

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.318/2010 & M.A.No.175/2010.

Date of decision: December 03rd, 2010

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J)
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Dr. Aminu Deen son of Shri Baulaki Khan, R/o 4-E-152, J.N. Vyas Colony, Bikaner, last employed on the post of Principal Scientist in Central Sheep and Wool Research Institute, Malpura, Avikanagar-304501 Distt. Tonk, (Rajasthan)

..... Applicant.

Rep. By Mr. A.K. Kaushik, Counsel for the applicant.

Versus

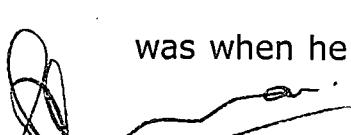
1. Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi.
2. Director General, Indian Council of Agriculture Research, Krishi Bhawan, New Delhi.
3. The Chairman, Agricultural Scientists Recruitment Board, Krishi Anusandhan Bhawan, Pusa, New Delhi-110012.
4. Dr. K.M.L. Phatak, Dy. Director General, Animal Science, I.C.A.R., Krishi Bhawan, New Delhi.

..... Respondents.

ORDER

Per Mr. Sudhir Kumar, Member (A)

The applicant is before us in the 3rd round of litigation with almost the same prayer. He had first filed an O.A. No. 280/2006, which came to be dismissed as withdrawn. The 2nd round of litigation was when he had came before this Tribunal in O.A. No. 105/2007, in



which the final order was passed on 6.3.2009. Para 7 & 8 of that order states as follows regarding the first round of litigation:-

"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 M.A. 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 M.A. 56/2007 to amend the O.A. read:

"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."

2. In the 2nd round of litigation, apart from cosmetic changes in the O.A. and bringing 4 Annexures relating to his personal achievements on record, as noted in paragraph 9 of the order of this Tribunal, no document was produced by the applicant to support his basic claim (running through all the 3 O.As filed by him) that Veterinary Parasitology is not included in the realm of Animal Production. In the 3rd round of litigation also, he has come before this Tribunal once again to challenge the appointment of Private Respondent No.4 as the Director of National Research Centre on Camel Farm, Bikaner, for which post he himself also was a candidate, and a interview was held for the same on 13.11.2006, at which a total of 18 candidates had been called, and 12 appeared, with the applicant being tied at 10th & 11th position out of the 12 who appeared in the interview. After perusing the relevant selection file produced before this Tribunal during the course of hearing of that O.A. No. 105/2007, the Bench had stated as follows:-

" 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 of ICAR."

"A perusal of the selection file shows that of the twelve persons interviewed, three each 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 10th and 11th position. Even, if we leave-out candidates belonging to veterinary parasitology, pathology & medicine amongst the remaining eight candidates, the applicant will be at Sl. 7 & 8. 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 Organogram of the IVRI, Izzatnagar, relied upon by the applicant, Nutrition falls in production division."

3. The Bench had on that date followed the observations of the Hon'ble Apex Court in the case of **Mohammed Shujat Ali & Ors. Vs. U.O.I. & Ors., AIR 1974 SC 1631**, in para 15 of its order, in **Osmania University, Hyderabad, A.AP. Vs. Abdul Rayees Khan and anr. 1997 SCC (L&S) 763: (1997) 3 SCC 124** in paragraph 16 of its order, in the three Judge Bench order of the Apex Court in **Dr. Kumar Bar Das Vs. Utkal University and Ors. 1999 SCC (L&S), 236** and the Bench had further relied on **M.V. Thimmaiah & Ors. VS. UPSC & Ors. (2008) 2 SCC 119** in paragraph 18 of its order. Among the conclusions drawn from those decisions by the Bench was the following:-

20. " (a)

(b)

(c)

(d) It is for the expert bodies and the department 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."



4. It was also recorded in paragraph 21 of the Judgment as follows:-

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

5. In the end the Bench had opined as follows:

"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 the private Respondents does not have the essential qualifications."

"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."

6. It is clear that the Bench had noted that the Organogram of the Indian Veterinary Research Institute, Izzatnagar, a unit of ICAR, *prima facie* suggests that the Private Respondent does not have the essential qualifications. However, for considering this purely technical aspect and for passing a speaking order in this regard, in the ends of justice, directions had been issued to the Respondents for it to be considered by the Governing Body of ICAR.

7. The speaking order passed as a result of these directions has been enclosed by the applicant as (Annexure A/3) of the O.A. Paragraphs 9,10,11 and 12 of the speaking order dated 14th May, 2009 passed on behalf of the ICAR are relevant, which state as follows:-

"9. Whereas, regarding item no. (iv) of the essential qualifications, it is clarified that the area of Animal Production primarily comprises of the disciplines/specializations in (i) Animal

Genetics and Breeding, (ii) Animal Reproduction, (iii) Animal Nutrition and (iv) Animal Health. Technically and professionally these four specializations/disciplines are interconnected and interdependent which contribute to the productivity of Animals. Considering these technicalities it had been mentioned inter-alia that "Specialization and research experience in any field of Animal Production" as one of the essential qualifications and in consonance with this stipulation the Board had called only those applicants who possessed specialization in the disciplines of (i) Veterinary Parasitology, (ii) Veterinary Pathology, (iii) Veterinary Medicine, (iv) Animal Nutrition, (v) Livestock Production & Management and (vi) Animal Nutrition, (v) Livestock Production & Management and (vi) Animal Reproduction. The field of specialization of the recommended candidate is Animal health and is fulfilling the condition of specialization and research experience in any field of Animal Production."

"10. Whereas, in the light of the foregoing the recommended candidate fulfils the essential qualifications as specified in para 2(i)(iii) above."

"11. Whereas, the Selection Committee of the ASRB had made their recommendation with the sole intention of selecting the best talented applicant for the said Research Management Position. Whereas, it has been further reaffirmed that the selection has been made in accordance with the prescribed Screening/Selection Committee with adequate quorum and subject matter specialists and there has been no procedural lapse or any deviation from established procedure for some malafide intentions."

"12. Whereas, with reference to the observations of the Organogram of IVRI it is clarified that ICAR has different institute with varying status and mandate and the organization conveniences. The Organogram of one Institute cannot be relevant or applicable for another institute. In the specific case the Organogram of IVRI, an Institute with Deemed to be University status has been cited. The IVRI being a national institute has a very broad mandate with a separate PG school, whereas the NRCC, Bikaner is a small unit with a mission mode approach of working on a single species i.e. Camel and therefore total reliance on an Organogram of the IVRI and drawing conclusions concerning selections on that basis will not be administratively fair and just. The Organogram as available in the Annual Reports of the respective Institute depict the hierarchy and command structure of an individual institute for operational convenience and this should not be misconstrued as the sole documented basis for selection in another institute."

8. We find nothing wrong with these observations in the speaking order, and we agree that the grouping of the various micro-disciplines relating to animal science in a teaching institute, which is a

Deemed to be University, like the Indian Veterinary Research Institute, Izzatnagar, cannot have a direct bearing on the groupings of disciplines in which the various Research Institutes of ICAR are organized. It cannot be anybody's case that Veterinary Parasitology

- would not affect Animal Production, as it is obvious that Veterinary
- Parasitology would affect both the Animal Production, and their Reproduction, and also the production of animal produce like milk, etc. wool etc. Therefore, it cannot be said that Veterinary Parasitology could not have been one of the relevant fields for being kept as one of the Branch of relevant disciplines from which candidates can be short listed.

9. As was cited by the Bench on 6.3.2009, while passing the order in O.A. 105/2007, out of the 12 persons who were interviewed on 13.11.2006, 2 had Ph.D. in Veterinary Parasitology, and 3 others had Ph. D. in Veterinary Bacteriology and Virology and Veterinary Medicine, and 3 had Ph.D in Animal Genetics & Breeding and another 3 had Ph. D. in Animal Nutrition, and the applicant of this O.A. had Ph.D in Veterinary Gynecology and Obstetrics, and it would be preposterous for anybody to allege that expert committee of the Agriculture Scientists Recruitment Board, which short listed and interviewed those 12 candidates, did not know as to what expertise in the respective Branches meant, and involved. In any case, no malafide had been alleged against any of the members of the Agriculture Scientists Recruitment Board, which conducted the interviews.

10. Therefore, in view of the observations of the Hon'ble Apex Court in the case of Mohammed Shujat Ali & Ors. (Supra),

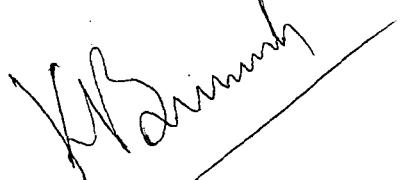
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Osmania University, Hyderabad, A.P. (Supra), Dr. Kumar Bar Das (Supra) and M.V. Thimmaiah & Ors. (Supra) and in view of the supporting observations of the Hon'ble Apex Court in the National Institute of Mental Health and Neuro Surgery Vs. Dr. K. Kalyan Raman & ors. AIR 1992 SC 1806, and in Madan Lal Vs. State of Jammu & Kashmir 1995 SCC (L&S) 712: 1995 (3) SCC 486: AIR 1995 SC 108 and in the case of Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors. AIR 2008 SC 1913, the applicant having appeared at the interview, cannot now turn around and contend that the process of selection was unfair, only because the result of the selection is not palatable to him. We also do not find anything wrong with the logic and reasoning of the speaking order dated 14.5.2009 (Annexure A/3) as stated above also, which has the approval of the Chairman of the Governing Body of I.C.A.R.

11. In the result, the O.A. is dismissed at the admission stage

itself. Accordingly, M.A. is also dismissed.


(SUDHIR KUMAR)
MEMBER(A)


[DR. K.B. SURESH]
MEMBER (J)

SK

5/1/16

दिनांक 5/1/16 के अद्वैतानुसार
मेरी उपस्थिति में दिनांक 12/1/16
को अम-II व III वर्ष किया गया।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकारण
जोधपुर नवायपीठ, जोधपुर