

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 84/2009

This the 27th day of May, 2009

**Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Dr. Ashwani Kumar aged about 54 years son of Mr.O.P. Geol, R/o A/77-J, Rail Nagar, Lucknow.

Applicant.

By Advocate: Sri A.Moin

Versus

1. Council of Scientific and Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi through its Director General.
2. President, Council of Scientific and Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi.
3. Vice President, Council of Scientific and Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi.
4. Dr. K.C. Gupta, Scientist 'G' and Acting Director, Institute of Genomics and Integrative Biology, Delhi.

Respondents.

By Advocate: Sri A.K.Chaturvedi and Sri Rajan Rai.

ORDER

By Hon'ble Dr. A.K. Mishra, Member (A)

This application has been made challenging the constitution of Search Committee made by respondent No.1 for selection to the post of Director, Indian Institute of Toxicology Research, Lucknow (IITR) and the selection made by the Committee on 15.2.2009 which was approved by the competent authority followed by issue of memorandum dated 28.2.2009 making an offer of appointment to the respondent No.4. This order has been challenged in the amended O.A. filed on 3.3.2009.

2. The background of the case has been elucidated in the order dated 4.3.2009. At the time of hearing, the learned counsel for the applicant confined his arguments to one issue whether the selection made by six members of Search Committee which consisted of 7 members was valid. The subject of selection to the post of Director of IITR is governed by Recruitment Rules, 2008 (hereinafter referred as Rules) framed for

selection and appointment on the post of Director of Labs/Institutions/Centres of CSIR. Rules 6 and 8 of the Rules which are relevant to our purpose are extracted below:-

“6. Constitution of Search-cum-Selection Committee:-

6.1 DG, CSIR, with the approval of Vice President, CSIR, shall constitute a Search-cum-Selection Committee comprising of 7 members as follows.

6.2 One eminent Scientist/Technologist/Expert in the relevant field to be designated as Chairman by the DG,CSIR, four eminent Scientists/Technologists/Experts in the relevant field (at least one scientist being an outsider, one of the Secretaries of the Scientific Department ; and DG, CSIR.

6.3 In cases there is no Vice President in position, approval of the President ,CSIR shall be obtained.

7. XXXXXX

8. Process of Search and Selection

8.1 The Search-cum-Selection Committee shall consider (a) applications received in response to advertisement(b) nominations received.

8.2 The Search-cum-Selection Committee may shortlist eligible applicants/nominees and invite them for personal discussion. The Committee may also consider the candidature of an applicant/nominee in absentia.

8.3 The recommendations of the Search- cum-Selection Committee shall be submitted by DG,CSIR to the appointing authority, for approval.”

3. It is seen that Rule 6 deals with constitution of Search-cum-Selection Committee and Rule 8 provides for the process of Search and selection for the post of Director by the Committee.

4. The Committee was constituted on 22.12.2008 comprising the following members:-



Prof. R. Kumar, Professor (Retd.), Deprt. Of Chemical Engineering & Fellow, JN Centre for Advanced Scientific Research, Indian Institute of Science, Bangalore-as Chairman and Prof. M. Mijayan, President INSA & Hony. Professor, Molecular Biophysics Unit and Associate Director, Indian Institute of Science, Bangalore; Dr. N. K. Ganguly, FNA, Former DG, ICMR & Distinguished Biotechnology Fellow, National Institute of Immunology, New Delhi; Prof. Asis Datta, Former VC, JNU and Professor of Eminence, National Institute for Plant Genome Research, New Delhi; Dr. Javed Iqbal, Director, Institute of Life Sciences, University of Hyderabad; Dr. M. K. Bhan, Secretary, Department of Biotechnology, New Delhi and Prof. S. K. Brahmachari, DG, CSIR-as Members.

Although, the constitution of Search-cum-Selection Committee itself was challenged in the O.A., taking the ground that the experts included in the Committee were not from the relevant field of the Toxicology itself, this ground was not pressed at the time of hearing. On the other hand, the main ground for assailing the selection was non-presence of all the 7 members of the Committee at the time short listed candidates including the applicant were called for personal interview and discussions on 15.2.2009. According to the applicant, in the absence of any prescription about quorum in the Rule, it has to be held that all the 7 members of the Committee constituted the quorum, non-presence of a single member has to be treated as a violation of mandatory provision of the Recruitment Rules. He cited the judgments of the Supreme Court in the case of State of Andhra Pradesh and another Vs. Dr. Mohanji Singh and another reported at 1988 (Supp) Supreme Court Cases 562, in which it was held that ratification of the representative of Director of the Higher Education on a later point of time could not validate the proceedings of the Selection Committee. In the present case, the Secretary of the Department, Dr. Bhan could not participate in the Selection Committee Meeting as he was occupied with an international meeting. However, he ratified the selection made by other six members



on a later date. Such a ratification, it was contended, could not validate selection made in the meeting on 15.2.2009.

5. A careful reading of the judgment cited by the applicant reveals that the order of the Andhra Pradesh Government dated 21.9.76 prescribed specifically that the presence of at least one representative of the University and the representative of the Director of Higher Education in the Selection Committee meeting should be regarded as essential for completing the quorum. In other words, the presence of these two representatives was considered as essential. In the absence, the selection could not be held as valid. But in the present case, no quorum has been prescribed, neither is there any stipulation about the mandatory presence of any of the members of the Committee. Therefore, the present case is on a different footing from the cited case of **State of Andhra Pradesh and Another Vs. Dr. Mohanji Singh and another.**

6. Learned Counsel for the applicant also placed reliance on **G.M. Indian Bank Vs. R. Rani and another Reported at (2007) 12 Supreme Court Cases 796**, which held that the action of an improperly constituted district level committee to cancel the Schedule Tribe Certificates was invalid. The judgment made in this case, again, was in a different context. It referred to the guidelines of the Supreme Court in **Madhuri Patil Vs. Additional Commissioner, Tribal Development (1994) 6 SCC 241**, relating to constitution of district level and state level committees and held that Constitution of a Committee which did not follow the guidelines was illegal. The constitution of Search and Selection Committee in the present case is not in question and it has been made as per the provisions of Rule 6 of the Rules. Therefore, this judgment is not much helpful to the applicant.



7. Now the only question which is to be decided is whether the mandatory quorum for the meeting of Search Committee is to be held as 7 in the absence of any prescription for quorum in the Rules. The learned Counsel for the respondent No. 4 cited the decision of Supreme Court in the case of Ishwar Chandra Vs. Satyanarian Sinha and others. reported at 1972 (3) SCC page 383, in which it was held that in the absence of a provision in the rule prescribing the quorum, any decision of the committee where majority of the members were present would be considered to be a valid decision. Relevant portion of the judgment is extracted below:-

"It is also not denied that the meeting held by two of the three members on April 4, 1970, was legal because sufficient notice was given to all three members. If for one reason or the other one of them could not attend that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the numbers would constitute it a valid meeting and matters considered there at cannot be held to be invalid."

The word quorum has been defined in the Advanced Law Lexicon in the following manner:-

"Quorum denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly, so that its acts may be lawful." (Punjab University Vs. Vijay Singh, AIR 1976 SC 1441)

Since the word quorum refers to the minimum number of members required to be present in order to make a decision valid, it cannot be interpreted to mean that all the members of the Committee will constitute the quorum.

8. As regards the use of word 'Shall' in the Rule 6 of the Rules, the learned counsel for the official respondents submits that the mandatory direction is for constitution of Search and Selection Committee. Similarly, the use of word 'Shall' rule 8.1 is regarding mandatory consideration of



all applications received in response to the advertisement / nominations received. In other word, the Rule prescribed that the constitution of the Committee should be as provided in rule 6 and that all the applicants should be considered but as regards short listing of eligible applicants, and discussions with them the word used is 'may' at Rule 8.2 of the Rules.

9. According to him, there is no case law to suggest that in the absence of the prescription of quorum of a meeting, all the members of the committee are to be mandatorily present. This would led to absurd situation where because of absence of even one member on genuine ground, the entire selection proceeding involving the other members of the committee as well as all the candidates invited to the meeting would have to be postponed not only for once but may be many times. If such an argument is accepted, it may lead to unconscionable delay in the selection proceeding. Surely, the Rules do not envisage such a situation. In the absence of specific rule on the subject we are to be guided by the case law pronounced on this issue.

10. The learned counsel for the respondent No.4 urged that the applicant participated in the interview held on 15.2.2009 and knew about the number of members present in the committee but did not take any steps till filing of this application on 2.3.2009 . The approval of the president of the CSIR, who is the Prime Minister of India, was obtained on 27.2.2009. The impugned order was issued on 28.2.2009. It was only when the result of the selection was known after issue of the impugned appointment order, the present O.A. has been filed. Although, the applicant has taken pains to suggest that he came to know about the result of the selection only in the afternoon of 2.3.2009 when a faxed copy of the appointment order dated



28.2.2009 was received in his office, yet the fact remains that the result had been communicated before filing of the application. Therefore, the applicant is estopped from challenging the very procedure of selection in which he had participated after the results of the selection were known on 28.2.2009, when the order of appointment was issued only because he failed to make the grade. He cited the case of **Madan Lal and others Vs. State of J&K and others reported at 1995 (3) SCC 486** where it was held that a candidate who had taken a chance to get himself selected in the interview process, cannot be permitted to impugn the process of selection on the ground of a defect in the constitution of selection committee or the process adopted therein. The facts of the present case are covered by the aforesaid judgment.

11. The learned counsel for the official respondents cited the following cases in support of the above contention:-

- i) 1976(3) SCC 585 Dr. Gupal Saran Vs. University of Lucknow
- ii) 1986(Supple) SCC 285, O.P.Shukla Vs. Akhilesh Shukla
- iii) 1989 (Supp) 2 SCC 268 State of Rajasthan Vs. R.K. Rawat

12. It is admitted that the applicant had participated in the interview held on 15.2.2009, he did not make any representation about the alleged lack of quorum before any authority until this application was filed on 2.3.2009. It is also admitted that the results were communicated on 28.2.2009 and a fax of it was received in the office of the Director IITR on 2.2.2009 when this application was filed. Without going into the quibble about the exact time of receipt of fax , one can safely conclude that the results were known as soon as the order regarding offer of appointment to respondent No. 4 was issued. In the circumstances, the ratio



of the judgment relating to the application of doctrine of estoppel and waiver would apply in the present case against the applicant.

13. Learned counsel for the applicant cited the case of **Raj Kumar and others Vs. Shakti Raj and others** reported at (1997) 9 Supreme Court Cases 527, where, in the context of a different background, it was held that if the procedure of selection and exercise of power to exclude certain post from the purview of Selection Board suffered from glaring illegalities, the candidate who appeared in selection and remained unsuccessful would not be barred from questioning the selection and the doctrine of estoppel would not apply in such a case. Here, the Supreme Court was examining the legal position as to the requirement for not only calling names from employment exchange but also giving wide spread publicity and found fault with the procedure of completing the examination before hand and asking the selected candidates to get themselves sponsored by the employment exchange afterwards. Further, the Supreme Court considered the exclusion of certain posts from the purview of the Selection board after the results of the examination were announced as illegal. So, the facts of this case are entirely different and the decision given in that case will not have any application to the case before us.

14. The applicant counsel also placed before us the ruling of the Supreme Court in the case of **Babu Verghese and others Vs. Bar Council of Kerala and others** reported at 1999 (3) SCC 422 to the effect that if rules prescribed an action to be taken in a particular manner, it has to be carried out in that manner or not at all. This dictum will not apply to our case once we hold that the rules do not prescribe a mandatory quorum



of all the members of the Search Committee to remain present at the time of its interview meeting.

15. From the aforesaid discussions of the case law cited before us, we come to the conclusion that there was no mandatory quorum that all the 7 members of the Search Committee had to be present at the time of interview meeting. Absence of a single member because of his legitimate pre-occupation would not vitiate the selection process, particularly when six other members including all the expert members were present at the time of interview of short listed candidates. Further, we also find that applicant had participated in the interview process and has filed this application when the result of the selection ,duly approved by the President of CSIR, was made known through issue of offer letter dated 28.2.2009.

16. From consideration of all aspects of this case, we find that there is no infirmity in this selection. In the result, Original Application is dismissed. No costs.

A. K. Mishra 27/05/09
(Dr. A.K.Mishra)
Member (A)

M. Kanthaiah 27-05-09
(M.Kanthaiah)
Member (J)

HLS/-