

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 1582/1993

New Delhi this the 23rd Day of September, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. SINGH, Member (A)

1. Dr. Jitendra Verma,
Son of Shri B.K. Verma,
R/o 109/4, IVRI Hostel,
Izatnagar
2. Shri Pankaj Kumar Shukla,
Son of Shri R.P. Shukla,
100 Krishnapuri,
Mathura.
3. Dr. Susanta Kumar Panda,
S/o Shri Gopi Nath Panda,
Resident of Mirzapur,
P.O. Madhuban Hat,
Via Kabirpur,
Distt. Cuttack, Orissa-243122 ... Applicants

(By Advocate: Shri S.S. Tiwari

Vs.

Union of India

1. Through Director General,
Indian Council of Agricultural
Research, Krishi Bhawan,
New Delhi.
2. Director (P)
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
3. Secretary,
Agricultural Scientists Recruitment
Board, Krishi Anusandhan Bhawan,
Pusa, New Delhi. ... Respondents

(By Advocate: Shri V.K. Rao, proxy for
Shri A.K. Sikri)

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

Pursuant to the advertisement issued
by the Agricultural Scientists Recruitment Board
(ASRB), the applicants applied for the posts of
Scientists in Poultry Science Discipline in the

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Agricultural Research Services. A combined examination was held in December 1991. When the results of the examination were being compiled the Indian Council of Agricultural Research Institute informed ASRB that no vacancy exist in the Poultry Science Discipline and no person was selected as Scientist in the Poultry Science Discipline. The grievance of the applicants is that they had appeared in the written examination from Jabalpur Centre and Applicant No. 3 appeared from the Delhi Centre and their interview was held in Delhi on 13.7.1992. The result of that examination was declared in the Employment News dated 23.1.1993. The applicants found their names missing from the said list of successful candidates and for the ARS examination it was written under Poultry Science 'None qualified'. However, the name did appear in the National Eligibility Test. The applicants made representation. In spite of the facts that the applicants have got high marks, - Applicant No. 1 487, Applicant No. 2 456 and Applicant No. 3 456 respectively out of 700 but they were not given appointment though some of the selected candidates were sent for training to Hyderabad in different batches. It is the case of the applicants that who secured only 406 marks have been selected. The first batch of trainees was sent in April 1993 followed by other batches in May and July 1993 respectively. and some of the more selected candidates are going for training.

2. In the light of the above, the applicants have prayed in this application filed in July 1993

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for grant of the following reliefs:

- a) The respondents be directed to declare the reasons as to why the applicants have not been selected;
- b) direct the respondents to give the same treatment to the applicants as has been done to those persons who had secured less marks then the applicants and declare the applicants as selected on the basis of marks obtained.

3. The respondents in their reply have stated that after the said examination had been conducted in December 1991, the ICARⁱⁿformed ASRB that no vacancy exists in the Poultry Science Discipline. In view of this no person was selected as Scientist in the Poultry Science Discipline. As regards the National Eligibility Test for Recruitment of Lecturers and Assistant Professors for the State Agricultural Universities, the applicants obtained the minimum qualifying marks fixed by the Board for acquiring NET and therefore their names was duly shown in the list circulated by the Board to all the Agricultural Universities in the country. Thus, the applicants could not be selected because there were no vacancy in the Poultry Science Discipline. The names have already been sent to all the States Agricultural Universities for future recruitments.

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The word "None Qualified" in the Poultry Science Discipline have been used as per the practice, there are only two terminologies which are used by the Respondent No. 1 "Qualified" and No. 2 "Not Qualified". Since there was no vacancy, the respondents have mentioned the word "None Qualified". This should not be taken to mean that there were posts available in the discipline and "None Qualified". Thus, the respondents have clearly stated that the applicants have no case.

4. The applicants have also filed the rejoinder reiterating the same facts as averred in the Original Application. It is further stated that the time when the advertisement was made the ASRB has shown the vacancies and in the subsequent examination also of 1992 there is a vacancy in Poultry Science Discipline and there are about 23 vacancies in Poultry Science Discipline in Central Avian Research Institute, Izatnagar, Brailley, Uttar Pradesh.

5. Heard the learned counsel of the parties at length and perused the record. The Bench in order to arrive at a just decision directed the respondents to intimate regarding the vacancies existing in that particular year in Poultry Science Discipline. In spite of the repeated opportunities, the respondents have not furnished the details and only confined to the fact that they should not get any detail in that respect from the concerned department.

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Shri V.K. Rao appearing for the respondents stated at the Bar at the time of hearing that if the vacancies were available in the year of examination then the respondents will consider the case of the applicants as per their merit.

6. However, we have considered the case on the legal position as on the day. Merely taking an examination, qualifying in the same could not by itself entitle a person to be appointed to a post. The Counsel for the applicant, however, has referred to the case of Prem Parkash reported in AIR 1984 SC P 1082 where the Hon'ble Supreme Court has considered a matter of posting of successful candidates and observed that if a candidate has qualified and comes within the zone of merit in the declared number of vacancies, he should not be refused appointment arbitrarily. The issue in this case is that before the result of the examination was compiled ICAR has informed ASRB, the Recruitment Body, that there are no vacancy in Poultry Science Discipline. In fact the ASRB should not have entered into further processing of the result of the Poultry Science Discipline. However, since it was a combined competitive examination for NET as well as for appointment to certain posts in the other disciplines of ICAR, the result was declared of NET but as regards the final result of the Poultry Science Discipline the name of the applicants did not figure and there was note that "None Qualified". The respondents have clarified this in their reply that due to the

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practice prevalent as a precedent, they only declared the pass candidates as qualified and if there are no appointments to be made for want of vacancies as none qualified. The applicants counsel only referred to the meaning of the ordinary meaning of the words but did not file any documents to show either from their possession or by summoning the same from the respondents that the practice stated by the respondents is not prevalent.

7. In a recent decision of the State of Bihar and ors. Vs. Secretariat Assistant Successful Examinees Union 1986 and ors. reported in 1994(26) ATC P 500, the Hon'ble Supreme Court has laid down that even after the declaration of the result the successful candidates cannot claim his appointment to the post unless an offer of appointment is made by the respondents. Though in that case a number of vacancies were advertised but there was a delay in declaring the result of the examination about seven years. Those who were higher in the merit were allowed to be given appointment for the vacancies extant in the year of examination and for the rest no direction was made but they were given a right to take the ensuing examination and the authorities were directed to give relaxation in age. The point was also considered in the case of Jai Singh Dalal Vs. State of Haryana reported in 1993(24) ATC 788. A candidate who has taken the examination and has also undergone the recruitment process, has no vested right to compel the Government for giving an appointment

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but the Government may be required to justify its decision as being not arbitrary. The point has also been considered in the case of U.P. Bhooni Sudhar Nigam Ltd., vs. Shiv Narain Gupta, Judgement Today 1994(4) SC P 374. In that case also two candidates qualified but there was one post. The person who was at serial No. 1 in the merit did not join, so Shiv Narain Gupta, the next selected candidate placed his claim which was accepted by the Allahabad High Court. The Department went in Appeal before the Hon'ble Supreme Court and the judgement was set aside held that the respondents was Shiv Narain Gupta has no vested right for appointment to the post.

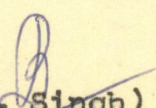
8. In view of the above position of law, we do not find that the respondents have taken a reasonable stand that there were no vacancies in the Poultry Science Discipline for which the combined examination was held in the year 1991. None has been appointed to the post of Poultry Science Discipline. The applicants, therefore, cannot have any grievance on that account. Merely, securing certain marks both in written and interview do not give any rightful claim for appointment to a post. The learned counsel for the respondents have referred to the case of Shankar Dass vs. Union of India reported in AIR 1991 SC P 1612. In that case also in spite of a vacancy being available the person next in the merit was not given an appointment and the claim of Shankar Dass was not favourably accepted and

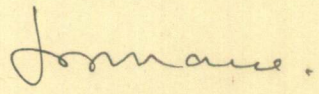
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the Writ Petition was dismissed. The action of the respondents is not arbitrary or in any way malafide. ICAR is a Registered Body and it feeds Agricultural Universities and other Research Institute by appointing capable meritorious persons who have come out successfully in the selection. It is not in every case possible by ICAR to adjust all the qualified candidates if ultimately it is found that the vacancies are not available for appointment. The vacancies should be of a paritcular year of examination. It is not that the candidates who secure even better marks in an examination by virtue of their merit, they should be appointed in the vacancies arising subsequent to the year of examination as that would be unjust as well as unequitable. The claim of those who could appear in the vacancies of the subsequent years would not be considered though they are eligible to apply and take the examination for the vacancies for that subsequent year.

9. However, in view of the statement of Shri V.K. Rao appearing on behalf of the respondents still it shall be open to the respondents to find out any vacancy in the Poultry Science Discipline in the year of examination 1991 must be existing at that time and declare the result of the applicants and after that consider their cases of appointment according to rules. The application, therefore, disposed of accordingly.

No order as to costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)