

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 520/03

Friday this the 13th day of October, 2006

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Dr.Lila Babu,
Senior Scientist,
Central Tuber Crops Research Institute,
Sreekariyam, Thiruvananthapuram,
residing at "Surabhi", TC 9/342
Plavila Road, Chenthi, Pongummoodu,
Medical College PO,
Thiruvananthapuram.695011.Applicant

(By Advocate Mr. P.Ramakrishnan)

v.

- 1 Indian Council for Agricultural Research (ICAR)
New Delhi represented by its Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.
- 2 The Chairman, Agricultural Scientists Recruitment Board,
Krishi Anusandhan Bhavan, I, Pusa Gate,
New Delhi.110 012.
- 3 The Director, Central Tuber Crops Research Institute,
Sreekariyam,
Thiruvananthapuram.
- 4 Dr.S.Edison, Director,
Central Tuber Crops Research Institute,
Sreekariyam, Thiruvananthapuram.Respondents

(By Advocate Mr.P.Jacob Varghese for Respondents 1 to 3)

The application having been finally heard on 26.9.2006, the Tribunal on 13 . 10.2006 delivered the following:

✓

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant is aggrieved by the denial of appointment to the post of Principal Scientist in terms of the "Scheme for Career Advancement of ARS Scientists under the ICAR" effective from 1.1.1996 and her promotion to the said post in the scale of pay of Rs. 16,400-450-20900-500-22400 with effect from 27.7.1998.

2 The brief facts relevant for the adjudication of the present dispute is that the applicant is a first rank holder in M.Sc (Botony) and Ph.d from Banaras Hindu University. She was initially recruited as 'Scientist' by the Respondent No.2 ie., the Agricultural Scientists Recruitment Board (ASRB for short), later promoted to the post of 'Scientist-II' in 1984 and to the post of as 'Sr.Scientist' in 1986. Since then, she has been continuing in the said post of Senior Scientist in the office of the Respondent No.3, namely, Central Tuber Crops Research Institute (CTCRI for short), under the 1st respondent, namely, the Indian Council of Agricultural Research (ICAR for short).

3 According to para 1.3 of the aforesaid scheme, a Senior Scientist with minimum of 8 years of service in that grade is eligible to be considered for appointment as 'Principal Scientist'. Para 2.4 of the Scheme contains the eligibility criteria for promotion to the post of Principal Scientist, which is extracted below:

"2.4 Principal Scientist (Promotion):

In addition to the sanctioned posts of Principal Scientists as per cadre strength already fixed, which is to be filled through direct recruitment through All India advertisement, promotions will be made from the posts of Senior Scientist to the post of Principal Scientists after 8 years of service as Sr.Scientist. This promotion will be personal to the Scientist



who is promoted.

A Senior Scientist will be promoted to the post of Principal Scientist if he/she:

- i has completed 8 year of service, and
 - ii he/she presents himself/herself before the Selection Committee constituted by ASRB with some of the following:
- a Self appraisal reports (required)
 - b Research contribution/books/articles/research papers published
 - c Any other academic contributions. The best three written contributions of the Sr. Scientist (as defined him/her) may be sent in advance to the experts to review before coming for the selection. The candidate should be asked to submit these in sets with the application.
 - d Seminar/conference attended
 - e Contribution to teaching/ academic environment/ institutional corporate life.
 - f Extension and field outreach activities."

The applicant having qualified for consideration for promotion as Principal Scientist applied for the same and on 10.4.01 and she appeared before a Selection Board constituted by the ASRB for assessment for promotion. The 4th respondent Dr.S.Edison, Director of CTCRI was also included as a member of the Selection Board, which according to the applicant was an unprecedented procedure in ICAR as the Directors of the ICAR Institutes were not made members of the evaluation board for promotion of Scientists. After assessment, the first respondent decided not to promote the applicant and the said decision was conveyed to her vide the Annexure.A2 Note dated 3.8.2001 issued to her by the Respondent No.3 which is extracted below:-

"In connection with the above, the undersigned is directed to convey approval of the Competent Authority of the Council to the acceptance of the recommendations of the Agricultural Scientists Recruitment Board for non-promotion in respect of Dr. Lila Babu, Sr.Scientist in the discipline of "Biochemistry (Plant Science)" to the next higher grade of Principal Scientist in the scale of pay of Rs. 16400-45-20900-500-22400 with effect from 27.7.1998."



The applicant submitted that the decision of the Respondent No.1 not to promote her to the post of Principal Scientist is arbitrary, illegal and unsustainable as she had put in 13 years of service as Senior Scientist as against the minimum requirement of 8 years. She had acquired the Ph.d as early as in 1979. According to the applicant, the self-appraisal report submitted by her in time was not placed before any expert for proper evaluation. Again, according to her, she had made ample research contribution and has been the leader of two research projects and was associated in other two projects during the assessment period and the ICAR itself had recognized her contribution by conferring a national award on her in 1996-98 ironically coinciding with the assessment period and denial of promotion. She has also submitted that she had 25 publications, including book, articles in technical bulletins and research papers, yet the selection committee overlooked her. She had been a resource person for many international and national courses conducted by the CTCRI. She had submitted three of her best contributions and had placed on record the details regarding the symposium/workshop/conference, including international conferences to which she had been invited to present research papers. But they were not given due recognition by the Selection Committee. According to her, the denial of promotion to her was mainly due to the arbitrary and erroneous procedure adopted by the second respondent in as much as though there was no provision according to A1 circular for evaluation on the basis of an interview yet in an arbitrary manner 50% marks were earmarked for interview and only 30% marks and 20% marks have been assigned for research publications/achievement and recommendations of superior respectively. She has submitted that



the allotment of 50% marks for interview is clearly excessive and against the principles laid down by this Tribunal as well as the Apex Court in a number of cases. Moreover, the interview was a mere eye wash as 33 candidates were interviewed in 3 hours on 10.4.2001 and the time spent with a candidate was hardly sufficient to assess or evaluate his/her research work of over a decade in the case of the applicant it took less than 5 minutes. She had also submitted that the Director of her Institute (Respondent No.3) having been included as a member of the Selection Board for the first time, the Board only relied upon his report and no Annual Confidential Reports were produced before it for verification. She has alleged malafide against the respondent No.3 (arrayed in person as Respondent No.4 also) who had a strained relationship with her ever since he joined the Institute in 1997, started with her visit to Brisbane in Australia in connection with a workshop conducted by Asia Pacific Food Analysis Net Work in May, 1996. The traveling allowance bill submitted by her for attending the conference, to which she was entitled, was denied by the 4th respondent. In 1999 when the applicant was awarded the prestigious INSA (Indian National Science Academy) visiting fellowship to CCMB (Center for Cellular and Molecular Biology) at Hyderabad, the 4th respondent has caused inordinate delay in relieving her compelling her to take earned leave/loss of pay leave when she was eligible to proceed on duty leave on deputation. When the ICAR National Award was conferred upon her while she was doing fellowship at CCMB, Hyderabad and even when the said information was available with the Director, he had never informed her about it till she joined back duty on 10.7.2000 and because of the delay in getting the information, she could not attend the prestigious

ceremony held in Vigyan Bhavan, New Delhi on 16.7.2000.

4 She placed reliance upon the common order of this Tribunal in OA Nos.1054/01 and 1055/01 in support of the ground taken by her that the allotment of 50% marks for interview was excessive and arbitrary. The interview was a mere eye wash lasting 3 to 5 minutes in the case of each candidate during which time true evaluation of the performance of the candidates cannot be ascertained. She had also alleged violation of Annexure.A1 guidelines contained in the scheme for career advancement of ARS Scientists under the ICAR from 1.1.96. She has alleged utter perversity and malafide on the part of the Respondent No.4 who was made a member of the selection committee. She has, therefore, prayed for quashing and setting aside of Annexure.A2 Note dated 30.8.01 as well as Annexure.A5 letter dated 25.6.02 by which her representation for review of assessment promotion to the grade of Principal Scientist with effect from 27.7.98 was rejected saying that there was no provision for such a review of assessment promotion under the new guidelines of Career Advancement Scheme circulated vide Council's letter No.21(10)/99PER-IV dated 19.7.2000. On the contrary, she relied upon the Annexure.A6 letter dated 17.7.02 by which Shri Govindankutty, Senior Scientist whose request for review was also rejected along with that of the applicant vide Annexure.A5 letter dated 25.6.2002 was granted an opportunity to present himself again before the Board for interview.

5 The respondents in their reply has not refuted any of the grounds taken by the applicant except saying in a general manner that "all the grounds raised in support of the original application are untenable and unsustainable." The respondents, of course, in the reply have denied the



contention of the applicant that Dr. M.P.Govindankutty was allowed a review by the ICAR/ASRB. According to them the earlier representation of Dr.Kutty was not considered by the authority and the same was found to be incomplete. There was no review in his case but his case was considered on receipt of complete recommendation from the Board whereas in the case of the applicant the recommendation of the Board was clear and accepted by the competent authority. They distinguished these two cases stating that in the case of Dr.Govindakutty, he did not receive any communication of his assessment result while in the case of the applicant she got a conclusive report regarding non promotion. They have also denied the contention of the applicant that for promotion of Senior Scientist to Principal Scientist, Ph.d is not regarded as an eligibility criterion and the assessment is made purely on quality and quality of work during the period of assessment and not the mere degree.

6 The applicant has filed a rejoinder refuting the contentions of the respondents.

7 We have heard Shri P.Ramakrishnan for the applicant and Shri P.Jacob Varghese for Respondents 1 to 3. In our considered opinion the present case is squarely covered by the common order of the Madras Bench of this Tribunal in O.As 1054 and 1055 of 2001 – Dr.P.Sunderaraja and Dr.S.Asokan Vs. Union of India and others. Applicants were Senior Scientists since 1986 in National Research Centre for Banana, Tiruchi, Tamil Nadu under the ICAR. The ASRB conducted a selection for promotion from the eligible candidates to the post of Principal Scientist in the year 2001. Though the applicants were highly qualified and held Ph.d degree, they were not selected. The thrust of the argument in that case

was that though the guidelines for promotion to the post of Principal Scientist do not envisage any interview, yet the respondents made the promotion based on the marks obtained for interview which was contrary to the rules. Further, by awarding 50% of the marks for the interview, the respondents have violated the law laid down by the Apex Court in this regard.

8 The Apex Court in **Ashok Kumar Yadav Vs. State of Haryana**,
AIR 1987 SC 464 held as under:-

"While a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantage over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview board. There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is, therefore, regarded as an important tool along with the written examination.

So far as candidates in general category are concerned, it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selection to the Indian Administrative Service and other allied services. The percentage of marks allocated for the viva voce test by the Union Public Service Commission in case of selections to the Indian Administrative Services and other allied services is 12.2, and that has been found to be fair and just, as striking a proper balance between the written examination and the viva voce test. This court would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2 per cent of the total marks taken into



account for the purpose of selection. The court would suggest that this percentage should also be adopted by the Public Service Commission in other States, because it is desirable that there should be uniformity in the selection process throughout the country and the practice followed by the Union Public Service Commission should be taken as guide for the State Public Service Commission to adopt and follow. In case of ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed, the percentage of marks allocated for the viva voce test may be 25. Whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2 percent in case of candidates belonging to the general category and 24 percent of ex-service officers."

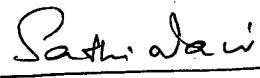
The Tribunal found that the guidelines issued by the ICAR do not indicate any such method of selection based on interview and therefore, there was *prima facie*, no justification for conducting the personal interview for the selection. Having done so, the respondents have further erred in allotting 50% of the total marks for personal interview. This Tribunal, therefore, ordered the respondents to consider the applicants therein for promotion to the grade of Principal Scientists with effect from 27.7.1998 with the stipulation that the applicants would be entitled for national fixation of pay and not for any arrears of back wages on their promotion. Though this order was challenged before the Hon'ble High Court of Madras in W.P Nos.1216 and 1217/03, the High Court upheld the Tribunal's order with the minor variations stating that there was no question for further giving direction that on their promotion, they would be entitled to any particular relief.

9 We respectfully follow the orders of the coordinate Bench of this Tribunal in the aforesaid common order in OA 1054 and 1055 of 2001 dated 24.9.2002(supra) as modified by the Hon'ble High Court of Madras in W.P.Nos. 1216 and 1217/03 (supra). In the present case also the

action of the respondents are vitiated by the fact that they have allocated 50% marks for personal interview, which is against the law laid down by the Apex Court in the case of Ashok Kumar Yadav (supra). We, therefore, have no hesitation to quash and set aside the impugned Annexure.A2 Note dated 3.8.2001 and Annexure.A5 letter dated 25.6.02. We do so. We also direct the respondents to consider the applicant for promotion to the post of Principal Scientist with effect from 27.7.1998 strictly on the basis o the scheme for Career Advancement of ARS Scientists under the ICAR effective from 1.1.1996 (Annexure.A1 and R.1). This exercise shall be completed within a period of three months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 13th day of October, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

S

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 520 OF 2003

..... FRIDAY, this the ³⁰ th day of October, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Dr. Lila Babu,
Senior Scientist,
Central Tuber Crops Research Institute,
Sreekariyam, Thiruvananthapuram,
Residing at "Surabhi", TC.9/342,
Plavila Road, Chenthi, Pongumoodu,
Medical College (PO),
Thiruvananthapuram – 695 011.

... **Applicant**

(By Advocate Mr. P. Ramakrishnan)

versus

1. Indian Council for Agricultural Research (ICAR),
New Delhi, represented by its Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.
 2. The Chairman, Agricultural Scientists
Recruitment Board, Krishi Anusandhan
Bhavan-1, Pusa Gate, New Delhi – 110 012.
 3. The Director, Central Tuber Crops
Research Institute, Sreekariyam,
Thiruvananthapuram.
 4. Dr. S. Edison, Director, Central Tuber
Crops Research Institute, Sreekariyam,
Thiruvananthapuram.

(By Advocate M/s. Varghese & Jacob)

The application having been heard on 26.10.2009, the Tribunal on30.-10.-09..... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant approached this Tribunal with reference to review of assessment made for promotion to the post of Principal Scientist and her

claim is preliminarily and principally based on a decision by the Central Administrative Tribunal, Madras Bench in O.A. No.1054 & 1055 of 2001 decided on 24th September, 2002. This order of the Tribunal was upheld by the High Court of Madras in Writ Petition Nos. 1216 & 1217 of 2003.

2. On the basis of the above judgment and relying upon the Apex Court decision in the case of **Ashok Kumar Yadav Vs. State of Haryana**, this Tribunal has passed the following order :-

"9. We respectfully follow the orders of the coordinate Bench of this Tribunal in the aforesaid common order in O.A. No.1054 and 1055 of 2001 dated 24.09.2002(supra) as modified by the Hon'ble High Court of Madras in W.P. Nos.1216 and 1217/03 (supra). In the present case also the action of the respondents are vitiated by the fact that they have allocated 50% marks for personal interview, which is against the law laid down by the Apex Court in the case of Ashok Kumar Yadav (supra). We, therefore, have no hesitation to quash and set aside the impugned Annexure A2 Note dated 3.8.2001 and Annexure A5 letter dated 25.6.02. We do so. We also direct the respondents to consider the applicant for promotion to the post of Principal Scientist with effect from 27.7.1998 strictly on the basis of the scheme for Career Advancement of ARS Scientists under the ICAR effective from 1.1.1996 (Annexure A1 and R1). This exercise shall be completed within a period of three months from the date of receipt of this order. There shall be no order as to costs."

3. Aggrieved by the above order dated 13.10.2006, the respondents moved the High Court and by its judgment dated 16.01.2009 in Writ Petition (C) No.6872/2007, the High Court has held as under :-

"5. We feel that the above decision of the Apex Court does not have any application to the facts of case. Ext. P2 scheme provides selection by the Board, before which the candidate has to appear with certain documents. The same would imply that the entire selection is to be based on the assessment of the candidate in the personal interview and also other relevant documents mentioned in para 2.4 quoted above. For avoiding arbitrariness, the Board decided to allow marks for different heads and 50% of the marks were allotted for the interview. We find no illegality or irregularity in the said procedure followed by the Board. So, interference with the same, relying on the decision in *Ashok Kumar Yadav's* case (supra) is unsustainable. Therefore, Ext.P5 order of the C.A.T. is set aside and Ext.P1 is O.A. is remitted to the Tribunal for fresh consideration and disposal in accordance with law. The Tribunal shall call for the records connected with the selection and consider whether there was any irregularity in awarding marks. It shall also deal with the allegations of malafides raised by the applicant against the Director of her Institute. It is clarified that if, in the meantime, the decision of the Apex Court comes and if there is anything in it contrary to our findings in this judgment, Tribunal must follow the directions of the Apex Court.

The Writ Petition is disposed of as above."

4. In view of the above decisions, the case has been heard with larger reference to the allegations of malafide raised by the applicant against Respondent No.4.

5. It is appropriate to give a thumb nail sketch to the facts of the case culled out from our earlier order. The applicant is a Doctorate Degree holder

and was initially recruited as a Scientist by Respondent No.2 and was elevated to the post of Senior Scientist in 1986. The next promotional post is Principal Scientist for which he had applied and participated in the selection. The Selection Board constituted by ASRB consisted inter alia of the 4th Respondent as a member. According to the applicant, the said 4th Respondent was not smoothly poised with the applicant and the reason for the same was as given in Para 15 of the O.A. which reads as under :-

"15. The 4th respondent had even harassed the applicant on account of the travel expenses incurred by the applicant for attending the Agricultural Scientist Recruitment Board interview held in April 2001. The ICAR had released Rs.13 lakhs to the 4th respondent for travel expenses of Scientists in authorised classes during the time, but the 4th respondent had compelled the applicant to cancel the 2nd class AC ticket she had booked in Rajadhani express (Actually two classes lower than her authorised Air travel) and insisted that she travel only by Kerala Express in 3rd AC. When she pleaded non-availability of tickets in Kerala Express, she was directed in writing to book the ticket on three different days in that train and try for emergency quota on all these dates after cancelling her confirmed ticket in Rajadhani."

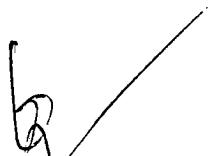
6. The applicant was not selected for the said post of Principal Scientist and on various grounds challenge as to her non-selection was made before the Tribunal and, as stated earlier the Tribunal relying upon the decision of the C.A.T., Madras Bench as upheld by Madras High Court moved this O.A. which was decided in favour of the applicant but the same was set aside by the High

Court.

7. Counsel for the parties stated that the appeal pending before the Apex Court has not so far been decided. It has been stated that the decision of the Apex Court shall bind the applicant as well, as the Apex Court is dealing with a question of law. As regards malafide the applicant's counsel submitted that there is enough to prove malafide against Respondent No.4. However, counsel for the respondents submitted that it cannot be that an individual can have persuaded all the other members of the Selection Committee.

8. Arguments were heard and documents perused. The alleged malafide is not borne on any concrete evidence. Infact, the 4th Respondent has filed his counter and in respect of Para 4.15 of the O.A., the reply is as under :-

"7. With reference to the Para 4.15 of the Original Application, it is submitted that the allegations made against this respondent that I have not permitted her to travel by Rajadhani Express is not correct. The true fact is that more than 35 Senior Scientists of the Institute had been called for the assessment during March-June, 2001. The funds for meeting the travel expenses had to be met from the allotted TA funds. In view of paucity of TA, Director has requested the Scientists to travel by II AC in express trains, which was adhered to by all the Scientists except the applicant. The normal instructions received from Government of India/ICAR authorities is to incur budget expenditure for April-May on a pro rata basis based on the previous year's expenditure pattern; the year's budget allocation is known in only May or so. Nevertheless, due to a large number of CTCRI Scientists having to attend ASRB/CAS interviews and almost everyone of them being eligible for air travel, the fare alone @ Rs.20,000/- (2001 rates) had a large commitment of Rs.6 Lakhs on TA in April-May alone. Accordingly, all of them were requested

A handwritten signature consisting of a stylized 'Q' and a diagonal line.

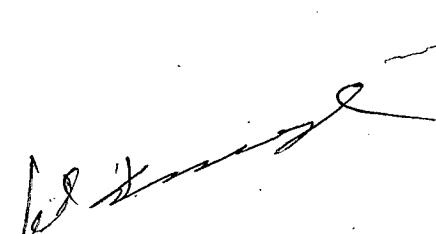
to go to Delhi by AC class in train since the likely expenditure was about Rs.1.5 Lakhs and this was possible to be met. In spite of constraints in TA, the ICAR gave some special consideration in view of large scale travel to attend ASRB/CAS interviews. It is respectfully submitted that the applicant has never been disallowed any tour with reference to participation in Conference/other official trips nationally or internationally."

9. We are not persuaded with the contention of the applicant about the aspect of malafide. As such the applicant's case has to fail from that point of view. As regards the selection, as stated earlier the parties shall be bound by the decision of the Apex Court in the case pending before the Apex Court (in respect of the decision by the Madras Bench of the Tribunal as upheld by the High Court of Madras).
10. With the above directions this O.A. is disposed of. No costs.

(Dated, the 30th October, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER

rkr