

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 10-12-2003

OA No. 259/2002

Dr. N.P. Singh s/o Shri Ram Singh r/o Type 5/4, CSWRI Colony, Avika Nagar, District Tonk at present employed on the post of Principal Scientist in Central Sheep and Wool Research Institute, Avika Nagar, District Tonk.

.. Applicant

VERSUS

1. Union of India through its Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. The Secretary, Agricultural Scientist Recruitment Board, Krishi Anushandhan Bhawan, PUSA, New Delhi.
3. The Director, CSWRI, Avika Nagar, Tonk.

.. Respondents

Mr. Shiv Kumar - Counsel for the applicant

Mr. V.S. Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

Per Hon'ble Mr. M.L. Chauhan.

The applicant, who is working as Principal Scientist in the Central Sheep and Wool Research Institute (CSWRI), Avika Nagar, Distt. Tonk has filed this application challenging the action of the respondents whereby he has not been called for interview for the post of Director under the Indian Council of Agricultural Research (ICAR) pursuant to the advertisement No. 5/2001 for item No. 294 (Ann. A1). In relief, he has prayed that

the respondents may be directed to consider the case of the applicant for appointment to the said post for which the applicant has already applied in due course of time to the concerned authorities with all consequential benefits. It is further prayed that the respondents may be directed to issue vigilance clearance to the applicant forthwith as per rules and it may be declared that there exist no departmental proceedings/vigilance case pending which were initiated in pursuance of the chargesheet dated 26.4.93.

2. Facts of the case are that the applicant applied for the post of Director, CSWRI, Avika Nagar in pursuance to the advertisement No. 5/2001 for item No. 294 for the post of Director under the ICAR (Ann.A1). According to the said advertisement, closing date for receipt of applications for Agricultural Scientist Recruitment Board (ASRB) as mentioned in the advertisement was 29.1.2002 and for persons posted abroad and for Avika Nagar and other places mentioned in the notification, the last dated was 13.3.2002. It is not disputed that at the time of submitting the application, the applicant was under chargesheet, which was issued sometime in 1993 and based on another OA since the respondents did not complete the enquiry within the stipulated extended time granted by the Tribunal, the enquiry stood abated w.e.f. 28.2.2002. Copy of this order is placed on record as Ann.A2. It may be also mentioned here that the application of the applicant for the post of Director, CSWRI, Avika Nagar was forwarded to the Secretary, ASRB, New Delhi vide letter dated 16.5.02 (Ann.RA4) for consideration. However, vide letter dated 6.6.02 (Ann.RAS) the Controller of Examination, ASRB, Krishi Anusandhan Bhawan, New Delhi was informed

that the disciplinary proceedings against the applicant have not yet been finalised. The applicant was not called for interview as the respondent authority did not issue the vigilance clearance. It is further stated that in the past cases, as per practice of the respondents, the vigilance clearance is required only at the time of interview and since at the time of interview the disciplinary proceedings stood abated pursuant to the order of this Tribunal (Ann.A2), the action of the respondents in not considering the case of the applicant for the post of Director, CSWRI, Avika Nagar, is illegal and arbitrary. It on the basis of these pleadings, the applicant has filed this application thereby praying for the aforesaid reliefs.

3. Notices of this application were given to the respondents. The respondents have filed reply. In the reply it has been stated that pursuant to the advertisement No. 5/2001 (Ann.A1) interview for appointment to the post of Director, CSWRI, Avika Nagar was held on 11.6.2002 and the applicant was not eligible for consideration of his candidature, in view of the fact that the disciplinary proceedings were pending against the applicant at the time of issuing of advertisement No. 5/2001 and also on the closing date of receipt of the application i.e. 29.1.2002. It is further stated that the consolidated instructions on forwarding of applications of employees of ICAR as on 31.12.2000 provides that as for CCS (CCA) Rules, 1965 as applicable to ICAR employees, the applications of the employees for posts advertised by the ASRB or outside agencies should not be forwarded if any vigilance/disciplinary case is pending/contemplated

against them. The rules further provide that when the conduct of a Government servant is under investigation by the Central Bureau of Investigation or by the Controlling Department but the investigation has not reached the stage when a *prima facie* case can be made out against Government employee, the application of such an employee may be forwarded together with brief comments on the nature of allegations and it would also be made clear that in the event of actual selection of a Government servant he/she would not be relieved for taking up of the appointment if the investigation has been completed and disciplinary proceedings have already commenced or are likely to be initiated shortly. These facts are fortified by instructions issued vide communication dated 25th September, 2000. The instructions aforesaid is incorporated in view of Office Memorandum issued by Government of India in reference to forwarding of applications of Government servants who are under suspension or against whom departmental proceedings are pending. (GI, MHA OM No.F.39/17/68-Estt.(A), dated the 6th September, 1968 and CSDP and AR OM No. 11012/10/75-Estt. (A), dated the 18th October, 1975). Thus, it is apparent on the fact of the record that the applicant was not eligible for forwarding of his application and consequent consideration for selection to the post of Director at Item No.294 of the avertisement No. 05/2001. Hence, the Original Application preferred by the applicant is not maintainable and merits rejection on this count alone.

4. The applicant has filed rejoinder reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The main contention of the learned counsel for the applicant is that once having forwarded his application for the post of Director under Indian Council of Agricultural Research and disciplinary proceedings stood abated w.e.f. 28.2.02, the respondents were bound to consider his case for the said post and action of the respondents in not considering the case of the applicant for the said post is illegal and arbitrary. Though the submissions made by the learned counsel for the applicant appears to be attractive, but the applicant is not entitled for any relief in view of the reasons stated herein under.

5.1.1 It is admitted fact between the parties that last date for receipt of applications for the post of Director under ICAR was 29.1.02, as can be seen from Ann.A1. Admittedly, on that that the enquiry was pending against the applicant. It can also not be disputed that the applicant earlier filed OA No.129/01 in this Tribunal and this Tribunal vide order dated 17.8.01 granted time to the respondents to finalise the disciplinary proceedings within the specified time (copy of order not placed on record). Since the disciplinary proceedings could not be completed within the stipulated period, the respondents moved a Misc. Application No. 390/01 for seeking extension of time for implementing the order dated 17.8.01 by 3 months and this Tribunal vide order dated 1.2.2002 allowed the respondents to implement the order by 28.2.02. It was further observed that if no compliance is made within this period, the proceedings against the applicant shall be abated (Ann.A2). Thus from the facts, as stated above and

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not disputed between the parties, it is evident that the disciplinary proceedings were pending against the applicant on the last date of receipt of applications for the said post viz. 29.1.02 and it is only after 28.2.02 that the proceedings stood abated in view of the order passed by this Tribunal in MA No. 390/01 in OA No.129/01 (Ann.A2). Now the question which requires our consideration is whether the application of the applicant could be forwarded in violation of the instructions/rules and the same will afford indefeasible right to the applicant to consider his candidature for appointment to the post of Director under ICAR. According to us, the answer to this question is in negative. The learned counsel for the applicant has not disputed the consolidated instructions issued by the respondents which provide that the applications of employees of ICAR for the posts advertised by the ASRB or outside agencies should not be forwarded if any vigilance/disciplinary case is pending /contemplated against them. In view of this specific provision and the fact that on the last date of receipt of application viz. 29.1.02 disciplinary proceedings were pending against the applicant, his application could not have been forwarded by the respondents in view of the instructions dated 31.12.2001. We are also of the view that simply because the application was wrongly forwarded by the respondents will not grant indefeasible right to the applicant to consider his case for the post of Director, CSWRI, Avika Nagar. We are also aware about the provision that in normal course the application of employees for the post advertised has to be forwarded in case there is no vigilance/disciplinary case pending against him or where the conduct of a Govt. servant is under investigation either by the Central

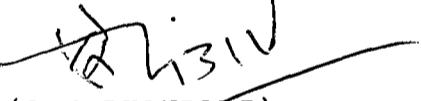
Bureau of Investigation or by the controlling department but the investigation is not reached the stage where a prima-facie case can be made out against the Govt. employee and in that contingency the application has to be forwarded together with the comments on the nature of allegations. In that eventuality, the appropriate authority has right not to relieve the concerned employee even if selected, in case the investigation has been completed and disciplinary proceedings have already commenced or likely to be initiated shortly. This is not the situation in the present case. In the instant case, the applicant was under chargesheet, which was issued to him sometime in the year 1993 and the enquiry was not over as on 29.1.02, being the last date of receipt of applications. Thus, the application of the applicant for the post of Director under ICAR could not have been forwarded and consequently he has no indefeasible right if he was not called for interview to the said post and the action of the respondents cannot be faulted on this count.

5.1.2 The learned counsel for the respondents argued that for another reason the applicant is not entitled for any relief. Vide letter dated 6.6.02 (Ann.RA3), the Controller of Examination, Agricultural Scientists' Recruitment Board, Kirshi Anusandhan Bhawan, New Delhi was informed that though the applicant has been reinstated and the disciplinary proceedings against him have not yet been finalised. Copy of this letter was also endorsed to the applicant by Senior Administrative Officer in the month of June, 02. The applicant has not chosen to challenge the validity of this order of the respondents either by amending the application or by challenging this order by separate application. Be that as it may, since we have

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held that on the last date of submission of application disciplinary proceedings were pending against the applicant, as such his application could not have been forwarded in view of the instructions dated 31.12.2001. The learned counsel for the respondents also argued that the person has already been selected pursuant to the interview held on 11.6.02. The applicant has not impled the party, who is likely to be affected by this selection. As such, no relief can be granted to the applicant in view of the law laid down by the Apex Court in the case of Bhagwanti and Ors. vs. Subordinate Services Selection Board, Haryana and Another, 1995 Supp (2) SCC 663 whereby the Apex Court has held that no order to the detriment of a person can be passed without hearing him. We see considerable force in the submissions made by the learned counsel for the respondents.

5.2 For the reasons stated hereinabove, we are of the view that the applicant is not entitled to any relief. As such, the present application is dismissed with no order as to costs.

  
(A.K.BHANDARI)

Member (A)

  
(M.L.CHAUHAN)

Member (J)