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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 221 of 2004
Cuttack, this the 12th day of July, 2005.



DR. RADHA CHARAN DAS. APPLICANT.

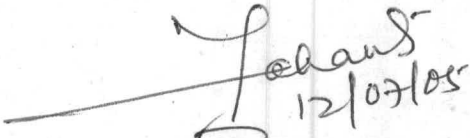
VERSUS

I.C.A.R & Ors. RESPONDENTS.

FOR INSTRUCTIONS.

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


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)
12/07/05

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

Original Application No. 221 OF 2004
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C O R A M:-

**THE HON'BLE MR. B.N. SOM , VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDL.)**

DR. RADHA CHARAN DAS,
Aged about 55 years,
S/o. Late Lingaraja Das,
At: C-25, Rashmi Towers, Nageswar Tangi,
Bhubaneswar-751 002, Dist. Khurda. APPLICANT.

For the Applicant : M/s. S.K. Gajendra, S.K. Ojha, H.M. Das,
Advocates

VERSUS

1. Indian Council of Agricultural Research (ICAR)
represented by its Director General,
At-Krishi Bhawan, New Delhi-110 001.
2. Agricultural Scientists' Recruitment Board (ASRB)
represented by its Chairman,
At-Krishi Anusandhan Bhawan-1,
Pusa, New Delhi- 110012.
3. Dr. S. Ayyappan,
Deputy Director General (Fisheries)
At-Krishi Anusandhan Bhawan-II
Pusa, New Delhi-110012.
4. Dr. Niranjan Sarangi,
now working as Director, CIFA,
At- Kausalyaganga, Bhubaneswar. ... RESPONDENTS

For the Respondents: Mr. S.B. Jena, ASC,
M/s. A.K. Bose & D.K. Malik,
Advocates.


O R D E R

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL)

In order to fill-up the post of Director of Central Institute of Freshwater Aquaculture(in short 'CIFA') at Bhubaneswar (under the Indian Council of Agricultural Research; in short 'ICAR'), applications were invited from the intending candidates vide Advertisement No.02/2003 dated 01-11-2003. It was made clear, in the said Advertisement, that irrespective of the category, the candidate coming out successful, on the basis of the career assessment and interview, shall be selected and appointed on tenurial basis for a period of five years. In this connection, the mode of marks to be awarded to the candidates, as prescribed under Annexure-11, was as under :

i) Academic qualification	15 marks
ii) Experience	7 marks
iii) Publication	20 marks
iv) Inservice special award	8 marks
v) Special attainment	9 marks
vi) External funded projects	4 marks
vii) Seminar/symposia	5 marks
viii) Institutional buildings	7 marks
ix) Interview	25 marks

In the said Annexure 11, under the heading Note it was provided as under :-





“NOTE: (i) any scientist getting of 60% and above marks out of 75 marks (25 marks are of interview) will be eligible to be called for interview.

(ii) The score of the candidate should not be made available to the members of the selection committee at the time of interview. However, the same will be made available to them after the interviews are over to tabulate the total marks and to finalize the recommendations for the selection.

(iii) Annual Confidential Reports (ACRs) for immediate past 5 years will be looked by the ASRB at the time of selection of candidate of different posts of Sr. Scientists and above upto National Institutes Directors/DDGs Etc.

(iv) Where ACRS are written abstracts of the ACRs with overall grade awarded will be called from the competent authority of the institute/organization where the candidate is working;

(v)Where ACRs are not written the competent authority of the institute/organization, where the candidate is working/worked in the 45 years will be requested to give year wise assignment in the proforma developed by the ASRB regarding work and conduct of the candidate.

(vi)However, remarks in the ACRs if any during immediate past 5 years will be taken into account and appropriate decision will be taken by the competent authority in the ASRB keeping in view the nature of adverse remarks.”

Pursuant to the said notification under Annexure-10 dated 01.11.2003, the Applicant, the Respondent No.4 and several others applied for the post of Director of CIFA, and were called to face the interview that was taken on 22.3.2004 (wherein, the Respondent No.4 was found to be the most meritorious) and, ultimately, the said

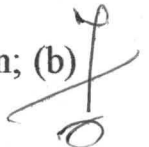


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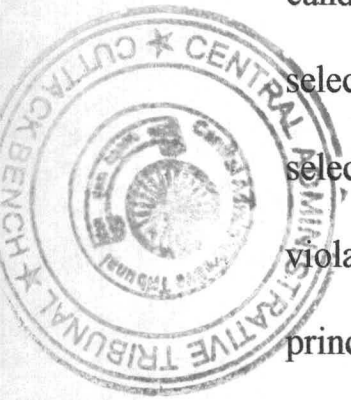
Respondent No.4 was issued with the order of appointment on 12.04.2004. Being aggrieved by the said selection and appointment of Res.4, the Applicant submitted a representation to Respondent No.1 (vide Annexure/12 dated 12.04.2004) and, having failed to get redressed of his grievances, he has moved this Tribunal in the present O. A. filed (on 21.05.2004) under Section 19 of the AT. Act, 1985, seeking the following reliefs:

- i) "to hold and declare that the selection process for CIFA, Bhubaneswar directorship is totally vitiated allowing Res. 3 Dr.S. Ayyappan to remain a Member in both the Screening Committee as well as the Selection Committee and hence the selection of Re.4 as Director, CIFA, Bhubaneswar is bad in law;
- ii) to hold and declare that in view of career performance of the applicant available on record in comparison to the career of Res.4 it is the applicant only who should have been given appointment as Director, CIFA, Bhubaneswar, but not the Res. No.4;
- iii) to direct the Respondent Nos. 1 and 2 to give appointment to the applicant in the post of Director, CIFA, Bhubaneswar
- iv) to quash the selection and appointment of Res.4 as illegal, arbitrary being against the Rule/procedure and so done against the applicant with mala fide ;"

2. In support of his contention, the Applicant has taken the grounds that (a) as per Clause 10 of Annexure 11, the marks of the candidates awarded by the Screening Committee should not have been made available to the members of the Selection Committee during the interview, as has been done by the Respondents during the selection; (b)



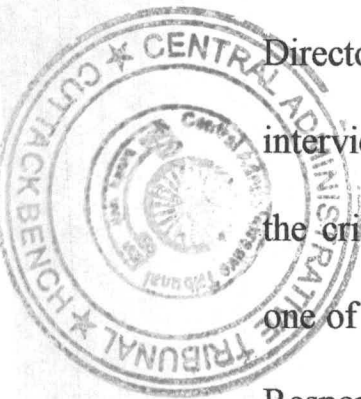

no member of the Screening Committee should have been the member of the Selection Committee; (c) the Res.4 being not adjudged more meritorious than the Applicant (even in the subordinate post of Principal Scientist on several occasions, he could not have been, this time, determined more meritorious for being considered for selection and appointment to the Post of Director of CIFA, but for Dr. S. Ayyappan, a member of both the Committees; (e) selection for the post of Director ought to have been made on assessment of career performance of the candidates also, as ICAR has not made any specific rules for such selection by conducting various tests like written, vice voce, etc.; (f) selection and appointment of Res.4 for the post of Director was in violation of ARS rules/procedure apart from being violative of the principles of natural justice; (g) the Applicant had a better and brilliant academic achievement and had the marks given by the Screening Committee not been placed before the Selection Committee or had Dr. Ayyappana not been allowed to remain in both the Committees, he would have been selected for the post in question and it is only to show favouritism to the Respondent No.4, for the best reason known to the Respondents, such a procedure was adopted and thereby the Applicant was a victim of such an illegal action and (h) although the Applicant made a representation on 12.4.2004, the same was not responded by the Respondents-Department. He has also given some of the instances with



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regard to the various irregular activities without any documentary proof. On these grounds, the applicant has prayed for intervention of this Tribunal .

3. In their counter/ reply, filed by Res. 1 and 2 , it has been stated that the selection for filling up of the vacancies in Scientist category in various Units of ICAR is being done by the Agricultural Scientists Recruitment Board (in short A.S..R.B); which has been established on the lines of the UPSC and the selection for the posts of Director of such Institutes of ICAR has been conducted through open interview by a specific Committee of experts and that the seniority is not the criterion to adjudge the suitability, but high degree of selectivity is one of the essential factors for selection. It has also been submitted by the Respondents that the selection is made through score card system; which has duly been approved by the ICAR and adopted by the ASRB and that the selection is not only made on the basis of the length of service only, but by considering all aspects of the matter including career assessment, as per the Rules. It has been maintained that even a junior most man may march over his senior and break the queue; if he had outstanding ability. The selection process encourages merit. When the Res.4 was duly selected and recommended by the Selection Committee (formed as per the he Rules of the ICAR) it is not for the Applicant (having not been selected) to challenge the same. It is in this background, the Respondents



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have brought before the Tribunal the relevant Board constituting the Selection Committee, which is as under:

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|---|-------|----------|
| i) Chairman, ASRB | | Chairman |
| ii) DG, ICAR or his nominee | | Member |
| iii) Secretary, Agriculture & Cooperation or his nominee | | Member |
| iv) Member, ASRB | | Member |
| v) An expert in the field of management drawn from any of the Indian Institutes of Management to be nominated by the Chairman ASRB... | | Member |

vi) Not less than two Advisors drawn from outside the ICAR system to be nominated by the Chairman, ASRB (The quorum for the meeting of Selection Committee shall be six (6) quorum of six would ensure at least two outside experts in every meeting:

..... Member

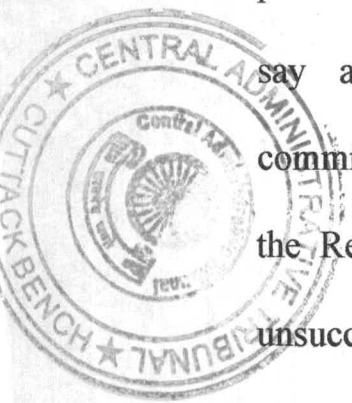
It has been disclosed by the Respondents that the selection to the post in question was made strictly in accordance with the guidelines/norms/Rules of the ICAR. The Res.3, as alleged by the applicant did not manage to get himself included in the selection committee as one of the members, rather he was nominated by the competent authority (i.e., DG of ICAR) as per Rules to attend the selection committee meeting being his nominee. It has been further disclosed that it is inevitable that ASRB and ICAR representatives are to



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be on both the Committees and that, after the process of selection was over, the recommendation of the selection committee was placed before the competent authority/Union Agriculture Minister and President of ICAR for approval and, the selection, in question having been approved, Respondent No.4 was appointed. Lastly, it has been pointed out by the Respondents that the Applicant having participated in the selection process and he, having not been selected, is now estopped under law to say anything with regard to the constitution of the selection committee/manner of evaluation of performance etc. In other words, what the Respondents have submitted is that had the Applicant not been unsuccessful, he would not have called in question the very process of selection. With these submissions, the Respondents have prayed for dismissal of this case.

4. Respondent No.3, (Dr.S.Ayyappan) has filed his counter stating therein that the members of the said Selection Committee were eminent Scientists of National and International repute and no personal bias or motive they do have against any individual officer. It has been submitted that the selection was not done under a single umbrella system, in the instant case, by Res.3. Since no personal biasness or mala-fide has been attributed against the other members of the Selection Committee, it is unthinkable on the part of the Applicant to submit that Res. No.3 was wholly and solely responsible for his non selection. .It has been submitted



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by him that he was one of the members in the selection committee and selection was made basing on the marks awarded by different members of the said committee. As such the allegations (as leveled against him, by the Applicant) is nothing but out of frustration. It has further been submitted by him that the Applicant has made many allegations of mala fide without any iota of evidence and it is not expected of the Applicant to come forward with such frivolous plea without any basis. Res.3 has also emphatically denied the allegation of bias and mala fide (in the matter of selection) raised against him.

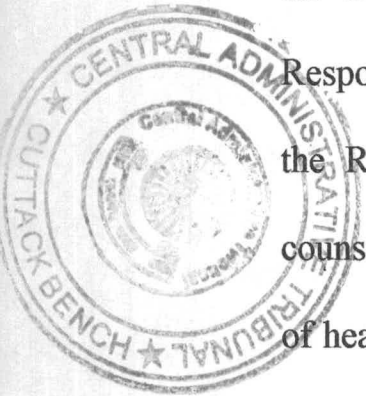
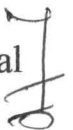
5. Reiterating more or less, the averments as made in the counter filed by Res. 1 and 2; it has been submitted by Res.4 (in his counter filed by him separately) that the allegations made by the Applicant are unfounded and baseless. He has also stated that the marks awarded in career assessment as well as in the selection have rightly been done and, therefore, the Tribunal should not interfere in that matter.

6. Rejoinder filed by the Applicant is more or less, reiteration of the facts as averred in the O.A., excepting the plea that he ought not to have been awarded the minimum less than 64.5 marks in the career assessment. In his rejoinder while reiterating the stand taken in the O.A. has, virtually, stated that he had absolutely no personal malice against Res.3 but, unfortunately, Res.3 got himself involved in the Selection Committee with an ulterior motive to support the interest of

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Res.4 and to frustrate the interest of the applicant. He has based this allegation on the fact that Res.3, being an authority in administrative hierarchy in the ICAR, should have adhered to laid down principles of score card system, which under clause 10(1) debars him to attend both the Screening Committee and the Selection Committee Board. While submitting so, he has prayed for allowing his prayer as made in the O.A.

7. Heard Shri S.K.Gajendra, learned counsel appearing for the Applicant, Mr. A.K. Bose, learned counsel appearing for the Respondent No.4, Mr. S.B.Jena, learned Additional Standing counsel for the Respondent Department and Mr. Aswini Kumar Mishra, learned counsel for ICAR and perused the materials placed on record. In course of hearing, the parties have reiterated their respective stand taken in the pleadings by laying their hands to various judge made laws. Learned counsel for the Applicant has submitted that since the procedures have not been followed in the matter of selection and since there has been deviation of laid down rules in this regard, the selection and appointment of Res.4 should be declared null and void. Per contra, the learned counsel appearing for the Respondents submitted that the selection was made strictly in accordance with the rules laid down in this regard and that there has been no deviation of it in any manner. They have also submitted that the allegations made by the Applicant in his Original



Application against the Respondents are based on no evidence, and therefore, the grievance of the Applicant is devoid of any merit.

8. Needless to mention here that it is not the function of the Court/Tribunal to hear appeals over the decision of the Selection Committee and to scrutinize the relative merits of the candidates like that of an Appellate Authority. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee, which has the expertise on the subject. However, the decision of the Selection Committee can be interfered with only on the grounds of (a) illegality or patent material irregularity, in the constitution of the Committee or its procedure leading to vitiation of the selection or (b) proved mala fide affecting the selection etc. In the present case it is not in dispute that the selection Committee/Board was constituted with due compliance with the relevant rules. The Committee consisted of experts, selected Res.4 after going through all the relevant materials placed before it. It has been observed by the Hon'ble Supreme Court in the case of **Dalpat Abasaheb Solunke, etc. etc. vs. Dr.B.S.Mahajan etc. etc.** (reported in AIR 1990 SC 434) that:- which reads under :

“It is not the function of the Courts to hear appeals over the decision of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for the particular post or not has to be decided by the duly constituted Selection Committee,

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which has the expertise on the subject. The Court has no such expertise...”

(a) The next question arises as to whether the allegation leveled against Res.3 is sustainable and as to whether the marks awarded by the Screening Committee was actually placed before the Selection Board prior to the marks awarded by them basing in the interview. From the materials placed on record, we find that except bald allegation of favouritism (alleged to have been shown by the Respondent No.3 in favour of Respondent No.4) no material has been placed on record (by the Applicant) to substantiate the said allegation. In this connection, we would like to rely on the decision rendered by the Hon’ble Supreme Court of India in the case of **E.P.Royappa vs. State of Tamil Nadu and another** (reported in AIR 1974 SC 555),wherein their Lordships of the Hon’ble Supreme Court have observed as under :



“...Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person, who alleges. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a higher order of credibility...”.

(b) In the instant case, we find no corroborating materials on record to come to the conclusion that Res.3 was an instrumental for the selection of Res.4 to the post in question in any manner. It is in this background, we would like to quote the decision of their

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Lordships in the case of **R.C.Dass vs. Union of India & Ors.** (reported in AIR 1987 SC 593), which runs thus :



“The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection.”

Therefore, the plea of mala fide as raised by the applicant is hereby over-ruled.

© The selection to the post of Director was totally based on merit and the selection being based on merit, seniority does not play any vital role ; as has been decided by the Apex Court of India in the case of **Sarat Kumar Das and Ors. Vs. Biswajit Patnaik and Ors.** – reported in 1994 AIR SCW 5206.

(d) To add to this we would also like to quote the observations of their Lordships of the Apex Court of India, rendered in the case of **U.P.S.C. vs. H.L.Dev & Ors.** (reported in AIR1988 SC1096), which reads as under :

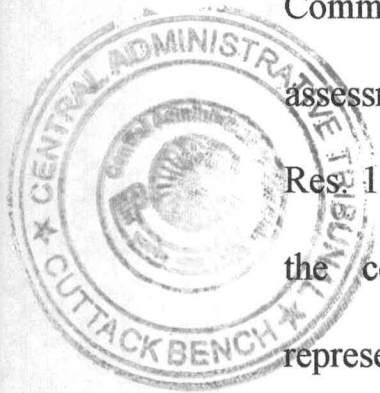
“How to categorize in the light of relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection Committee”

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Viewed from the above, there is hardly any scope for the Tribunal to interfere in the matter of career assessment and/or marks awarded by the Screening Committee.

9. However, now the Tribunal is to examine as to whether inclusion of Res.3 in the Screening Committee as well as in the Selection Committee in any way is irregular and/or as to whether actually the career assessment marks have been placed before the Selection Committee ?.

Res. 1 and 2 at Para 13 of their counter affidavit have stated that as per the constitution of the Selection Committee, there has to be representatives of both the ASRB and ICAR. Res.3 was in the Screening Committee representing the subject matter from ICAR and he served on the Selection Committee as the nominee of the Director General of ICAR. The Member (Animal Science) of ASRB was the Chairman of the Screening Committee as well as a member of the Selection Committee. Therefore, by the Constitution, it is inevitable that ASRB and ICAR representatives are to be on both the Committees. The applicant has not rebutted this fact showing any material before us. There are also no material to show that the marks/points given in the Screening were placed before the Interview Board before marks were awarded in the interview. Therefore, we are not accepting this stand of the Applicant simply because the Res.3 had served the Selection process as Member of both the Committees. The submission of the Applicant that the career

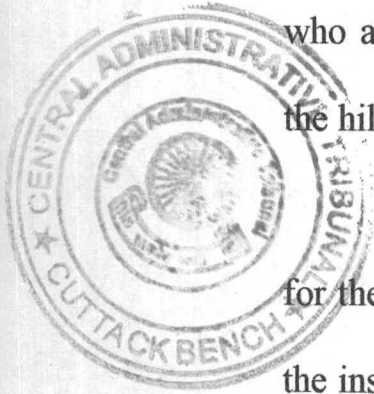


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assessment marks were placed before the Selection Committee (resulting selection of Res.4) is also not accepted because no material has been placed (either on record or during oral argument) to substantiate the said statement. This Tribunal is also not competent to make a roving inquiry to make out a case for any of the parties. Rather, onus lies on the person who alleges any infringement of rules/guidelines/procedure to prove (to the hilt) the allegations by adducing unimpeachable materials.

As regards the achievements in different fields, it is not for the Tribunal to weigh them; as it is for the authorities competent, (in the instant case, the Screening Committee or the Selection Committee, as the case may be), to consider those aspects in order to determine/adjudge the most meritorious candidate.

With regard to the submission of the applicant that he secured more marks than the Res.4 in the Career Assessment and interview, this submission of the applicant is based on surmise and conjecture, and has no bearing to the issues involved in the present case as no procedural irregularity has been done by the Respondents-Department, during the course of selection to the post in question. That apart, on perusal of the materials placed on record, we have found that the selected candidate (Respondent No. 4) secured more marks than the Applicant; for which he was selected.



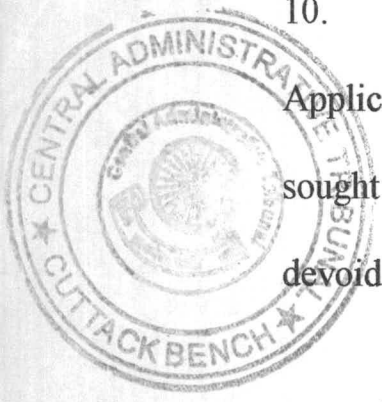
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For the reasons discussed above, we hold that the

Applicant has not been able to make out a case for any of the reliefs sought for by him, and, therefore, this Original Application, being devoid of any merit, is dismissed. No costs.




(B.N.SOM)

VICE-CHAIRMAN


12/02/05

(M.R. MOHANTY)
MEMBER (JUDICIAL)