

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA 670/2004

New Delhi, this the 12 day of April, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Dr. V.T. Prabhakaran,
S/o late Shri T. Sankara Menon,
Working as Principal Scientist
Indian Agricultural Statistics Research Institute,
New Delhi – 110 012.
(By Advocate : Shri B.P. Singh along with applicant
in person)

...Applicant

Versus

1. The Union of India
Through the Secretary,
Department of Agricultural Research & Education
Krishi Bhawan, New Delhi – 110 001.
2. The Indian Council of Agricultural Research
Through its Secretary,
Krishi Bhavan, New Delhi – 110 001.
3. The President, ICAR & Minister of Agriculture,
Krishi Bhavan, New Delhi – 110 001.
4. Dr. S.D. Sharma, currently, Director
Indian Agricultural Statistics Research Institute,
New Delhi – 110 012.

... Respondents

(By Advocate : Shri V.K. Rao along with Sh. Satish Kumar)

ORDER

By Hon'ble Shri S.K. Malhotra, Member (A) :

The applicant by filing this OA has prayed that the orders dated 8.8.2003 (Annexure-I) and 25.8.2004 (Annexure-V) by which Director, Indian Agricultural Statistics Research Institute (IASRI), New Delhi has been allowed to continue in its post and thereafter renewing his tenure of appointment w.e.f. 13.8.2003 to 12.8.2008 be quashed and set aside. It has also been prayed that the respondents be directed to follow the consolidated instructions on making interim arrangements during the absence of Director in appointing a Director on adhoc basis till regular appointment is made.

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2. The facts of the case in brief are that the applicant joined the ICAR in 1969 and was appointed by direct selection to the post of Principal Scientist at IASRI w.e.f. 9.5.1996. In compliance to the order dated 8.4.2004 passed by this Tribunal in OA 2364/2001, he was appointed as adhoc Head of Biometrics Division w.e.f. 6.4.2002. It has been stated that in various ICAR institutes, the post of Directors is filled by direct recruitment and appointment is made on tenure basis for five years. Following this procedure Dr. S.D. Sharma was appointed as Director w.e.f. 13.8.1998 for the period of 5 years (Annexure-2). According to him as per existing ICAR Rules, there is no provision for allowing the incumbent to continue beyond the stipulated period of 5 years from the date of appointment. As per consolidated instructions on making interim arrangements during the absence of Director, the senior-most among the Joint Directors and Project Directors should hold the charge in the absence of Director and if the Joint Director is not in position, the senior-most among the heads of division and project coordinators should hold the charge of the post of Director. The ICAR in violation of ICAR's Rules vide order dated 8.8.2003 allowed the incumbent to continue as Director until further orders. Against this illegal action, the applicant represented to the President, ICAR but no reply was received. He, therefore, filed the present OA. Later vide another order dated 25.8.2004, Dr. S.D. Sharma has been appointed for the second tenure of five years w.e.f. 13.8.2003. According to the applicant this action on the part of ICAR is unjust and arbitrary.

3. It has further been stated that the post of Director, IASRI was advertised vide advertisement dated 14.6.2003. The interview for the post was to be held on 18.12.2003 but two days before this interview, a charge-sheet was issued to the applicant which matter is separately under consideration of this Tribunal. Simultaneously the interview was postponed and the post was re-advertised in January, 2004. The applicant was ordered by this Tribunal to be interviewed for the above post. Later the interview for this post was cancelled and requisition for filling up the above post was also withdrawn. It has been contended that the postponement and later cancellation of interview was done in order to benefit Dr.

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S.D. Sharma by giving him the second tenure of five years. This benefit was not available to him as per tenure renewal rules. According to him, Dr. Sharma was not even eligible for being considered for the post of Director, IASRI according to the score card system introduced by Agricultural Scientists Recruitment Board (ASRB) for screening/short-listing of candidates. Besides the above, his case for the second tenure should not have been considered in terms of ICAR Rules which stipulates that renewal of tenure cases are required to be processed immediately on completion of four years of tenure. Thus both the orders dated 8.8.2003 and 25.8.2004 have been issued in contravention of the tenure renewal rules and are, therefore, liable to be set aside.

4. The respondents have filed the counter reply in which they have stated that the departmental proceedings are continuing against the applicant. On this count itself the applicant cannot be considered for the post of Director, IASRI. Secondly, he is not even in the zone of consideration. As per consolidated instructions, Joint Director is to be given temporary charge of the post of Director, whereas the applicant is not a Joint Director.

5. In so far as the appointment of Dr. S.D. Sharma as Director is concerned, he was appointed as Director, IASRI, New Delhi on tenure basis for a period of five years w.e.f. 13.8.1998 to 12.8.2003. Before completion of his tenure, ICAR has forwarded a requisition to ASRB for filling up this post on regular basis. In the meanwhile Hemandra Kumar Committee was set up to review the functioning of ICAR. The said committee proposed only a single tenure for the post of Director. Pending final decision on these recommendations, the mechanism of tenure renewal was temporarily kept in abeyance. On 8.8.2003, Dr. S.D. Sharma was instructed to continue as Director until further orders. In the meanwhile, as per decision taken on the recommendations of Hemandra Kumar Committee, the earlier provision of the tenure renewal was restored. As a result the formal requisition sent to ASRB for filling up the post was withdrawn. As the incumbents were entitled for consideration for the second term, the Tenure Renewal Committee in its meeting held on 24.8.2004, considered the proposal of

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extension of tenure of Dr. S.D. Sharma and approved another tenure of five years i.e. from 13.8.2003 to 12.8.2008. An order to this effect was issued on 25.8.2004 with the approval of the President, ICAR Society who is the competent authority in this case. Thus this order can neither be considered as arbitrary or unjust nor there has been any violation of consolidated instructions/guidelines.

6. The main emphasis of the Ld. Counsel for the applicant during the course of arguments was that the extension of the tenure of Dr. Sharma after 5 years and that too with retrospective effect, was totally against any rule and guidelines and as such it is illegal and deserve to be set aside. In support of his contention, he referred to Rule 21 of ARS rules regarding Tenurial appointment, in which it is clearly mentioned that any member of the service appointed on tenure basis, after completion of the tenure will return to matching position in research work. He further stated that the respondents had in fact no intention to renew his tenure as is evident from the fact that they had requested ASRB to go ahead with the selection of a new incumbent for which even interview had been fixed. But later with an ulterior motive, the interview was cancelled and Dr. Sharma was allowed to continue as Director after the expiry of 5 years of his tenure and later extension for a further spell of 5 years was granted to him with retrospective effect. The action of the respondents was malafide, which is supported by the fact that Dr. Sharma had not applied for the post which was advertised and for which interview had been fixed earlier. All this seems to have been done with a view to allow undue benefit to Dr. Sharma. In support of his contention, a judgement of the Hon'ble Supreme Court in case of State of Assam and others Vs Padma Ram Borah AIR 1965 Supreme Court 473 was also cited in which case it was held that the order for extension of service made on the date when Govt. servant had ceased to be in service, was nullity.

7. After hearing the rival contentions of both the sides, we are not convinced that there is no provision in the rules for extension of the tenure of Director. In this connection attention is invited to chapter 8 of the rules regarding appointments of tenurial basis (Annexure-X). It is clearly mentioned that the

Research Management position namely Directors of Institutes are filled on tenure basis initially for a period of 5 years with a provision for extension to a maximum period of another 5 years. However the process of renewal of tenure is required to be initiated immediately on completion of 4 years of tenure. It must be appreciated that these are the guidelines and cannot be considered mandatory provisions, enforceable in the court of law. The intention of these guidelines is that normally if the tenure of an incumbent is to be renewed, the process for renewal should be initiated well in advance so that a decision is taken before the expiry of his tenure of 5 years. In the present case, initially a decision was taken by ICAR to make a fresh selection for which a requisition was sent to ASRB in November, 2002 itself, although the tenure of Dr. Sharma was upto August, 2003. However in the meantime, Hemandra Kumar Committee report on the functioning of ICAR had been received in which a single tenure for the post of Director was recommended. Pending final decision on the report, the process of tenure renewal was temporarily kept in abeyance. Dr. Sharma was, therefore, allowed to continue as Director until further orders. As far as the order by which Dr. Sharma was allowed to officiate cannot be challenged by applicant because he was not even in the zone of consideration. As per the instructions relied upon by the applicant himself, temporary charge should have been given to a Joint Director and applicant is admittedly not a Joint Director, therefore, he cannot even have any grievance nor can he say that any of his rights has been violated. Even otherwise perusal of the instructions relied upon by the applicant show that they are not even relevant because officiation on adhoc basis is by way of stop gap arrangement which can always be restored to in view of administrative exigency. Therefore, applicant has not been able to make any good ground to quash the order dated 18.8.2003.


8. As far as the renewal is concerned, it is seen that the recommendation made by Hemandra Kumar Committee regarding a single tenure was not found justified in the interest of continuity of scientific contribution to the system, and was rejected by the competent authority and the second tenure policy was

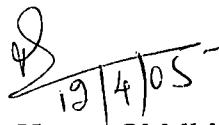
allowed to be continued. As a result, the requisition sent to ASRB was withdrawn and Tenure Renewal Committee, the competent body in its meeting held on 24.8.2004 considered the proposal for extension of the tenure of Dr. Sharma and granted him extension for another period of 5 years w.e.f. the date of expiry of his first tenure from 13.8.2003 to 12.8.2008. Since Dr. Sharma had been continuing as Director since 13.8.2003, the renewal was given from the said date with retrospective effect.

9. It must be understood that the guidelines framed by the organizations are meant for smooth functioning of the Institutes. These are not enforceable in the court of law. In the peculiar facts and circumstances of the instant case, the process of appointment of a new incumbent and renewal had to be installed and kept in abeyance due to Hemandra Kumar Committee's recommendation for a single tenure on which decision was yet to be taken. After the competent authority had taken a view that this recommendation was not to be accepted, the tenure renewal policy was allowed to be continued. The Tenure Renewal Committee considered the case of Dr. Sharma and many others and extended their tenure for another 5 years. While, it is a fact that for renewal, the process should be initiated a year in advance, as provided for in the guidelines but in all cases, it may not be practicable to do so as happened in the instant case due to certain developments having taken place in the meantime. However, that alone cannot make the extension of tenure illegal. The renewal of extension in the case of Dr. Sharma was recommended by Tenure Renewal Committee and approved by the competent authority, therefore, by no stretch of imagination it can be termed as illegal or in violation of rules. Therefore, rules do provide for another extension, as explained above. We do not, therefore, find any justifiable ground to intervene in the matter. The facts and circumstances of the case cited in the judgement in case of Padma Ram Borah (supra) are entirely different and cannot be made applicable in the present case, as Dr. Sharma had not ceased to be a Govt. employee when the order for extension was passed. No benefit of that judgement can be derived by the applicants

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10. As a result of the above discussions, the OA is considered to be without any merit and the same is accordingly dismissed, without any order as to costs.


(S.K. Malhotra)
Member (A)


(Mrs. Meera Chhibber)
Member (J)

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