

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: This the 19th day of May 2011

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N.Shukla, Member (A)

Original Application No.650 of 2005

Harish Chandra Pandey,
S/o Late Shiv Dutt
Aged about 49 years,
R/o 902 Janakpur,
Avas Colony, Izzatnagar, Bareilly.

..... Applicant

By Adv : Shri K. P. Singh

Versus

1. Union of India /I.C.A.R. through
Secretary, Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi
2. Director, Indian Veterinary Research Institute, Izzatnagar,
Bareilly.
3. Chief Administrative Officer (A)
I.V.R.I., Izzatnagar, Bareilly.

By Adv : Shri N. P. Singh

..... Respondents

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The facts capsule: The applicant, who initially joined the I.V.R.I. as Lower division Clerk in 1975, ascended in the hierarchy and came upto the level of Assistant in 1994 and was an aspirant to the next higher post of Asst. Administrative Officer.

2. While earlier, reservations were made on the basis of vacancies in a cadre, w.e.f. 02-07-1997, the system of post based roster was introduced.

According to the said system, all the posts would be reviewed and the number of reserved candidates already in position ascertained and their slots earmarked. Subsequently, posts falling vacant would be got filled up as per the post based roster – vacancy against the general posts would be filled up by general candidates and against reserved posts by reserved candidates. When the mode of filling up of the vacancies is more than one, reservation in each mode has been catered for. In the case of A.A.O., the 75% of the posts are filled up by Promotion and 25% by Limited Departmental Competitive Examination (L.D.C.E. for short).

3. Two posts of A.A.O. were notified in 2002 for being filled up through Limited Departmental Competitive Examination and the applicant did participate. However, he was not declared successful and two individuals, S/Shri S.K. Saxena and P.S. Jeena were promoted. As there appeared to be some irregularities in the evaluation, the applicant moved the matter and on investigation such irregularities having been found, the said individuals were reverted and persons responsible for committing such irregularities proceeded against by way of suspension. The reverted individuals moved the Tribunal through OA No. 315 of 2003 which was allowed by quashing the order of reversion and with a direction to the respondents to afford them an opportunity of being heard. Thus, the reversion order was cancelled and the two individuals restored to their original status of A.A.O.

4. According to the applicant, the ICAR Headquarters, the administrative Control of which, the I.V.R.I. is subjected to, declared six posts to be filled up by way of L.D.C.E. vide order dated 17-12-2003

(Annexure A-XVIII) but since no action was taken in this regard, the applicant moved a representation dated 17-02-2004 and in the absence of any response, he moved the Tribunal through OA No. 263 of 2004. The said O.A. was disposed of by the Tribunal, along with two more O.As, with a direction to the respondents to decide the representation pending with them. As even after such mandate by the Tribunal no action was taken, the applicant moved contempt petition No. 111 of 2004 during the pendency of which, the respondents had reverted the two individuals (Shri Saxena and Jeena referred to above) from the post of A.A.O. and further had cancelled the entire examination for re-notification in future. Annexure A-1 order dated 31-12-2004 which is impugned in this OA refers. The same inter alia reads as under:-

"All the aforesaid issues have been duly examined and it is informed as follows:-

1. *The Limited Departmental Competitive Examination held during May, 6-10, 2002 for promotions to the posts of ASO at IVRI has been cancelled by the Council, and, therefore, the promotion made on the basis of the said examination and the CAT's order dated 7.4.2003 have been cancelled by reverting S/Shri S.K. Saxena and P.S. Jeena vide order of even number dated 27.11.2004. Accordingly, the Show cause notice dated 17.5.2003 stands disposed of and there is no question of promoting the applicant on the basis of the aforesaid LDCE.*
2. *Appropriate action as deemed fit has been initiated by the Competent Authority at the Council against the officials responsible for inadvertent irregularities, if any, in conducting LDCE/Evaluation. However, this does not come within the purview of the applicant who is advised to restrict his concern to his own interest. Action has also been initiated to prepare and maintain the quota roster/register etc. as per the existing rules and orders in this regard.*
3. *The next LDCE for promotion to the post(s) of AAO will be conducted, on completion of the actions, in consultation with the Council.*

Therefore, the representation dated 17.02.2004 filed by Shri H.C. Pandey, Assistant is disposed of accordingly with the remark that he may appear afresh in the next LDCE as and when conducted."

5. The case of the applicant in this OA is that while reversion of the two individuals from the post of A.A.O. is justified, cancellation of the entire examination is inappropriate and in addition restricting the vacancies to two only when the ICAR itself vide order dated 17-12-2003

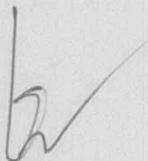
specified six vacancies is again illegal. Thus, the case of the applicant is given in para 4.40 of the OA as hereunder:-

"4.40. That in the light of facts and evidences produced by the Applicant through O.A. No. 650 of 2005, its counter, rejoinder including this Amendment application, the applicant's case is as under:

- a. *That here are six posts of Assistant Administrative Officer, which should have been filled through Examination on or after 22.07.2002, the date on which the result of Examination was declared erroneously promoting two officials.*
- b. *That the Applicant had secured third position in the merit in spite of manipulations/irregularities committed by the department in making results of the Examination.*
- c. *That the Examination for promotion to the said post held during 6-10th May, 2002 has not been scrapped/cancelled by any authority. ICAR issued letter No. 33 (9)/2002-Estt.I dated 18.02.2003 with an incorrect/wrong decision to this extent. The Agriculture Minister/President, ICAR vide his note dated 11.02.2003 approved the proposal of Secretary, ICAR only to cancel the promotion of S/Shri Santosh Kumar Saxena and P.S. Jina, and no orders to cancel the entire examination or to debar other qualified persons from being promoted through that Exam were either proposed by Secretary, ICAR or approved by the President, ICAR. That is why the Central Vigilance Commission had also advised for evaluation of Answer Books of Examination by External Examiner. So, on cancellation of results of two erroneously promoted officials, the name of Applicant stands at Sl. No. 1 of the merit list of qualified candidates in that Examination.*
- d. *That there exists a provision to correct such mistakes/irregularities including the number of vacancies earlier occurred in the process of promotions by holding a Review DPC as IVRI had done in the case of promotions of six Sr. clerks namely S/Shri Md. Wasim, B.K. Kanchan, A.M. Khare, A.K. Marwari, Avinas Kumar and Rajiv Lochan, Sr. Clerks to the post of Assistants in February/March, 2005 with retrospective effect from the year 2001/2003.*
- e. *That the applicant is fully entitled for promotion to the post of Assistant Administrative Officer on the basis of the said Examination held during 6-10th May, 2002 right from 22.07.2002, the date on which the result of the Examination was declared by IVRI (and allowed erroneously promoted persons to continue on promotion for over two years), with benefits of salary and arrears thereof."*

6. In this O.A. the applicant has prayed for the following reliefs:-

- (A) To issue writ, order or direction in the nature of certiorari quashing the order dated 31.12.2004 (Annexure - I of O.A.).
- (B) To promote the applicant on the post of Assistant Administrative Officer on the basis of examination held during 6-10th May 2002 against any of the six



vacancies of A.A.O. w.e.f. 22.7.2002 with all consequential benefits.

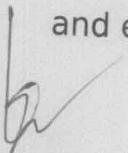
- (C) To issue any order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

7. Respondents have contested the O.A. and their version is as under:-

- "1. *The Limited Departmental Competitive Examination held during May, 6-10, 2002 for promotions to the posts of AAO at Indian Veterinary Research Institute has been cancelled by the Council, and therefore, the promotion made on the basis of the said examination and the Central Administrative Tribunal's order dated 07.04.2003 have been cancelled by reverting S/Shri S.K. Saxena and P.S. Jena vide order of even number dated 27.11.2004. Accordingly, the Show Cause Notice dated 17.05.2003 stands disposed of and there is no question of promoting the applicant on the basis of the aforesaid LDCE.*
2. *Appropriate action as deemed fit has been initiated by the Competent Authority at the Council against the officials responsible for inadvertent irregularities, if any, in conducting LDCE/Evaluation. However, this does not come within the purview of the applicant who is advised to restrict his concern to his own interest. Action has also been initiated to prepare and maintain the quota roster/register etc. as per the existing rules and orders in this regard.*
3. *The next LDCE for promotion to the posts (s) of AAO will be conducted, on completion of these actions, in consultation with the council*

Therefore, with the above observation, the applicant has been directed that he may appear afresh in the next LDCE as and when conducted."

8. An overdose of pleadings by way of rejoinder, supplementary rejoinder and counter and supplementary counter have all been filed, making the records unjustifiably bulky. Nevertheless, as said Lord Denning in *Jones v. National Coal Board* — "let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every situation"



9. Written arguments were also sought to be filed and on permission having been granted, the same had been filed by the respondents, while the counsel for the applicant confined his arguments as presented at the time of hearing.
10. Arguments were heard and documents perused. The questions that are to be addressed are as under:-
- (a) How many vacancies were to be filled up through the L.D.C.E.
 - (b) Whether the cancellation in toto of the earlier examination was justified or should those who had genuinely participated in the examination and got through be considered for promotion.
11. First as to the total number of vacancies that are to be filled up under the L.D.C.E. While the respondents initially contend that the share of vacancies for being filled up by LDCE is only two, the applicant heavily relies upon the order of the Deputy Secretary, ICAR vide Annexure A XVIII to insist that all the six vacancies are to be filled up by the LDCE. The said order inter alia reads as under:-

"AND WHEREAS, considering the aforesaid request, Shri P.S. Jeena was, vide Institute communication No. 35-2/2001 dated 4.12.2003 provided the required documents viz. Recruitment Rules, Scheme and Syllabus of the LDCE as also other documents as per his request which was considered relevant and justified in consultation with the Council (ICAR).

AND WHEREAS, despite providing the above cited documents/information and also giving him a final opportunity vide Memo. No. 35-2/2001-EC dated 3.9.2004, to submit his reply within 15 days. Shri P.S. Jeena has not given convincing explanation during the period from 17.5.2003 to 18.9.2004 justifying that he should not be reverted to the posts of Assistant.

AND WHEREAS, consequent on cancellation of the aforesaid LDCE as well as orders of promotion have become invalid and having regard to the points raised by Shri P.S. Jeena in his reply and all the facts & circumstances of the case, the undersigned

has come to the conclusion that there exist sufficient justification to revert Shri P.S. Jeena to the post of Assistant.

NOW, THEREFORE, Shri P.S. Jeena, Assistant Adm. Officer is deemed to have been reverted to the post of Assistant from the date of issue of this order."

12. The respondents in their written arguments stated that on the basis of the clarification received from ICAR headquarters vide letter dated 17-12-2003, 06 posts are to be filled up by way of LDCE and therefore, action is in progress to fill up these posts by conducting LDCE shortly. Thus, there does not seem to be any quarrel over the total number of posts that are to be filled up through LDCE. In fact, the claim of the applicant in this case for filling up of six vacancies is perhaps on the ground that in the L.D.C.E. conducted in 2002, he had secured the third in the merit position and if the promotion is restricted to two, he might not get promoted. In the event of the first two having been disqualified due to irregularity conducted, if he is placed in merit No. 1, he may not insist that the vacancies to be filled are six and not two.
13. Coming to the next issue whether the applicant should be considered for promotion on the basis of the examination that took place in May, 2002 which stood cancelled by the respondents, the same calls for a little analysis.
14. Cancellation of examination could be as a whole or in part. This is the law laid down by the Apex court. In the case of *Union of India v. Tarun K. Singh*, (2003) 11 SCC 768, the Apex court held as under:-

"Needless to mention that subsequent to the order of cancellation, in view of the allegation of malpractice, the departmental authorities had held an enquiry into the matter and the result of that enquiry revealed gross irregularities and illegalities as referred to in the judgment of the Division Bench of the Allahabad High Court.

Consequently the process of selection to a public office, which stands vitiated by adoption of large-scale malpractice, cannot be permitted to be sustained by a court of law."

15. In an earlier decision in the case of *All India Railway Recruitment Board v. K. Shyam Kumar*, (2010) 6 SCC 614, the Apex court held as under:-

"51. We, therefore, find no infirmity in the decision taken by the Board in conducting the second written test for those who have obtained minimum qualifying marks in the first written test rather than going ahead with the first written test which was tainted by large-scale irregularities and malpractices. The Board can now take further steps to regularise the results of the second test and the appointments of the selected candidates. Ordered accordingly."

16. Where it could be possible to identify the innocent candidates perhaps cancellation in toto may not be justified. It is only where such segregation is impossible that there should be an en-mass cancellation. In this regard, reference could be invited to the decision of the Apex court in the case of *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti*, (1998) 9 SCC 236, where it has been held as under:-

"It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results."

17. The right of a candidate who appeared in a competitive examination has been succinctly brought by the Apex Court in the case of *East Coast Railway v. Mahadev Appa Rao*, (2010) 7 SCC 678 wherein it has been held :

"The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not

allowed to be scuttled for mala fide reasons or in an arbitrary manner."

18. The Apex Court in the case of *Union of India v. Rajesh P.U.*, (2003) 7 SCC 285, has held as under:-

".....in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."

19. Thus, the law is settled. Where it is impossible to segregate from the rest, the candidates who are likely to have the unintended and undeserving benefits by way of adopting malpractice, cancellation of the examination as a whole becomes inevitable. As a corollary, where, it could be possible to segregate such innocent candidates, their candidature need not be cancelled and their results could be announced. Decision in Rajesh PU is the one which is to be applied in the instant case.

20. It has been contended by the respondents that at the instance of the Minister for Agriculture and the President of the Institute, the entire examination conducted in 2002 stood cancelled, while, according to the applicant, there is no such order of the President as

alleged. In this regard, para 5 of the rejoinder, as extracted below is relevant.

"However, the only letter of dated 18.02.2003, being referred to by the respondents in support of their statement to the effect that the examination held in May, 2002 was scrapped/cancelled by the President, ICAR, is not correct with reference to the original orders of Hon'ble Union Minister of Agriculture & President, ICAR of dated 11.02.2003 on page : 42/Notice of the same filed No. 32(9)/2002-E.I (Changed No. 4(2)/2004-Vig) from which the said letter dated 10.02.2003 has been issued, wherein there is no mention about cancellation of examination held in May, 2002. The certified copies of this record in support of these facts has been submitted by the applicant along with the Amendment application No. 550/2007 and on the basis of that record, the earlier examination is valid and applicant fully entitled for promotion to the post of Assistant Administrative Officer by virtue of his having qualified in the said examination, even though the erroneously promoted officials have been reverted from that post."

21. It is not the case of the respondents that there is a full fledged irregularity in the conducting of the examination. At least nothing of that sort surfaces from the pleadings which talk of only some irregularity in the matter of evaluation in respect of a few and not of all. As such, following the decision in Rajesh PU (supra), and subject to the confirmation by the respondents about the exact nature of the orders passed by the Minister for Agriculture regarding the cancellation that it was limited to the two candidates who had already been reverted, the applicant shall be considered for promotion to the post of AAO against the two posts notified earlier. If he has qualified (which as per the information under RTI is in favour of the applicant), he should be considered for promotion to the said post of A.A.O. Justice demands that a like action could well be taken in respect of the second notified post as well. Respondents can well hold the examination for the rest of the posts to be filled up by the LDCE.

22. The matter has to be analyzed from two different angles. First of all, it has to be seen whether the cancellation of the examination could be legally tenable. This part has been considered in another OA No. 1616 of 2004 filed by those who have been reverted to the post of Assistants. In the instant case, since the focus is as to the nature of order passed by the Minister in respect of cancellation, it is to be seen whether the Minister has ordered for the cancellation of the entire examination, the same shall have to be tested on the basis of the decision by the Apex Court in the case of Rajesh P.U. (supra). In the other OA the same has been analyzed and it has been held that the cancellation of entire examination cannot stand judicial scrutiny and the irregularity in the conducting of the examination could be remedied without undergoing the process of re examination. In the other OA the order has been for revaluation of the answer sheets and for grant of moderation marks uniformly in respect of any question out of syllabus. The applicant's answer sheet would also undergo the same drill as of others and a revised merit list has to be drawn.

23. Thus, the OA is allowed to the extent as under:-

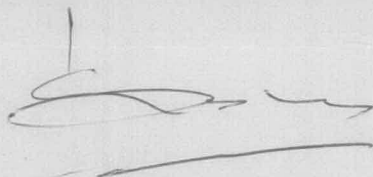
- (a) The impugned order dated 31-12-2004 is hereby quashed and set aside.
- (b) The respondents are directed to re-evaluate the papers removing all the deficiencies as contained in Annexure A-23 order dated 27-11-2004 and where necessary for out of syllabus portion, moderation marks may be allotted to all the candidates uniformly and a revised merit list be framed and promotions to the extent of vacancies be

made. In case the applicant does not figure in the merit list, he be informed accordingly. In case he is in the merit list, then his promotion to the post of AAO shall reckon notionally from the date the other two (who have been reverted) were initially granted the promotion, while the actual pay and allowances would be from the date the applicant assumes higher responsibilities.

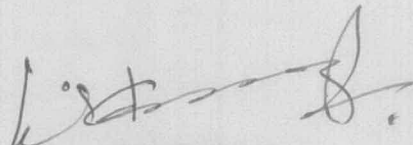
- (c) The respondent may consider filling of the second post also accordingly on the basis of the results of the earlier examination.
- (d) In respect of the remaining vacancies they could conduct the examination afresh as, in the previous examination, only two posts were notified and it is settled law as spelt out by the Apex Court in the case of A.P. Public Service Commission vs B. Swapna (2005) 4 SCC 154 wherein the Apex court has held as under:-

"10. There are two principles in service laws which are indisputable. Firstly, there cannot be appointment beyond the advertised number and secondly norms of selection cannot be altered after the selection process has started."

24. The above drill shall be complied with, within a period of two months from the date of communication of this order. No cost.



Member (A)



Member (J)

/pc/