

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 383 of 2008

FRIDAY, this the *1st* day of *May*, 2009

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Dr. B. Madhusoodana Kurup,
S/o. Late V. Balakrishna Pillai,
Professor, School of Industrial Fisheries,
Cochin University of Science and Technology,
Fine Arts Avenue, Cochin city. Applicant

(By Advocate – Mr. V. Sajith Kumar)

V e r s u s

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 for Agriculture, Government of India, New Delhi.
4. Dr. Mohan Joseph Modayil, Member, Agricultural Scientists Recruitment Board, Krishi Anusandhan Bhavan-1, PUSA, New Delhi 110012.
5. Mr. G. Syda Rao, Director, CMFRI, Cochin. Respondents

(By Advocate – Mr. P. Jacob Varghese, Sr. and M/s. Varghese & Jacob (R1, 2 & 4).

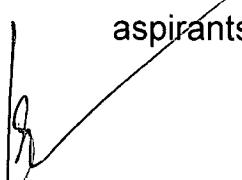
The Original Application having been heard on 20.1.2009, the Tribunal on 01-05-09 delivered the following:

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ORDER
By Hon'ble Dr. K.B.S. Rajan, Judicial Member

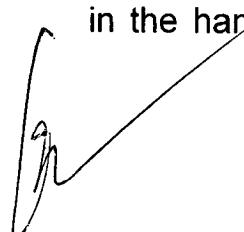
The case of the applicant, as contained in this O.A., is narrated in the succeeding paragraphs.

2. The applicant, presently working as a Professor (School for Industrial Fisheries) CUSAT and advisor to the Minister (Fisheries & Registration), Government of Kerala, having, according to him, an excellent academic record all through his career and holding various recognitions and awards, responded to a notification for selection as Director, Central Marine Fisheries Research Institute (CMFRI) vide Annexure A-2 notification dated 16.2.2008. For selection, the filtration process consists of two stages – (a) by a screening committee that has to recommend the candidates for interview and (b) by the Selection Committee to recommend the candidate to be appointed. As per the conditions notified, the screening committee has to follow a score card system for various attributes. Percentage of marks for these attributes is specifically provided in the notification issued by the respondents vide Annexure A-3. The selection committee has to follow and award marks to the attributes of the candidate in the same manner which is being followed by the screening committee. In other words, the selection committee cannot ignore the marks awarded by the screening committee for the attributes of the candidates. As such, evaluation by the two committees, according to the applicant, cannot be such that a candidate who secured high marks awarded by the screening committee, could score low marks in the interview for his attributes by the selection committee. His grievance is that though as per screening committee, he has an edge over various other aspirants to the post of Director (CMFRI), in the final selection, he was not

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selected and person with less qualifications has been selected. Such a selection, according to the applicant is vitiated also on the ground of illegal constitution of selection committee members and other irregularities committed at the time of selection.

3. According to the applicant, the respondents have prescribed byelaws, *inter alia* for the purpose of selection to various categories of posts in the Council. The current byelaws succeed the old bye laws but, Clause 28 of the current byelaws makes clear that clauses 38 to 48 relating to recruitment under the old byelaws will be followed till such time recruitment rules are framed for various categories of posts in the Council, as provided in Rule 73. As per clause 38 the Interview Board should consist of Chairman, ASRB, Director General of the first respondent or his representative and 2 to 3 advisors vide Annexure A-4. Thus, the constitution of the selection committee does not provide for Member of the ASRB as a participant in the committee. However, the 4th respondent, a member of ASRB was included in the interview board in a wrongful fashion. Further, as per the rules and procedures, even advisors to be inducted in the selection committee/interview board should be duly qualified and drawn from outside the ICAR system, whereas one of the experts was an Oceanographer (Sree V. Raveendranathan) who is not qualified. The said Raveendranathan was a colleague of the 4th respondent at Mangalore Fisheries College and they are good friends. The 2nd advisor is one Shri S.A.H. Abide who is a person within the ICAR system. Even though he has retired recently, the other applicants are all from ICAR system and for them he is a mentor. Thus, a person from ICAR system has been included in spite of the specific condition in the handbook of ASRB that experts can be only from outside the ICAR



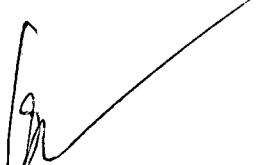
system. The above provision, according to the applicant, is with a specific intention to avoid bias in the selection process. The applicant alone is a candidate outside the ICAR system.

4. The applicant was interviewed on 3rd July, 2008 which he attended. Though original certificates and testimonies were ready with him to establish essential qualification, experience, managerial ability and contributions of the applicant, they were never verified by the office or the selection committee even though the applicant expressed his willingness to present them as called for in the interview call letter vide Annexure A-5.

5. The applicant learnt that he had topped the rank list prepared by the screening committee.

6. According to the applicant, Dr. Mohan Joseph Modayil, the 4th respondent was not a nominee of the Director General. He is a person facing serious allegations and there were various types of investigations regarding the activities of the 4th respondent, formerly the Director of CMFRI. He has interfered with the selection process with a view to unduly favour Syda Rao, the 5th respondent who was a subordinate of the 4th respondent and Mr. Syda Rao is presently in charge of the project with 2.5 crores, earlier handed over by the 4th respondent. It is learnt that the project became a flop and the authorities lost the money spent for the same.

7. The selected candidate Mr. Syda Rao, the fifth respondent, is a person who failed even in the selection conducted by the screening committee for the post of Mulluscian, Fisheries Division, Cochin in 2005.

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8. The fifth Respondent has now been selected for the post of Director CMFRI, vide Annexure A-1. On being convinced that the process of selection was stage managed by the 4th respondent, the applicant made representations before the Minister of Agriculture in his capacity as President of ICAR and to the Secretary, Ministry of Agriculture vide Annexure A-6.

9. On the ground of various legal lacuna in the selection process and on the grounds of bias and malafide against respondent No. 4, the applicant has moved this OA seeking the following relief:

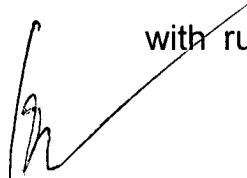
"(i) To quash Annexure A1;

(ii) To declare that the selection proceedings initiated pursuant to Annexure A2 permitting the participation of the 4th respondent and the persons without fulfilling the eligibility conditions as experts/advisors is violative of the rules and byelaws and instructions governing the selection to the post of Director, CMFRI under the 1st respondent.

(iii) To declare that, the selection to the post of Director, CMFRI under the 1st respondent merely based on interview without giving due weight to the qualifications/attributes of the candidates is highly unfair and illegal being violative of the principles of equality guaranteed under the Constitution of India and the provisions of the Byelaws and rules of ICAR.

(iv) To declare that the selection and appointment of 5th respondent is illegal and arbitrary being violative of Rules and Byelaws of the 1st respondent.

(v) To direct the respondents 1 and 2 to conduct the selection to the post of Director CMFRI notified pursuant to annexure A2 in accordance with rules and Byelaws by adopting a rational procedure giving due



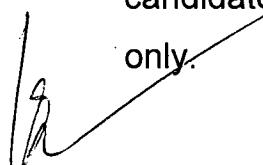
weight to qualifications/attributes of the candidate sponsored by the screening committee on quantitative terms.

(vi) Grant such other relief's which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case."

(vii) Grant the cost of this Original Application."

10. Respondents have contested the OA and their contentions are as under:

- a) Selection of candidates under the direct selection has two phases of process namely (a) screening of applications by a duly constituted screening committee and (b) the interview by the selection committee. Interview is done in respect of candidates who have been recommended by the screening committee. Both the screening committee and the selection committee inter alia comprise of subject matter expert/advisors of national repute from the relevant fields/disciplines having expertise in the relevant field or subject matter.
- b) It is the Chairman/Member of the ASRB who is competent to interpret the qualification and the recognitions by different professional body.
- c) The screening committee recommends the candidates up to 10th rank in the score of merit (based on marks obtained in the 15 parameters/attributes of the score card) subject to minimum of 50% marks for the purpose of interview.
- d) The marks awarded by the screening committee for research management positions are for the purpose of short listing of the candidates for personal interview before the selection committee only.

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e) The second phase of the selection process involves interview of the candidates by the selection committee. For Research Management position (RMP for short), the selection committee has Chairman ASRB as Chairman, DG, ICAR or his nominee as member, one member of ASRB as member and not less than 3 advisors drawn from outside the ICAR system to be nominated by Chairman ASRB. The selection committee comprises of the subject matter experts of national repute and ICAR representative.

f) The selection committee independently assesses the suitability of candidates on the attributes namely depth of knowledge in the relevant field and related subjects, mindset (scientific temper, positive thinking, sense of belonging, concern for fellow colleagues, quick decision making ability etc.), communication skills, holistic scientific vision, international exposure, leadership traits with proven leadership record, aptitude for team work, capabilities to guide/motivate, high standards of values and ethics, understanding of relevant international developments like IPR/WTO regime, knowledge of major agricultural legislations of the country, institution building abilities and managerial capabilities. Marks are allotted by the screening committee on the basis of the performance of the candidates in the personal interview and that candidate, who secures the highest marks, is recommended for appointment to the RMP post under reference.

g) It has also been stated by the respondents that as per instructions conveyed by the Indian Council of Agricultural Research vide letter No. 1(3)/2006-Per.IV dated 27th March, 2006 the composition of selection committee for the Research Management positions is as under:

1. Chairman, ASRB Chairman
2. DG, ICAR or his nominee Member
3. One member of ASRB Member
4. Not less than three Advisors drawn from outside the ICAR system to be nominated by Chairman, ASRB Member

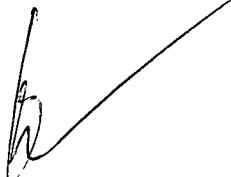
h) As regards to averments of the applicant regarding inclusion of Prof. V. Ravindranath in the Selection Committee, Prof. Ravindranath is a senior advisor/expert in his field having vast managerial and scientific experience and was associated with Department of Ocean Development as Advisor. Prior to this, he had also worked as Director, Centre for Marine Living Resources, the agency which has been providing funding support to many research projects of CMFRI, Cochin.

i) Dr. S.A.H. Abide (ex-Chairman, ASRB) is no longer in the ICAR system. After his retirement he was associated with the selection committees as an outside expert.

j) The documents called for from the candidates for interview are eight to ten copies of the Part-B of their application form, educational qualification certificates and work plan etc. The copies of these documents are placed in the folders meant for the Chairman/Members of the selection committee, and before the interview process starts these folders are provided to the selection committee for perusal.

k) The marks awarded in the screening are not added to the marks in the interview. In the personal interview the marks are allotted by the selection committee on the basis of the performance of the candidates in the personal interview held on the various attributes. The candidate securing the highest marks in the personal interview is recommended for appointment to the RMP post.

l) For the post of Director, CMFRI, Cochin, the selection committee had the same composition as provided for in the aforesaid instructions. The selection committee had Chairman, ASRB as Chairman, nominee of Director General, ICAR as Member, one Member of ASRB as Member. Besides, three advisors were drawn from outside the ICAR system and were associated as Members of the selection committee.

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m) The respondents also submitted that the recommendations of the selection committee are unanimous and not based on the view of one or two members/experts. There is no question of any influence by a member on the selection committee.

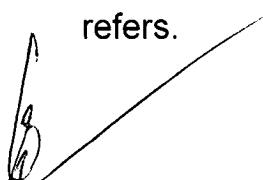
n) For the post of Director, CMFRI, experience in Research Management Position is only a desirable qualification and the qualifications prescribed for the post of Director, CMFRI, Cochin do not speak of experience in administration, as being averred by the applicant.

11. In his rejoinder, the applicant has contended that the contentions of respondents with regard to awarding of marks by the screening committee that it is only for the purpose of short listing is contrary to the score card system approved by the President of the Society. According to the applicant, the respondents cannot ignore the marks through the score card system while making assessment in the interview. It has also been contended in the rejoinder that the respondents have not disputed the contention of the applicant that as per Clause 38 of the Byelaws a Member of the ASRB shall not be a part of the selection committee. The applicant contends that if there be any change by any administrative instruction, the same cannot override the rules and Byelaws framed by the ICAR with the approval by the Government of India. The applicant has also reiterated that the Member, ASRB who took part in the interview is very much acquainted with many of the aspirants to the post who are from within the organization while the applicant alone is an outsider. As regards experts in the interview board, Shri Raveendranathan was a colleague of 4th respondent and both of them were good friends; again the second expert Dr. Devaraj was also a colleague of 4th respondent and that he is not an expert in Marine Fisheries. He is otherwise specialist in Inland Aqua Culture. As regards inclusion of Mr. Abide

who is also to be termed as insider, the contention of the respondents that he cannot be treated as an insider since he is already retired, is incorrect. It has been contended by the applicant that the attributes required for DDG have been pressed into services in the selection to the post of Director, CMFRI, which again is illegal. It has also been contended that in an interview of this nature each member of the interview board should award independently marks which may be consolidated. Instead, the so called consensus has been followed which is illegal and unjust.

12. As regards the selected candidate, the applicant submitted in his rejoinder that the said selected candidate has no experience in Research Management which is indicated as a desirable qualification, whereas the applicant is having experience in Research Management and Administration. The close and proximate relationship of 4th and 5th respondents has been explained in paragraph 14 of the rejoinder with attended annexures (Annexures A-8 and A-9).

13. According to the applicant undue haste has been shown by the respondents in announcing the result of the interview within 24 hours which, according to him, is a clear attempt of the respondents to avoid judicial scrutiny. In yet an another case of identical nature where the selection process involves score card system in OA 280 of 2004 before the Hon'ble CAT Madras Bench, the respondents conceded that out of total 100 marks 75 are kept for qualification, experience, etc. and marks for personal performance were limited to only 25. Annexure A-10 order of the Tribunal refers.

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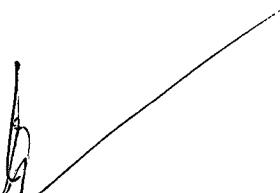
14. Apart from the above, the applicant has also questioned the possibility of conducting interview to this important post within 10 to 20 minutes.

15. Counsel for the applicant laid emphasis on the following grounds: -

- (a) Constitution of Selection Committee is against the byelaws.
- (b) Experts have not been called for as provided for in the Byelaws.
- (c) Those who had been treated as 'outsiders' were only from the very same Institution.
- (d) Bias and Malafide levelled against Respondent No. 4 and 5.
- (e) R-5 is not eligible at all for consideration.
- (f) Documents were not verified at the time of selection. The details furnished by the candidates had been taken for granted.
- (g) Attributes of other post have been taken into account, which is illegal.
- (h) 100% marks have been allotted for interview, which is illegal.
- (i) The Committee Members have not granted individual marks and the decision was collective without allotting such individual marks which is not proper.
- (j) The final selection has been made without the proper approval of the competent authority.

16. Counsel for the applicant submitted that notwithstanding the fact that the earlier decision had rendered some findings, the same be not adopted in this case, as, certain additional grounds and information are available in the present case, which would justify the claim of the applicant.

17. To substantiate the above grounds, the applicant has taken us through the relevant passages in his application/rejoinder and other

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pleadings/decisions and the same are summarized in the succeeding paragraphs.

18. As regards Constitution of the Committee which according to the applicant is bad in law, the counsel referred to para 8 of the OA and the same is as under: -

“8. The clause 28 of the byelaws makes clear that clauses 38 to 48 relating to recruitment under the old bye-laws will be followed till such time Recruitment Rules are framed for various categories of post in the Council as provided in Rule 73. As per clause 38, the interview Board should consist of Chairman ASRB, Director General of the 2nd respondent or his representative and 2 to 3 Advisors. (Annexure A-4 refers).”

19. As regards the contention that experts have not been called the applicant relied upon the decision in 1996(2) KLT 368, para 36 and (1990) 4 SCC 510 and the same are as under: -

(a) 1996(2) KLT 368 –
(b) (1990) 4 SCC 510:

20. The applicant has alleged mala fide against Respondent No. 4 and 5 and the same are as under: -

“It came to know that 4th respondent who is incompetent to take part in the selection process played the key role in the selection process. It also came to know that the advisors/experts in the Selection Committee were unqualified and one among them was a person within the ICAR System. The applicant was not even told to present his vision and the details of his achievements.

It is submitted that the 4th respondent was not competent to sit in the selection process. As per the byelaws, a member of the ASRB is not competent to sit in the selection process. The 4th respondent

was not a nominee of the Director General. The fourth respondent is a person who is facing serious allegations and there were various types of investigation regarding activities of the 4th respondent formerly the Director of CMFRI. The 4th respondent interfered with the selection process with a view to unduly favour with the 5th respondent. The 5th respondent was a subordinate of the 4th respondent and Mr. Syda Rao is presently incharge of a project worth 2.5 crores handed over by the 4th respondent on his retirement from the post of Director, CMFRI. It is learnt that the project became a flop and the authorities lost the money spent for the same. Dr. Mohan Joseph Madayil took part in the interview contrary to byelaws and rules. He is a tainted person and was at the centre of controversies while working at CMFRI, Cochin. Hon'ble CAT in O.A. 147/2006 had found his misdeeds and observed that the "Director seems to have abused his powers and the personal feuds fouled the air."

21. The applicant has relied upon :-

- (a) AIR 1993 SC 763,
- (b) (1994) 6 SCC 1998 and
- (c) 2001(2) KLT 878.

22. As regards eligibility or otherwise of Respondent No. 5, the counsel referred to the qualification prescribed and contended that the said respondent does not possess the same.

23. With reference to verification of records, as required, the applicant has cited para 2 of the O.A. which reads as under:-

"2. The applicant is having excellent academic records all through his career and he was the 2nd rank holder in M.Sc. Marine Biology. He took his doctoral degree from Cochin University for Science and Technology in the year 1983. He was a UGC Scholar for the doctoral research and he got fellowship from "NUFFIC" in his post doctoral programs at wagonengen University, Netherlands.

24. The senior counsel for the respondents submitted that an identical case having already been decided, the same should be applied to this O.A. as well. He has referred to the counter filed by the respondents and denied all the contentions raised by the counsel for the applicant. According to the senior counsel, the constitution of the Selection Committee cannot be faulted with; the experts are as per the provisions of the byelaws; the member ASRB can function as one of the members of the selection committee. The score card system is merely for the purpose of recommendation upto interview stage; the selection committee decides unanimously after due deliberations and there is no need to give marks either for each attribute nor is there any requirement that each member should independently award marks and the same consolidated. There is no stipulation that 100% marks for interview cannot be provided for interview, especially, when the selection is preceded by the earlier filtration process of scorecard system by the Screening Committee, wherein 50% marks have been stipulated for recommending the candidates for interview.

25. Before referring to the arguments advanced by both the parties at the time of hearing, it is essential to point out one aspect. Earlier, a like application was filed challenging the selection to the post of Director in another Institution and some of the findings therein are as under:-

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

1. 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 of Agricultural Research Bye-Laws relating to recruitment 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.

2. 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 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
3. 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.
4. 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 handbook 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.

5. 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 applicants 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.

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15. Arguments were heard and documents perused. Certain records were also produced by the respondents, which have also been gone through. These include communication dated 17th December 1990 relating to constitution of selection committee in which one Member of ASRB has been included as a member; 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 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

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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."

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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 Uttarakhand*, (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*

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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 deviation from the byelaws. 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 is 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 byelaw 28 of the old byelaws, incorporated in the current byelaw. The same has already been extracted earlier. This byelaw is in fact applicable for the transitory period. The byelaws had come into force in 1975. The question is whether the ICAR is still in transitory stage since 1975? Have not the recruitment Rules 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 byelaw 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 byelaws 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 byelaws and hence, the selection is illegal has to be rejected.

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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 CIIT. 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: -

1	2
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

1	2
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
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 CIIFT, 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. When 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.

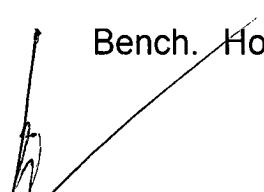
32. Contention that the interview was a farce or that extraneous considerations weighed more are to be summarily rejected in view of the settled law position that unless malafide is alleged and proved, the wisdom of the selection committee cannot be doubted by the Tribunal.

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 same is dismissed. "

26. A perusal of the above would go to show that the points that have been raised in the present OA have all been raised in the earlier OA and those contentions have been rejected and the O.A. was dismissed. However, as stated at the very outset, counsel for the applicant at the time of arguments submitted that though the same points as in the earlier O.A. are argued, the argument is with a different dimension and with additional information, which had not been earlier canvassed. As such, the counsel prayed that this Bench may take appropriate decision on these issues independent of the earlier decision.

27. This calls for an analysis of the difference in the approach of the counsel in meeting the common grounds. Where grounds and facts are the same or where the issue relates purely to the law points, it would be appropriate to adopt the earlier decision, unless this Bench has serious difference, in which event the case may have to be referred to a larger Bench. However, in a few aspects, grounds may be the same, but the facts



are different. As for example, as regards expert, the earlier case was with reference to a particular expert and the decision is different. As regards the present case, the expert is different from the one in the earlier case and as such, it is to be examined as to whether the expert fills the bill. So is the case relating to the 'outsider – insider' issue. As such, there is no question of adopting the earlier OA without considering the points raised by the applicant in the present O.A.

28. As regards constitution of the Selection Committee, with particular reference to inclusion of ASRB Member, this Tribunal has analysed the same in the earlier judgment and arrived at a finding that where no prejudice is caused, inclusion of the Member ASRB as a member of the Board would not vitiate the selection. In the instant case, however, the applicant has referred to the close relationship between the fourth and fifth respondents and has stated that the same would be sufficient to cause prejudice to the applicant. The participation and sharing of common dais just before the holding of interview, vide annexure A-8 and A-9 has been contended to be a pointer to prove that there has been extraneous influence in the recommendation of the fifth respondent for selection to the post. This, however, is far fetched. For, both the individuals participated in the programme in their respective official capacity and further, it cannot be presumed that at the time the function took place in April, 2008, it was decided to induct the fourth respondent in the Board. Nor can it be argued that the fourth respondent should dissociate from the Selection Committee simply on the ground that he had shared the common dais with one of the applicants to the post. Again, the decision being by the entire committee as a whole, one man's influence cannot have twisted the balance. Further, the

score card had been verified and the marks allotted by the Selection have been contrasted. In so far as the respondent No. 5 is concerned, he had scored 71.5 marks in the initial screening and 82.0 in the Selection. These go in tandem. There has been no sharp increase in the marks awarded by the Selection Committee as compared to the marks awarded as per score card by the Screening Committee. Thus, it cannot be held, even on facts, that prejudice has been caused to the applicant by inducting the Member ASRB as one of the members of the selection Committee. As regards the other contention in this regard by the counsel for the applicant that the byelaws cannot be eclipsed by an executive instruction, the same has been answered in the earlier decision and we adopt the same.

29. As regards the contention that experts have not been called for as provided in the Byelaws and that the two experts cannot be treated as experts, the counsel has drawn our attention to two decisions one of which is by the Supreme Court. In the first case, i.e. *Triloki Nath Singh vs Bhagwan Din Misra*, (1990) 4 SCC 510, the requirement was experts in Hindi and Linguistics, whereas the institution had only expert in Hindi for selection of Reader in Linguistics. This has been held to be invalid. The counsel also referred to the decision in the case of *Sree Sankara University vs State* (1996) 2 KLT 378 to hammer home the point that the selection committee should be constituted as per the provisions of the Statute (para 33) and guidelines to be fixed for interview (para 21 and 22) and further that expert from outside should be from the same subject (para 36). In the instant case, the about the expert, the respondents have stated that Prof. Ravindranath is a senior advisor/expert in his field having vast managerial and scientific experience and was associated with Department of Ocean Development as

Advisor. Prior to this, he had also worked as Director, Centre for Marine Living Resources, the agency which has been providing funding support to many research projects of CMFRI, Cochin. The complaint from the counsel for the applicant is that the expert is not even a doctorate. That the expert should be a doctorate is not stipulated in the statute. However, there is substance in the argument of the counsel for the applicant that the expert should be from the very same subject and this aspect has not been directly confirmed by the respondents in their counter or oral submission. They have however, maintained that according to them, the person inducted in the selection board did have that expertise. The Tribunal cannot go ~~in~~ against the views of the respondents in this regard, as there is no statutory stipulation as to who should be an expert.

30. As regards the contention that the outsiders are not strictly outsiders, the counsel no doubt had made certain submissions. However, in our considered view, once a person has retired from the service, he cannot be termed as one from 'inside'. Hence, no legal flaw could be located from that point of view.

31. The next point canvassed is that selection has been accentuated by bias and Malafide. For this purpose, the applicant has referred to certain projects earlier handled by one of the selection committee members, now being handled by the selected candidate. Para 14 refers. In reply to the same, the respondents have stated, "in reply to the averments of the applicant on handing over a project worth 2.5 crores to the respondent No. 5 on his elevation as Member, ASRB, it is stated that the same has no connection with selection to the post of Director CMFRI, Cochin." The

question is whether by virtue of the fact that a particular project hitherto handled by one individual (who is now in the selection committee) being handed over to another individual (who is a candidate facing selection committee) would mean bias and Malafide. In the case of **State of Punjab v. Gurdial Singh, (1980) 2 SCC 471** the Apex Court has held as under:-

"9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

32. Here again, since the selection was by a committee, and not by an individual member, whatever may be the extent of extraneous consideration between a single member in the selection committee and the selected candidate, it cannot be said that the entire selection committee had been influenced by the said relationship. Thus, the mischief aimed at by the above dictum of the Apex Court does not exist in the instant case.

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33. The decision referred to by the counsel for the applicant reported in AIR 1993 SC 763 in fact goes in favour of the respondent and not the applicant. In the said decision, the dictum laid down by the Apex Court as contained in para 12 of the judgment as reported in **(1993) 1 SCC 54** is -

It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture:

Hence, this point of the counsel for the applicant has to be dismissed as bereft of merits.

34. Reliance on the decision in the case of *Ashok Kumar Yadav vs State of Haryana* (1985) 4 SCC 417 is also not so relevant as the same is a case of relative being selected and in the instant case, no such allegation has been made, much less, proved. The reasonable likelihood of bias, which would have invalidated the selection process, is absent in the case in hand.

35. As regards ineligibility of the fifth respondent, the contention vide ground E goes to show that the said respondent failed to clear screening committee for selection as HOD in the year 2005 and he does not have administrative and research experience. This ground too has to be rejected, as failure in one interview cannot lead to the conclusion that the fifth respondent is ineligible for the post of Director CMFRI. Whether the said respondent has research and administrative experience or not has been considered by the respondents. Hence, this ground also is without substance.



36. Non-verification of documents has been taken as a ground for challenge. Candidates who have aspired for the posts are all highly educated and experienced. When they submit the application, entries are made only on the basis of the certificates held by them. Verification of documents would be resorted to only when the department so chooses. If they have reposed confidence upon the applicant and did not verify the records, the same cannot be treated to mean that the selection process is vitiated.

37. As regards the contention that other attributes have been taken into account by the Interview Board, the points advanced by the counsel for the applicant are by and large the same as advanced in the earlier case and the Tribunal has dealt with *in extenso* about the same in the earlier judgment extracted. We are not inclined to deviate from that decision.

38. The last point for consideration is whether the interview could have 100 marks for selection. In fact this has been a ground in the earlier ground but the Tribunal dismissed the contention, holding, "*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.*"

39. The counsel for the applicant relied upon a number of decisions where higher marks allotted for interview have been criticised by the courts, as the same would encourage arbitrariness or favouritism. Again, vide para 12

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above, in the case before the Madras Bench, interview marks were limited to 25% only, while in the instant case, it is 100%. In our earlier decision i.e. in O.A. No. 537/08, the question as to whether the interview Board could allot marks collectively instead of individual marks by members being allotted and the same consolidated has not been considered in detail. As such, this Bench is of the considered view that in regard to the following two questions of law, the matter may have to be referred to a larger bench: -

- (a) Whether for the post of Director CMFRI, the awarding of full marks for interview would be held legal.
- (b) Whether each member of the selection Committee should have awarded marks independently instead of arriving at a collective decision, without allotting individual marks.

40. The Registry is directed that matter may be placed before the Hon'ble Chairman, Central Administrative Tribunal for constituting a Full Bench.

(Dated, the 1st May, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA-cv"

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 383 of 2008

This, the 30th day of July, 2009

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member**

Dr. B. Madhusoodana Kurup,
S/o Late V. Balakrishna Pillai,
Professor, School of Industrial Fisheries,
Cochin University of Science and
Technology,
Fine Arts Avenue, Cochin City. Applicant.

(By Advocate Mr. 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. Union of India, represented by the Secretary
to the Government, Ministry of Agriculture,
Government of India, New Delhi.
4. Dr. Mohan Joseph Modayil, Member,
Agricultural Scientists Recruitment Board,
Krishi Anusandhan Bhavan-1, PUSA,
New Delhi-110012.
5. Mr. G. Syda Rao, Director, CMFRI,
Cochin. Respondents.

(By Advocate Mr. P. Jacob Varghese, Sr. Counsel and M/s
Varghese & Jacob (R1,2 & 4)



O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J).

The Indian Council of Agricultural Research by Memorandum dated 07.07.2008 (Annexure A-1) had appointed Dr. G. Syda Rao, the fifth respondent in the above OA as the Director, Central Marine Fisheries Research Institute (CMFRI), Cochin, on tenure basis for a period of five years. These proceedings are under challenge.

2. The applicant is working as Professor (School for Industrial Fisheries), CUSAT. He is advisor to the Minister (Fisheries and Registration), Government of Kerala. The appointment conferred on Syda Rao is challenged by him on various grounds, including irregularity in constitution of the Selection Committee, their incompetence and also possible mala fides. According to the applicant, as of now the best candidates available have been sidelined and the appointment had gone to a person already earmarked. All the steps and proceedings, therefore, require to be retraced so as to ensure that a top post in the ICAR goes to a person who is qualified, efficient and most eligible. The anguish shown reflected in the passionate arguments of the counsel, and we would examine the contentions with the seriousness it deserves.

3. The Agricultural Scientists Recruitment Board (ASRB), New Delhi had by Annexure A-2 notified recruitment to several scientific posts under the different Institutes of the ICAR. One such post is Director, CMFRI, Cochin. Essential qualifications

required for the incumbent had been notified. There was also reference to desirable qualifications expected of. The closing date of applications was 02.04.2008. It was an unreserved post. The brochure supplied along with the application intended for information of the candidates spoke of further details, viz regarding the constitution of the Screening Committee, the process of preliminary appraisals, guidelines, which were to be followed by the Screening Committee and short listing of candidates to be called for interview. Candidates scoring the prescribed minimum percentage marks alone would have become eligible for being interviewed. The final selection to the post concerned was to be made on the basis of performance at the time of interview.

4. During the course of selection process, two Original Applications had come to be filed, one by a person working as Principal Scientist in ICAR (OA 356/2008) and the other by a person, who was Registrar of Cochin University of Science and Technology (OA 537/2008). The Constitution of the Board for selection had been challenged. There was also a prayer that since some of the candidates, who were screened and found eligible (not the 5th respondent) for partaking the interview, basically were unqualified, they were to be deleted from the list. The methodology of selection based solely on the interview also was challenged, as, according to the applicants, the rules do not permit such a procedure. However, a Division Bench, consisting of one of us (Mr. K.B.S. Rajan) had dismissed the applications, finding that there was no substance in the contentions raised.

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5. In the present O.A, the relief prayed for is for quashing the appointment order and for a declaration that selection is invalid because of participation of fourth respondent as a Selection Committee Member. Some other members also, according to the applicant, were not sufficiently qualified, or independent enough to act as Members of the Committee. It had been further alleged that selection based on interview without giving weight to the qualifications and attributes of the candidates offended the principles of equality. Merit of the respective candidates on the basis of their attainment as per records, should also have been a yardstick for the selection, delinking process of preliminary and final selection was not warranted. Therefore, a de novo selection as prescribed by the Rules and bye laws was to be ordered for finding out the best candidate among the applicants.

6. The Original Application had been heard by a Bench at some length. Thereafter, an order had been passed on 01.05.2009 wherein following the earlier order in OA 356/2008 (and connected case), the contentions raised about the incompetence of the selection body and the methodology adopted by them in the matter of selection have been repelled. But, however, the Bench had noticed that a contention raised in the application was about the irregularity of allotment of hundred percent marks for the interview. The learned Members had observed that in view of the decision of the Madras Bench, which had come to be passed almost on similar facts, wherein an opinion had been expressed that reservation of 25% marks for the interview would have been irregular, propriety demanded of them that the present OA be

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heard and disposed by a Full Bench. In OA 289/2004 and OA 291/2004, the Madras Bench had held that the ICAR was not justified, in completing a selection process without giving full information with reference to the procedure to be followed in the selection. Supply of yardsticks which were likely to be employed in the process should have been made to the participants. Therefore, the selection was set aside.

7. The present OA was thus heard by the Full Bench in the above background.

8. So as to give an opportunity for the applicant to address upon the issues, as desired by him, the Bench had framed two questions of law, which were to be examined and pronounced upon by the Larger Bench. Questions were framed as following:

- (a) Whether for the post of Director CMFRI, the awarding of full marks for interview would be held legal.
- (b) Whether each member of the Selection Committee should have awarded marks independently instead of arriving at a collective decision, without allotting individual marks.

On the orders of the Chairman, thereupon a Full Bench had been constituted.

9. Before us, Mr. V. Sajith Kumar, learned counsel appearing on behalf of the applicant, submits that the questions as framed essentially have to be examined in the backdrop of the other relevant facts. Therefore, an opportunity to advert to the primary

facts which have been pleaded in the OA was sought for. Mr. P. Jacob Verghese, Senior Counsel, appearing on instructions, on behalf of the respondents, had been fair in not opposing the submissions as made by Mr. Sajith Kumar. As one of us (Justice M. Ramachandran) had been freshly nominated by the Hon'ble Chairman, and as the Member had not heard the matter earlier, and since the judgment was to be comprehensive on all issues raised, a full hearing was accepted as the course to be followed.

10. We may, therefore, examine afresh the contentions that have been raised and de novo, although they had been already adverted to by the Division Bench, of course, as might be necessary for the present adjudication. In fact, the points agitated, (excepting the issues framed for consideration by a Larger Bench) had been previously subjected to an examination by the Division Bench when it rendered the judgment in OA 356/2008 and connected case. A detailed discussion would be warranted only if the Full Bench deem it fit to record altogether different findings.

11. Mr. Sajith Kumar thereupon had referred to the factual averments made in the Original Application and submitted as following.

12. The applicant is a highly meritorious candidate working as a Professor in an Institution under the Government of Kerala. He has excellent academic records and is attached to the present institution from 1983 and had served as Junior Assistant Professor, Assistant Professor, Associate Professor and Reader. He is a doctoral fellow and was promoted as Professor in April, 1998.

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He had numerous research publications to his credit and is recipient of Bharat Jyothi Award. A number of scholars had secured post graduate doctorate under his guidance. It is an ongoing programme. His authority in the relevant fields is unquestionable.

13. Applicant had responded to the Notification to the post of Director, and had been cleared by the Screening Committee. As far as his knowledge goes, he had secured the maximum marks among the aspirants. But thereafter he is placed in a common pool and his candidature is adjudged only on the basis of an interview. This is not permissible as per the bye laws of the ICAR. No satisfactory reason is given for following such a weird procedure, and one could smell rat, for unceremonious elimination of a meritorious candidate.

14. It is submitted that in view of clause 28 of bye laws clauses 38 to 48, as existing under the old bye laws, were required to be followed till such time new recruitment rules were framed. The interview Board was to consist of Chairman, ASRB, Director General of the ICAR or his representative and 2 to 3 advisors. However, the fourth respondent, a Member of the ASRB, was included in the interview Board in violation of the rules. The rule position provided that the Selection Committee Members were to be drawn from outside the ICAR stream. The constitution of the Committee was, therefore, irregular. One person who had not even done the Ph.D had been included as Member of the Selection Committee. This was against basic tenets of a fair selection.

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15. Particular reference is made to the presence of the fourth respondent, Dr. Mohan Joseph Modayil, as according to the learned counsel as relying on the pleadings, he was a tainted person. Formerly, he was Director of CMFRI and he could not have been permitted to be associated with the Selection. He was still connected with the ICAR and had bias, particularly with selfish interests. The applicant had, according to him, brought the attention of the higher ups about the irregularity of the proposal, but the selection proceedings went on unhindered. He was, therefore, constrained to partake in the selection. In due course, he had been subjected to interview on 03.07.2008. It is asserted that the interview was practically stage managed. There was no adequate time set apart for assessing the real worth of a person, who was being interviewed. In spite of his offer to make available his credentials, the suggestion had been sidelined. He further submits that the fifth respondent who was selected was a close associate of the 4th respondent, who was far lesser qualified and notoriously, was known as unable to make his mark in a previous selection held three years back for a still lower position. But, however, flouting all norms and without applying mind to the special attributes of the applicant, which, in fact, the incumbent was to possess, selection has gone to a person who is not qualified enough or experienced to hold the position.

16. Mr. Sajith Kumar thereafter also had addressed us on the two issues that had been framed for being answered by the Full Bench. According to him, the selection, in fact, solely rested on the basis of interview. This amounted to a situation where the

interviewing body had grabbed power to give hundred percent marks, as ultimately the things have now turned out. With the authority of decided cases, it is submitted that the above could not be condoned or approved as a happy situation. The Courts repeatedly had indicted that assigning even thirty to fifty percent marks for interview, would have been irregular.

17. Further submission was that when different attributes were to be examined by the expert selectors drawn from different sources, and who were supposed to have specialized fields, it would have been appropriate that marks scored as per the assessment of the individual experts required to be shown separately on the records. In a case where the process was under examination by a third party or a court of law to examine whether there was a fair selection carried out and whether the person, who was adjudged as winner in the selection could have been undoubtedly the most qualified and eligible person for conferment of the appointment, such records would have had rendered immense assistance. In support of his general submissions, he has cited several decisions, to which we may advert to later. In essence, the argument was that it was a case where excessive and arbitrary powers had been given to a Selection Committee to assess a person as they wished, de hors the qualifications or attainments of candidates. The track records they possessed which would have been the ultimate yardstick stood relegated to background. All these cumulative circumstances, according to the counsel, contributed to vitiate the process of selection. It is asserted that the candidate selected is far lower in merits and

attributes compared to others who had occasion to respond to the notification.

18. Mr.Jacob Verghese, Senior Counsel, however, submitted that the selection procedure had been adopted as authorized by the competent authority. He adverts to the circumstances that the method decided to be employed for selection was well known and transparent. It was not as if the applicant was taken by surprise or kept in the dark which circumstance had resulted in the decision of the Madras Bench. He further points out that the parameters that were employed for selection in the selection concerned have been equally applied in respect of the other more than thirty posts that had been notified, and no complaints had come from any quarter that the procedure adopted suffered from irregularity. It is pointed out that an order passed by this Tribunal in OA 356/2008 has covered almost all the technical contentions that have been raised by the applicant and since it has attained finality, that will be a guideline for the Full Bench to follow. It is further asserted that the manner, in which the applicant has attempted to focus the attention of the Tribunal to the methodology employed in the interview, is haphazard and perhaps misleading. It was not a case where hundred percent marks were to be assigned for interview. Selection was to consist of two separate steps, which was authorized to be followed by the highest body of ICAR and which was being adopted over a period of years. Even the Madras Bench decision did not disapprove of the methods which were laid down for a similar selection.

19. Counsel submits that the instructions to the candidates very well disclosed as to the manner in which the process of selection was to be conducted. The first step was a Notification giving the parameters of selection. Candidates were to respond supplying all relevant credentials and highlighting that they had eligibility to participate in the selection to the post advertised. A Screening Committee had been entrusted with the duty to scrutinize the applications. A verification process was very much working at that point of time. On set pattern, for every attributes, marks were awarded again in a most transparent, and notified manner. A candidate who secured fifty percent marks alone was to come to the second stage of the selection, viz, the interview. It is submitted that about thirty applications had forth come, and ten candidates were found as having sufficient qualification/experience set for the selection, entitling them to participate in the interview. Seven of them had participated in the interview.

20. Counsel submits that the brochures containing all the relevant details of the candidates had been with the Members of the Selection Committee. As pre-notified, the candidates were required to make a presentation the quality of which had to be specially assessed by the Interviewing Committee. Ultimately, the person who secured the highest marks was recommended for selection. Everyone of these details and procedure had been supplied before hand. The candidates were aware and were to be conscious of what would have been expected of them. The applicant had partaken in the selection. But when there were ~~more~~ persons of better capabilities, skills and adaptability for

shouldering the duties expected of from a Director, as assessed by the Committee, such a candidate had been selected. The applicant could not have contended for a position that since on his estimation he was the best candidate, he should have been selected. That he could not tolerate a rejection was no reason for mud slinging. These in short were the submissions made by the respondents. Of course, on the issue of constitution of the Selection Committee and the alleged bias harboured by the members, he submits that the arguments are immature, as had been already found in the earlier decided cases.

21. The fifth respondent who was the selected candidate had not presented himself, or taken any effort, to highlight his claims or justify his selection. We do not think, he was expected to jump into the fray, as the burden to prove that procedural formalities, including the responsibility for the final selection, exclusively was on the official respondent.

22. Paragraphs 15 to 36 of the reference order dated 01.05.2009 deal with the contentions raised by the applicant vis-à-vis the methodology employed for selection. We are of the considered view that the findings arrived at there, which was again on the basis of the earlier decision in OA 356/2008 do not require to be varied. In respect of the authority of the Selection Committee to sit in judgment over the candidature of the applicants, reliance had been placed on clause 28, which provides that notwithstanding anything contained in bye laws, the provisions of the existing bye laws 38 to 42 relating to recruitment and appointment to various posts under the Council were to be continued 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 ICAR Rules, are framed and enforced. The argument is that for constituting Interview Boards of Directors, under clause 39, such a body should be constituted consisting of Chairman, ASRB, as the Chairman, Director General or his representative plus two or three advisors, to assist as Members. It is contended that a Member of ASRB was present in the Interview Board and this is a vitiating circumstance. Further, the advisors from outside were insisted for obvious reasons and especially to ensure that there is fairness in the selection. But the advisors who had functioned as the Member continued to be associated with the ICAR, its committees and institutes, it may be that they had retired from the service of ICAR but the ties with the Institute was strong, and was likely to operate as a vitiating factor. This is a circumstance which goes to the root of the matter and, therefore, impartiality expected of a Selection Board could not have been there.

23. However, the submissions as above have been controverted by the Senior Standing Counsel. Indisputably, by proceeding dated 27.03.2006, with the approval of the President of the ICAR (Hon'ble Minister of Agriculture) guidelines have been prescribed which were being followed ever thereafter. The further contention was that clause 28 could be understood as only transitory provisions. Clause 24 alone could have had application as this has been approved by the governing body. The said provision conferred on the Chairman of the ICAR with full discretion in laying down the norms for constituting the Selection Board. It was

in exercise of this power that proceedings were issued on 27.03.2006.

24. Mr. Jacob Verghese also submits that the self same objections raised here about the constitution of the Selection Committee had already been repelled by order dated 24.11.2008 by a Bench in OA 356/2008. The advisors could never be considered as coming from the ICAR system. Earlier, they had held offices under the ICAR but after retirement it would be idle to contend that they are still within the fold of the organization, disabling them from discharging duties of selection independently assigned to them. They were experts in their fields and taking notice of the skill required for arriving at a correct decision as the post notified was that of a high functionary, their services have been utilized and this could not have been considered in any way irregular.

25. As against the objection of the presence of the 4th respondent, the OA contains only vague allegations. The apprehension of the applicant was that as recently retired Director of CMFRI, he had still connections with the Institute. Some of his projects had misfired and as an officer directly responsible for loss sustained, he required the assistance of a trusted person as otherwise skeletons in the cupboard would have appeared for the general public to view. In any case, he had intention to see that this did not happen. Fifth respondent was his favorite.

26. However, such allegations cannot be taken in its face value and it has not been possible for the applicant to throw light to any ~~✓~~ of the alleged misdeeds, as have been incorporated in the Original

Application. Of course, counsel submits that as an outsider, the applicant had limitations, to come up with records. But it does not appear to be sufficient justification for jumping into a conclusion that the 4th respondent had applied his weight, in any disagreeable manner in the matter of a selection held by a Committee of which he was only a Member. Thus, we have to hold that the contention regarding the illegality of constitution of the Selection Board has not been substantiated at all, or for that reason he had been put to prejudice.

27. Now we may advert to the contentions raised about the objection of grant of awarding of full marks for the interview and whether such a procedure could be styled as illegal as also whether there was a duty expected of from the selection committee members to award marks independently instead of allotting collective marks.

28. In fact, on these points, our task has been made easy, in view of the presence of authoritative pronouncements of the Supreme Court on the subject. We find that the applicant was not well advised, in taking up such contentions. The situations available are explicitly transparent. Further, the respondents had even at the inception of the selection disclosed the procedure in unambiguous terms. It is to be noticed that the post of Director was only one of the notified post, and the method of selection was uniform, as far as the rest of the posts were concerned. Such selections have not been questioned from any quarter, and this ^{also} according to us, is a most relevant circumstance.

29. The applicant is not probably justified in contending that it is an instance where the respondents had set apart 100% marks for interview. The wisdom of assigning a higher mark for interview certainly on certain occasions might have given unfair advantage to preferred participants in a selection, who might have secured low marks in a written test. A dishonest interview could jack up a candidate, without leaving traces of any irregularity, as giving of marks is within prerogative of the interviewer. It was probably in these contexts that the principles have been churned out as to what should have been the proper method of selection and how much percentage of marks could be set apart for interview. From the number of decisions cited, the circumstance appears that it was mostly confined to admission to educational institutions. The rule appears to be that if the method of selection was to consist of a written test followed by an interview, reservation of comparatively a higher percentage of marks for interview was likely to spell out arbitrariness at least in some cases.

30. But that might not be the case here. A Bench mark had been prescribed as among competing personnel, on the basis of their basic records for a preliminary assessment as to whether they were entitled to compete in the selection. It would have been something like possession of pre-qualification before submitting bids. Once the Bench mark had been satisfied, as per the terms of selection notified, the candidates were on a level play field because the selection depended only on the assessment made by the Interviewing Board. The person who secured the highest

position, would have been invited for conferment of the post. That is what has happened here. Therefore, the question whether 100% of the marks or full marks were set apart for the interview was really not the issue here, nor the moot point. This is because this is an instance where the person who scored the highest, got the selection.

31. Mr. Sajith Kumar had invited our attention to a few decisions mainly rendered by the Supreme Court. In **Ashok Kumar Yadav and Ors. Vs. State of Haryana and Ors.** (1985 (4) SCC 417), adverting to Paragraphs 25 and 26, it is urged that the Court was consistent in taking the view that allocation of as high a percentage of marks as 33.3% towards viva voce test was beyond a reasonable proportion. This rendered the selection process of candidates arbitrary. But it is interesting to point out that the decision had also referred to a contra point, namely, that it is well settled that "in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirement being satisfied." We also would notice that the claims as urged in the petition there had been allowed by the Supreme Court principally taking into account the peculiar facts of the case. The above decision appears to be irrelevant while deciding the present issue.

32. Reference had been made to **Ajay Hasia etc. Vs. Khalid Mujib Sehravardi and Ors.** (a Five Bench judgment of the Supreme Court) reported as AIR 1981 SC 487. However, later decisions have indicated that principles as highlighted in the above

judgment, which pertains to admission to an educational institution, can have little application in the case of appointment to higher posts in service. A person in his younger years will be yet in the process of acquiring skills of expression and personality. It will be too early, therefore, to adjudge his candidature by a process of interview. Therefore, the above decision practically does not help the applicant here. Counsel had also adverted to the decision of **Dr. J.P. Kulshrestha and Ors. Vs. Chancellor, Allahabad University and Ors.** (1980 STPL (LE) 10157 SC). The Court had suggested that it would have been indeed advisable that marks obtained by the candidates and the like should be available for scrutiny when the appointment was under challenge. However, there is no dispute about the position that the fifth respondent had secured the highest position, after the interview, and it may not be necessary for us to further delve into a discussion in the above case, as the documents in respect of the selection are available for examination.

33. Next the counsel had adverted to **Satpal and Ors. Vs. State of Haryana & Ors.** (1995 Supp. (1) SCC 206). However, the principles that have been highlighted by the applicant in the present case, do not appear to be available there. The Court had indicated that when a Selection Committee interviewed, 400 to 600 candidates on a single day, in an ongoing process, such a weeding out becomes a mockery and farce. This being the principle adopted to adjudge the interview as arbitrary, this case has little relation to the facts of the present case.

34. In **Atul Khullar and Ors. Vs. State of J&K and Ors.** (1986

STPL (LE) 12642 SC), the issue was about the justifiability of interview for admission to the Medical College. It has to be held that the principles to be applied are widely different than while a public authority making appointment to a superior post. The observations in the judgment, therefore, cannot be relevant as to the case agitated by Mr. Madhusoodana Kurup, applicant here.

The case of **Dr. Triloki Nath Singh Vs. Dr. Bhagwan din Misra and Ors.** (1990 STPL (LE) 15809 SC) had been also adverted to.

When the selection of Reader in 'Linguistics' was being carried out, the Vice Chancellor had nominated expert in the subject of Hindi Language and Literature. This was found to be irregular/inadequate. In the present OA, we have already noticed that the persons who have been entrusted with the duty of selection had high academic qualification and rich experience in the field and subject. As such, it may not be necessary for us to advert to the above decision as only a facet of the issue if at all was discussed there.

35. Mr. Sajith Kumar had also adverted to **All India State Bank**

Officers' Federation and Ors. Vs. Union of India & Ors. (1997 (9)

SCC 151) where it had been held that interview marks of 25% may workout hardship. But the observation in the very same decision show that there cannot be any hard and fast rule possible to be prescribed, as facts of each case has to be independently looked into as to whether methodology adopted was reasonable or not. Further, it could have been an interview, after a qualifying test involving awarding of marks. What is suggested was that the

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interview marks should not be so high so as to make a situation arbitrary and illusive, the result of the exercise is capable of mischief of a meritorious candidate to be overthrown unceremoniously. We also note that in **Inder Parkash Gupta Vs. State of Jammu & Kashmir & Ors.** (2004 (6) SCC 786) when 100% marks were set apart for interview the Supreme Court had observed that there cannot be any error in such a prescription if a fair procedure is seen to have been followed.

36. At this point, we may also advert to a Division Bench decision of the Kerala High Court (02)(3)KLT 729. Selection was being held to the post of legal advisor in the Vigilance Department. The method contemplated was only interview. Unsuccessful candidates had questioned the efficacy of the method adopted. But observing that in respect of posts of similar nature, the interview alone would have been the best method for assessing the candidature, the writ petition had been rejected. It is not, therefore, uncommon for the appointing authorities to devise the procedure which may lead to identification of the best talents. It can be by a method of interview, it can be even by extending an invitation, as it is well known that for a variety of reasons persons with talents are reluctant to make applications for top jobs. The interest of the Institution would be better served if they are invited to accept the superior positions. A bonafide method for securing the best candidate can seldom be found fault with.

37. In respect of the proposition whether separate marks are to be given as concerning the traits which was expected to be there,
 For a Director, who is head of a National Institute, learned counsel

submitted that excepting to place it as a proposition, there was no authoritative decision, within his knowledge. The materials, produced in the case indicate that the relevant parameters were such as depth of knowledge, mind set, communication, skills, international exposure, vision, high standards of value, knowledge of legislation, institution building, etc. In fact, the Interviewing Board was expected to come to a unanimous conclusion in respect of each candidate. It is averred that brochures containing the details of the candidates have been supplied in advance to the Committee for them to acclimatize with the special and general attainments of the participants. It is practically conceded that what has been arrived at is a unanimous decision. We are of the considered view that so long as there is no statutory guidelines which requires any evaluation as suggested by the applicant, it may not be possible for us to hold that the selection was bad for such reasons. We had, in fact, come across observations made by the Supreme Court, which may indicate that such an argument does not hold water. In **Kiran Gupta & Ors. Vs. State of UP & Ors.** (AIR 2000 SC 3299), after scanning the entire law on the subject, it had been held that when the traits as prescribed by the guidelines drawn up by the Commission are innumerable and to be kept in mind in evaluating a candidate for his suitability and fitness for being appointed to the post, it may not be necessary that marks are to be allocated individually in respect of each of the qualifications so prescribed. The Court had rendered an opinion that an overall evaluation rather than awarding of marks for each item will be more productive.

38. Mr. Jacob Verghese, had brought to our attention a few decisions which we find, offer better assistance and materials for us to conclude that there has not been any arbitrariness in the methodology adopted. Adverting to **Lila Dhar Vs. State of Rajasthan** (1981 (4) SCC 159), it is pointed out that the Supreme Court had indicated that in respect of mature personalities, an interview might be the best and only way to pick the best person. Court had also observed that unless found as arbitrary, it is for the Administration to choose the method that is best suited to pick up the most eligible person. In fact, the Court may not be in a position to sit in judgment over the wisdom employed. The senior counsel had also relied on **All India State Bank Officers' Federation and Ors. Vs. Union of India & Ors.** (cited supra), where more or less such a method of selection was found as acceptable. Referring to **Osmania University Vs. Abdul Rayees Khan and Anr.** (1997 (3) SCC 124), counsel pointed out that the Court should refrain from interfering in the academic selection made if it is done after following the prescribed procedure. The objectivity depends on the facts and circumstances of each case. The Court had also indicated that as far as the superior posts were concerned, awarding of formal marks itself was not necessary. In **C.P. Kalra Vs. Air India** (1994 Supp (1) SCC 454), the counsel points out that observation made showed that there cannot be any hard and fast rule for allotment of marks for selection of Station Superintendent. The award of 40% marks was not found as excessive. However, we do not think the other observations made there are relevant.

39. In **Anzar Ahmad Vs. State of Bihar & Ors.** (1994 (1) SCC 150), the Supreme Court had pointed out that selection for employment and methodology adopted for admission to Educational Institutions require to be assessed with different yardsticks alone. A weightage for viva-voce procedure as far as public employment is concerned, could not have been objectionable; only fairness had to be ensured.

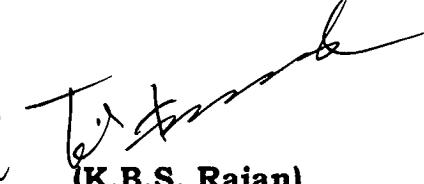
40. A scan made as above of the authorities available, therefore, according to us, compel us to come to conclusion that there may not be justification for alleging that there was arbitrariness in the selection process employed. While dealing with the specific issues formulated for consideration, we answer the reference by holding that it would have been possible to rest a selection on an interview alone, as far as superior posts were concerned. The Supreme Court had made the position clear as early as in 1981 in **Leela Dhar Vs. State of Rajasthan** (1981 (4) SCC 159). Since the applicant has not been able to place any materials for substantiating the contentions that in a selection process each member should have awarded marks independently instead of arriving at a collective decision, we note that the later trend of the decisions appears to be that awarding of marks itself might not be necessary, when the members of interview consider the rival claims and come to a unanimous assessment. We agree with the submissions made by the senior counsel that it is not necessary for the Interviewing Board to allot separate marks in respect of different factors or traits, while considering the suitability of a

candidate. An assessment about the total suitability of the candidate would have been sufficient and acceptable.

41. As about the merits of the rest of the contentions, we have already recorded our opinion that the selection process was neither irregular, or there has been any import of mala fides. The net result of the aforesaid discussions is that the O.A. is found as without any justifiable merits. We dismiss the application but there will be no order as to costs.



(K. Noorjehan)
Member (A)



(K.B.S. Rajan)
Member (J)



(M. Ramachandran)
Vice Chairman (J)

'SRD'