

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.140 /98

Date of Decision: 28.06.2002

Smt. Mary Joseph.

Applicant(s)

Shri M.S. Ramamurthy.

Advocate for applicants

Versus

Union of India & others.

Respondents

Shri R.R. Shetty.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.

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(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

ORIGINAL APPLICATION NO. 140/1998

THIS, THE 28TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHAstry. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

1. Smt. Mary Joseph
Assistant, Establishment V,
Personnel Division, BARC,
Central Trombay, Mumbai-400 085.
2. Smt. Sharada Sethu,
Assistant, Department of
Atomic Energy, Anushakti Bhavan,
CSM Mart, Mumbai-400 039.
3. Smt. Bharati Sharad Pai,
Assistant, Department of
Atomic Energy, Anushakti Bhavan,
CSM Mart, Mumbai-400 039.
4. Shri Mathew M. John,
Assistant, Department of
Atomic Energy, Anushakti Bhavan,
CSM Mart, Mumbai-400 039.
5. Smt. Meenaxi Subramanian
Assistant, Department of
Atomic Energy, Anushakti Bhavan,
CSM Mart, Mumbai-400 039.
6. Kumari c.K. Annamkutty,
Stenographer, Bhabha Atomic
Research Centre, Trombay,
Mumbai-400 085.
7. Shri V.P. Surendran, Assistant
Accounts Division, Central Complex,
BARC, Trombay, Mumbai-400 085.
8. Ms. Indira N. Nair, Assistant
Central Complex, BARC, Trombay,
Mumbai-400 085.
9. Smt. Anantha Lakshmi S.,
Stenographer, Mod. Labs Trombay,
Mumbai-400 085.
10. Smt. Stella Jose, Stenographer,
BARC, Trombay, Mumbai.
11. Smt. Mallika D. Shetty, Assistant
in BARC, Trombay.

12. Smt. Ramani Hariharan, Assistant
Department of Atomic Energy,
Mumbai.
13. Shri K. Vasudevan Nair,
Senior Accounts Clerk,
Central Complex, BARC, Mumbai.
14. Shri M.V. Viswan, Assistant
in BARC, Dhruva Trombay,
Mumbai.
15. Smt. Sudha S. Mariyar,
Assistant in BARC, Central
Complex, Trombay, Mumbai-400 085.
16. Smt. Devaki S. Shetty, Assistant
in BARC, Recruitment Section IV
Central Complex, Trombay, Mumbai-85.

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India, through
the Secretary, Government of India,
Department of Atomic Energy and
Ex-Officio Chairman, Atomic Energy
Commission, Anushakti Bhavan, CSM Marg,
Mumbai-400 039.
2. The Additional Secretary,
Government of India,
Department of Atomic Energy,
Anushakti Nagar, CSM Nagar,
Mumbai-400 039.
3. Head Personnel Division,
Bhabha Atomic Research Centre,
Recruitment Section III, Central
complex, Trombay, Mumbai-85.
4. The Under Secretary,
government of India,
department of Atomic Energy,
CSM Marg, Mumbai-39.
5. Mr. S.S. Boopathy,
Assistant Personnel officer,
Indira Gandhi Centre for Atomic
Research, (P.O.) Kalpakkam,
Chengai Anna District,
Tamil Nadu-603 012.
6. Smt. Saroja Gopal
Assistant Personnel officer,
Radiation Medicine Centre, BARC,
Parel, Mumbai-400 012.

7. Shri K.R. Sethuraman,
Assistant Personnel officer,
Indira Gandhi Centre for Atomic
Research, (.P.O.) Kalpakkam,
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8. Smt. Sylaja Damodaran,
Assistant Personnel officer,
Water Board, Vikram Sarabhai
Bhavan, Anushakti Nagar,
Mumbai-400 094.
9. Smt. Nalini B.
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Mumbai-400 001.
10. Shri N.V.S.V. Prasad,
Steno Grade II, Atomic Minerals
Division, AMD Complex, Begumpet,
Hyderabad-560 016.
11. Smt. U.G. Nair, Isotope Division,
Bhabha Atomic Research Centre,
Trombay, Mumbai-400 085.
12. Shri V. Padmanabhan, Section Officer,
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Anushakti Bhavan, CSM Marg,
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13. Smt. Vinayalatha, S.
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
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14. Smt. M. Sheela, Administration
Section, Personnel Division,
Central Complex, Bhabha Atomic
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15. Smt. A. Jayakrishna, SAC,
Nuclear Fuel Complex,
P.O. ECIL, Hyderabad-560 062.
16. Shri K. Swaminathan,
Assistant, BRIT, CCCM Project,
Post ECIL, Hyderabad-560 062.
17. Shri N. Venkateswaralu,
Steno-II, Nuclear Fuel Complex,
PO ECIL, Hyderabad-560 062.
18. Shri. S.S. Prasad Rao,
Steno III Nuclear Fuel Complex,
PO ECIL, Hyderabad-560 062.

19. Shri T.G. Raveendran, Assistant
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
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20. Shri T.S. Balasubramanian,
Assistant, BARC Facility,
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Tamil Nadu 603 002.
21. Shri Ashoki S. Rao, Assistant,
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Mumbai-400 001.
22. Smt. S.K. Jayashree, UDC, Estt. IA
Personnel Division, Central Complex
Bhabha Atomic Research Centre,
Trombay, Mumbai-400 085.
23. Debjit Gupta, Steno III,
Variable Energy Cyclotron Centre,
Sector 1, Block AF, Bidhan Nagar,
Salt Lake City,
Calcutta-700 064.
24. Shri S. Sriram, Assistant,
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Mumbai-400 001.
25. Shri D. Rajagopalan, Assistant,
BARC Facility, Chengai MGR dist,
Kalpakkam P.O. Tamilnadu-603 012.
26. Smt. R.R. Patil, Assistant
Accountant General Services
Organisation, P.O. Ghivali,
Via Boisar, Dist. Thane-401 502.
27. Smt. R.S. Warriyar, Assistant,
Estt.I, Personnel Division,
Central Complex, Bhabha Atomic
Research Centre, Trombay,
Mumbai-400 085.
28. Ssmt. C. Shakuntala, UDC,
Accounts Division, Central Complex,
Bhabha Atomic Research Centre,
Trombay, Mumbai-400 085.
29. Smt. B.V. Balaji, Steno -III,
Nuclear Fuel Complex, PO ECIL,
Hyderabad-560 062.

30. Smt. S. Komalavalli, Centralised Master Management Facility, BARC, IGCAR Complex, PO Kalpakkam, Dist. Chennai Anna, Tamil Nadu-603 102.

31. Shri K.V. Subramanian, Assistant Personnel Division, Central Complex, Bhabha Atomic Research Centre, Trombay, Mumbai-400 085.

32. Shri N. Ravichandran, Assistant, BARC Facility, Chengai MGR Dist. Kalpakkam PO, Tamil Nadu-603 102.

33. Shri T. Newton, Assistant, Accountant, Accounts Division, Central Complex, Bhabha Atomic Research Centre, Trombay, Mumbai-400 085.

34. Shri C.V.S. Sastry, SAC, Heavy Water project, PO HWP Aswapuram Colony, Dist. Khammam, Andhra Pradesh-507 116.

35. Shri G.S. Karwade, SAC Accounts Division, Central Complex, Bhabha Atomic Research Centre, Trombay, Mumbai-400 085. .. Respondents

By Advocate Shri R.R. Shetty.

O R D E R
Hon'ble Smt. Shanta Shastry, Member (A)

The present OA is directed against the select list for the post of Assistant Personnel officer (APO for short) in the scale of Rs.6500-10500 published under circular dated 24.11.1997 as amended by circular dated 02.01.1998 of the Department of Atomic Energy, Mumbai. The applicants have challenged the consequent promotion of the first four employees in the select list namely Respondents No.5 to 8 who have been posted as APO vide order dated 05.01.1998.

2. The applicants are working as Assistants in the Department of Atomic Energy. The next post of promotion for the applicants is that of APO. Recruitment rules have been made in the year 1991 for filling up of the post of APO/AAO. This was published on 20.12.1991. According to the said rule the post of APO/AAO is a selection post. 80% of the posts are to be filled on the basis of Departmental Qualifying Examination and 20% of the posts are to be filled by promotion on the basis of seniority cum fitness. There are different categories of employees who were eligible to be considered for recruitment by promotion/transfer. Senior Personnel Assistant in the scale of Rs.2000-3200, Superintendent/ Accountant in the scale of Rs.1640-2900, Assistant/Personnel Assistant in the scale of Rs.1640-2900 who have completed three years of regular service in the grade, Senior Stenographers, Senior Accounts Clerk, Senior Clerks, UDC/ Junior Stenographer etc., are held to be eligible for being considered for the post of APO.

3. Notification was issued on 18.11.1996 for the 12th Centralised examination for selection of candidates for the post of APO/AAO in the DAE and its constituent units. The examination was to be held in March, 1997. Applicants applied and appeared in the examination. The applicants qualified. The marks secured by the employees were also published. Those who have passed

written examination were called for interview. After the interview was held, the impugned select panel was published on November 24, 1997 and modified on 02nd January, 1998.

4.. The contention of the applicants is that in the recruitment rules there is no provision for an interview to be held or for ACRs to be assessed by DPC and yet the respondents held an interview and assessed the employees, with the result, juniors were included in the select list because of manipulation of marks during the interview though they had secured less marks in the written examination. According to the applicants, the select list contains names of persons, who could not clear the examination for the feeder grade of Assistant in the first instance did not find any place in the final select list even though they secured good marks in the written examination. The applicants contend that the interview itself was a farce because in most cases questions were based on religion and other irrelevant matters were asked in the interview. It was not conducted bonafide or in a fair and reasonable manner. it was totally biased in favour of some candidates.

5.. The applicants submit that there is no mention in the recruitment rules that an interview would be held for filling up of the posts of APO under 80% quota. They only provide for vacancies to be filled by

departmental qualifying examination. However, there is a note under column No.12 of the recruitment rules, which states that the selection against item No.1 will involve interview of the eligible candidates. According to the applicants, the aforesaid note cannot add or detract from the substantive provision of the recruitment rules. It cannot be treated as part of the recruitment rules and therefore interview ought not to have been held.

6. The applicants submit that the selection appears to have been finalised on the basis of marks assigned to the Confidential Report. The said assignment of marks for ACRs is also not provided for in the recruitment rules. The statutory recruitment rules providing for filling up of 80% of the post on the basis of departmental qualifying examination. Further, the respondents have made the selection on the basis of the total marks assigned by the DPC. There is no specific qualifying marks for interview. Thus, the selection is bad in law. The applicants' staff union therefore sent a representation on behalf of the applicants and other senior candidates on 01.12.1997 pointing out that well settled principles of giving weightage to experience had been ignored and the junior most persons close to the power had been selected. They also complain about marks assigned in the interview and request to scrap the same. The Union sent another letter and demanded norms adopted

in the selection be disclosed. According to the applicants, no reply was received on behalf of the applicants. A further letter dated 06.01.1998 was sent by the DAE Secretariat Employees Association, many other applicants also represented like the first applicant sent his representation on 09.12.1997

7. The applicants have also mentioned about OA No.389/93 filed by one Smt. P.M. Dakshayani before this Tribunal challenging the selection of private Secretary held on 10.9.1991. The said selection was set aside on the ground interalia that in the absence of rules permitting interview there was an express ban on holding interview and any selection made on the basis of consideration of interview or partly on the basis of consideration of service records and partly on interview would vitiate the entire process. The judgment was delivered on 31.8.1995. The applicants therefore urge that since there is no provision for interview in the recruitment rules for the post of APO and the note below under column 12 cannot be read as part of the entry under column No.11, the selection is vitiated.

8. The respondents in their reply submitted that the Department of Atomic Energy is empowered to frame its own rule and matters relating to personnel and is exempted from consulting UPSC in framing the recruitment rules as well as for filling up the posts. However, the

respondents have particularly adopted the guidelines of DOP&T on DPCs and empanelment personnel for various posts, operation and validity of the panels etc. The post of APO/AAO is a Group-B gazetted post with the pay scale of Rs.6500-10500. It is a centralised cadre post and the posts are available in this category in various constituent units of the department. Department conducts centralised limited departmental written examination for the post of APO/AAO for filling 80% of the vacancies as per the eligibility criteria prescribed in the recruitment rules for the post. The written examination consists of four papers carrying 100 marks each. All persons, who qualify in the written examination become eligible for empanelment through personal interview by the DPC. The DPC empanels the candidates on the basis of the actual marks secured by them in the written examination, their performance in the interview and their gradings in their ACRs. Minimum marks for each of the above feeder factors for arriving at the overall performance of each candidate have been fixed. Thereafter, the panels are duly published and communicated to all through their controlling authorities in each constituent unit. Selected candidates are provided placement and posted.

9. The DPC consists of Additional Secretary, DAE as Chairman, Deputy Secretary, Director Chief Administrative & Accounts Officer and one Member from

Nuclear Fuel Complex. Further, those who failed to get empanelment can also appear in the next examination upto a maximum of six times to improve their marks in the written examination to enable to enhance their chance of selection after personal interview.

10. The respondents have denied that the interview was uncalled for and it was a complete farce or was mischievous and unwarranted. According to the OM dated 10.3.1989 issued by the DOP&T it is for the department to decide as to whether an interview also should be made a part of the selection process or not and if it is found necessary it has to be incorporated in the recruitment rules. The provision for interview has already been incorporated in column No.12 of the relevant recruitment rules and eligibility criteria have already been specifically indicated in Note 2 of column No.12 of the said recruitment rules. Further, while issuing the notice for the 12th Centralised Examination for the post of APO/AAO on 18th November, 1996 it was clearly stated in para 5 that those who would qualify in the written examination would be interviewed and the selected candidates would be empanelled for appointment. Thus, the applicants while appearing for the written examination knew that there would be an interview. They did not challenge it.

11. The respondents have also denied the allegation

made by the applicants that there was favoritism. In most cases the Members of the DPC did not know the candidates personally. At the time of interview some general questions were asked even though such questions may not have direct bearing on the post to which selection has to be made. Members of the DPC are high level officers, therefore, the contention that special favour was shown to some candidates by granting them higher marks in the interview, though they had secured less marks in the written examination is not correct. The respondents further stated in their written statement that a maximum of 25 out of total of 115 marks were assigned for the interview. The selection list of 27.11.1997 was modified as some arithmetical errors had crept in while totalling the marks to arrive at the total marks and therefore, they were rectified and the revised panel was published on 02.01.1998. Seniority is not the criteria as the selection has to be made through written examination and interview. The applicants were not declared failed in the interview but they could not be empanelled after taking into account the overall grading of all the candidates who appeared for the interview and the fact that there were limited vacancies. The respondents have also submitted that the contention of the applicant that assignment of marks for ACRs is not provided for under the relevant recruitment rules is not correct. According to the respondents, it is part of the procedure adopted by the DPC at its

discretion to assess evaluation which does not come under the recruitment rules. It is part of the selection process alone, though it cannot be mentioned in the recruitment rules and if it is made applicable to all candidates, it cannot be said to be discriminatory.

12. The learned counsel for the respondents referred to the judgment in OA No.389/93 relied upon by the applicants. According to him that judgment is not relevant in the case of the applicants. In fact, one of the similarly placed candidate had challenged these very recruitment rules and the method of selection etc., followed by the Department of Atomic Energy by filing OA No.311/92 in the Hyderabad Bench of the Tribunal. The judgment was delivered on 20.6.1994 upholding the criteria adopted and the provisions for interview in the recruitment rules. The respondents therefore, maintain that they have followed the proper procedure and therefore, the select panel issued on 24.11.1997 modified on 02.01.1998 is perfectly in order.

13. The respondents have also considered the contention of the applicants that all the officials whose overall grading is equal to or better than the bench mark 'Good' should be included in the panel for promotion to the extent of number of vacancies and it should be arranged in the order of interse seniority in the lower category with reference to the overall grading

obtained by each of them is in contradiction to the recruitment rules. According to the respondents, the bench mark can be adopted only if all the candidates are from the same cadre or only based on seniority cum fitness. The selection held earlier during 1994 to the post of APO was also on the basis of the same criteria as adopted for the selection made in November, 1997 and therefore, according to the respondents, the statement of the applicants that consideration of the ACRs was not provided for in the recruitment rules is incorrect.

14. The applicants have further submitted that a mistake for an illegality committed in the 1994 selection cannot be termed as a valid provision for subsequent selection. The bench mark basis is applicable only in case of promotion according to the selection method and not in the system based on seniority cum fitness. The applicants have reiterated their arguments further in the rejoinder.

15. We have heard the learned counsel for the applicants as well as the respondents. The selection was held for the post of APO/AAO and the select panel was published on 24.11.1997 modified on 02.01.1998. It is clear that a written examination was held and also an interview was held. During the course of the interview, the DPC also assessed the ACRs of the concerned individuals. We note that the applicants could not be

selected after appearing for the interview. The applicant's main contention is that the recruitment rules did not provide for an interview or for consideration of ACRs and therefore, the whole process of selection is vitiated and the select panel needs to be set aside including the promotion of the candidates on the basis of the said panel. We have perused the recruitment rules. There is a provision under the recruitment rules by way of note No.2 that the selection against item 1 will involve interview of the eligible candidates. The contention of the applicants is that this note is not an integrated part of the recruitment rules. Further, it might be relating only to item No.1 in column No.12 and not column No.1. The applicants relied on the judgment of this Tribunal in OA No.389/93. We have perused the judgment. In our considered view that judgment does not help the applicants. The facts therein were different. It was held in the judgment that no interview should be held unless it has been specifically provided for in the recruitment rules for the post and provision should be made in the recruitment rules if any, interview has to be held. As a provision has been made in the recruitment rules for the post of APO/AAO the judgment is not applicable. The respondents have also referred to a judgment in OA No.311/92. We have also perused the said judgment of the Hyderabad bench. In this judgment the very recruitment rules for the post of APO/AAO were challenged. In the aforesaid

OA the applicants had prayed for following declarations:

- i) The allotment of 25% of marks for interview is excessive, arbitrary and unreasonable;
- ii) Fixation of minimum marks of 15 for interview
- iii) Non disclosure of promotion policy and procedure for selections appointments to the posts of Assistant Personnel officers (APOs)/ Assistant Administrative Officers (AAOs) before the examinations are held is illegal, arbitrary and unconstitutional;
- iv) Non publication of panel and non disclosure of marks secured by candidates in the said examinations is illegal, arbitrary and unconstitutional;
- v) Selections held without adopting the bench mark system as per the guidelines issued by the Government of India in its OM No.F.22011/5/86-Estt(D), dated 10.3.1989 are ultravires of the rules and Constitution of India and
- vi) Non-inclusion of the applicant's name in the panel of 1992 and denial of promotion to him as APO/AAO is illegal and arbitrary.

16. It can thus be seen that contentions raised in OA 311/92 were similar to the various contentions raised by the applicants in the present case in regard to the holding of the interview has been fully answered in the judgment of the Hyderabad Bench of the Tribunal. We agree with the aforesaid judgment of the coordinate Bench.

17. Further, as already pointed out by the respondents in the notice which was issued on 18.11.1996 for selection to be held for the post of APO/AAO it was

clearly stated that there would be an interview. Therefore, the contention of the applicants that there is no provision in the recruitment rules about the interview and the interview was uncalled for does not hold good.

18. We have however, perused the relevant record pertaining to the selection. On perusal of the record we find that the DPC considered and gave marks for assessment of ACRs as well as seniority. This has not been provided for either in the recruitment rules or in the notice issued for selection of the post and therefore, according to us the selection gets vitiated to the extent that the DPC considered the ACRs and seniority of candidates. We therefore, quash and set aside the selection panel to the extent of the assessment of marks given for ACRs and seniority. The respondents are directed to delete the marks for ACR and seniority and revise the selection panel on the basis of the marks secured in the written examination and interview only by ignoring the marks obtained for ACRs and seniority. This exercise shall be carried out within a period of one month from the date of receipt of copy of the order. Accordingly, the OA is allowed partly. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shanta f-

(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan