

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 93 of 2004

Wednesday, this the 15th day of March, 2006

C O R A M :

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

1. Mr. M. Ravindran,
S/o. B.K. Muthu Manian,
Lower Division Clerk,
Central Plantation Crops Research Institute,
Kasargod, Residing at T/4-C,
C.P.C.R.I. Quarters, Kasargod.
2. M.S. Antony,
S/o. M.V. Sebastian,
Secretary (Staff Side),
Institute Joint Staff Council,
Central Plantation Crops Research Institute,
Kasargod, Residing at T/9-C,
C.P.C.R.I. Quarters, Kasargod. ... Applicants.

(By Advocate Mr. P.V. Mohanan)

v e r s u s

1. Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi.
2. The Director,
Central Plantation Crops Research Institute,
Kudlu P.O., Kasargod. ... Respondents.

(By Advocate Mr. P. Jacob Varghese)

{The application having been heard on 28.02.06, this Tribunal
on 15-3-2006 delivered the following:}

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O R D E R
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicants have filed the present O.A. seeking the following reliefs :

"(i) To direct the respondents to proceed with the process of selection and appointment to the post of Senior Clerk by conducting a limited departmental competitive examination, only permitting the candidates who appeared for examination held on 12th and 13th August, 1998.

(ii) To direct the respondents to conduct detailed enquiry in respect of malpractices occurred in the examination held on 12th and 13th August, 1998.

(iii) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice."

2. The brief facts of the case are that the Recruitment Rules for the post of Senior Clerk envisaged 75% by promotion and 25% on the basis of result of Limited Departmental Competitive Examination (LDCE, for short) restricted to Junior Clerks having rendered 3 years service in the grade and Junior Stenographers rendered 1 year service in the grade. The Departmental Examination consisted of written examination carrying maximum of 300 marks and evaluation of service records of the

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candidates carrying maximum of 100 marks.

3. A post of Senior Clerk fell vacant in the year 1998 in the office of the 2nd respondent, namely, the Central Plantation Crops Research Institute, Kasargod, to be filled up by Departmental Examination quota. A written examination was held on 12th and 13th August, 1998. There was a complaint of malpractices in the examination regarding setting the question papers by the Senior Administrative Officer (i.e., without proper authority and leakage of question papers etc.). Accordingly, the competent authority cancelled the examination and ordered to hold fresh examination on 5th and 6th March, 1999. However, the competent authority had cancelled the proposed examination scheduled on 5th and 6th March, 1999 until further orders. Since there was no prospect of holding the said examination, the Secretary (Staff side) made a representation to the respondents to conduct the examination for filling up of the vacancy. According to the applicant, even though the vacancy remained unfilled from 1998 onwards, the first respondent, namely, Indian Council of Agricultural Research (ICAR, for short) has cleared the vacancy in the Annual Direct Recruitment Plan 2003-04 and, therefore, the post has not been lapsed. Meanwhile, the respondents have also amended the Recruitment Rules for the post of Senior Clerk. In

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the amended Recruitment Rules, there is no provision for LDCE and the method of recruitment is 100% by promotion. The applicants have, therefore, sought the relief that the LDCE should be held immediately in accordance with the unamended Recruitment Rules permitting only the candidates who appeared for the examination held on 12th and 13th August, 1998 and also to conduct a detailed enquiry in respect of malpractices occurred in the examination.

4. In the reply, the respondents have denied the allegation of the applicants that the question papers were set by the Senior Administrative officer without proper authority. They have submitted that in order to maintain secrecy and confidentiality, it was decided to entrust the work of setting the question papers to an officer outside the department and one Shri Sanjay Gupta, Senior Administrative Officer, Sugarcane Breeding Institute, Coimbatore, was entrusted with this task. The examination was held on 12th and 13th of August, 1998 and the said Shri Sanjay Gupta was to evaluate the answer sheets. However, later he was placed under suspension and as such he had not evaluated the answer papers and returned the same after a gap of 4 months. The competent authority after due consideration decided to cancel the written examination held on 12th and 13th August, 1998 and to

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conduct a fresh examination on 5th and 6th March, 1999. The examination was to be confined only to those candidates who appeared in the examination held on 12th and 13th August, 1998. However, the Chairman of the respondents Institute did not agree with the proposal and the matter was referred to the respondent No.1 for final decision. Thereafter, the test scheduled to be held on 5th and 6th March, 1999 was cancelled until further orders. As per the respondents, the Recruitment Rules were amended in the meanwhile and circulated to all the Institutes, according to which there is no provision to hold LDCE and the method of promotion is 100% by promotion. The respondents have also submitted that they could not fill up the vacancy which was lying vacant since 1998 due to the ban imposed by the Ministry of Finance, Government of India and the posts lying vacant for more than a year are deemed to have been abolished and if, under exceptional circumstances, the post is to be filled up, concurrence of Ministry of Finance is mandatory. The respondents have, however, included the said vacancy in the Annual Direct Recruitment Plan 2002-03. They have also submitted that though the vacancy occurred and notified prior to the amendment of Recruitment Rules, the same should be filled up now only according to the Recruitment Rules in force as the posts lying vacant for more than one year stood automatically abolished. Therefore, to fill up the said post on

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revival, the old Recruitment Rules cannot be made applicable.

5. We have heard Mr. P.V. Mohanan, learned counsel for the applicants and Mr. P. Jacob Varghese (rep.), learned counsel appeared on behalf of the respondents. In view of the judgement reported in (1983) 3 SCC 284, Y.V. Rangaiah and Ors. vs. J. Sreenivasa Rao and Ors., no doubt, the vacancy which has occurred prior to the amendment of the Recruitment Rules has to be filled up in accordance with the unamended Rules. However, the facts in this case are slightly different. The post was lying vacant since 1998 and it could not be filled up before the Recruitment Rules were amended for various reasons as stated earlier. The new problem faced by the respondents is that in terms of the orders of the Government of India, Ministry of Finance, the post in question which was lying vacant since 1998 is deemed to have been abolished on expiry of one year. Therefore, as on date the post in question is not in existence and it will not get automatically revived just because the same has been included in the Annual Direct Recruitment Plan 2002-03. The inclusion of the post in the Annual Direct Recruitment Plan would at best indicate the intention of the respondents to fill up one post of LDC. However, it can be filled up only after reviving the lapsed post of LDC with the concurrence of the Finance Ministry which would amount to creation

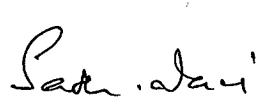


of a new post following the prescribed procedure. The post so created cannot be treated as the old post. The availability of the new post will be from the date of its creation and not from 1998, the date from the lapsed post had fallen vacant. Therefore, in the given facts and circumstances of the case, no direction can be issued to the respondents to proceed with the process of selection and appointment to a non-existent post as prayed for by the applicant. In view of the factual position explained by the respondents in the reply affidavit regarding the cancellations of both the tests, the test already held on 12th and 13th August, 1998 and the test scheduled for 5th and 6th March, 1999, we do not consider it necessary to entertain the second prayer of the applicant to direct the respondents to conduct any enquiry in respect of alleged malpractices.

6. Resultantly, the O.A. fails and it is accordingly dismissed with no order as to costs.

(Dated, the 15th March, 2006)


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

CVR.