, which is to make recommendation to the President for his approval based on the merit of the scientist. At this point of time, the Chairman categorically said that we are only concerned with 25 marks and we cannot even discuss and assess what to talk of the score provided to different candidates by the screening committee out of 75 marks.
5. The whole selection process was not at all transparent and there was every scope of doubt at each stage of the selection process.

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The concern expressed in the past was also brought to his attention. However, this was of no effect. Under the circumstances, we thought the whole selection process was futile and as such, the undersigned and the Secretary, DARE came out of the Selection Committee meeting".

The Secretary (A&C) also recorded a note which reads as under:-

"2. After the interview of the candidates was over, we were requested by the Chairman, ASRB to make available to him the slips on which markings of the eight candidates were done, this being on an average of 25 marks set aside for interview. Upon completion of this process, we requested the Chairman, ASRB to make available to us the basis on which the tabulation of the marks for all these eight candidates had been made against the benchmark of 75, by an earlier screening committee appointed at will by Chairman, ASRB to assist him in the selection process, he refused to share this information with us. He insisted that the procedure of rating the candidates by the screening committee (appointed by him in a discretionary manner) was not discussable or disclose able. With such an attitude being adopted by the Chairman, ASRB in which everything appeared to have been done behind closed doors, and there being no rationale on the weightage prescribed for the candidates' merit, publications and years in service, we did not consider it fit to partake any further in the deliberations of the selection committee, and left the meeting without agreeing to put our signature on its proceedings".

3. The ASRB is an extremely important body of this Ministry and is required to make selection for very senior positions in the research and education system of ICAR. It is, therefore, imperative that we ensure that the best of our scientists do get a fair and just opportunity to be selected for the posts for which they have applied. The procedure which is presently being followed does not ensure such equity or fair-play and needs to be revised immediately.

16. The recommendations of the selection committee were not accepted by the Agriculture Minister (President ICAR Society) and the impugned order dated 18.5.2004 was addressed to controller of Examinations, ASRB, which reads as under:

"This has reference to your DO letter o. Scr/CE/ASRB/04/XI/RMP/14 dated 16.04.2004 forwarding the recommendations of the ASRB for the post of Deputy Director General (Crop Science) at ICAR HQrs. The same was submitted to Hon'ble Agriculture Minister and President ICAR Society for approval.

The President ICAR has not accepted the recommendations of the ASRB for this post.

Accordingly , the post of DDG(CS) may be re-advertised with same duties and qualifications as mentioned in our letter No.2(4)/96-Per.III dated 01.10.2003."

17. The questions before the Tribunal are whether the Chairman of the selection committee followed the correct procedure and were there any extrenuous considerations, as alleged by the applicant, for setting aside the recommendations of the ASRB.

18. We first take up the question of procedure followed by the Chairman of selection committee. Respondents No.3 and 4 have placed before us the procedure to be followed in the interview and personality test and is reproduced below:

"10. Interview/Personality Test:

Knowledge of the candidate in the concerned and related field has to be evaluated. Power of expression, team working, leadership quality and overall smartness of the candidate has to be assessed at the time of interview to know his/her personality.

Note: I) any scientist getting of 60% and above (1-8 above) marks out of 75 marks (25 marks are for

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interview) will be eligible to be called for interview.

ii) The score of the candidate should not be made available to the members of the selection committee at the time of interview. However, the same will be made available to them after the interviews are over to tabulate the total marks and to finalise the recommendations for the selection".

19. From the above, it is clear that the any Scientist getting 60% out of 75 marks in the score cards is eligible to be called for interview and the marks obtained in the score card are not to be made available to the members of selection committee at the time of interview. These marks are made known after the interview for arriving at the total marks. This procedure has been approved by the Agriculture Minister as President of ICAR and communicated to the Chairman ASRB vide letter dated 31.7.2003. The scoring of the score card is by a committee, as per special guidelines. In the case of the applicant, the screening committee awarded the marks in its meeting held on 26 and 27.2.2004. These marks were then added to the interview marks and a select list drawn up. The Chairman of the selection committee thus followed the system approved by the President ICAR and as the quorum of six was complete forwarded the recommendations of the selection committee to the President on 16.4.2004. The Respondents 1 and 2 have not been able to place on record or show rules or bye laws that have been violated by the Chairman, and or selection committee. We therefore, find no infirmity in the process followed by the Chairman of the Selection Committee.

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20. We now take up the question of the reasons for rejection of the recommendations of the ASRB. We have had the benefit of the relevant file (made available to us by the respondents) and the reasons recorded for rejecting the recommendations of the Selection Committee by the Agriculture Member (President of ICAR) in his note dated 9th May 2004 and they are as under:

"I have gone through the note on page 10-11/n and other facts available on the file. I have also perused the dissent notes separately submitted by Secretary (Agriculture & Cooperation) and Secretary (DARE) & DG ICAR regarding the lack of transparency, lack of impartiality and fair play, and lack of objectivity in the selection process. Both of them have also recommended that the selection process system be improved to make it merit oriented, objective and impartial. On perusal of the recommendation submitted by the ASRB, it is clear that the recommendation has not been signed by 2 members of the interview board i.e. Director General, ICAR and Secretary (A&C) who by virtue of being ex-officio members of the interview board are bound to be represented on the interview board (other members are to be nominated by the ASRB itself) and whose concurrence for the selection becomes most important.

The Director General, ICAR has also adversely commented upon the constitution of interview board by the ASRB by nominating relatively junior members on the board. In the circumstances, the recommendation of ASRB for selection to the post of DDG (CS) lacks transparency and may not reflect the selection of the best available candidate. Therefore, I am compelled to reject the recommendation of the ASRB. The selection process to the post of DDG (CS) may begin afresh by re-advertising post". (emphasis supplied).

21. From the above it is apparent that the President ICAR has set aside the recommendations of the ASRB by considering the notes recorded, separately, by Secretary (A&C) and Secretary

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(DARE) as `dissent notes even though they do not form the part of the selection proceedings forwarded by the ASRB.

22.. In the case of A K Doshi Vs Union of India JT 2001(3) SC 367 it has been held:

“All materials, which are relevant are to be placed before the Selection Committee. It is the Selection Committee which makes the selection on the basis of relevant materials. After the Selection Committee completes the exercise and recommends one or more names for appointment, the recommendation along with the materials considered by the Selection Committee should be placed before the Appointments Committee without any further addition or alteration. The notings made by the Secretary to the Appointments Committee in the file, as noted earlier, was an attempt to interfere with the process of selection, which was neither permissible under the Rules nor desirable otherwise. By indulging in such unhealthy process, the sanctity of the selection by the Selection Committee was attempted to be set at naught.”

23. In view of A.K. Doshi Vs UOI (supra) a note has to form part of the selection proceeding to be taken into consideration by the accepting authority,. In the present case the two ex. Officio members of the selection committee chose not to record their views as part of the proceedings but as separate notings on file. These notings cannot be taken into consideration as they were not available to the Chairman and other members of the committee to comment upon or give their views. They are additions to the proceedings, as such, they can not be considered to be dissent notes.

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24. We, therefore, have no hesitation in quashing the impugned order dated 18.5.2004 and direct the respondents to place before the President ICAR the recommendations of the selection committee as forwarded by ASRB vide their letter 16.4.2004 for taking a fresh view. The notes recorded by Secretary (A&C) and Secretary (DARE) or any other functionary should be ignored as they cannot be considered to be part of the selection proceedings. The file containing the recommendations of ASRB to be submitted to the President ASRB should not have notings of Secretary (A&C) and Secretary (DARE) or any other functionary.

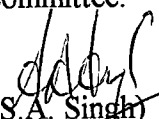
25. We strongly feel that the two ex. Officio members of the selection committee, through their notings, have made an unwarranted interference in the independence of ASRB. This independence is assured by bye law 26(a) of the ICAR Society, relevant portion reads as below:


“26 (a) The Recruitment Board shall function as an independent recruiting agency and shall be responsible for recruitment to posts in the Agricultural Research Service and to such other posts and services as may be specified by the President from time to time.”

26. We are dismayed that the two ex. Officio members of the selection committee of the rank of Secretary to Govt. of India did not record their views as part of the selection proceedings but preferred to walk out and then proceed to have the recommendations of the ASRB rejected by recording separate notes on the file. We impose a cost of

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Rs. 10,000/- on the respondents which is recoverable from
the two aforesaid ex. Officio members of the selection
committee.


(S.A. Singh)
Member (A)


(Kuldip Singh)
Vice Chairman(J)

Patwal/