

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.959/89

Date of order: 30-10-95.

Brij Raj Singh

: Applicant

Vs.

The Indian Council of

: Respondents

Agriculture Research,

New Delhi & Ors.

Mr.S.Kumar

: Counsel for applicant

Mr.V.S.Gurjar

: Counsel for respondents Nos.1 & 2

Mr.Prahlad Singh

: Counsel for respondent No.4

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Shri Brij Raj Singh in this application under Sec.19 of the Administrative Tribunals Act, 1985, has prayed that the Tribunal may issue a writ of quo warranto to respondents Nos.3 & 4 (private individuals appointed to the post of T-6 in the Central Institute for Research on Goats) and has further prayed that all appointments to the post of T-6 including the appointment of respondent No.4 vide Annx.A1 dated 2/6.2.1988 in accordance with the selection held on 24.6.'87 be declared as illegal and may be set aside. He has further prayed that a writ of mandamus may be issued commanding respondents Nos.1 and 2, the Director General, Indian Council of Agriculture Research, New Delhi and the Director, Central Institute for Research on Goats Mukhadoo, respectively to terminate the services of respondents Nos.3 & 4 and fillup the post of T-6 from amongst the candidates according to merit (list) to be prepared after excluding the names of ineligible candidates.

2. The case of the applicant, who is working on the post of T-4 in the Central Institute for Research on Goats at Avikanagar is that respondent No.2 issued an advertisement

5. The applicant made two representations against the irregularities in the selection, but there was no response. However, in response to a notice for demand of justice sent vide letter dated 1.9.1989 (Annx.A8), the respondents sent a reply dated 27.9.89 (Annx.A9), which however does not contain any reasons for calling for interview and selecting ineligible candidates on the post of T-6. Since the candidates are educated and still they applied for the post for which they were ineligible, there must have been some understanding prior to sending the applications for appointment. A perusal of the record would reveal the true situation. Since respondent No.4 did not possess the requisite qualifications and experience his appointment is illegal and in violation of the relevant rules and he has been made for extreneous reasons best known to the appointing authority, respondent No.2. Respondent No.4 has no right to continue on the post. After excluding ineligible persons, whoever is eligible to be appointed on merit from amongst the persons on the select panel should be appointed to the post of T-6.

6. The official respondents, Nos.1 & 2, in their reply have taken a preliminary objection that the application is barred by limitation for filing the O.A. Since the selections were made in June 1987, the limitation expire in June 1988. Even if the limitation is reckoned from the date of appointment of Shri R.B.Sharma, respondent No.4, who was appointed in February 1988, the limitation would have expired in February 1989, whereas the application has been filed on 5.12.1989. Making of repeated representations does not condone the delay.

7. They have further stated that since the respondents Nos.3 & 4 are neither the "State" nor "other authority", no writ in the nature of quowarranto can be issued to them. As regards respondent No.4, he has been serving in the department in the

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concerned field since 31.7.1982 and therefore, he possessed 5 years experience. He had 5 months experience in the relevant field earlier to 31.7.82 also. The relevant date for computing the experience is the date on which the writ of quowarranto is to be issued. Thus, respondent No.4 had the requisite qualifications for the job. They have denied that ineligible persons were called for interview. Although there was only vacancy advertised, one more vacancy had occurred before the interviews were held, and therefore selections were made for two vacancies. It is open to the recruiting authority to fillup all the vacancies available at the time of appointment. Shri R.B.Sharma, respondent No.4 was at Sl.No.3 in the select panel and therefore he was offered the post after Shri N.V.Gaur left the job. No merit was found in the representations made by the applicant against the selections.

8. Respondent No.4 in his reply has also stated that no writ of quo warranto can be issued to respondents Nos.3 & 4, for the same reasons which have been mentioned by the official respondents. Moreover, such a writ can be issued by the High Court and the Supreme Court and this Tribunal does not have any power to issue writ of the nature sought by the applicant. He has also taken objection to the application on the ground of limitation mentioning more or less the same reasons which have been mentioned by the official respondents.

9. Further, according to respondent No.4, the impugned selections followed by appointments were made after following due procedure that is to say, an advertisement was issued, applications were scrutinised, the eligibility of the candidates was checked and after holding of interviews by the selection committee and on the basis of its recommendations, orders of appointment were issued. This Tribunal does not have any jurisdiction to examine the validity or otherwise of the

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selections and appointments made following the prescribed procedure when no specific allegations of malafides have been levelled by the applicant. This Tribunal cannot sit as an appellate authority above the selection committee.

10. Further, according to respondent No.4, the applicant has himself not disclosed his own experience and therefore presumably he himself does not possess the requisite qualifications for the post of T-6. Respondent No.4 was fully qualified and eligible for the post of T-6 in terms of the advertisement. Details thereof have been given in the reply. He has denied that he had been illegally illegally picked-up for appointment on the post of T-6.

11. Before advertizing to the oral arguments of the counsel for the parties, we may state that we had directed that the records of the selection as also the application made by respondent No.4 for appointment to the post of T-6 be produced at the time of hearing. Copies of the select panel and the application sent by the applicant have been taken on record. The applicant had also filed an M.A on 3.12.89 seeking condonation of delay in filing the original application. No specific orders had been passed on this application prior to the date of the final hearing. Thus, a view on the question whether there is any delay in filing the O.A and if so whether it should be condoned has yet to be taken by the Tribunal.

12. A further point to be mentioned at this stage that although there was a public advertisement calling for applications for filling-up the post of T-6 which was published in the Employment News in August 1986, both the applicant and respondent No.4 were already working on the post of T-4 when they submitted the applications and thus they were departmental candidates i that sense. The panel of the selected candidates produced before us during the hearing shows that one Shri

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Narendra Verma was at Sl.No.1, Shri Ramjeet Ram was at Sl.No.2, Shri, Shri Ramesh Babu Sharma, respondent No.4 was at Sl.No.3 and the applicant was at Sl.No.4. There were a total of only 4 names as aforesaid in the select panel. Since two vacancies were filledup, after Shri Ranjeet Ram vacated the post, Shri Ramesh Babu Sharma was appointed. If Shri R.B.Sharma is declared as not entitled to hold the post, the applicant would be the next person on the panel contending to be appointed to the vacancy caused by Shri Ranjeet Ram's leaving the post.

13. During the arguments, the learned counsel for the applicant stated that respondent No.4 did not possess 5 years experience as required as per the advertisement, for being eligible for the post of T-6. The application made by respondent No.4 showed that he had experience of Farm Management work from 31.7.82 to 2.5.84 i.e. for a period of less than 2 years. His next spell of experience from 3.5.84 to the date of making the application i.e. 25.8.86 was in Agrometeorology. However, as per the advertisement the experience required was in Management, Administration and Maintenance of Farm and Farm Stores, Accounts of a large Agricultural Farm or Research Station. Thus, as against the required experience of 5 years the respondent No.4 had actually only 2 years experience in this field. There was no requirement of experience in Agrometeorology but it was only a desirable qualification. Masters Degree in Agriculture(Agronomy) was mentioned as a desirable qualification. Thus, while experience required was 5 years in the particular field, the respondent No.4 actually possesses only 2 years experience. Further on the date of making of the application, the applicant possessed only a little over 4 years experience in all the fields mentioned by him, on the last date of making the application which was within 30 days of the appearance of the advertisement. The

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advertisement appeared on 9.8.86 and therefore, the last date for making the application would be 8.9.86, on which date even as implidely accepted by the applicant in his application, he did not possesses 5 years experience of any type. Even if the experience of months prior to 31.7.82 is taken into consideration, the total experience would be of 4 years and a little over six months. The fact that the applicant may have acquired the experience of 5 years subsequently after he was appointed to the post is irrelevant for considering whether the applicant had been rightly selected for the post and appointed to it.

14. He cited a number of judgments of the Hon'ble Supreme Court and various Benches of the Tribunal to show that selection and appointment of candidates not possessing the requisite qualifications as on the date of making the application could not be sustained, when there was no power available to the authorities to relax the qualifications. He referred to as many as 21 rulings in this regard. On going through these rulings, we find that several of these have no direct bearing on the subject under discussion. Some relate to regularisation of ad hoc appointees, others related to large scale irregularities in selection process and such other matters. However, the ones which have a direct bearing on this case are:

(i) District Collector and Chairman, Vizianagaram Social Welfare Residential School Society Vizianagarm & Anr. Vs. M.Tripura Sundari Devi, (1990) 3 SCC 655 wherein the Hon'ble Supreme Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it amounts to fraud on public to appointment persons with inferior qualifications unless it is clearly stated that the qualifications are relaxable.

(ii) Shainda Hasan Vs. State of U.P & Ors. 1990(3) SCC 48

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wherein the Hon'ble Supreme Court held that a Selection Committee is not justified in relaxing qualifications where the advertisement for the post does not mention that it is empowered to do so.

iii) Rekha Chaturvedi (Smt) Vs. University of Rajasthan & Ors, wherein the Hon'ble Supreme Court held that a selection committee would not be justified in taking into consideration the requisite educational qualification as on the date of selection rather than on the last date for making the applications, unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged.

15. Therefore, according to the learned counsel for the applicant since respondent No.4 did not possess the requisite 5 years experience as on the last date of making the application, he was ineligible for selection and appointment. Therefore, after excluding his name from the select panel the next available candidate should be appointed to the post which was vacated by Shri Ramjeet Ram.

16. The learned counsel for the official respondents merely stated that the selection committee had not committed any irregularity in selecting respondent No.4 on the post of T-6 and therefore, he had been rightly appointed. The learned counsel for respondent No.4 however argued the case at length. Apart from reiterating the averments made in the reply filed on behalf of respondent No.4, he stated that the applicant had not asked specifically for appointment for himself in the relief clause of the application. He added that the selection was by a due process, by a duly constituted selection committee, and no malice had been alleged against any member thereof. Therefore, such selection cannot be interfered with by the Tribunal.

Referring to the judgments of the Hon'ble Supreme Court in which it had been held that appointment of persons not

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possessing the requisite qualifications is sustainable, he added that almost in all the judgments the Hon'ble Supreme Court had, however, not quashed the appointments of those persons who had been appointed without having been in possession of the requisite qualifications. As regards respondent No.4, he was appointed to the post of T-6 in February 1988 and by now he has worked on the post as T-6 for a period of more than 7½ years. Therefore, keeping in view the judgments of the Hon'ble Supreme Court the appointment of the applicant should not now be interfered with by the Tribunal.

17. Referring to the judgment of the Hon'ble Supreme Court in District Collector & Chairman (supra), he stated that although the Hon'ble Supreme Court had strongly disapproved of appointment of persons not possessing the advertised qualifications, yet they had not quashed appointment of the persons who had been appointed without possessing the requisite qualifications. Same was the case with regard to the appointment in Shainda Hasan's case (supra). He next referred to the judgment of the Hon'ble Supreme Court in Dr.M.S.Mudhol & Anr. Vs. S.D.Halegkar & Ors, (1993) 3 SCC 591 in which the first respondent did not possess the prescribed qualification but was appointed. The Hon'ble Supreme Court found that it was the default on the part of the second respondent, Director of Education, in illegally approving the appointment of the first respondent although he did not have the requisite qualification as a result of which the first respondent continued to hold the said post for the last 12 years. The Hon'ble Supreme Court held that it would be now inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. He then relied upon the judgment of Hon'ble Supreme Court in the case of Rekha Chaturvedi (Smt) (supra) and drew attention to the fact that even though the appellant did not possess the prescribed qualification, the Hon'ble Supreme Court

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declined to set aside the selections in spite of the said illegality on the ground, amongst others, that the selected candidates had been working in the respective posts for a long time. He next referred to the judgment of the Hon'ble Supreme Court in Ram Sarup Vs. State of Haryana & Ors, 1978(2) SLR 836, wherein the appellant was not found to possess the requisite qualifications at the time of appointment but had acquired necessary experience during service. The Hon'ble Supreme Court held that the initial appointment was not wholly void but was merely irregular and further held that the appointment became regular from the date when the appellant acquired necessary qualification, i.e. experience during the service period. He also drew attention to the judgment of the Hon'ble Supreme Court in H.C. Puttaswamy & Ors. Vs. the Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors, AIR 1991 SC 295, in which the appointments made by the Chief Justice of the High Court were held to be invalid but the Hon'ble Supreme Court noted that the appointees i.e. the appellants had been in the service for the last 10 years and for various reasons mentioned in the judgment held that the circumstances of the case justified a humanitarian approach. Therefore, the Hon'ble Supreme Court ordered that the appellants should be treated as having been regularly appointed with all benefits of past service.

19. He then referred to certain orders of the Tribunal to support his case. In Dr. Shankar Lal Sisodia Vs. Indian Council of Agriculture Research and Anr, decided on 21.10.92 (O.A.No.414/90) the Jodhpur Bench of the Tribunal noted that the applicant in that case did not possess the 5 years experience for the post of T-6 till the department selected him, knowing fully well that the qualification of 5 years experience was not relaxable. After relying upon the



observations of the Hon'ble Supreme Court in District Collector & Chairman's case the Tribunal held that as soon as the applicant completes 5 years experience in the department, he should be appointed to the post of T-6. He next referred to an order of the Jodhpur Bench of the Tribunal in Dr.P.R.Sharma Vs. Union of India & Ors (O.A No.11/94) passed on 14.7.94, in which the Tribunal followed the judgment delivered in Shankar Lal Sisodia's case. In conclusion, the learned counsel for respondent No.4 stated that even if respondent No.4 did not possess the requisite experience of 5 years on the last date of making of the application, he had made up for that by his experience gained in the department subsequent to his appointment and therefore at this late stage it would be very cruel to displace the applicant from the post held by him as the applicant had also become age barred for government service.

20. By way of rejoinder, the learned counsel for the applicant stated that there is a crucial difference between this case on the one hand and the facts on the basis of which directions were given by the Hon'ble Supreme Court that although the persons concerned did not possess the requisite qualifications they should be allowed to be continued on the posts held by them. In the present case, according to him, the applicant had contested the appointment of persons who had been appointed without requisite qualifications and if the person appointed without requisite qualifications is asked to vacate the post the applicant would be entitled to occupy it being the next person on the select panel. From the judgments of the Hon'ble Supreme Court relied upon by the learned counsel for respondent No.4 it did not appear that there was some other selected candidate waiting for appointment in case the candidate without requisite qualifications was asked to vacate the post. He added

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that the judgments of the Jodhpur Bench of the Tribunal were not applicable to the facts and circumstances of the case.

21. We have heard the learned counsel for the parties and have gone through the material on record as also the judgments cited before us.

22. As regards the question of limitation, respondent No.4 was appointed in February 1988. The applicant made his first representation regarding irregularities in selection on 7.7.87 and a second one on 23.2.88. He did not receive any reply to these representations. At least the first representation was made within about 5 months of the selections. The second representation was made within a few days of the offer of appointment to respondent No.4 on 2/6.2.88. In our view the applicant was entitled to make an application to this Tribunal within a period of 18 months from the date of the offer of appointment to respondent No.4 if he did not receive any reply to the representation. In view of the situation that the applicant did not receive any reply to these representations either, he could make an application to the Tribunal by August 1989. He however received a reply dated 27.9.89 (Annx.A9) to his notice for demand of justice dated 1.9.89 (Annx.A8). Thus, he filed the O.A within less than 3 months of the receipt of the reply. The applicant had been diligently pursuing the departmental remedies and it appears that he bonafidely believed that now that he received a reply rejecting his representation/notice for demand of justice on merits, he could now move the Tribunal. In any case, if he was entitled to file an O.A. by August 1988, delay in filing the application is only of less than 4 months. The applicant has separately filed a Misc.Application seeking condonation of delay on which no view has been taken by the Tribunal so far. In the circumstances of the present case and in the interest of justice, we condone the

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delay in filing the application.

23. Much has been made by the respondents of the applicant's prayer that the Tribunal should issue a writ of quo warranto to respondents Nos.3 & 4, by stating that such a writ cannot be issued by the Tribunal, and not in any case not to ordinary employees like respondents Nos.3 & 4. We do not want to go into the question whether a writ of quo warrant can be issued by us in the facts and circumstances of the present case and even on principle. However, we are entitled to examine whether the appointment of respondent No.4 was proper and if not whether any relief can be granted to the applicant and if so what relief can be granted to him.

24. The learned counsel for the respondents has raised the point that no malice was alleged against any Member of the Selection Committee and that this Tribunal is not entitled to sit as an appellate authority over the duly constituted Selection Committee which had followed the prescribed procedure in preparing the selection panel. We find that malice has indeed been alleged against respondent No.2 who has made a respondent by name and the allegation is that there was some prior understanding regarding the appointments even before the applications for selection and appointment were submitted. Although this Tribunal is not expected to act as an appellate authority over the decisions of the Selection Committee yet where the selections are arbitrary and in patent disregard of the qualifications prescribed in the advertisement or perverse in other words, this Tribunal can in our view look into such selection and grant appropriate relief where warranted while exercising powers of judicial review. The applicant has not sought any specific relief for himself because he was not aware of the contents of the selection panel and where he stood vis a vis the other selected candidates or candidates appointed to

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the said post. Once the applicant had prayed that the post of T-6 should be filled-up "from amongst the candidates according to merit to be prepared after excluding the names of ineligible candidates", he can be presumed to have asked for relief for himself also if he is entitled to be appointed on merit after excluding ineligible candidates.

25. The learned counsel for the respondents did not seriously dispute during the arguments that respondent No.4 did not possess the prescribed minimum 5 years experience on the last date of making the application. It is well settled now by a number of judgments of the Hon'ble Supreme Court that where no date has been prescribed with reference to which a candidate should possess the prescribed qualification and experience, the prescribed qualifications or experience have to be possessed as on the last date for making applications. The following observations of the Hon'ble Supreme Court in Dr.M.V.Nair Vs. Union of India & Ors (1993) 24 ATC 236 clinch the issue.

"It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the application, unless, of course, the notification calling for applications itself specifies such a date."

Regarding selection and appointment of candidates who do not possess the requisite qualifications, the following observations of the Hon'ble Supreme Court in District Collector and Chairman (supura) are relevant.


"....When an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the

advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of fraudulent practice."

It is clear that the selection of respondent No.4 for the post of T-6 was irregular. Of course respondent No.4 had disclosed his qualifications and experience in the application and it was not on account of any misrepresentation on his part that the Selection Committee was misled into selecting him for appointment. We do not want to go into the truth of the allegation of the applicant that there may have been some prior understanding regarding the selection of respondent No.4 before making the application. Fact however remains that respondent No.4 was not eligible for appointment to the post of T-6. The thrust of the arguments of the learned counsel for respondent No.4 was that even if respondent No.4 was ineligible for appointment as T-6, his appointment should not be interfered with by the Tribunal at this stage when he has already worked on the post of T-6 for more than 7 years and has since acquired the requisite experience in the field in which he was expected to have experience of 5 years at the time of making applications. Numerous judgments of the Hon'ble Supreme Court have been cited in support of this view. We have carefully considered this aspect of the matter.

26. When the advertisement mentioned one post and application were called for filling up one post, two posts were filled up on the basis of the selection. But the applicant has not shown how he is affected by this action of the respondents. We, therefore, do not want to go into this issue. We have, however, no hesitation in holding that respondent No.4 was not eligible for being selected for the post of T-6 as he did not possess

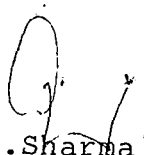
the requisite qualifications and experience as on the last date of making the application. Therefore, his appointment was improper and irregular. Now the question before us is whether the appointment of respondent No.4 to the post of T-6 should be set aside and the applicant should be asked to be appointed in his place being the next eligible person as per the selection panel. As regards the judgments of the Hon'ble Supreme Court cited before us, it does not emerge from them that some duly qualified selected candidates were awaiting appointment and if the ineligible person was asked to vacate the post occupied by him, a duly qualified and selected person who was awaiting appointment would occupy it. The same is the position with regard to the orders of the Jodhpur Bench of the Tribunal cited before us. As far as the case before us now is concerned, it is now more or less a matter between the applicant and respondent No.4, because there is only one post of T-6 is available which can either be filled up by respondent No.4 or by the applicant. Certainly, respondent No.4 has occupied the post for the last 7 years now. However, question of extending a humanitarian consideration to the case of respondent No.4 would arise if the applicant was not the duly selected candidate and had not been waiting for his appointment to the post of T-6. The appointment of respondent No.4 was made in February 1988 and the applicant filed the O.A challenging his appointment in December 1989. It is, therefore, due to no default on the part of the applicant either, that respondent No.4 worked on the post for 7 years. When we speak about extending a humanitarian consideration to the case of respondent No.4, we should remember that the applicant is also equally entitled to such consideration and his claim is better than that of respondent No.4. In these circumstances, when there is only one post available, we have no option but to set aside the appointment of respondent No.4

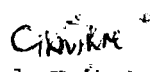


to the post of T-6 and further direct that the next selected person on the selection panel namely the applicant should be given appointment to the post of T-6 if he fulfils other criteria prescribed, if any. However, the applicant would be entitled to seniority from the date of this order and he would also not be entitled to pay and allowances from any date prior to the date of passing of this order, as he has not actually worked on the said post. The respondents shall implement this order within a period of four months from the date of receipt of a copy of this order.

27. As regards respondent No.4, the plea of his counsel was that he has become overage for another government service. However, prior to his appointment to the post of T-6, the respondent No.4 was working as T-4 and he would continue to work as T-4 if his appointment to the post of T-6 is set aside. Further, the official respondents can consider the experience gained by respondent No.4 on the post of T-6 for giving him any other suitable appointment including another post of T-6 if and when it falls vacant, by specifically relaxing qualifications ~~therefore~~ in the peculiar circumstances of the case.

28. The O.A. is disposed of accordingly with no order as to costs.


(O.P.Sharma)
Member(Adm)


(Gopal Krishna)
Vice Chairman.