CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 340 of 2008

MONDAY, this the 15TH day of December, 2008

CORAM:

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

Dr. N. Gopalakrishna Pillai,
S/o. P. Narayana Pillai,
Director Incharge,
Central Marine Fisheries Research Institute,
Cochin – 18, Residing at : PJRA 104,
Thejus Lane, P.J. Antony Road,
Palarivattom P.O., Cochin – 25 ... Applicant.

(By Advocate Mr. T.C.G. Swamy)

versus

1. Indian Council of Agricultural Research (ICAR)
Represented by its Secretary, Krishi Bhavan,
New Delhi : 110 012

2. The Agricultural Scientist Recruitment Board (ASRB),
Krishi Anusanthan Bhavan, Pusa,
New Delhi : 110 012 – Through its Secretary

3. Dr. Mohan Joseph Modayil,
Member, ASRB, Krishi Anusanthan Bhavan,
Pusa, New Delhi : 110 012 ... Respondents.

(By Advocate Mr. P. Jacob Varghese (Sr.) with Mr. Varghese Eso
for Respondent No. 2 and Mr. P. Santhosh Kumar for R-1)

(The Original Application having been heard on 11.12.08, this Tribunal on 15-12-08. delivered the following) :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMEBR

The applicant presently working as Director-in-charge of the Central Marine Fisheries Research Institute (CMFRI for short) was one of the aspirants to the post of Director, CMFRI. However, according to him he was not called for interview due to non fulfillment of the age limit for recruitment to the post, but the grievance of the applicant is that the following are the two factors which are responsible for his not being within the age limit and these two factors are in fact unreasonable and perhaps meant to see that the applicant does not become eligible to apply. The two aspects are –

(a) In the notification published through internet on 14th February, 2008, the last date for submission of application was indicated as 02-04-2008.

(b) The age limit prescribed has been sixty years on the last date for submission of application.

2. The grievance of the applicant is that his date of birth is 01-04-1948, whereby, he completes sixty by 31st March 2008. It was with a view to see that the applicant does not become eligible to apply that the above cut-off date i.e. 02nd April 2008 as well as age limit of sixty years have been prescribed. Applicant has impleaded Respondent No. 3, who was earlier functioning as Director CMFRI and who is at present serving as Member of the A.S.R.B. and who, according to the applicant, was not harmoniously poised with the applicant during his tenure as director CMFRI and whose hand is thus suspected by the applicant in prescribing the cut off date and the age limit.

3. The attack by the applicant is two fold. First, in so far as age limit is concerned; vide Annexure A-5 rules of 1995, there is no age limit for appointment to the Research Management Position (RMP). At that time the age of retirement was sixty years. Subsequently, in 2003, the age limit for retirement was increased from sixty to sixty two in respect of scientists. However, vide Annexure R 2(c) annexure to the counter, clarification dated 06th April 2005, from the ICAR to the Controller of Examinations, ASRB, the age limit was prescribed was 60 years. Subsequently, on 14th February 2008, the Governing Body had approved the proposal to continue the age limit at sixty, vide Annexure R2(f) annexed to the counter. It is the case of the applicant that there is no basis for Annexure R-2(c), and the very Annexure R-2(c) cannot be taken to substitute the condition prescribed in the Recruitment Rules, vide Annexure A-5. If Annexure R-2(c) cannot be taken as an authority, then the decision by the Governing body to 'continue' the age limit for RMP at sixty has no meaning.

4. The second attack is that the private respondent had, with a view to ensuring that the applicant does not compete for the post, prescribed the age limit as on 2nd April, 2008. The advertisement through inter-net was published on 14th February, 2008; the one in the news paper was published on 16th February, 2008 and in the Employment news it was published on 19th February, 2008. Normally six weeks' time would be granted for application and the age prescription should, thus be 29th March 2008 (if 14th February is taken as the date of publication(or 31st March 2008 if 16th February is taken as the date of publication. Prescribing the cut

off date after 48 days is without any purpose being served, save to see that the applicant is made ineligible to apply. Again, since the vacancy occurred from 7th December, 2007, if Annexure R2(c) is not held as an authentic authority for prescription of age limit, the age limit that prevailed at the time of occurrence of the vacancy should have been adopted, as per which, there is no age limit.

5. Respondents have contended that when in 1995 the rules were framed, the age of retirement of any scientist was 60 years and in 2003, it was enhanced to sixty-two. As per the provisions of the rules, there is no age limit for applying for the R.M.P. Obviously, one could apply only before the prescribed age of retirement. However, since the age of retirement was enhanced to sixty two, lest the age limit for application for any of the RMP should be misconstrued as upto sixty two, a clarification was issued to the Controller of examination, prescribing the age limit as sixty. This continued and in the latest Governing body meeting, it was also duly approved. There is thus, no illegality in the cut off date or prescription of age limit. As regards the role of Respondent No. 3 in prescribing the above conditions, there is nothing to substantiate.

6. Arguments were heard and documents perused. The contention of the applicant is that communication dated 6th April 2005 from ICAR to ASRB can, 'under no stretch of imagination' be held as superseding the prescribed rule position. The authority competent to modify any stipulation is the governing body and as such, such a modification by competent body should have first been approved by the Governing Body and then only the ICAR could have

communicated that decision to the Controller of Examination. The resolution of 14th February 2008 goes to state that 'the maximum age limit for appointment to Research Management Positions would **continue** to be 60 years.' This term 'continue' clearly indicates that there was already a decision to prescribe the age limit as 60 years; but other than Annexure R 2(c) letter in no other document, such a decision was reflected. As such, it was the 2005 communication that was taken by the Governing body as the authority whereas, the same cannot have the effect of amending the earlier provision in the absence of the resolution by the Governing body. Hence, the latest resolution dated 14th February 2008 based on a non-existing decision equally has no legal sanctity and hence it should be held that it is the 1995 provision that continues as per which there is no age limit for appointment to the post of Research Management Positions. Once there is no age limit, the second aspect i.e. prescription of cut off date is of no consequence for the purpose of working out the age on the date of application.

7. We have to reject the above argument of the applicant's counsel. True, there was no age limit as per 1995 provisions, when the age of retirement was sixty years. Thus, if there be any age limit that could be impliedly prescribed, the same was upto sixty years earlier for, none, beyond sixty, could serve. However, in 2003, the age of retirement for RMP was enhanced to 62. According to the counsel for the applicant, the age limit for recruitment should also undergo a corresponding change upto 62 from 2003, whereas the respondents had taken the age limit as sixty. That is why, in their communication vide Annexure R-2(c) it has been indicated that the candidates must not have attained the age of 60 years as

on the closing date for receipt of applications from candidates in India. This stipulation continued for at least four years. Thereafter, in February, 2008, the resolution had come into existence, vide Annexure R-2(f). For future stipulation, it is the resolution that is important and the same stipulates sixty years. The wordings of resolution may be that they contain the term 'continue'. That is not material so far as stipulation for future recruitment is concerned. Even assuming that the Annexure R-2© has no legal validity, the 14th February 2008 cannot be said to suffer from that angle merely because it contains the word, 'continue'. Thus, age limit prescribed vide resolution dated 14th February 2008 holds good for the present post for which advertisement was issued.

8. The next question is whether there could be any objection to the cut off date prescribed. According to the applicant, the cut off date has been tailor made to function as the centrifugal force to ward his case off the eligibility circle. It is to be seen that the prescription of 2nd April 2008 is not for one post but all the posts that have been advertised through the notification. Again, it is inconceivable that while prescribing a cut off date, the A.S.R.B. could target one person in mind. The Board takes into account the time required for the aspirants in making a proper and complete application. That respondent No. 3 who is now a member in the ASRB and who had inimical relationship earlier with the applicant cannot be the basis to come to a conclusion that it is he who would have engineered in prescribing the cut off date. If so, the applicant should have agitated the same when he applied to the Chairman, ASRB for age relaxation. The representation submitted with the applicant is blissfully silent about the same.

9. The law on the subject of prescription on cut off date and prescription of age for recruitment is crystallized inter alia in the following two decisions of the Apex Court:-

(a) ***Ami Lal Bhat (Dr) v. State of Rajasthan, (1997) 6 SCC 614,*** wherein the Apex Court has held as under:-

> *5. ..... Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in Union of India v. Parameswaran Match Works (1975) 1 SCC 305 and has been reiterated in subsequent cases. In the case of A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669 the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,* "when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".
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> This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take an uncertain time, it is desirable that such a

cut-off date should be with reference to a fixed date. Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of Union of India v. Sudhir Kumar Jaiswal (1994) 2 SCC 212 the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut-off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut-off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut-off date had become arbitrary. Negativing this view of the Tribunal and allowing the appeal, this Court cited with approval the decision of this Court in Parameswaran Match Works case and said that fixing of the cut-off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the Court would be reluctant to strike down such a cut-off date.

(b) *Union of India v. Sudhir Kumar Jaiswal, (1994) 4 SCC 212,* at page 215 :

5. As to when choice of a cut-off date can be interfered was opined by Holmes, J. in Louisville Gas & Electric Co. v. Clell Coleman 72 L ED 770 (1927) by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. What was observed by Holmes, J. was cited with approval by a Bench of this Court in Union of India v. Parameswaran Match Works (1975) 1 SCC 305 (in paragraph 10) by also stating that choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark.

6. The aforesaid decision was cited with approval in D.G. Gouse and Co. v. State of Kerala(1980) 2 SCC 410; so also in State of Bihar v. Ramjee Prasad (1990) 3 SCC 368 to which decision we shall have occasion to refer later also.

> *7. In this context, it would also be useful to state that when a court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void, as stated in Metropolis Theater Co. v. City of Chicago (57 L ED 730 (1912)in which Justice McKenna observed as follows:*
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> > "It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void ...."

10. The aforesaid was noted by this Court in **Sushma Sharma v. State of Rajasthan** (1985) Supp SCC 45 in which case also reasonability of fixation of a date for a particular purpose had come up for examination.

11. In view of the above discussion of this Tribunal and the decision of the Apex Court, we have no hesitation to hold that the applicant has failed to make out a case. The OA being devoid of merits, **merits only dismissal**, which we so order.

12. Costs easy.

(Dated, the 15th December, 2008)

(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.