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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2416/93

New Delhi, this the 19th day of August 1994

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

Hon'ble Shri S.R. Adige, Member (A)

1. Agricultural Research Service
Scientists' Forum
Through its
Secretary of the Delhi Unit

Dr. Deo Pal, working as Senior
Scientist, Division of Soil Science
and Agricultural Chemistry,
Indian Agricultural Research Instt.,
New Delhi.

2. Dr. R.P. Singh,
Principal Scientist,
Division of AG Extension,
I.A.R.I., New Delhi.

(Sh. B.B. RAVAL, Advocate)

..... Applicants

Vs.

1. Union of India
Through the Secretary
Department of Agricultural
Research & Education,
Ministry of Agriculture,
Krishi Bhavan,
Dr. Rajinder Prasad Road,
New Delhi.

2. Indian Council of Agricultural Research
through its Secretary
Krishi Bhavan,
Dr. Rajinder Prasad Road,
New Delhi.

..... Respondents

(Shri V.K. Rao, Advocate)

O R D E R

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

The Applicant No.1 is a registered society
and filed the present application in the representative voice
capacity. The Applicant No.1 has been authorised to raise the
grievances of its Members and therefore filed this application

against the order dated 12.2.91 (Annexure 'A'), dated 2.6.92 (Annexure 'B') and April, 1993 (Annexure 'C'). Annexure 'A' is a letter written by Director(P), ICAR to Director, IARI whereby in supersession of the existing procedure the position of Head of Division should be filled up by direct recruitment at the level of Principal Scientist. As the Head of Division is a functional designation, one of the existing posts of Principal Scientist in the Division should be designated as Head of Division. The qualifications for this position would be the same as prescribed for the Principal Scientist's post. Annexure 'B' is a letter from Director(P) to the Director, IARI in continuation of the earlier D.O. dated 12.2.91 enclosing the guidelines formulated in that regard. The guidelines for appointment of Head of Divisions are reproduced below:

1. The position will be filled up by selection through the ASRB on a tenure of 5 years, in the pay scale of 4500-7300.
2. The field of selection will be open to the Principal Scientists and Professors (or equivalent), in the relevant discipline. The existing incumbent will also be eligible to apply for the re-advertised post of Head of Division to take chance with others for a fresh tenure of 5 years.
3. Action for recruitment will normally be initiated one year before the date on which the vacancy is likely to arise.
4. On completion of the tenure, the incumbent may be posted anywhere in the ICAR, as Principal Scientist, depending upon the requirement and availability of a vacancy. Where, however, an individual has joined service from outside the ICAR system and holds a lien

on his original post or service in the Parent organisation and does not want to get absorbed in the ICAR service, his services will be placed back at the disposal of his Parent organisation.

5. While efforts should be made to complete the selection of a successor well in advance, if for any reasons, selection of a successor is not finalised in time, an interim arrangement as indicated below can be made by the Director of the Institute:-

(a) If the old incumbent is still in service, he may be allowed to continue for a period not exceeding six months.

(b) If the old incumbent is not available or is not interested in continuing further or is considered unfit or ineligible for further retention for reasons to be recorded, the senior-most Principal Scientist in the discipline, whether in the same Division or in any other Division of the Institute, may be appointed. The date of appointment to the post of Principal Scientist or in an equivalent grade in ICAR will be the criterion for determine the seniority in that grade. If however, there are more than one Principal Scientist with the same date of appointment, the one older in age would be considered to be the senior-most Principal Scientist in that Division.

(c) If the senior-most Principal Scientist is unwilling or is not found fit for reasons to be recorded, the next senior-most Principal Scientist identified by the same principles, would be considered.

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6. The model qualifications for the Head will be similar to those prescribed for the post of Project Coordinator.

7. A Unit can be classified as a Division if (a) it has at least 10 scientists in position, and (b) it has at least one post of Principal Scientist either on the original sanctioned strength or through re-deployment. If these conditions are not satisfied, the Unit should form part or some other Division. The concept of Divisions is not to be applied to the National Research Centres.

8. The above procedure of selection would also apply to the appointment of Heads of Regional Stations of the Institutes.

9. The incumbent will not be permitted to join or apply for another equivalent position within ICAR or outside, during the first four year of his tenure."

2. In pursuance to the above decision Agricultural Scientists Recruitment Board (ASRB) issued an advertisement No. 2/93 to fill up the post of Head of Division noted at S.No.11 to 26 of the said advertisement.

3. The applicant Prayed for grant of the following reliefs:

- i) To quash the impugned Annexures 'A', 'B' and 'C' being violative of the policy decision dated 13th October, 1988 and, therefore, ultravires the rules.
- ii) Consequent to relief at (i) being granted, direct the Respondents to fill up the posts of Heads of the Divisions from the rank of Principal Scientists, who have to be recruited laterally in any case by rotation as was the Practice adopted by the

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recommendations of the GAJENDRAGADKAR COMMITTEE and which was functioning quite satisfactorily till the issue of the 12th February, 1991 letter.

- iii) To quash the orders making stop-gap arrangement to fill up the posts of the Heads of the Divisions, which are issued in contravention of the policy decision dated 13th October, 1988 as Per Annexure 'A' and 'B'.
- iv) Award exemplary cost for this application with a further request to Pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit in the light of the facts and circumstances of the case.

3. The Respondents in their reply contested the application and opposed the grant of reliefs Prayed for. It is stated that the grievance of the applicant relates to the appointment of Heads of Division (H.O.D.) which was earlier on rotational basis and it has now been decided that the position of H.O.D. should be filled up by direct recruitment on tenure basis for 5 years renewable for another tenure of 5 years subject to incumbents interest and effective performance. The Governing Body of ICAR, which is an autonomous body is empowered to frame the rules and regulations including the service conditions for its employees. Decision was taken up by the Governing Body with the approval of the President, ICAR to fill up the positions of HOD. The employee has no right to demand that a Particular position should be filled up on a Particular basis only. As the rotational system has been changed.

by direct recruitment on the basis of the recommendation of G.V.K. Rao Committee who suggested the appointment to the HOD to be made on tenure basis and the system of rotational basis be dispensed with. It is a policy decision of the ICAR which Governing Body was competent to take. The impugned letter dated 12.2.91 itself shows that the decision is based on the recommendations of the ICAR Review Committee contained in Chapter VII, sub Para 7.2.3 observing that the HOD should not be only Leader in his discipline but also a Scientist who contribute to manage the research division for achieving the excellence of the Division and there is a clear responsibility on him to build the Division to a higher level. The Governing Body has also decided that the qualifications for HOD position would be same as for the Principal Scientist post in the model qualifications already circulated by the ICAR. The Govt. of India, Ministry of Finance (Department of Expenditure) Note dated 13.10.88 approves the implementation of the U.G.C. Pay scale for the Scientists of ICAR. The same is reproduced below:

"The question regarding revision of scales of Pay of I.C.A.R. Scientists has been under consideration of the Department of Agricultural Research and Education in consultation with the Ministry of Finance, with reference to the recommendations of Dr.M.V. Rao Committee and subsequently Prof. Menon Committee. After detailed examination of the Proposals, it has now been decided that the U.G.C. Package may be extended to ICAR Scientists engaged "in teaching, research and extension". Further, the U.G.C. Package will have to be applied without any alteration viz. the recruitment qualifications, Promotion policy and appointments at various levels on All India

Competition basis, etc., etc. The Department of Agricultural Research and Education are requested now to work out the details for implementation of this decision viz. how the existing scientists would be placed in U.G.C. scales of Pay strictly with reference to U.G.C. Pattern and refer the Proposal to this Ministry for concurrence."

4. A Perusal of the above Note will show that the U.G.C. Pay Package to be adopted without any alteration i.e. in the matter of recruitment, qualifications, promotion policy and appointment at various levels on All India Competition basis etc. Further, Ministry of Finance advised the DARE/ICAR to work out the details for implementation of this decision namely how the existing Scientists would be placed in the UGC scales of Pay strictly with reference to UGC Pattern and thereafter the Proposal to be referred to the Ministry for concurrence.

It is therefore stated that the minor changes brought in respect of process of recruitment against the position of HOD in respondent Institutes cannot be said to be unjustified. The applicant has therefore no case.

5. We have heard the learned counsel for both parties at length and perused the record. During the course of hearing a copy of the letter dated 2.5.94 has been filed wherein it is stated that the vacancies of Senior Scientists and Principal Scientists remaining unfilled as a result of refixation of cadre strength will be filled by redeployment and that only such vacancies of Senior Scientists and Principal Scientists will be filled by direct recruitment which cannot be filled by re-deployment.

It has also been stated that pending final decision about reviewing the procedure regarding filling up of posts of HOD/Head of Regional Stations at the Institutes, requisition for the post of Senior Scientists/Principal Scientists/Head of Division/Head of Regional Stations should not be sent to the A.S.R.B.

6. In view of the above it is clear that the appointment of HOD on tenure basis is only in the meantime restricted on the basis of Advertisement No.2/93. A further requisition shall not be sent to A.S.R.B. by the Research Institute/Centres under ICAR. The Respondents themselves as a result of implementation of U.G.C. Pay Package with effect from 1.1.86 and there being excess number of Senior Scientists and Principal Scientists under the ICAR with reference to sanctioned strength, filling up of vacancies by direct recruitment would lead to further excess in the number of Senior Scientists and Principal Scientists in position apart from other repercussions have entered into review of the procedure of filling up of the posts of HOD/Head of Regional Stations at the Institutes. The present application has been filed by the Respondents in June 1993 after the advertisement had already been issued in pursuance of the directions of Director dated 12.2.1991 issued to Director, IARI.

7. The first contention of the learned counsel for the applicant is that under the Rules ICAR is a registered Society and runs under the control of Central Government whose direction it is duty bound to carry out. In this connection, the learned counsel has referred to

Rule 16 of the Rules and Bye Laws of the Society which lays down that

"The Society shall have, subject to such restrictions as the Government of India may impose and subject to such guidelines as the Government of India may issue from time to time in this behalf, full authority to perform all acts and issue such directions as may be considered necessary.....".

Attention has also been drawn to rule 22 which also empowers decisions to be taken by the President, Vice-President and by the Governing Body will be subject to the order that may Pass by the Govt. of India. Reference has also been made to rule 38 wherein the financial powers of the Society confer on it or likely to be conferred under any statute will be subject nevertheless in respect of expenditure of such limitations as the Government of India from time to time may impose. On the basis of the above references, the learned counsel has Pressed that the Governing Body has to work under the directions and guidelines issued by the Central Government. However, under clause 9 of sub rule (b) of rule 38 the Governing Body has been given the power for laying down the principles for encadrement of the cadres for maintaining high standard of efficiency. Under clause 4 of sub rule (b) of rule 38, the Governing Body has been given powers to determine the condition of service of the employee of the council and under sub clause 6 can Prescribe the cadre strength of scientists for the Council as a whole with the appointment for individual or group of disciplines for each Institute for a period of five years at a time. This goes to show that ICAR is an autonomous body and that the Governing Body takes decision in the interest of the Society subject to overall supervision of the Central

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Government and also not overlooking or violating the directions, if any, of the Government of India. The contention of the learned counsel that the letter issued by Director(P) to Director, IARI is beyond the authority cannot be accepted. In fact as argued by the learned counsel for the Respondents it was G.V.K. Rao Committee set up by the Society which suggested certain improvements in the matter of appointment to HOD and by dispensing with appointment by rotational system and introducing direct recruitment on tenure basis. In fact after this letter was issued in 1991 on 2.6.92 the guidelines have been framed which have already been referred to above. The Members of the applicant association are not debarred from appearing in the direct recruitment if they are eligible. The authority of the Governing Body changed the mode of selection is not taken away by any of the orders, instructions or direction by the Central Government. The learned counsel has only referred to the Government of India order issued by the Ministry of Finance dated 13.10.88 which has already been reproduced above. In fact the instructions of the Ministry of Finance has been not on the mode of recruitment but on the financial aspect of the matter. Merely because in the Agricultural University some other method is adopted for a Process of selection or appointment to the position of Head of the Department or Division it necessarily does not mean that the Ministry of Finance has directed the ICAR to follow the same ^{selection} Pattern. In fact the Ministry of Finance, Department of Expenditure has only issued certain instructions on the revision of scales of Pay of ICAR Scientists. The learned counsel for the applicant referred to the case of S.M. Ilyas Vs. ICAR (1993) 1 SCC 182.

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The G.V.K. Rao Committee report suggesting alternative method of induction is not contrary to the instructions of the Ministry of Finance dated 13.10.88. Though the note of the Ministry of Finance dated 27.2.89 states that the recruitment, qualifications and standards for various posts in the UGC system including career advancement will apply, mutatis-mutandis in the ICAR. As the ICAR is different from UGC system in many respect i.e. ICAR Scientists are primarily engaged in the research and to some extent in teaching and extension, the UGC teachers are primarily engaged in teaching. Thus, the contention of the learned counsel that the aforesaid impugned orders are contradictory to the Ministry of Finance circular dated 13.10.88 and the letter of Ministry of Finance dated 27.2.89 has no basis.

8. On the basis of the reasonableness as well as for better advancement of the research ⁱⁿ agriculture science it shall be better if a competitive spirit is maintained and the choice of selection is enlarged. In the manner of rotational allotment of HOD positions the choice is limited and even one who has no aptitude and initiative of leadership and incentive of team spirit of highest order would also be placed in the position of HOD. In any case an expert body has gone into whole situation and the recommendations have been made. The respondents themselves are reviewing this position and also encountered certain difficulties likely increase in cadre strength or in the posts of Senior Scientists and Principal Scientists becoming far more than the strength. Thus, the impugned orders

are subject to further review by the Respondents themselves and as such it shall not be just and equitable to adjudicate on the efficacy of the scheme to find out its beneficial effect or drawbacks. This is left to the Administration as further requisitions of Scientists to ASRB have been stopped by the letter dated 2.5.94.

9. The learned counsel for the Respondents have rightly taken objection to the fact that the policy matters are not subject of judicial review unless the same is arbitrary or infringes statutory rules or is violative of Constitution of India. It is also contended by the learned counsel for the Respondents that policy making is within the power of the Governing Body. The contention of the learned counsel for the applicant is that the Govt. had already taken the decision with respect to promotion policy and career advancement scheme in the circular dated 13.10.88 and 27.2.89. However, a Perusal of the aforesaid circular does not come in the way of the newly framed scheme of lateral induction of Principal Scientists in HOD positions. The reliance by the counsel for the applicant in the case of Menka Gandhi 1978 S.C. P.597, in the case O.Z. Hussain AIR 1990 S.C.311 and Bhatt's case 1989 S.C. P.1972 has no application because no question of unreasonableness, unfairness or unjustness surfaces in the mode of lateral induction of Principal Scientists in the positions of HOD. The learned counsel for the applicant has also placed reliance that the court or Tribunal should not interfere and the decision has been taken by the Hon'ble Supreme Court in the case of J. Jagdishan Vs. U.O.I. - Jt 1990(1)SC 247 and the Director, Lift Irrigation Corporation Ltd. Vs. Pravat Kiran Mohanti- JT 1991(1) S.C. 430.

The Respondent counsel has also **contested** the maintainability of the application on the ground that if a change has been made on the basis of Past experience and the employer wants to introduce the same for the betterment and enhancement of the Scientific Research then the applicants have no Locus Standi to challenge the same. He has referred to the decision of AIR 1981 SC 1545 - A.S. Sangam Vs. UOI and the case of UOI Vs. S.C. Dutta - JT 1990(4) SC 741. The learned counsel has also placed reliance on the decision of Patna and Madras Benches of C.A.T. in the case Raja Ram Singh & Ors. Vs. Maitra/CSIR, O.A. 121/89 decided on 25.9.90 and the case of A. Muthukrishnan Vs. CSIR, O.A. No. 448/90 decided on 10.2.92. In the case of Raja Ram Singh, the applicants who were working as Store Purchase Assistant in different grades in the National Metallurgical Laboratory (NML) have challenged the classification of posts in NML. The Bench observed that the application is devoid of merit and quoted from the judgement of Asif Hameed Vs. State of Jammu & Kashmir reported in 1989 Supplement (2) SCC 364.

"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgement on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action,

the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive."

The Bench also quoted from the judgement of CSIR Vs. K.C.S. Bhatt reported in 1989 S.C. 1972 where the Hon'ble Supreme Court observed

"We have referred to those averments only to highlight the injustice done to represent and not to impeach the validity of categorisation. Indeed, we cannot meddle with the categorisation since it was done by the Expert Committee."

Similarly, in the case of Muthukrishnan decided by the Madras Bench the applicants were Section Officers working in CSIR and prayed for modification of circular dated 7.6.90 as also to quash the eligibility list of Section Officers/Private Secretaries/Senior Personal Assistants with the direction that their names be included in the seniority list. The application was dismissed as devoid of merit. In that the Bench held that the CSIR has got powers to make rules to various posts and to amend them in any manner. The Governing Body can also issue orders of modification of the said rules. CSIR is not State within Article 12 as held in Sabjit case reported in 1975 S.C. Page 1329 and so according to the learned counsel for the applicant no parallel can be drawn with CSIR and the aforesaid authorities are not applicable. It may be so to some extent but the principle enunciated is based on the decided cases by the Hon'ble Supreme Court. The learned counsel for the applicant has placed reliance on the case of S.M. Ilyas Vs. ICAR (supra) but that case only was with respect to the removal of anomaly in implementing the Pay structures of the Scientists in ICAR.

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In view of the facts and circumstances we find no merit in this application and the same is dismissed as devoid of merit.

Adige
(S.R. ADIGE)
Member (A)

Sharma
(J.P. SHARMA)
Member (J)

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