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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 417 OF 2001.

Cuttack, this the 11th day of July, 2005.

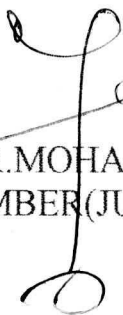
DR. MAHENDRA KUMAR PADHI. APPLICANT.

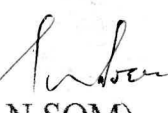
VERSUS

UNION OF INDIA & OTHERS. RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? **Yes.**
2. Whether it be circulated to all the Benches of the CAT or not? **Yes.**


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.417 OF 2001.

Cuttack, this the 11th day of July, 2005.

CORAM:-

THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)

Dr. Mahendra Kumar Padhi, Aged about 35 years,
Son of Nilamani Padhi, At- Keranga, Po- Pikol,
Via- Sungra, Dist. Cuttack. At present working as
Scientist (Poultry), Regional Centre, Central Avian
Research Institute, A/6, HIG, Housing Board Colony,
Baramunda, Bhubaneswar, Dist. Khurda.

Applicant.

By legal practitioner : Mr. Biswabihari Mohanty, Advocate.

VERSUS

1. President, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi-110001,
2. Union of India, represented through DGICAR and Secretary, Department of Agricultural Research and Education, Krishi Bhawan, New Delhi-110001.
3. Director, Central Avian Research Institute, Izatnagar, Uttar Pradesh-243122.
4. Secretary, Agricultural Scientist Recruitment Board, Krishi Anusandhan Bhawan, Pusa, New Delhi-110012.

Respondents.

By legal practitioner: Mr. B.Dash, ASC.

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O R D E R**MR.B.N.SOM, VICE-CHAIRMAN:-**

Applicant (Dr.Mahendra Kumar Padhi) has filed this Original Application being aggrieved by the action of the Respondents in debarring him from attending interview for the post of Senior Scientist that was scheduled to be held on 30.8.2001, although he was called to the interview after his candidature was duly forwarded through proper channel. He has in this Original Application prayed for quashing the said selection held on 30.8.2001 in pursuance of the advertisement dated 27.1.2001 and for directing the Respondents to conduct a fresh selection wherein his candidature should be considered for the post of Senior Scientist.

2. The factual matrix of this case is that the applicant, a Post Graduate in Veterinary Science was selected by the Respondents-Organization and has been working under them since 3.4.1995. In July, 2001, he was posted to Regional Research Centre, C.A.R.I., Bhubaneswar. It was during this period that he had applied for recruitment as a Sr. Scientist under the C.A.R.I, Izatnagar, in pursuance of an advertisement dated 27.1.2001. In the said advertisement it was prescribed that persons having doctoral degree (Ph.D) in Animal Science and having five years working experience in the grade of Rs.8000-

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13,500/- are eligible for consideration. As the applicant was fulfilling both the conditions, he applied for the same and his application was duly forwarded by the Head of Office of the Research Institute, as required under the conditions set out in the advertisement. He was permitted by the Director of the Research Center to participate in the interview which was scheduled to be held on 30.8.2001. However, when he appeared at the interview on 30.9.2001, he was debarred from appearing in the interview on the ground that he was not having the requisite experience of five years. The applicant, therefore, submits that he was denied an opportunity for consideration of his candidature in contravention of Articles 14 and 16 of the Constitution.

3. The Respondents have opposed the application on the ground that the same is devoid of merit. They have submitted that the order which has been assailed by the applicant is perfectly legal and that they have never acted arbitrarily. Regarding his eligibility they have submitted that the applicant did his Ph.D which was awarded to him on 26.9.2000, without taking leave for obtaining the degree. They have also stated that as per the requirement, the period spent on obtaining Ph.D during service is to be excluded and as it is evident the applicant was a student during his service, this period has got to be excluded and in the above circumstances, as on 13.3.2001, he did not have on job experience for more than two and a half years. Thus, being short of five years

working experience, he was considered ineligible for the post. They have submitted that the call letter was issued to the applicant by mistake/through over sight. The moment the said mistake was detected a telegram/communication was issued to the applicant by speed post informing him about the cancellation of his candidature. However, when the applicant reported for interview, he was told as to why he could not be allowed to appear at the interview. He was, however, paid TA for his journey. They have repeatedly submitted that the Applicant did not posses working experience of five years which was mandatory condition for the purpose of consideration of his case for promotion. They have also stated that the plea of the applicant that his application was duly forwarded by the Administrative Officer in charge (Annexure-6 of the O.A.) has no relevance, because the Administrative Officer only forwarded his application requiring the same to be considered at the level of Secretary, A.S.R.B. In other words, it is not the Administrative Officer, who is the authority competent to decide the question of eligibility of his candidature, Therefore, not much legal support could be derived from the forwarding of his application by the said officer. The Respondents have also stated that admittedly the applicant was a student from 1997 to 2000 for the purpose of obtaining Ph.D. irrespective of the fact whether he availed of study leave/ any other kind of leave or not. In the

circumstances, they have submitted that the applicant did not have five years of job experience to be considered eligible for the post.

4. We have heard the learned counsel for the rival parties and have also perused the records placed before us. The applicant has also filed not only rejoinder, but also an additional affidavit in response to the documents submitted by the Respondents on 10.9.2004. The Respondents, on their part, had filed M.A.733/04 dated 27.9.2004 explaining the system of co guide.

5. The sole question to be answered in this O.A. is that whether the applicant possessed five years of experience in research/teaching /extension education as Scientist (Rs.5000-13,5000/-) or in equivalent position in the relevant subject. To understand the complexity of the controversy raised in this O.A., it would be profitable to quote the essential qualification for the post as advertised by the Respondents under Annexure-A/3.

“Qualifications:

b) ESSENTIAL;

- i) Doctoral degree in Animal Genetics and/or Breeding
- ii) 5 (five) years experience (excluding the period spent in obtaining the Ph.D degree, during service, subject to maximum of 3 years) in research/teaching/extension education as a Scientist (Rs.8000-13,5000) or in an equivalent position in the relevant subject
- iii) Evidence of contribution to Research/Teaching/Extension Education as supported by published work/innovations.
- iv) Specialization in Poultry Science.”

6. We find that the applicant has based his claim to have possessed essential qualification by having it forwarded through the proper channel, i.e., Director, C.A.R.I., Port Blair, who as per the stipulation made in the Advertisement, has certified eligibility of the applicant in terms of condition regarding experience at Clause-iv of the Advertisement. Secondly, that the examining body which rejected the claim of the applicant of not having five years experience did not file any counter in this case. It was, in the counter filed on behalf of the Director, CARI, stated that three years experience was to be deducted of the total work experience of five years and six months. We also find that the applicant had prosecuted/acquired Ph.D. during service under the co-guide scheme with the permission of the Director, that too without taking any study leave for the purpose. It is on this ground he claims that no deduction should be made from his work experience as he had not taken leave from his work at any point of time. The case of the applicant is that since he had not availed of the facility of study leave, no deduction could be made from his work experience, because, he was not actually absent from duty at any point of time. The applicant has also taken the position that he was allowed by the order of the Director to get him registered for Ph. D in Animal Science with Dr.Bhim Rao Ambedkar University under co guide system and that he was also allowed to conduct experiment, and

laboratory analysis at CRRI, Port Blair. In the circumstances, the examining body (ASRB) should not have treated him ineligible on account of lack of adequate work experience by deducting three years mechanically from his total period of service. He has also contested that the application of the ratio of Circular dated 28-02-2001 (Annexure-11), in his case by the ASRB was incorrect. His case is that he having been was allowed to conduct research in the same laboratory where he was posted under co guide system the condition of eligibility as mentioned in the circulars dated 28.2.2001 and 12.9.2001 cannot be applied retrospectively, deducting three years from his experience. Relying on the following three case laws, he has argued that the circular dated 28.2.2001, read with the circular dated 12.9.2001 could not have retrospective effect.

- i) AIR 1996 SC 352 (Dr.K.C.Sahoo vs. State of Orissa)
- ii) AIR 1990 SC 405 (Mahendra & another vs. State of Karnataka)
- iii) AIR 1993 SC 2093 (G.K. Rath vs. M.A.A.Baig)

7. The Respondents, in their reply both in the counter as well as during oral argument, have refuted the above position taken by the applicant. In the first instance, they have stated that the applicant could not have obtained Ph D, i.e, could not have carried out the research for his project unless he had taken leave from his official duties. Referring to the circular dated 28.2.2001 which is based on the authority of the earlier

circular dated 20th August, 1971 and dated 22nd October, 1985, they have also clarified that the period spent in obtaining Ph.D degree starts from the date of enrolment in the university and extended up-to the date of declaration of result of viva voce and that, there is no provision for prosecuting doctoral study while on duty. They have further submitted that the applicant is causing confusion by wrongly describing the scheme of co-guide. The system of availing co guide is not in lieu of taking study leave for prosecuting research for Ph.D degree.. To understand the purpose of co guide system and to resolve the controversy, we had called upon the Secretary, ICAR to assist the Court. In reply, the Secretary, ICAR had filed an affidavit explaining the system of co guide. It has been explained by him that for obtaining doctoral degree, a student is affiliated to a particular Professor (called Guide) and the Professor conceptualizes the plan and decides the methodology and objectives of the research programme and guides the student in preparation of synopsis. In the aforesaid circumstances, the research is conducted directly under the Professor at the place where he is located. But in the event the student and the guide (Professor) are at different places, the candidate may work at a place of his choice where facility to do the research work exists and he may request for a co guide to assist him in his day to day research work. The co-guide is provided on request of the student to assist him in his day to day research work. It was further

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submitted that in certain institutions a junior Scientist also could be nominated as a co guide to gain experience. By making these clarifications, the Respondents submitted that the co guide system is a facility offered to a student for obtaining the doctoral degree when he is located far away from the main guide and it has got no linkage with the condition of service of a Scientist working in the Respondents Organization for obtaining doctoral degree.

8. The learned counsel for the applicant, however, repeatedly, canvassed before us the theory that when co guide system is offered, a student prosecuting doctoral degree is allowed to carryout the research as a part of his normal day to day official duties. If this definition of co guide system is accepted, then and then only the applicant has a case in his favour. However, the learned Addl. Standing Counsel vehemently opposed that the system of co guide absolves a candidate from taking leave. He was categorical in his statement that co guide scheme does in no way permit a candidate to carryout his doctoral research as a part of his official duty, nor was any such permission granted to the applicant. We have also perused Annexure-13 filed by the applicant, which is a copy of the 'REVISED ORDINANCES RELATING TO THE DOCTORATE DEGREE IN THE FACULTIES OF ARTS, FINE ARTS, SCIENCE, COMMERCE, AGRICULTURE AND EDUCATION', issued by Dr.Bhimrao Ambedkar University, Agra dated 1.7.1998. It has

been stated therein that the Head of the Institution of the College may, on the recommendation of the Professor, permit a candidate to work in another institution approved by the Academic Council where adequate facility exists. In such cases, there will be a co-supervisor belonging to the place, where the candidate is allowed to work and that the person recommended for appointment as a supervisor or co-supervisor must be in possession of Ph.D in the subject and other conditions. Along with this the applicant has enclosed a copy of the letter concerning notified rules/guidance for doing Ph.D for Scientific Staff issued by the Respondents-Organization dated 28.1.2004. A perusal of the letter clearly brings out the fact that before issue of this letter, conditions governing prosecution of doctoral degree required the candidates/scientists compulsorily to take study leave for doing Ph.D degree. This was one of the conditions stipulated for granting permission for registration for higher degree with the University/Institution. However, the above policy was reconsidered and it was decided in June, 2004 that in cases where the Ph.D work relates to the mandated area of the Institute, the scientist would be permitted to do Ph.D without taking study leave within the institution, subject to the following conditions:

- i) The research work being carried out by the Scientists in the Instt. is effectively monitored and research project reviewed regularly in the RPFs by the Directors of the the Instts.

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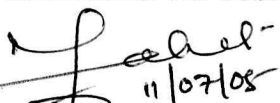
- ii) The Director should certify every year to the SMD that the RPFs are being regularly maintained and reviewed.
- iii) The progress of research project of the scientists should be reviewed by the SCR of the Institute.

However, it was also clarified in the new policy letter that "if the University rules require attendance for the course work the Scientists would be granted leave for the same". In other words, whether a student/scientist will require leave or not would depend entirely upon the University rules in that regard.

9. The admitted fact of the matter is that the applicant had never taken any leave for prosecuting his doctoral research. Admittedly, co guide system does not act as a waiver to taking leave for doctoral studies/research. It also can not be disputed by the applicant that by virtue of the letter No.16(2)/2003-Per.IV dated 23.1.2004, the Indian Council of Agricultural Research, Krishi Bhawan, New Delhi, has in partial modification of its earlier circulars dated 20.8.1971 and 22.10.1985 allowed Scientists to select mandated research project as subject for Ph. D. work in which case, they would not be required to take leave from normal duty. In the circumstances, the plea of the applicant that as he was granted a co- guide for carrying out research in the same Institute where he was working, he was not required to take leave of absence from duty to prosecute Ph.D degree is not acceptable or sustainable in the eye of law. As the applicant has not been able to place

any material before us to show that his employer by a specific order had allowed him to carryout his research work for the Ph. D in addition to his normal work, we are unable to accept his plea that he was so permitted. In fact, it was only from 28.1.2004, that the Respondents-Department seems to have introduced for the first time a system by which the Scientist could be permitted to prosecute Ph. D work without taking study leave, if only the Ph .D work relates to its mandated Projects.

10. In view of the above facts and circumstances of the case, we are of the opinion that this O.A. is devoid of merit and accordingly, the same is dismissed. No costs.


11/07/08
(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

BJY/PS.