CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common order in O.A.Nos.356/08 & .537/2008

FRIDAY, this the ...3rd... day of October, 2008.

CORAM:

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

O.A.356/2008:

Dr.TK Thankappan,
S/o Kurumpan, Principal Scientist,
Central Institute of Fisheries Technology, I.C.A.R.,
Government of India, Willington Island,
Cochin-29 residing a Thoduvayil, 61/704,
Sebastian Raod, Kaloor, Kochin-682 017. .....Applicant

(By Advocate S/Shri V.Sajith Kumar and P.A.Kumaran)

Vs.

1. Indian Council for Agricultural Research
represented by its Director General,
Government of India, New Delhi.

2. Agricultural Scientists Recruitment Board
represented by its Secretary,
Krishi Anusandhan Bhavan-1,
PUSA, New Delhi- 110012.

3. Director,
Central Institute of Fisheries Technology,
Willington Island, Cochin-29.

4. Union of India, represented by
the Secretary to the Government,
Ministry of Agriculture,
Government of India, New Delhi.. Respondents

(By Advocate Shri P.Jacob Varghese(R1)
(By Advocate Shri TP Sajan (R-3)

537/2008:

Prof.(Dr.) A.Ramachandran,
Registrar, CUSAT, Presently Professor,
Department of Marine Science and Fisheries, CUSAT,
S/o Late K. Sankara Narayana Menon (Rajappan),
Professor & Registrar,
Cochin University of Science and Technology,

Cochin - 682 022. Applicant

(By Advocate Shri R.Sreeraj)

Vs.

1. Indian Council for Agricultural Research represented by its Director General, Government of India, New Delhi.

2. Agricultural Scientists Recruitment Board represented by its Secretary, Krishi Anusandhan Bhavan-1, PUSA, New Delhi- 110012.

3. Union of India, represented by the Secretary to the Government, Ministry of Agriculture, Government of India, New Delhi.

4. Dr.Meena Kumari, Principal Scientist, Central Institute of Fisheries Technology, Matsyapuri, P.O. Cochin – 682 029.

5. Dr.T.K.Sreenivasa Gopal, Principal Scientist, Central Institute of Fisheries Technology, Matsyapuri, P.O. Cochin – 682 029. Respondents

(By Advocate Shri P.Jacob Varghese)

ORDER

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

This common order is passed in respect of interim relief prayed for by the applicants in the above two O.As.

2. Advertisement for the post of Director in the Central Institute of Fisheries Technology had been published in response to which the two applicants in the above two O.As applied. While Dr. Thankappan, applicant in OA No. 356/08 was not called for interview, Dr. A. Ramachandran, applicant in the other O.A. No. 537/08 had been called for interview. Dr. Thankappan had sought for an interim relief of stay of further proceedings pursuant to the issue of the advertisement or in the alternative, to permit the applicant to participate in the

interview. At the time of admission hearing, interim relief was restricted to the extent that the respondents may go ahead with the process but results of selection be not published save with the leave of the Court.

3. OA No. 537 of 2008 has been filed by Dr. Ramachandran challenging the legal validity of conducting of the selection to the post of Director CIFT. Interim relief of stay of further proceedings was also sought. When O.A. No. 537/08 came up for admission hearing and for grant of interim relief, the above fact of existence of interim order was brought to the knowledge of the Court and hence, it was thought that no separate interim order be passed in this OA as the order already passed would cover this case as well.

4. The respondents have not published the result of the selection and since the post of Director fell vacant w.e.f. 01 September 2008, some stop-gap arrangement is stated to have been made.

5. Short reply to meet the interim relief has been filed in both the cases, while, full-fledged reply is yet to be filed by the respondents.

6. Senior Counsel for the respondents submitted that the post is one of higher responsibility and the institute cannot afford to be without a permanent incumbent for a long time. According to the senior counsel, initially on the basis of the submission made on behalf of the applicant, interim relief was granted. At that time itself it was submitted that the applicant could not make to the minimum grade for qualifying for interview and as such he was not called for interview. There is a scientific method of awarding of points for various items details of which are well known to all those who apply for the post and as per the evaluation

made, the applicant Dr. Thankappan secured only 29.9 marks, consequent to which he was not called for interview. As regards Dr. Ramachandran, the applicant in the second OA, he has participated in the interview and has rushed to the court without waiting for the ultimate result. In none of the case the balance of convenience is in favour of the applicants, whereas keeping in view the fact that the Institute should have a regular Director, it would be in the fitness of things if the interim order be vacated and the respondents permitted to proceed further with the selection, albeit, such a selection be subject to the outcome of these and other O.As pending before the Tribunal.

7. Counsel for the applicant in OA No. 356/08 submitted that the matter requires deep analysis to find out the extent of bonafide with which selection is being made. It was further argued that it would be distressing to note that while the applicant who fulfils all the requirements as per the advertisement has not been called for interview, persons who are not qualified have been called for interview. Interim order had been passed in the presence of the counsel for the respondents and as a stop gap arrangement has already been made by the respondents, no prejudice would be caused to the respondents if the interim order is continued till the disposal of the O.A.

8. Counsel for the applicant in OA 537/08 has submitted that there are basic legal infirmities in the selection process adopted, including inclusion of a member of the ASRB as one of the interview Board members, whereas, save Chairman, ASRB, none should be appointed as members of the selection committee. The inclusion for interview names of at least two individuals, who do not possess the requisite qualifications for selection vitiates the very selection process. He has also challenged the manner of fixation of 100 marks for viva-voce. The

requirements for certain other (higher) posts have been brought in here for selection for this post, which is thoroughly illegal. Thus, as per the counsel for applicant, a prima facie case has been made out. Balance of convenience and interest of justice are in favour of the stay already granted to continue. It has been assured by the counsel for the applicant in this OA that on submission of the counter, rejoinder would be filed without waste of time so that the case could be concluded without much delay and till then interim order be continued.

9. Arguments were heard and documents and pleadings available on records perused. Respondents have produced the relevant records containing the scorecard also. The matter is one of adjudicating the right of the applicants in regard to the selection to the post of Director. Grant of interim relief was based on prima-facie case having been made out and on ascertaining that the balance of convenience is in favour of the applicant. The post has become vacant only recently w.e.f. 01-09-2008. At present, according to the counsel for the respondents, the functions of Director CIFT are being carried out on a stopgap arrangement. It is not that there is none to look after the functions of Director. Again, such a stopgap arrangement for a limited period would not have any permanent dent in the efficiency of the organization. The questions raised and the grounds for challenge in the O.As are substantial and need full-fledged analysis after getting comprehensive reply from the respondents. The respondents could well file their counter to the O.As within a reasonable time in which event, minimum time for filing of rejoinder would be granted to the applicants and the case would be taken up on priority basis for final hearing. In fact, if there be any modification in the interim order p[assed consequent to which some one is appointed, it would essentially become necessary to implead that individual also in the case which would telescopically delay the final hearing.

10. Hence, balance of convenience and interest of justice are in favour of continuance of the interim order already passed in OA 356 of 2008 vide order dated 02-07-2008. Accordingly, prayer of the respondents for vacation of interim order is declined.

11. Let reply be filed in both the cases within a period of three weeks and rejoinder, within one week thereafter. The case is listed peremptorily for final disposal on 5th November, 2008.

Dated the 3-10-2008.

Ms.K.NOORJEHAN
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

rv
Common order issued on 6/9/08

6/9

Reply filed by R4 no reply filed by other respondents

4/11

Reply by LCAR filed and Addl rejoinder also filed

6/11

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 356 of 2008
with
Original Application No. 537 of 2008

Monday..., this the 24th day of November, 2008

CORAM:

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

1. O.A. No. 356/2008:

Dr.TK Thankappan,
S/o Kurumpan, Principal Scientist,
Central Institute of Fisheries Technology, I.C.A.R.,
Government of India, Willington Island,
Cochin-29 residing a Thoduvayil, 61/704,
Sebastian Raod, Kaloor, Kochin-682 017. .....Applicant

(By Advocate Shri V.Sajith Kumar)

versus

1. Indian Council for Agricultural Research
represented by its Director General,
Government of India, New Delhi.

2. Agricultural Scientists Recruitment Board
represented by its Secretary,
Krishi Anusandhan Bhavan-1,
PUSA, New Delhi- 110012.

3. Director,
Central Institute of Fisheries Technology,
Willington Island, Cochin-29.

4. Union of India, represented by
the Secretary to the Government,
Ministry of Agriculture,
Government of India, New Delhi.. .....Respondents

(By Advocates Shri P.Jacob Varghese (Sr.) with Mr. Easo Vasrghese (R1&2), Shri T.P. Sajan (R-3) and Mr. P. Parameswaran Nair (counsel for petitioner in MA 827/08)

2. O.A. No. 537/2008:

Prof.(Dr.) A. Ramachandran,
Registrar, CUSAT, Presently Professor,
Department of Marine Science and Fisheries, CUSAT,
S/o Late K. Sankara Narayana Menon (Rajappan),
Professor & Registrar,
Cochin University of Science and Technology,
Cochin - 682 022. .....Applicant

(By Advocate Shri R.Sreeraj)

Vs.

1. Indian Council for Agricultural Research represented by its Director General, Government of India, New Delhi.

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4. Dr.Meena Kumari, Principal Scientist, Central Institute of Fisheries Technology, Matsyapuri, P.O. Cochin – 682 029.

5. Dr.T.K.Sreenivasa Gopal, Principal Scientist, Central Institute of Fisheries Technology, Matsyapuri, P.O. Cochin – 682 029. .....Respondents

(By Advocate Shri P.Jacob Varghese (Sr.) with Mr. Easo Varghese (R1-3) and Mr. P. Parameswaran Nair (R4).

ORDER

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

The two cases relate to selection to the post of Director, Central Institute of Fisheries Technology, Cochin and are thus taken up together for disposal.

2. The facts of the case in OA No. 356/08 are as under:-

(a) The applicant entered the service in the respondents office in January, 1975 and was promoted as Principal Scientist with effect from 27.07.1998. The respondents have notified vacancies for the post of Director, Central Institute of Fisheries Technology, Kochi. The qualifications required for the post of Director as given in Annexure A/2 are as under :

(i) Doctoral degree in fisheries Technology/Fishjeries Science/Marine Biology/Aquatic Ecology/Soology/Microbiology/ Bio-Chemistry/Bio-Technology/Mechaical Engineering applied to fishing, fish processing and related aspects including relevant basic sciences.

(ii) At least 5 years experience as a Scientist in the pay scale of Rs. 16400-20000 or in an equivalent position. **OR** an eminent Scientist having proven record of scientific contribution working in a reputed Organization/Institute having at least 18 years experience in the relevant subject.

(iii) Evidence of contribution to research/teaching/extension education as supported by published work/innovations.

Desirable : (i) Specialization and experience in harvest/post-harvest technology of fish/ship design/Marine Engines and scientific reputation in the field of fishing/fish processing

technology. (ii) Experience in Research Management with evidence of scientific leadership, vision perspective on agricultural research.

(b) The respondents have also made available instructions to the candidates vide Annexure A/3. The applicant accordingly applied for the said post. According to the applicant, no disciplinary or vigilance case are pending against him. While the applicant was awaiting call letter, he was surprised to find that others were issued call letters and the applicant has not been called for.

(c) The applicant has come up with this O.A. before the Tribunal seeking a direction to the respondents to consider the applicant for selection to the post of Director notified in Annexure A/2 and Annexure A/3 and appoint him accordingly if found fit considering his achievements in the field of fisheries research and grant consequential benefits.

3. The facts of the case in OA No. 537/08 are as under:-

(a) The applicant got his appointment as Scientist, Central Institute of Fisheries Technology, Cochin, in November, 1984 and subsequently in 1989, he was promoted as Senior Scientist therein. In May, 1992, he was selected as Reader in Cochin University of Science & Technology. Late on, he was appointed as Professor in April, 1999 and in 2002, he was further elevated as Controller of Examinations, Cochin University of Science & Technology. In September, 2004, he became the Registrar of Cochin University of Science & Technology.

(b) The respondents have issued a notification dated 16.02.2008 for selection to the post of Director, Central Institute of Fisheries Technology, Cochin vide Annexure A/1. They have also made available the instructions to the candidates along with the said notification. In the web site the respondents have published guidelines for screening of applications for direct recruitment for different scientific positions, vide Annexure A/2. The applicant applied for the said post and was called for interview vide Annexure A/6 dated 16/19.6.08. The applicant attended the interview. However, on finding that there are certain grave defficiencies in the selection process (as detailed in para 9 below), the applicant has filed this OA before the Tribunal challenging the said selection and praying for the following reliefs:

(i) To declare the selection proceedings initiated pursuant to Annexure A1 permitting the participation of Member ASRB in the interview Board and the persons without eligibility as experts/advisors is illegal being violative of the rules and byelaws and instructions governing the selection to the post of Director, CIFT under the first respondent.

(ii) To declare that 4th and 5th respondents are not eligible to be considered for the post of Director, CIFT, under the first respondent as they are not having the basic qualifications notified in Annexure A1.

(iii) To declare that, the selection to the post of Director, CIFT, under the first respondent merely based on interview without giving due weight to the qualifications/attributes of the candidates is highly unfair and illegal being violative of principles of equality guaranteed under the Constitution of India and the provisions of the byelaws and rules of ICAR.

(iv) To direct the respondents 1 and 2 to conduct the selection to the post of Director CIFT notified pursuant to Annexure A/1 in accordance with rules and byelaws by adopting a rational procedure giving due weight to qualifications/ attributes of the candidates sponsored by the

Screening Committee on quantitative terms from among the candidates applied for the post as per the notification.

4. Respondents have contested the O.As. Their stand in the two cases is summarized as under:-

4.1 In their reply to O.A. 356/08, the respondents have stated that the Screening Committee recommends the candidates upto the 10th rank in the order of merit (based on marks obtained in the fifteen parameters/attributes of the Score Card) subject to a minimum of 50% marks for the purpose of interview. The applicant has secured less than 50% marks and hence the Screening Committee has not recommended him for interview. The respondents further contended that the prescribed essential qualifications are minimum and possessing of the same does not entitle candidates to be called for interview as the candidates are to be qualified on screening of their applications as per Score Card system adopted by Agricultural Scientists' Recruitment Board (ASRB, for short). According to the respondents, 11 candidates have applied for the said post and as per the Score Card system only 4 candidates could be recommended for interview and and the applicant's name does not figure in the said list.

4.2 As regards reply in respect of OA No. 537/08, the stand of the respondents is that the applicant was called for interview and the attributes

for which marks are awarded have been kept in mind by the Selection Committee. The Selection Committee consisted of the Chairman, ASRB as its Chairman, DG, ICAR or his nominee as a Member, one Member of ASRB is another Member and not less than 3 Advisors drawn out side the ICAR System to be nominated by the Chairman, ASRB as Members. Dr. K. Gopakumar was also included as an outsider as he had vast experience in the field of Fisheries.

4.3 Respondents have in their counter also defended that the 4th respondent has fulfilled the qualifications and hence she was called for interview. They have denied that that there have been defficiencies or violation of rules in conducting the interview. Thus, according to the respondents after the applicant has participated in the interview/selection, when no malafide is alleged, the applicant has to produce sufficient convincing material to challenge the selection. Having participated in the selection and finding that the applicant stands on a slippery ground, the applicant has moved this O.A., which is liable to be rejected.

5. The private respondent No. 4 in OA No. 537/08 has also filed her reply. The said respondent justified that her qualifications are as per notification Annexure A/1 and she has been rightly called for interview about which the applicant could have no grievance. The said respondent has furnished

various documents to show that her academic and professional knowledge is excellent.

6. The applicant has filed additional rejoinder reiterating the averments made in the O.A.

7. Initially, in view of the fact that prima facie case was found to have been established, the respondents were directed not to publish the result of the selection and the said restraint order continues.

8. Counsel for the applicants have been in the same symphony in so far as the general questions relating to the selection. Though the case in OA No. 356/08 is with regard to non-calling of the applicant for interview, the counsel submitted that in the event of his proving the case and in the event of the other applicant proving the case, there could be selection afresh in which the applicant could well be included for consideration.

9. Counsel for the applicant in OA No. 537/08 succinctly brought out the challenge under the following heads:-

(a) Constitution of the very selection Board. According to the counsel, the Bye-laws stipulate vide clause 28 thereof that "*notwithstanding anything contained in these bye-laws, the provisions of the existing 38*

to 42 of the Indian Council ofAgricultural Research Bye-Laws relating to rcrjuitment and appointment and appointment to various posts in and under the Council shall continue to be in force till such time as the Recruitment Rules for various categories of posts in the Council as provided in Rule 73 of the Indian Council of Agricultural Research Rules are framed and enforced." The counsel contended that Vide clause No. 39 of the ICAR Bye-Laws, in so far as Interview Board for posts of Directors in various grades at the Institutes, the same shall be as under:-

i) Chairman, Agricultural Scientists' Recruitment Board:	Chairman
ii) Director-General or his representative	Member
iii)Two or three Advisors	Members

Despite the above stipulation, admittedly, Member, A.S.R.B happened to be in the interview Board and the same vitiates the entire selection.

(b) The Advisors who are expected to be outsiders, are not so. The counsel further argued that whereas the Advisors are to be outsiders, which has a purpose behind in it in that the same would avoid favouritism, Dr. K. Gopakumar who was the Advisor cannot be said to be an outsider. In fact the two Advisors are now associated with various responsibilities and are members of various committees of ICAR and its institutes. Even though retired recently, other applicants being from the ICAR system, for them the Advisor has been a mentor. Thus, inclusion in the interview Board of a person from the ICAR system in spite of the specific statement in the hand book of ASRB to the effect that Advisors can only be from outside the ICAR System, is illegal and makes the selection vitiated.

(c) Ineligibles have been called for interview. The counsel for the applicant argued that the fourth respondent has no basic or essential qualification as notified by ASRB. She is having only a Doctorate in Biology under the Faculty of Science of University of Kerala which is not a notified essential qualification for the post of Director, CIFT. University of Kerala does not have any Faculty of Fishing Technology/Fish Processing Technology or Marine Sciences or any Faculty related to the qualifications prescribed in the notification. Similarly, Respondent No. 5 too is not having any notified Degree or Post Graduate Degree in Fishing or Fish Processing or related subject. His Ph.D. is in packaging material of fish products and its properties. His Post graduation is in Food Science. He never worked as Head of Division nor has any experience in Research Management Position. Packaging is not a basic degree of Fishing Processing.

(d) Interview was a farce. Prescription of 100 Marks for interview for the post of Director is highly arbitrary and illegal. In fact, the respondents are misusing the wide direction of 100% marks in interview in discriminating candidates like applicant. The very same ICAR in another case in Madras Bench of the Tribunal has sworn an affidavit stating that 100% marks are divided with 75% marks for various attributes of the candidates like qualification, experience, research publications, institution building etc. and only 25% is allotted to personal interview. In the case of personal interview also, the attributes are well defined as per the hand book of ICAR. The Selection Committee cannot award marks for anything else other than the attributes well defined by the competent authority. If selection is conducted merely based on interview without relying on the attributes of the candidates, the same is impermissible in law.

(e) Extraneous considerations have dominated the selection. Respondents have followed the attributes for the post of Directors of National Institutes/DDG, while interviewing the candidates like applicant to the post of Director, CIFT (Research Institute). The impact of using the wrong attributes which is not notified for the post caused prejudice to the applicant.

10. Senior Counsel for the respondents submitted that in so far as the applicant in OA 356/08 is concerned, he having not secured adequate points under various heads, he was not recommended by the Screening Committee. The senior counsel made available the tabulation statement of marks awarded by the Screening Committee.

11. As regards various contentions of the counsel for the applicant in OA No. 537/2008, the senior counsel submitted that none of the contentions is tenable. As regards Member ASRB being one of the Members of the Board, he has invited the attention of the Tribunal to R-4 letter dated 27th March, 2006 which was issued with the approval of the Hon'ble Agriculture Minister and the President of ICAR. In so far as constitution of Selection Committee is concerned, he has taken the Court through the following provisions:-

a) Clause 24 of the Bye Laws.
b) Clause 28 of the Bye Laws.

12. The senior counsel argued that in so far as clause 28 is concerned, the same is transitory provisions and its life is only upto framing of recruitment rules. He has thus submitted that specific qualifications etc., have been approved by the Governing Body and it is only clause 24 which holds the fort. Referring to clause 24 which has continued life, he stated that the Chairman of the ICAR has been vested with full discretion in prescribing the norms for constitution of the selection Board and in accordance with the communication dated 27th March 2006 (Annexure R-4) constitution has been made. The advisors are not from the ICAR system. They have certaily held office earlier and are associated with the Institute in their capacity as retired officers. There cannot be any embargo for seeking their assistance in conducting the interview as they are the experts on the field. As long as they are not in the pay roll of the Institution, it cannot be said that they are not outsiders.

13. The following are the authorities cited by the senior counsel in support of his defence.

(a) *Dalpat Abasaheb Solunke v. B.S. Mahajan, (1990) 1 SCC 305,*
(b) *Durga Devi v. State of H.P., (1997) 4 SCC 575*
(c) *Kuldip Chand v. State of H.P., (1997) 5 SCC 60,*
(d) *G.N. Nayak v. Goa University,(2002) 2 SCC 712,*
(e) *Satya Narain Shukla v. Union of India,(2006) 9 SCC 69 = AIR 2006 SC 2511*
(f) *M.V. Thimmaiah v. UPSC,(2008) 2 SCC 119*
(g) *Dhananjay Malik v. State of Uttaranchal,(2008) 4 SCC 171*

14. Counsel for the applicants in the rejoinder stated that permitting Member of the ARSB as a Member of the Interview Board, is contrary to clause 28 of the Bye-Laws. The whole selection has thus become invalid with the participation of an ineligible member.

15. Arguments were heard and documents perused. Certain records were also produced by the respondents which have also been gone through. These include (a) communication dated 17th December, 1990 relating to constitution of selection committee in which one Member of ASRB has been included as a member; (b) Noting dated 16th March 2006 confirming the constitution of selection committee with the Chairman and members as in the aforesaid communication. This noting has the approval of the Hon'ble Minister for Agriculture; and (c) revised Model Qualifications for various Scientists Posts; approval by the Governing Body of various agenda items including the revised qualifications.

16. Now a look at the decisions relied upon by the counsel for the respondents. In Dalpat Abasaheb Solunke v. B.S. Mahajan, (1990) 1 SCC 305, the Apex Court has emphasized the limitations of judicial interference in matters where expert bodies undertake the exercise of selection for appointment and held as under:-

12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. 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. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.

17. A like observation was echoed in a subsequent case of *Durga Devi v. State of H.P., (1997) 4 SCC 575,* referring to the above opinion, the Apex Court has held as under:-

"4. In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb Solunke case are squarely attracted to the facts of the present case.

The order of the Tribunal under the circumstances cannot be sustained. "

18. Yet another decision on the above line, wherein the Apex Court has held that the Tribunal 'exceeded its jurisdiction' is *Kuldip Chand v. State of H.P., (1997) 5 SCC 60,* wherein it has been observed:

"The Tribunal exceeded its jurisdiction in entering into the field exclusively reserved for the Selection Committee. The finding that the appellant "manipulated" his selection is not supported by any material and reasons and is purely a conjectural finding."

19. The next citation is *G.N. Nayak v. Goa University,(2002) 2 SCC 712,* wherein the relevant ratio relied upon by the senior counsel for the respondents is whether participation in the selection committee of a particular person who happens to be senior or worked along with one of the aspirants to the posts could be held as accentuated with bias. It has been held therein as under:-

"36. As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. For example, if a senior officer expresses appreciation of the work of a junior in the confidential report, it would not amount to bias nor would it preclude that senior officer from being part of the Departmental Promotion Committee to consider such junior officer along with others for promotion."

20. In *Satya Narain Shukla v. Union of India,(2006) 9 SCC 69,* the permissible extent of judicial intervention in selection process has been highlighted. The Court has held as under in that case:-

> *"It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides."*

21. In *M.V. Thimmaiah v. UPSC,(2008) 2 SCC 119,* again, the ratio was that the Court cannot sit on appeal over the assessment made by the Selection Committee. The Court has, in that case, held as under:-

> *"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."*

22. In *Dhananjay Malik v. State of Uttaranchal,(2008) 4 SCC 171* the impermissibility of a person to challenge the selection when he had participated therein has been specified. The Court has held in that case as under:-

> *7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the*

process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal v. State of J&K this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

23. All the above decisions are no doubt relevant to the facts of this case. However, it has to be emphasized here that the challenge by the applicant in OA 537/08 is prior to the results being announced and the challenge is only with reference to alleged deviation from the bye-laws. To specify, that the constitution of the Board is not in accordance with the professed guidelines or that the advisers were not outsiders etc., could be known only when an individual participates in the interview. Any contention that the interview was a

farce etc., could also be claimed only after participation in the interview. Thus, the bar in challenging the selection process would apply where the individual waits till the results are out and challenge is an afterthought. In the instant case, it is not so. Hence, challenge is maintainable but it is to be seen whether the contentions of the applicant are legally tenable.

24. Again, it is made clear here that the Tribunal in its analysis does not sit act as the appellate authority. It only tries to ascertain whether the process followed are deviated from the professed guidelines and even if it be so, whether any prejudice has been caused to the applicants herein.

25. Now as to the first contention i.e. Constitution of the very selection Board is illegal. The applicant relies upon bye law 28 and the old bye laws, incorporated in the current bye-law. The same has already been extracted earlier . Para 9(a) refers. This bye-law is in fact applicable for the transitory period. The bye-laws had come into force in 1975. The question is whether the ICAR is still in transitory stage since 1975? Have not the recruitment Rules been framed? If the rules have not been framed, then how have the qualifications etc., been prescribed? According to the senior counsel, recruitment rules have already been prepared and are enforced. To substantiate the same, the counsel has made available a copy of the Model qualifications as approved by the Governing Body.. A perusal of the same goes

to show that in so far as the qualifications are concerned, approval of the Competent authority has been obtained. In so far as selection committee, the 1990 communication dated 17th December as approved by the A.M.as recently as 17th March, 2006 when it was approved by the Hon'ble Agriculture Minister referred to earlier had been cited. Though the Recruitment Rules are not in a specified format, in so far as qualifications are concerned, the approval has been from a competent authority. Whether this would suffice to jettison clause 28 of the Bye-laws is the question. Obviously, the said clause of 28 of the Bye-laws relate to initial transitory period. It is inconceivable that the same could hold the fort even today i.e. After a score of years! The transitory provision vide clause 28 of the bye-law cannot apply now. In that event, clause 24 alone would apply, which gives complete discretion to the President of ICAR for prescribing the constituents of the Selection Committee and it is on the basis of this bye-law that Annexure R-4 order dated 27th March 2006 was issued in consultation with the Hon'ble Agricultural Minister. Thus, there cannot be said to be any deviation from the bye-laws in so far as inclusion in the selection committee members, member of the A.S.R.B. In any event, there does not appear to be any prejudice that would have been caused to the applicant in ASRB Member being in the Board. Procedural irregularity could vitiate the proceedings only when the irregularity causes prejudice to a party. Even in criminal matters, where certain laid down procedure has been violated, the same has been held as not vitiating the proceedings when no prejudice is caused. See

Wariyam Singh v. State of U.P., (1995) 6 SCC 458. Again, the deviation is not with reference to the applicant alone but common to all. Thus, the applicant is not discriminated in this regard. Hence, this contention that the ASRB Member has been included in the Selection Committee which is contrary to the provisions of bye-laws and hence, the selection is illegal has to be rejected.

26. As regards the outsiders as advisors, the two persons included have been committee members of the ICAR. But, as rightly pointed out by the senior counsel for the respondents, they are not in the pay roll of the Institute. That they were earlier part of the system would in fact ensure that the selection would be based on merit as such persons would be able to assess the caliber of the participants in the interview. Hence, this point by the counsel for the applicant has to be rejected.

27. The counsel for the applicant addressed the court a lot in regard to qualifications. He has attempted to press into service the maxim *expressio unius est exclusio alterius* — expression of one thing is the exclusion of another. Mention of one thing implies the exclusion of another. According to the counsel, the qualifications possessed by the private Respondent (No. 4) is one prescribed for certain other post and not the post of Director in CIFT. As such, inclusion of the said qualifications for another post, impliedly excludes for the present post in question, is the argument. In fact, Respondent No. 4 has at her

credit the qualification of Doctoral degree in Acquatic Biology and Fisheries. This is not, according to the counsel for the applicant, specified in the list of essential qualifications for the post of Director, CIFT, but prescribed as a qualification for the post of Director CMFRI and hence, respondent No. 4 cannot be stated to possess the requisite qualifications. Senior counsel for the respondents as well as counsel for the private respondent submitted that the subject matter of the said Respondent's Doctorate degree is proximately related to fisheries sciences and the Selection Committee has taken it as a qualification for the above post. Rival contentions have been considered in this regard. The qualifications prescribed cover the following:-

(a) Fisheries Technology
(b) Fisheries Sciences
(c) Marine Biology
(d) Aquatic Ecology
(e) Zoology
(f) Microbiology
(g) Bio-chemistry
(h) Biotechnology
(i) Mechanical engineering applied to fishing, fish processing and related aspects including relevant basic sciences.

28. Acquatic Biology and Fisheries cannot be said to be unrelated to the subject matter Fisheries Technology. A comparison with item (i) above and Acquatic Biology and Fisheries may perhaps prove that the latter is more proximate with fisheries. As such, it cannot be said that the private respondent has not fulfilled the qualifications. The maxim *expressio unius est exclusio alterius* may not be applicable in this case. In any event, the screening

committee has considered the qualification as one for the present post. That decision cannot be interfered with.

29. The next issue relates to score board. According to the counsel for the applicants, what is prescribed for the post of Director at the National Institutes have been considered, which is over and above that prescribed for the Director CIFT. Respondents have denied the same. The score card for posts of Project Director, and others on the one hand and Director of National Institutions on the other are as under:-

For Project Director, Director, Asst. Director General, Joint Director of National Institute	For posts of Director of National Institutes, National Director, Deputy Director General
Academic Brilliance	**Depth of knowledge in the relevant and related subjects.**
Depth of knowledge in the relevant and related subjects	Mindset (aptitude for work, scientific temper, values and Ethics and team spirit)
Mindset (aptitude for work, scientific temper, values and Ethics and team spirit)	Communication skills
Communication and computer skills	Holistic scientific vision
Power of Logical reasoning	International exposure
Understanding of relevant international developments, like IPR/WTO Regime	**Leadership traits**, with proven leadership records
Knowledge of major agricultural legislations of the country	Aptitude for team work

For Project Director, Director, Asst. Director General, Joint Director of National Institute	For posts of Director of National Institutes, National Director, Deputy Director General
Contributions/attainments in research/Teaching / Extension/Management and other attributes	**Capabilities to guide**/motivate
Leadership Traits and capability to guide	High standards of values and ethics
Holistic scientific vision	Understanding of relevant international developments,like IPR/WTO Regime
Managerial abilities	Knowledge of major agricultural legislations of the country
	Institution building abilities and managerial capabilities

30. In fact, in the reply it has been stated that only the attributes as at column 1 above have been considered. Though the respondents have annexed the statement which goes contrary to the reply, the senior counsel for the respondents submitted that Annexure R-5 is a statement by the counsel only and the same is not being relied. Permission was requested for, to treat the same as withdrawn.

31. The above tabular column would show that by and large, almost all the attributes of one match with the other (as highlighted) save some minor variations. Even where there are differences, the same are only in degree, as for example, managerial skill for Project Director is also for the other but with Institution building abilities. Thus, it cannot be stated that the two are mutually

exclusive of each other. As such, even if the attributes for the post of Directors of National Institutes have been considered, the same cannot be said to be so fatal to the selection, especially, when the uniform yardstick has been applied for all the candidates. We find that even if the assessment included some faculties not provided for Director CIFT, since uniformity has been maintained in respect of all the participants, the same does not vitiate the proceedings. This is not a case comparable to 'out of syllabus' in respect of academic or professional examinations where the result of such out of syllabus would be catastrophic. The selection committee's decision was stated to have been based on the main aspects as for director and not for director of national institutes. Hence, this aspect has also does not vitiate the proceedings.

32. Contention that the interview was a farce or that extraneous considerations weighed more are to be summarily rejected in view of the settled law position that unless malafide is alleged and proved, the wisdom of the selection committee cannot be doubted by the Tribunal. Thus the applicant in O.A. 537/08 could not make out a case. His O.A thus is liable to be rejected.

33. In respect of applicant in OA No. 356/08, as found from the statement of marks, whereas those who were called for interview secured marks to the tune of 74.5, 58.64, 34.56 and 50.5, the score of this applicant was just 29.9. In other words, he could not secure even 50% of the highest mark holder. The applicant

stands third from the bottom of the list. Hence, his non inclusion in the list of candidates interviewed cannot be said to be illegal.

34. In view of the above, the applicants having not been able to make out any case, the Original Applications are dismissed. Restraint order vacated. No costs.

(Dated, the 24th November, 2008)

(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.

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