

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560038.

Dated: 15 SEP 1993

APPLICATION NO(S) 442 of 1992.

APPLICANTS:

Chivukula Gopalakrishnaiah  
TO.

RESPONDENTS: Secretary, Ministry of  
v/s. Agriculture, New Delhi & Others.

1. Sri.K.Subba Rao, Advocate,  
No.27, Chandrashekar Complex,  
First Floor, First Main,  
Gandhinagar, Bangalore-9.
2. Sri.G.Shanthappa,  
Additional Central Government Standing Counsel,  
High Court Building,  
Bangalore-1.

Subject:- Forwarding of copies of the Order passed by  
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the  
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the  
above said application(s) on First September, 1993.

Issued  
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For m. Dura S  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.  
15/9/93

DATED THIS THE 1ST DAY OF SEPTEMBER, 1993

PRESENT

HON'BLE SHRI S. GURUSANKARAN .. MEMBER (A)  
HON'BLE SHRI A.N. VUJJANARADHYA .. MEMBER (J)

APPLICATION No. 442/92

Chivukula Gopalakrishnaiah,  
S/o. Chi. Ramakrishnaiah,  
Principal Scientist and  
Head of Reservoir Division,  
Central Inland Capture Fisheries  
Research Institute,  
Residing at No.22, 1st Main,  
80th Feet Road, IV Block,  
Rajajinagar, Bangalore-10.

... Applicant

(Shri K. Subba Rao ... Advocate)

Vs.

1. Union of India,  
rep. by its Secretary  
Ministry of Agriculture,  
Krishi Bhavan, New Delhi.
2. The Secretary,  
Indian Council of Agricultural  
Research, Krishi Bhavan,  
New Delhi.
3. The Secretary,  
Agricultural Scientist Recruitment  
Board, Krishi Anusandhan Bhavan,  
Dr.K.S. Krishnan Marg, Pusa,  
New Delhi.
4. The Director General,  
Indian Council of Agricultural  
Research, Krishi Bhavan,  
New Delhi - 110 001.
5. The Director,  
Central Inland Capture Fisheries  
Research Institute (CICFRI),  
Barrakpore, West Bengal-743 1010
6. Dr.M.R. Sinha,  
Director (on officiating basis)  
Central Inland Capture Fisheries  
Research Institute (CICFRI),  
Barrakpore, West Bengal-543101.
7. Dr. S.P. Ayyar,  
Director,  
Central Inland Capture Fisheries  
Research Institute, Barrackpore,  
West Bengal - 743 101.

... Respondents

(Shri G. Shanthappa ... Advocate)

This application, having come up before this Tribunal  
today for orders, Hon'ble Shri S. Gurusankaran, Member (A),  
made the following :

ORDER

The applicant is aggrieved by the circular dated 31.7.1992



(Annexure-A3), wherein one Dr. M. Sinha was handed over charge of the post of Director of the Central Inland Capture Fisheries Research Institute (CICFRI for short) for holding current charge has of the post and prayed for the following reliefs:

- ....(a) Issue a writ of certiorari or any other appropriate writ, order or direction quashing order bearing reference No.485-P/ dated 31.7.1992, as the same is illegal and violative of the principles of natural justice and also violative of Articles 14 and 16(1) of the Constitution of India;
- (b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 1 to 5 to consider the case of the applicant for further promotion to the post of Director from the date on which 6th respondent was promoted with all the consequential benefits to meet with the ends of justice;
- (c) Direct the contesting the respondents to pay the applicant the costs of these proceedings; and
- (d) Grant such other relief or reliefs as this Hon'ble Tribunal deems fit to grant under the circumstances of the case to meet the ends of justice.

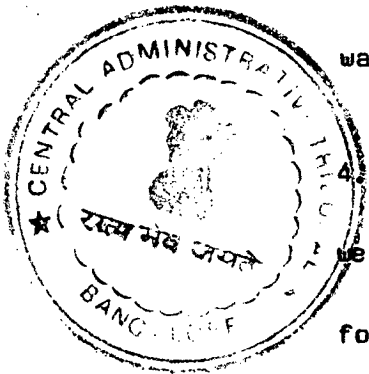
2. The essential facts of the case are not in dispute. The applicant, a M.Sc in Fisheries, joined as Research Assistant in CICFRI in 1960. Later on he was given promotions to various higher posts and was finally promoted as Scientist S-3 in 1984. The post of Scientist S-3 was redesignated as Principal Scientist from 1.1.1986 and he is working as such in Bangalore as head of Reservoir Division, When one Dr. Y. Rama Rao officiating Director superannuated on 31.7.1992, Dr. M. Sinha, Respondent (R for short) No.6 was handed over charge to hold current charge of the post of Director till instructions are received from the Indian Council of Agricultural Research (ICAR for short) head quarters. The applicant being senior to Dr.M. Sinha, as per seniority list of Scientists S-2 (Annexure-A), which shows the applicant at Sl.No.12 and R-6 at Sl.No.36, was aggrieved by the circular dated 31.7.1992 and made a representation

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dated 31.7.1992 (Annexure-D). In that, he had stated that he is the senior-most after the retirement of Dr.Y. Rama Rao and has been denied the opportunity of taking over charge and has prayed for justice. However, without waiting for a reply, he has filed this application on 14.8.1992. The application was admitted and notice was issued to respondents.

3. On 24.9.1992, the applicant filed M.P.406/92, for impleading one Dr.V.R. Desai as additional respondent No.7, since he had taken over current charge from Dr.Sinha with effect from 17.8.1992 and notice was issued on 25.9.1992. R-6 filed his reply dated 26.9.1992 by post and R-1 to 5 filed reply on 11.11.1992. Since no acknowledgement was received from R-7, the applicant wanted time to take steps to issue fresh notice. R1 to 5 filed objections to M.P. 406/92 on 23.11.1992 and on that day none appeared for the applicant. The applicant filed M.P.64/93 to implead one Dr.S.P. Ayyar as additional respondent and notice was issued on 13.4.1993. During preliminary hearing on 10.6.1993, the learned counsel for the applicant submitted that since he is impleading Dr. Ayyar as R-7 since Dr. Ayyar has been selected and appointed as officiating Director and Dr.V.R. Desai is no longer holding charge, M.P.406/92 to implead Dr. Desai has become infructuous. Accordingly, M.P.406/92 was disposed off as having become infructuous.

When the case came up for final hearing on 25.8.1993, we have heard Shri Anandaramu for the applicant and Shri G. Shanthappa for the respondents. From the facts of the case, it was seen that the applicant was originally aggrieved by the circular dated 31.7.1992



by which one Dr. Sinha, junior to the applicant was asked to hold current charge of the CICFRI. This purely temporary arrangement was terminated, when one Dr. V.R. Desai was asked to hold current charge from 17.8.1992, as per ICAR telex message No.3823 dated 7.8.1992. Even though the applicant filed M.D.406/92 to implead Dr. Desai, it was subsequently withdrawn as having become infructuous with the appointment of one Dr.S.P. Ayyar as regular officiating Director after due selection. Dr. Ayyar was appointed as per ICAR memorandum dated 17.11.1992 and he took over charge on 31.12.1992. Dr. Ayyar has been imp-loaded as R-7. So, we asked the learned counsel for the applicant as to how this application survives, particularly when the O.A. was filed against the principles followed in appointing officers to hold current charge and this arrangement is no longer there with the appointment of Dr. Ayyar as regular Director and which appointment is being challenged in a separate application O.A.443/92. O.A.443/92 was also heard immediately after hearing 442/92 and is being disposed off today by separate orders.

5. Shri Anandaramu, in all fairness, conceded that in reality the application does not survive with the appointment of R-7 as regular officiating Director. However, he pleaded that this Tribunal should decide the application on merits and give a finding on the action of the respondents in denying the applicant the opportunity of holding charge of the post of <sup>Director of</sup> CICFRI till the appointment of regular incumbent after due selection. He submitted that the applicant

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was the senior-most Principal Scientist and as per well accepted norms only the senior-most eligible and suitable officer should be made to look after current charge till regular appointment is made. He pointed out that Annexure-RTI was issued only on 17.9.1992 and hence was not applicable, when the temporary arrangement was made on 31.7.1992. The counsel for the applicant further submitted that he had already applied for the post of Director against the advertisement issued by Agricultural Scientists Recruitment Board and he had the necessary qualifications to be considered for the post of Director. However, he was not called for the interview. It is the case of the applicant that Ph.D. qualification is not relevant in this case in view of the explanation for the purpose of academic qualification given in the advertisement.

6. The learned counsel for the respondents submitted that the circular dated 31.7.1992 was issued only because there was no order of the competent authority, viz., ICAR head quarters and as soon as that order dated 7.8.1992 was received current charge was handed over to Dr. Desai. Further, the applicant does not possess Ph.D. qualification and hence was not eligible for being considered for the post of Director. The explanatory note does not mean that the essential qualification of Ph.D. is not relevant. He, therefore, explained that even for holding current charge, only the senior-most and suitable person had to be considered and this has been done by competent authority by order dated 7.8.1992.



7. We have heard the submission of both the parties and also perused the pleadings and annexures carefully. We find that the circular dated 31.7.1992, which has been challenged, has clearly brought out that the senior-most Principal Scientist available at Barrackpore has been handed over current charge in the absence of instructions from the competent authority, viz., ICAR head-quarters. Since, the administration has to be run at all costs, We find that the circular dated 31.7.1992 is the only one that could have been issued under the circumstances and hence, we find no grounds to set aside the same. In any case, by order dated 7.8.1992, ICAR head-quarters had ordered Dr. Desai to take over current charge and it is this order, if at all, can be challenged by the applicant. Even though, the applicant filed M.P.406/92 and wanted to implead Dr. Desai, he had to finally withdraw the M.P. as having become infructuous. Even otherwise, we find that there is nothing wrong in the ICAR Head quarters ordering Dr. Desai to take over current charge of the post of Director, since in their interpretation of the recruitment notification for the post of Director, Ph.D. is an essential qualification and the applicant did not possess it. Further neither Dr. Sinha nor Dr. Desai was actually promoted as Director and they were only asked to hold current charge of the post of Director and did not get any monetary benefit. Hence, the question of considering the applicant's case for promotion consequent to declaring the circular dated 31.7.1992 does not at all arise.

8. Regarding the issue raised by the applicant as to whether Ph.D. qualification becomes redundant because of the explanatory note, we are of the opinion that since the applicant has filed a separate application No.443/92 challenging his not being called for the interview to the post of Director, it is not necessary to consider the question in this application. This application is to be confined only to the challenge to appointing a person junior to the applicant to be in current charge.

9. While it is true that Annexure-R1 dated 17.9.1992 was not in existence on 31.7.1992, we find from para 3 of Annexure R-4 dated 27.12.1979 and para 2 of Annexure-R5 dated 15.5.1986, only officers at the head quarters of the Institute are to be considered. In the present case particularly, this would have been very relevant, since the respondents had decided the applicant is not eligible for the post due to his not having Ph.D. and the selection was in progress. In fact, orders posting R-7 was issued on 17.11.1992, i.e., within 3 months of issuing order dated 7.8.1992. Hence, we find that the actions of the respondents cannot be faulted. Further, since R-7 has been posted on officiating basis after selection, the applicant can't challenge that order in this application. In fact, R-7 is not a necessary or proper party as far this application is concerned and with his appointment, this application has become infructuous.

10. In view of the above, we find no merit in this application and accordingly dismiss the same.



Sd/-  
11/9/92  
MEMBER (J)

Sd/-  
11/9/92  
MEMBER (A)

TRUE COPY

M. S.  
15/9/92  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE