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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 105/2007  
JODHPUR THIS IS THE 06th March, 2009**

**CORAM :**

**HON'BLE MR. N.D.RAGHAVAN, VICE CHAIRMAN [J]**

**HON'BLE MR. SHANKAR PRASAD, MEMBER [A]**

Dr. Aminudeen S/o Sh. Bulaki Khan, aged about 49 years, at present working as Principal Scientist in the office of National Research Centre on Camel Farm, Shivbari Jorbar, Bikaner. R/o 4-E-152, J.N. Vyas Colony, Bikaner (Raj).

**.....Applicant**

**For Applicant : Mr. Hemant Jain, Advocate.**

**Vs.**

1- I.C.A.R. through Secretary, Krishi Bhawan, New Delhi.

2- Director General I.C.A.R., Krishi Bhawan, New Delhi.

3- The Chairman, Agricultural Scientists Recruitment Board, Krishi Anusandhan Bhawan, Pusa, New Delhi.

4- Dr. K.M.L. Pathak, Director, National Research Centre on Camel Farm, Bikaner.

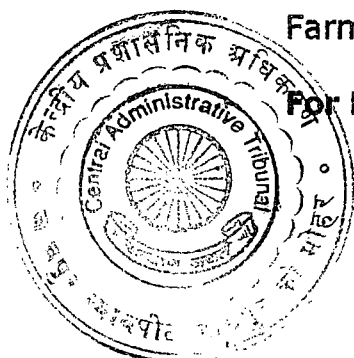
**.....Respondents.**

**For Respondents : Mr. V.S. GURJAR, Advocate.**

**.....**

**ORDER**

**[PER SHANKAR PRASAD, MEMBER(A)]**



In this second round of litigation, the applicant seeks quashing of the proceedings of selection to the post of Director, National Research Centre on Camel Farm, Bikaner. At the time of issuing notice, the Tribunal had granted the interim relief of treating the appointment of respondent No. 4 as provisional till the finalization of the present O.A.

2(a) The case of applicant in brief is that the Agriculture Scientists Recruitment Board invited applications for many posts including the above mentioned post, vide Advertisement No. 01/2006 Item No. 6. Sixteen applications were received. Twelve candidates including the applicant and private respondent appeared for the interview. The Condition [4] of essential qualification is Specialization and Research

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experience in any field of Animal Production. Respondent No. 4 does not fulfill this essential condition. His appointment is de hors the rules. The applicant fulfills all the conditions (Annexs.A/2 to A/5). Interview letter issued to the applicant is Annex. A/6. Condition 12 and 13 thereof refer to notes on points mentioned in Annex.-I and to bring all certificates of academic qualification. O.A. 280/2006 filed earlier was withdrawn with liberty to file a fresh O.A.

(b) A very detailed rejoinder is filed. Annexure A/8, guidelines for preliminary scrutiny, provides that no marks are to be assigned to an ineligible candidate. It is stated that the research activities in animal sciences are broadly divided into two heads viz., animal production & animal health. The Organogram <sup>As in the annual</sup> ~~Animal~~ Report of IVRI, Izzatnagar shows that Animal Health and Animal Production are separate divisions (Annex.A/9). Veterinary <sup>As</sup> Parasitology is under Animal Health. Pleading by respondents that Veterinary Parasitology is a branch of animal production, is denied. Private respondent No. 4 is from that discipline. The Screening Committee has ignored this aspect. ASRB has erred in interviewing the private respondent. It is submitted -



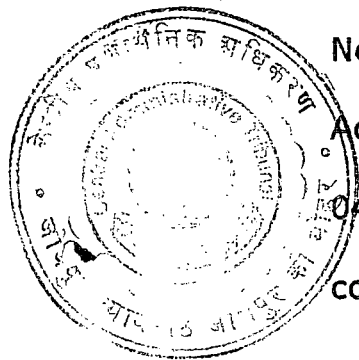
**"4.5.9 ..... Plea of respondents that the area of Animal Production primary league comprises of the disciplines / specializations in Animal Genetics and Breeding, Animal Reproduction, Animal nutrition and Animal health is partially true to the extent that it includes disciplines / specializations in Animal Genetics and Breeding, Animal Reproduction, Animal nutrition but inclusion of Animal health is misleading. In fact, specifically mentioning Animal Production itself means that disciplines of Animal Health are not acceptable and similarly requisition mentioning that specialization in Animal Health itself means that disciplines of Animal production are not acceptable. In the same advertisement notice for the post of Director, IVRI, eligibility conditions indicated both Animal Production and Animal Health. If ASRB considers Animal Production and Animal Health as one entity, "why they need to mention that persons from either of these divisions are eligible"? The plea is not true and denied. ....".**

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This post was for the specialists of Animal Production, which includes the disciplines of Animal Reproduction (Gynecology and Obstetrics) Animal Physiology, Animal Breeding and Genetics, Animal Nutrition and Live-stock production and management. Condition 8 of Instructions to candidates by ASRB (Annex.A/10) casts an obligation on the applicants to satisfy themselves that they fulfill the eligibility condition. Annex. A/11 is the letter written by a Scientist of Animal Health in 1999 to include Animal Health also for the post of Head, Regional Campus of CSWRI, Bikaner.

There is no reply in rejoinder to the assertion in reply that he lacks desirable qualifications.

(c) The applicant brought on record on 17.10.2008 (a) Chapter 3 titled 'Revised Qualifications' from Agricultural Scientific Service Rules. Our attention was drawn to para 5 regarding Directors mentioned therein. Sub-para (iv) states specification (to be specified) (b) Notifications for Advertisement No. 01/2006 Item No. 1, Item No. 6, Advertisement No. 02/2006. Item No. 52, 53, and Advertisement No. 04/2006 Item No. 278, Item No. 282. Our attention was drawn to condition (iv) specification which can be summarized as under :-

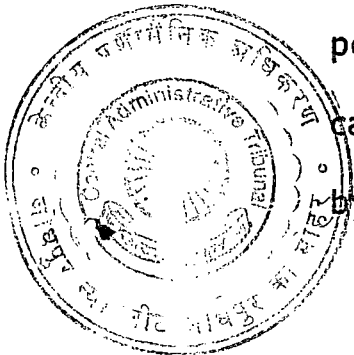


Sl.No.	Noti- fication	Post.	Clause (iv)
1.	1/1	Director NRI, Izzatnagar	livestock Health/Live Stock Production.
2.	1/6	Present post	Animal Production.
3.	2/52	ADG (Animal Health)	Animal Health
4.	2/53	Director,CSWRI	Animal Production.
5.	4/278	ADG/Animal Nutrition & Physiology	Animal Nutrition/ Animal Physiology
6.	4/282	Director,CARI	Animal Production

Serial 1 is covered under para 4 which has the clause specialization and experience.

(c) Classification of disciplines in IVRI.

3(i) The ASRB has filed the reply on behalf of official respondents. It is stated in their reply that ASRB is an independent recruiting agency on the lines of Union Public Service Commission to make recruitment to all Scientific posts in I.C.A.R. The screening process and the entire process is aimed at selecting the best available talent. The applicant has challenged only the selection process and not any specific order. The OA is accordingly required to be dismissed in limine. The prescribed procedure is explained. It consists of two phrases; submission of score card by Screening Committee as per marks scored in different attributes, which is followed by an interview. Director, N.R.C. on Camel is a post for direct recruitment on tenure basis. 18 persons responded to the selection notification of which sixteen were called for interview. Only twelve participated. The total marks obtained by applicant was less than that of the selected candidate. It is stated :



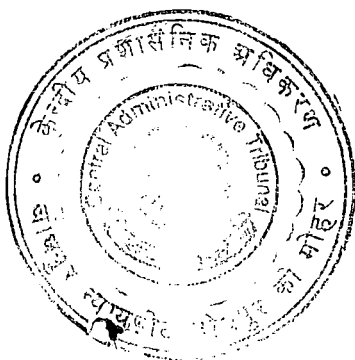
**"44 The area of Animal Production primary league comprises of the disciplines / specializations in Animal Genetics and Breeding, Animal Reproduction, Animal Nutrition and Animal Health. Technically and professionally these for the specialization / disciplines are interconnected and interdependent which contribute to the productivity of the Animals. The recommended candidate possesses adequate exposure and experience in Animal Health. In fact, considering the technicalities the Board had called only those applicants who possessed specialization in the disciplines of Veterinary Parasitology, Pathology, Medicine, Nutrition, Livestock Production and Management and Animal Reproduction. In fact, in five other institutes of ICAR, working on R&D of previous animal species, the incumbent Directors having specialization in Veterinary Parasitology."**

(ii) Para 4.5 (iii) of the reply reads : *Sh*

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**"(iii) As regards the other conditions, i.e. contribution to Research / Teaching / Extension Education, and specialization and research experience on the basis of publications / innovations, the same were also found to be fulfilling in his case by the Screening Committee/Board."**

(iii) The applicant does not fulfill the desirable qualification of having experience in research management position. The O.A. is required to be thrown-out only on this count. The comparative position vis-à-vis the selected candidate is indicated to show that recommended person is a far superior candidate. The research work done in Breeding, Reproduction, Nutrition & Health is counted towards experience in Animal Production. The applicant after participating in selection is estopped from challenging the same. Reliance is placed on the decisions in **National Institute of Mental Health and Neuro Sciences Vs. K.K. Raman**, AIR 1992 SC 1806 and **Osmania University Vs. Abdul Rayees Khan and Anr.**, (1997) 3 SCC 124.

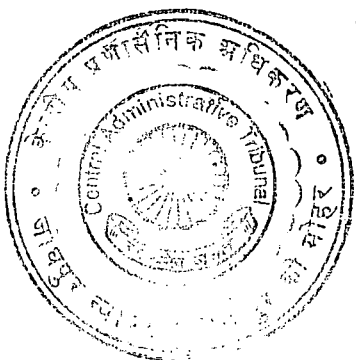


The claim of the applicant for Interim Relief is not sustainable in view of the decisions of Apex Court in (a) **Union of India Vs. Modilust Limited**, (2003) 6 SCC 65, (b) **State of U.P. Vs. Visheshwar**, 1995 Supp (3) SCC 590, (c) **Home Secretary, U.T. of Chandigarh Vs. D.S. Grewal**, (1993) 4 SCC 25 and (iv) **Ritona Consultancy (P) Limited Vs. Lohia Jute Press**, (2001) 3 SCC 68. The same is required to be vacated.

4- The private respondent has filed reply asserting that he fulfills all the conditions. He has broadly advanced the same arguments as official respondents. *dh*

5- We have heard the learned counsels. We have also gone through the selection file, produced pursuant to our order dated 21.11.2007. The appointment of the applicant was approved by the President <sup>of ICAR</sup>.

6. A perusal of the selection file shows that of the twelve persons interviewed, three each have Ph.D. in Animal Genetics & Breeding and Animal Nutrition, two have Ph.D. in Veterinary Parasitology and one each has Ph.D. in Veterinary Gynecology and Obstetrics (Applicant), Veterinary Parasitology, Veterinary Bacteriology and Virology and Veterinary Medicine. The applicant is tied at 10<sup>th</sup> and 11<sup>th</sup> position. Even if, we leave-out candidates belonging to veterinary parasitology, pathology & medicine amongst the remaining eight candidates, the applicant will be <sup>placed</sup> ~~held~~ at Sl. 7<sup>th</sup> & 8<sup>th</sup>. One Dr. R.C. Jakhmola belonging to the Animal Nutrition Wing, who is number 2 on the existing panel, will be at the top of panel. Even in the Orgonogram of the IVRI, Izzatnagar, relied upon by the applicant, Nutrition falls in production division.



7- We note, at the out-set that the applicant had earlier approached this Tribunal in respect of this very issue by filing O.A. 280/2006. He had moved MA 56/2007 to amend the OA to include additional grounds based on refusal of respondents to furnish certain information in respect of respondent no. 4. The operative part of order dated 04.04.2007 dismissing MA 56/2007 to amend the O.A. reads :

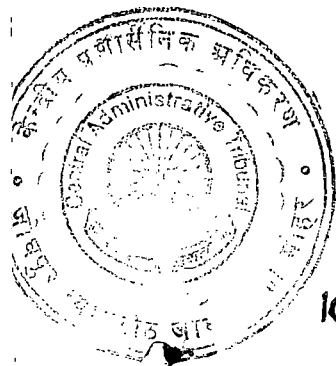
**"On examination of the OA we find that the applicant has challenged the selection & appointment of the respondent No. 4 and the information derived by the department under RTI Act is not at all relevant for determining the question involved in the OA and as such MA seeking amendment of the OA is rejected."**

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The Tribunal passed the following order in the OA:-

**"Heard learned counsel for the applicant. After addressing certain arguments, learned counsel for the applicant states that he may be allowed to withdraw this O.A. with permission to file a fresh one with better particulars. Request is allowed. O.A. is dismissed as withdrawn with liberty as prayed for."**

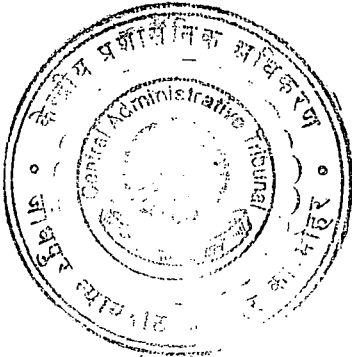
8- It is, thereafter, that the present O.A. is filed. Apart from a new paragraph 4.5 to incorporate particulars about the applicant and modified paragraph 7 regarding matter not previously filed or pending before any other Court, the rest of paragraphs are identical except <sup>in reference to</sup> reference to Annex.A/2 in para 4.6 <sup>in reference to</sup> replaced by Annex.A/6. We note that the words 'certain' in place of 'curtain' in para 4.7, 'Sharve' in place of 'Sarva Shri' and 'de-horse' for 'de hors' in para 4.8 are repeated. The Interim Relief clause is identical even though the position might have been changed. Apart from bringing the four annexures relating to his personal achievement on record, no document to support his claim that veterinary parasitology is not included in animal production is enclosed along with the O.A.



10(a) The appellant in **Dr. Duryodhan Sahu & Ors. Vs. Jitendra Kumar Mishra & Ors.**, 1998 SCC (L&S) 1802, was working as an Assistant Surgeon in the Department of Gastroenterology of S.C.B. Medical College, Cuttack. He had acquired special training experience in the said field. The Orissa Public Service Commission invited applications for the post of Junior Teacher (Lecturer) in Surgical Gastroenterology and other disciplines. Medical Council of India was consulted regarding the qualifications. After two candidates had been short-listed, comments of Director, Medical Education and Training were obtained. Along with the appointment of other candidate, one

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post was created. The Public Service Commission recommended the name of the applicant against the second post. Three OAs were filed seeking identical relief. The Tribunal held that OAs were maintainable. The Tribunal came to the conclusion that it cannot be said that applicant has acquired the special training as indicated in letter of Medical Council of India. While refusing to quash the order creating the additional post, the Tribunal restrained the Government from appointing the appellant and directed fresh consideration. On appeal, the three Judge Bench held :-



**"The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3 (q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3 (b) defines the word "application" as an application made under Section 19. the latter section refers to "person aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. The word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. if public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated."**

The Apex Court also held :

**"22. Turning to the second question, even the facts set out by us earlier would show that the petitioner satisfied the requisite qualifications prescribed for the post of**



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**Lecturer. The only contention urged is that the petitioner did not have two years' special training in Surgical Gastroenterology from an institution recognized by the MCI for giving special training. There is no merit in the contention. The list of recognized medical colleges in India published by the MCI contains the name of S.C.B. Medical College, Cuttack at Sl. no. 80. Thus the said College is a recognized institution. The interpretation that the institution should be recognized for giving special training is erroneous. There is no such requirement in the rules."**

It allowed the appeal.

9(b) The Apex Court in **Kusum Lata Vs. Union of India**, (2006) 6 SCC 180 held :-



**"5. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal v. H.S. Chowdhary and Kazi Lhendup Dorji v. CBI. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See Ramjas Foundation v. Union of India and K.R. Srinivas v. R.M. Premchand)."**

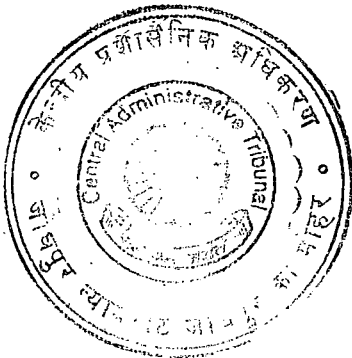
**8. In Janata Dal case this Court considered the scope of public interest litigation. In para 53 of the said**

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judgment, after considering what is public interest, has laid down as follows: (SCC p. 331)

"53. The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

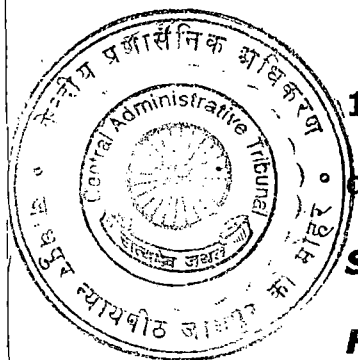
17. As noted supra, a time has come to weed out the petitioners, which though titled as public interest litigations are in essence something else. It is shocking to note that the courts are flooded with a large number of so-called public interest litigation where only a minuscule percentage can legitimately be called as public interest litigation. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, the courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters by competitors continue unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts. &



10(c) A Three Judge Bench of the Apex Court in **Prabodh Verma & Ors. Vs. State of U.P. & Ors., AIR 1985 SC 167** has held :-

**"A High Court ought not to hear & dispose off a Writ Petition under Art. 226 without the persons who would be vitally affected by its judgement being before it as respondents or at least some of them being before it in a representative capacity if their numbers is too large to join them as respondents individually and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition to non-joinder of necessary parties".**

11- The crucial question for consideration in the present O.A. is as to whether, the private respondent fulfills qualification No. 4. An equally important question is as to whether the Tribunal can interfere with the decision of ASRB and the Authority that the private respondent fulfills this condition.



12- The learned counsel for the applicant has placed reliance on the decision in **District Collector and Chairman Vs. M. Tripura Sundari Devi** (1990) 3 SCC 655, **Hoshier Singh Vs. State of Haryana and Ors.,** 1993 Supp. (4) SCC 377, **Dr. Bhanu Prasad Panda Vs. The Chancellor, Sambalpur University and Ors.,** AIR 2001 SC 3324 and **Chandra Sekhar Azad Vs. United Traders,** 2008 (2) SCC 552. The Apex Court in **M. Tripura Sundari Devi** (supra) held :-

**"6. It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."**

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13- The Apex Court in **Hoshiar Singh** (supra) has followed the principles enunciated in **M. Tripura Sundari Devi** and held that Board could not have relaxed the standards laid down in advertisement. The decision in **Chandra Sekhar Azad** is on the subject of regularization of Casual Labour. The Apex Court has held that Constitutional Scheme be followed.

14- The Apex Court in **Dr. Bhanu Prasad Panda** (Supra) held :-

**"5. We have carefully considered the submissions of the learned counsel appearing on either side. The stipulation regarding the minimum academic qualification read, "good academic record with at least 55 per cent marks or an equivalent grade of Masters degree level in the relevant subject from an Indian University or an equivalent degree from a foreign university". Though the Department concerned for which the appointment is to be made is that of 'Political Science & Public Administration', the appointment, with which we are concerned, is of the Lecturer in Political Science and not Public Administration and subject matter-wise they are different and not one and the same. It is not in controversy that the post of Lecturers in Public Administration and in Political Science are distinct and separate and on selection the appellant could not have been appointed as Lecturer in Public Administration be it in the Department of Political Science and Public Administration since the advertisement was specifically to fill up the vacancy in the post of Lecturer in Political Science. Merely because the Department is of Political Science and Public Administration - the essential requirement of academic qualification of a particular standard and grade, viz., 55%, in the "relevant subject" for which the post is advertised, cannot be rendered redundant or violated by ignoring the relevant subject and carried away by the name of the Department only which, in substance, encompass two different disciplines. That merely depending upon the context he was being referred to or the post is referred to as being available in the Department of political science and Public Administration, is no justification to do away or dispense with the essential academic qualification in the relevant subject for which the post has been advertised. Consequently, the Resolution No. 6.2 dated 18.2.92 or extracts provided from the proceedings of the Board of Studies dated 2.3.96 cannot be of any assistance to support the claim of the appellant. The rejection by the U.G.C. of the request of the Department in this case to relax the condition relating to 55% marks at Post Graduation level for Research Assistant having M. Phil upto March 1991 or Ph.D. upto December 1992, is to be the last word on the claim of the appellant and there could be no further controversy raised in this regard. In**



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view of the above, no exception could be taken to the decision of the Chancellor and no challenge could be countenanced in this appeal against the well merited decision of the High Court."

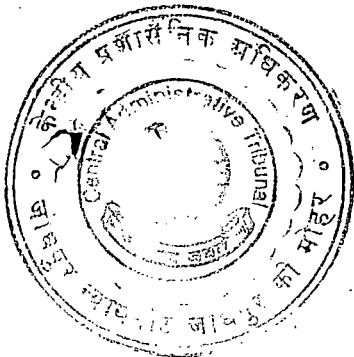
15- The Constitution Bench in **Mohammed Shujat Ali & Ors. Vs.**

**U.O.I. & ors.,** AIR 1974 SC 1631 held :

"The question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government."

16- The Apex Court in **Osmania University, Hyderabad, A.P. Vs.**

**Abdul Rayees Khan and anr.,** 1997 SCC (L&S) 763 held :-



"The procedure for promotion from the post of Lecturer to Reader as enjoined in University statute and the guidelines laid down by University Grants Commission was scrupulously followed and strictly complied with. The High Court was not right in concluding that there was no objective evaluation by two experts constituting the expert committee. The High Court was also not right in concluding that the Committee should have adopted the procedure of awarding marks for selection of the candidates. When a Lecturer was selected for promotion as a Reader, respective academic preferences and performance, teaching experience and capacity to teach and other teaching material relevant to the subject in that behalf were considered by the Committee. It is not necessary, like in selection of Class II and Class III officers, to award marks to each candidate for their selection. What is required to be done is dispassionate and objective selection but not arbitrary or colourable selection. When the University nominated seven members including a High Court Judge and it selected Readers or Professors on objective test, there emerges no arbitrary selection. Generally, the court may not interfere with the selection relating to educational affairs, and academic matters may be left to the expert body to select best of the talent on objective criteria. What is the objective criteria is a question of fact in each case. Each

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**case depends upon its own facts and the circumstances in which the respective claims of competing candidates come up for consideration. No absolute rule in that behalf could be laid down. Each case requires to be considered on its own merit and its own setting, giving due consideration to the views expressed by educational experts in the affairs of their administration or selection of the candidates."**

17- A Three Judge Bench of the Apex Court in **Dr. Kumar Bar Das**

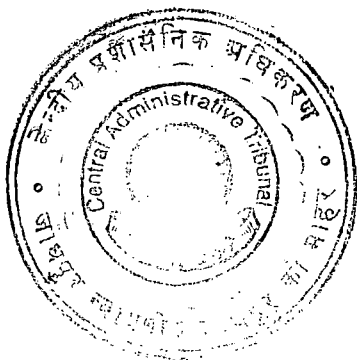
**Vs. Utkar University and Ors.**, 1999 SCC (L&S), 236, held :

**"27. In our view, having regard to the high qualifications of the experts and the reasons furnished by the Syndicate as being the obvious basis of the experts' opinion, the Chancellor ought not to have interfered with the view of the experts. The experts' views are entitled to great weight as stated in University of Mysore vs. Govinda Rao, J.P. Kulshrestha vs. Chancellor, Allahabad University, Neelima Misra v. Harinder Kaur Paintal, Osmania University vs. Abdul Rayees Khan.**

**28. In our opinion, the Chancellor cannot normally interfere with the subjective assessment of merit of candidates made by an expert body unless mala fides or other collateral reasons are shown. In Neelima Misra case above-referred to, this Court observed, referred to the powers of the Chancellors in matters of appointment of Professors / Readers as being purely administrative and not quasi-judicial. It was further stated : (SCC p. 761, para 29)**

**"29. The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the statutes. He must not be guided by extraneous or irrelevant considerations. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, ... is liable to be quashed being violative of Article 14 of the Constitution of India."**

**In the present case, the Chancellor failed to notice that the advertisement and the UGC Regulations - even as per the show-cause notice - referred only to "about 10 years' experience in teaching and/or research". Hence, it was necessary to take into account not only the teaching experience but also the research experience. The pro forma which mentioned the marks under each of the six heads did not unfortunately refer to the research experience though the advertisement did. Hence the Chancellor committed an illegality in omitting the research experience of 1 year and 5 months out of consideration. If the research experience of 1 year and 5 months and 14 days were added, the total teaching and research experience of the appellant would come to 9 years 1 month. It was not sufficient for the Chancellor to just go by the pro forma inasmuch as the advertisement did refer to research experience also apart from the teaching experience."**



18- The Apex Court in *M.V. Thimmaiah & Ors. Vs. U.P.S.C. & Ors.*, (2008) 2 SCC 119, has held :

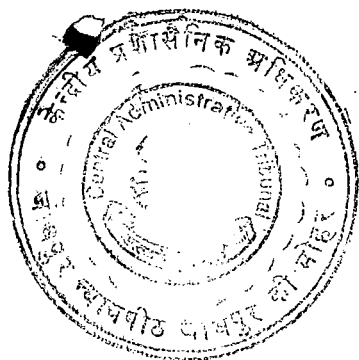
**"30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions."**

19- The Apex Court in Civil Appeal 6045/2008 after referring to the decisions in *Dr. Kumar Bar Das, G.N. Nayak Vs. Goa University*, 2002 (2) SCC 712, *C.D. Govinda Rao & Anr.*, AIR 1965 SC 491, *M.V. Thimmaiah, NIMHANS Vs. Dr. K. Kalyan Raman & Ors.*, concluded as under:-

**"27. Before we conclude, at the risk of repetition, we may reiterate that the Chairman, Department of Sociology, University of Bangalore submitted his scrutiny and verification report in which it was stated as under :-**

**"On my scrutiny, I am satisfied that the candidate under reference fulfils all the requirements as laid down in the University Notification under reference and the candidate may be invited for the interview. If the candidate is not eligible, please furnish the details."**

**28. A reading of the scrutiny report which was extracted by the learned Single Judge in his order would clearly show that the Chairman found only four persons eligible for the post and invited the appellant and the respondent Nos. 1 and 2 and one more candidate for interview. After being satisfied and after verifying the report of the eligibility and the requirements for appointment to the post of Professor in the Sociology Department of the University, the scrutiny and verification report was filed by the Chairman and on the basis of which the appellant was selected and appointed in the post of Professor in the University. That being the position and in view of our discussions made herein**



<sup>-16-</sup>  
*above, we are of the view that the Division Bench as well as the learned single judge ought not to have exercised the writ jurisdiction and interfered with the selection of the expert committee of the University for the reasons made in the order and particularly when the selection of the appellant was not challenged on the ground of mala fides."*

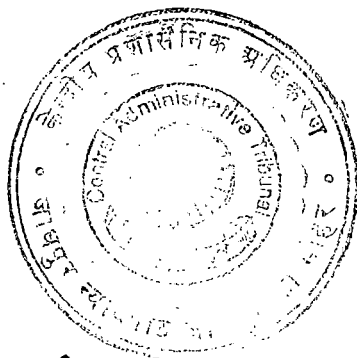
20- The following conclusions emerge from these decisions:-

(a) Recruitment has to be made in accordance with the Constitutional Scheme. The Selection Board cannot depart from the recruitment rules.

(b) The appointment of a person in disregard of advertisement is a fraud on public. No Court should be a <sup>party to</sup> ~~partly~~ perpetuation of the fraudulent practice.

(c) The requirement of academic qualification of a particular standard and grade viz. 55% marks in relevant subject cannot be ignored by ignoring the relevant subject and accepting other subjects in that department.

(d) It is for the expert bodies and the departments to judge the technical qualification. Courts cannot sit as an appellate authority to examine the recommendations of expert committees etc. in matters of appointment. It cannot be challenged except on the grounds of malafides or serious violation of rules.



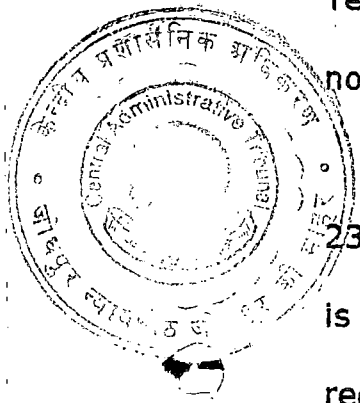
21- Coming to the facts of this case, we find that even if the applicant succeeds in the OA, he will not get the appointment to this post as he is low down on the merit list. He has also not joined any of the persons above him in the merit list either individually or in a representative capacity. Lack of desirable classification is in a different category from essential qualification. The latter dis-entitles. As the applicant has participated in the selection, we cannot say that he is not



~17~

an aggrieved person. The O.A. cannot be termed a public interest litigation.

22- The chapter on revised qualifications brought on record by the applicant, indicates that specialization was to be specified. Neither the applicant nor the respondents have brought on record the order of ICAR prescribing the specialization for this post. The applicant has brought on record certain notifications to show that specialization is shown as Animal Production / Animal Health, as the case may be. In one case, discipline like Animal Nutrition / Animal Physiology has been indicated. For this post, the specialization is shown as Animal Production. The applicant has also brought on record the classification in IVRI, an institution under ICAR. It shows that various disciplines are classified under four broad heads for the purposes of Research Teaching & Experience. Parasitology is mentioned under Health and not production.



23- The respondents have filed a reply to contend that Parasitology is part of Animal Production but without bringing any documents on record. The ASRB Guidelines indicate that applicant is responsible for his essential educational qualifications. The selection file does not show an examination of this aspect. They have only seen whether the 18 persons who have applied are otherwise fit to be called for interview or not?

24- It is true that recommendations of expert committee are not to be interfered with lightly. The Organogram of IVRI, a Unit of ICAR, suggests that <sup>In the private respondent's</sup> applicant does not have the essential qualifications. *Li*

-18-

25- We think the ends of justice shall be met if we direct the Governing Body of ICAR, the highest body, to consider this aspect and pass a speaking order within three months of the receipt of the order. The O.A. is disposed of accordingly. No costs.



*Shankar Prasad*  
**(Shankar Prashad)**  
**Member (A)**

*N.D. Raghavan*  
**(N.D. Raghavan)**  
**VC (J)**

jr

Recd. copy  
Jemur Jain Adv.  
13/03/09.

R/C copy  
on 17/3  
Ad

Part II and III destroyed  
In my presence on 8/2/15  
under the supervision of  
section officer (J) as per  
order dated 07/07/2015

Section officer (Record)