

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 14<sup>th</sup> day August 2018.

Original Application No. 764 of 2005

PRESENT:

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER-A**

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER -J**

Smt. Vinita Bisht W/o Nandan Singh Negi, R/o A-369/3 Rajendra Nagar, Bareilly (U.P)

.....Applicant

By Advocate: Shri R.C. Pathak

Versus

- 1.Union of India through the Secretary, Ministry of Agriculture Krishi Bhawan New Delhi.
- 2.The Director General Dr. Mangala Rai Indian Council of Agriculture Research (ICAR), Krishi Bhawan, New Delhi.
- 3.Shri R.N.Rai S/o Shri R.G. Rai C/o Mohd. Akram Hostel No.1 Indian Veterinary Research Institute (I.V.R.I) Izzatnagar Bareilly.
- 4.The Secretary and Chief Vigilance Officer, Indian Council of Agriculture Research (I.C.A.R) Krishi Bhawan, New Delhi.
- 5.The Under Secretary (Vig.) Indian Council of Agriculture Research (I.C.A.R), Krishi Bhawan, New Delhi.
- 6.The Director, Indian Veterinary Research, Institute (I.V.R.I) Izzatnagar, Barielly (U.P).

.....Respondents

By Advocate: Shri Manoj Kumar/Shri R.K. Srivastava

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER -J

1. We have heard learned counsels for the parties who adduced oral arguments and perused the written arguments filed learned counsel for respondent No. 3.

2. Applicant's Smt. Vinita Bisht seeks the following reliefs in the present O.A. filed by her:

(I) Issue suitable order or direction by way of certiorari quashing the orders dated 01.06.2005 and 15.6.2005 shown as Annexure A-1 and A-2 i.e. the Appointment letter to the respondent No.3 issued by the respondent NO. 5 illegally and unlawfully and order dated 16.06.2005 issued to the applicant by the respondent NO. 4 illegally and unlawfully.

(II) Issue suitable order or direction by way of mandamus directing the respondent No. 5 to cancel the order of appointment dated 01.06.2005 issued to the respondent No. 3 on the post T-3 (Lab Technician) as he is not eligible for the aforesaid post and having no qualification in

the relevant field and being age of 42 years.

(III) Issue suitable order or direction by way of mandamus directing the respondent NO. 5 to appoint the applicant on the post T-3 (Lab Technician) for which she is fully eligible as per TSR qualification in the relevant field and she is of age of 25 years and also she has been selected by first selection committee and also be given all the consequential benefits.

(IV) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case of the applicant.

(V) Toward the cost of the application to the applicant.

3. Applicant's case is that she along with respondent No. 3 Shri R.N. Rai appeared for the interview call issued by Indian Veterinary Research Institute, Izatnagar, Bareilly on 24.07.2004 (hereinafter referred to as 'IVRI') for the post of T-3 (Lab Technician). Applicant pleads that respondent No.3 (R.N.Rai) was not eligible as per his qualification and age to appear in the interview. The final list of selected candidate wherein the applicant

was selected by the Committee and her name sent to Dr. M.P.Yadav, director, IVRI for declaration of result and issuance of appointment letter to the selected candidate. However, despite lapse of time and reminders/complaints by the applicant, the Director (respondent No. 6) did not respond.

4. It may be noted that applicant has alleged that respondent no. 3 hails from the place of residence of wife of the Director General Dr. Mangala Rai of ICAR and pressure was upon Dr. Yadav to select respondent No. 3. On respondent No. 3 being unsuccessful for being selected, the director IVRI did not declare the result of the aforementioned interview but issued another advertisement on 2-8.10.2004 (Annexure-A15) for the post T-3 Lab Technician to which she and respondent No. 3 had applied.

5. Meanwhile, applicant also filed an O.A. for a declaration of the result of the interview held on 24.7.2004 wherein the IVRI took the stand that recruitment was cancelled on technical ground and the O.A was dismissed by the Tribunal vide order dated 17.01.2005 (Annexure A-17) and the same was upheld in the writ petition filed by applicant in the Hon'ble High Court at Allahabad vide judgment dated 17.01.2005 (Annexure A-19). She also filed

complaints/representation to various authorities against the irregularities/corruption but of no avail.

6.It is the further case of applicant that in the second interview held on 18.01.2005 wherein she along with respondent no. 3 had participated, respondent No. 3 was declared successful and appointed vide letter dated 01.06.2005.

7.Applicant has filed the present application seeking the relief of cancellation of the appointment of respondent No. 3. Amongst other grounds, applicant has challenged the impugned appointment letter of respondent No.3 on the following grounds:

1)Members of the Committee, who were not expert in the field of Pathology, recommended respondent No. 3 just to favour the respondent and to oblige Dr. Mangla Rai, D.G. I.C.A.R, New Delhi.

2)The respondent No. 3 was declared selected in the test/interview held on 18.01.2005 due to favour of respondent No. 6 to Shri R.N. Rai to oblige Dr. Mangala Rai D.G. I.C.A.R., New Delhi whose wife belongs to the place of Shri R.N. Rai. Shri R.N. Rai is not graduate

in the relevant field nor in the age of 18-30 years he is of 42 years of age.

3) The applicant's complaint/representation sent to Higher Authorities and the same was under investigation. The respondent No. 6 illegally and unlawfully issued appointment letter on 01.06.2005 to the respondent No. 3 i.e. Shri R.N. Rai on the post of T-3 (Lab Technician) and respondent No. 3 resumed his duty on 04.06.2005. It is appropriate place to mention that no candidate (except the applicant) was selected in the test/interview on 24.7.2004 including the respondent No. 3 i.e. Shri R.N. Rai. But now under some conspiracy, favourism, castism & nepotism Shri R.N. Rai was selected on the aforesaid post.

4) The respondent NO. 5 issued letter to the applicant on 16.06.2005 for affirming her complaint and asking oral/documentary evidence of the matter of irregular/corrupt means in the selection of T-3 (Lab Technician). The respondent No. 6 could not wait till completion of investigation on the matter, issued appointment letter on 01.06.2005.

8. In the counter-affidavits filed by the respondents it has been averred that the applicant appeared in the interview held on 24.7.2004 along with other eligible candidates, including the respondent No. 3 and was allowed to appear in the interview on the basis of judgment passed by Tribunal in O.A. No.1009 of 1992. The result of the interview could not be declared because no candidate was selected as per the result intimated by CAO vide note dated 9.8.2004. It is stated that vide order dated 17.1.2005 passed in O.A No. 1482 of 2004 the Tribunal recorded a finding that the question of issuance of a direction to the respondents to declare the result of earlier selection committee does not arise, when the earlier selection has been cancelled as no one was found suitable for the selection. No Rejoinder affidavit was filed by the applicant, hence the writ petition filed by applicant before the Hon'ble High Court was rightly dismissed by the court because it is settled law if the allegation made in the counter affidavit are not controverted by way of filing the rejoinder affidavit must be deemed to be correct. It is stated that the following committee was constituted by the Director for selection to the post of T-3 (Laboratory Technician) in its meeting held on 18.1.2005.

- |                             |   |          |
|-----------------------------|---|----------|
| 1. Dr. M.P. Yadav, Director | - | Chairman |
| 2. Dr. R.K Singh H.D.(V)    | - | Member.  |

- |                                       |   |           |
|---------------------------------------|---|-----------|
| 3. Shri C.P. Tomas, CAO               | - | Member.   |
| 4. Dr. ML Ex-JD Mahrotra              | - | Member    |
| 5. Dr. M.K. Pr. Scientist<br>Mandppe. | - | Member    |
| 6. AAP (MRDPC)                        | - | Member    |
|                                       |   | Secretary |

9. It is stated in the counter affidavit that the private respondent had worked as casual labour in the I.V.R.I and CARI, Izzat Nagar, Bareilly near about four years. His services were terminated for want of work. The private respondent filed an O.A. No. 1009 of 1992 before this Tribunal. The same was decided on 10.12.1999 with certain direction. In view of the judgment of Tribunal, the case of private respondent was considered and relaxation in upper age limit was given to private respondent by following the recruitment procedure by the competent authority on the basis of noting dated 13.8.2005. It is mentioned that while granting relaxation in upper age limit, I.C.A.R administration had also taken cognizance on the complaint of the applicant dated 11.4.2005.
10. Before proceeding further, we may refer to the arguments adduced by the learned counsels in respect of the first interview held on 24.07.2004, wherein the Selection Committee recommended the applicant for appointment, but the recommendation was not approved by the Director Mr.



M.P.Yadav, who directed action be taken for fresh selection appointment which was challenged by the applicant in the Central Administrative Tribunal, Allahabad. The challenge to the cancellation of selection process was dismissed vide order dated 17.01.2005 of this Tribunal and same was upheld by the Hon'ble High Court of Allahabad vide order dated 23.3.2005 in Writ petition No. 19797 of 2005 filed by applicant against the order dated 17.01.2005 of the Tribunal.

11. After the order dated 23.03.2005 of the Hon'ble High Court, the applicant did not carry the matter forward by way of appeal or any other remedy under law available to her in the matter.
12. So, the order of the Tribunal has become final giving a quietus to the selection process on 24.07.2004 and it is not open to fresh challenge. Therefore, at present, we cannot consider the prayer made in Para 8 (III) of the O.A. and are confined to the challenge thrown to the selection of respondent No. 3 (Shri R. N. Rai) in the interview conducted on 18.01.2005 and appointed on 01.06.2005.
13. Learned counsel for applicant argued that respondent Mr. M.P.Yadav (Director IVRI) became the chairman of the new interview committee and the members of the 2<sup>nd</sup>

interview committee were not experts in the field of Pathology. Therefore, the circumstances would show the favouritism shown by Mr. M.P.Yadav, who was the director of IVRI at that time and other members of the interview committee.

14. Another question which arises as to whether this Tribunal can interfere with the decision of the Selection Committee. Applicant has challenged the decision of the Selection Committee to appoint respondent No.3 (R.N.Rai) on the ground that he did not fulfil the criteria for appointment as laid down in the advertisement (Annexure A15).
15. The advertisement lays down the essential qualifications for the post of T-3 (Laboratory Technician): UR Pay: Rs.4500 - 7000. Age: 18 to 30 years, which reads as under:-

"One T-3 (Laboratory Technician) UR Pay Rs.4500-7000 Age: 18 to 30 years

Essential qualifications; Bachelors degree in medical laboratory Technology/Clinical Pathology/Clinical Biochemistry/Clinical Medicine/Clinical diagnosis or B.Sc (Biology). Desirable: 3 years experience in the relevant field".

16. Learned counsel for applicant argued that in the counter-affidavit of Assistant Administrative Officer of IVRI filed on behalf of respondent No. 1 and 2 reveals the true colours of the respondents in denying the appointment to the applicant and taken the Tribunal through the reply given to Para No.4.10 of the application in the counter affidavit. In the reply, it has been averred in the counter affidavit that "The result of the interview could not be declared because as no candidate was selected by the Selection Committee meeting held on 24.7.2004, as per the result intimated by the COA vide note dated 9.8.2004"
17. Learned counsel for applicant submitted that the above mentioned quote/stand of the respondents in their counter affidavit shows how it has thrown the rules of procedure, appointment etc to the wind and in the process misleading this tribunal as well as the other judicial forums.
18. It is further submitted by the learned counsel for applicant that the stand taken by the respondent is shocking and bizarre to say the least. In the first instance he argues that being a director, Mr. M.P.Gupta and rightly so, was not a member of the Selection Committee at first instance, as he was the authority to approve and disapprove the selection. But

strangely enough, he became a member of the second Selection Committee and if so, whose approval was to be taken on the recommendation of the Committee. He referred to copy of the proceedings of the selection committee for the post of T-3 held on 24.7.2004 and argued that as per the proceedings, the selection committee recommended the following candidates for the appointment i.e Select List: Mrs. Vainta Bisht and Reserved list: Dinesh Singh Gangwar and Sudhir Kumar. Though on 24.7.2004, the director approved the recommendation of the Selection Committee but later on inserted the word 'Not' and gave reasons vide note dated 2.8.2004 which delay again is a suspicious factor which shows that deliberations and consultation took place and justifies the allegation of favouritism levelled by the applicant and reveals the deliberate attempt by the Mr. M.P.Yadav to derail the selection of the applicant.

19. However, this plea of the learned counsel for the applicant cannot be taken into consideration. The question of the legality or otherwise of the interview held on 24.7.2004 has been settled once for all by the order of the Tribunal and upheld by the Hon'ble High Court. The applicant has not further taken the matter in appeal and therefore, the legality or

otherwise of the interview held on 24.7.2004 cannot be reopened as discussed in Para 13 of this order.

20. Learned counsel for applicant challenged the appointment of respondent No. 3 on a host of grounds like qualification, experience etc and over age. However, apart from the question of over age, the other grounds argued by the applicant challenging conditions of the advertisement and the appointment of respondent No. 3 cannot be considered by this Tribunal. For the settled law is that once a person appeared in the examination/interview without any protest and was not found successful, question of entertaining a petition challenging the said examination or interview would not arise and this Tribunal cannot assume the role of selection committee and evaluate the fitness of the candidate for a particular post. (Refer the case law in this regard: Chandra Prakash Tiwari v/s Shakuntala Shukla, (2002) 6 SCC 127, Madan Lal and others Vs. State of J&K, AIR 1995 SC 1088, Civil Appeal No. 108545 of 2014 titled Union Public Service Commission v/s M. Sathiya Priya decided on 13.04.2018 by Hon'ble Apex Court, Ranjan Kumar v/s State of Bihar, (2014) 16 SCC 187, Union of India v/s S. Vinod Kumar, (2007) 8 SCC 100).

21. However, we note the allegation of the applicant (vide Para 4.12 of the O.A.) regarding the over age of the respondent No.3 who, as per, the applicant could not be appointed, being over age. This is in view of the advertisement which requires the age of the candidate is to be between 18 and 30 years. But as per the averment in the O.A., the age of respondent No. 3 was 42 as on 24.7.2004, the date of interview.
22. There is no specific denial by the respondents No. 1 and 2 in their counter-affidavit regarding the allegation regarding relaxation of the age of the respondent No. 3. It is further noted that in the written arguments filed by respondents No. 1 and 2, it is mentioned that age relaxation upper age limit was considered by the competent authority i.e. D.G., ICAR. However, no such plea was taken in the pleadings of the respondents in this case and no evidence to this effect was furnished by the respondents. As per the respondents, the over age has been validly condoned and relaxed as per the Rules.
23. The written arguments further state that "The appointment letter was issued on 1.6.2005 to the respondent no. 17

according to the recruitment rules and relaxation of the Upper age limit was given to the respondent No. 17 in compliance of the directives issued by this Hon'ble Tribunal OA No - 1009 of 1992 decided on 10-12-1999".

24. It is apparent that the respondents are continuously improving upon their stand on this issue. Let one thing be clear that there was no directive of this Tribunal to specifically give age relaxation to respondent No. 3 or 17. What the Tribunal has observed in its order in O.A. No. 1009 of 1992 is that the respondents are also directed to consider the age relaxation of the said respondent in view of his prior experience as per rules. So, consideration was to be based on application of Rules only. It is a settled law that no direction can be issued so as to give relaxation of the age limit and it cannot be claimed as a matter of right as held by Hon'ble Apex Court in the case of Vindon T v. University of Calicut, 2002 (4) SCC 726 and Mahendra L. Jain & Ors. v. Indore Development Authority & Ors., (2005) 1 SCC 639. Union of India Vs. Arulmozhi, (2011) 7 S.C.C. 397, it has been observed by the Hon'ble Apex Court that ".....the Tribunal as also the High Court has directed the appellants to grant relaxation in age-limit over and above what is stipulated in the recruitment rules/advertisement. In

view of the state factual scenario, in our opinion, the engagement of the respondents as casual labourers even for a considerably long duration did not confer any legal right on them for seeking a mandamus for relaxation of age-limit".

25. Another galling aspect of the case is that counter-affidavit filed allegedly by respondent R.N.Rai (respondent No.3). The counter-affidavit has been filed by one Ved Prakash as pairokar of respondent R.N.Rai. In this regard, learned counsel for applicant submitted and perhaps rightly so, that the counter-affidavit has not been filed by respondent R.N. Rai (respondent No. 3) personally. No documents have been placed on record to show that said Ved Prakash has the authority to file the counter affidavit on behalf of respondent R.N. Rai. Hence, the said counter affidavit cannot be considered while deciding the case.

26. A disquieting feature of the case is that if the age relaxation has been given to the successful candidate, then it overrides the eligibility condition of candidate to be between 18 and 30 years of age. If, this be so, surely that a candidate would be given the benefit of age relaxation, as per, rules should be part of the conditions of every



advertisement to make the selection transparent, since many persons in similar situation could have applied had it been known to them that their over age can be relaxed by the authorities as it was done in case of one applicant.

27. Taking into consideration the facts of the case, the pleadings of the parties and their stand, it seems that the respondents have taken refuge of the order passed by the Tribunal in O.A No. 1009 of 1992 titled Ravinder Nath Rai v/s Union of India and others to justify the over age relaxation respondent No.3 without citing any rules under which such relaxation was done in case of a recruitment through open advertisement with a specified age criteria.

28. In the circumstances and facts of the case as noted above, in order to clear the controversy, it would be in fitness of things to issue the following directions to the respondent No. 2, who is the head of the ICAR to get the following aspects inquired into through as a competent senior Officer

- (a) whether actually, respondent No. 3 was given age relaxation;
- (b) If, the answer to direction No. (a) is in affirmative, then to inquire under

which rules or guidelines of Government the respondent No. 3 was given age relaxation.

- (c) If the answer to (b) above is in affirmative, whether the benefit of age relaxation was extended to other candidates who had applied or might have applied in response to the advertisement in question, if it was known that age relaxation can be considered as per rules.

It would be desirable if the aforesaid enquiry is completed and appropriate follow up action is taken as per law by the competent authority, preferably within four months from the date of receipt of a certified copy of this order.

29. In so far as other reliefs claimed by the applicant are concerned, we are unable to accept the same for the reason explained elsewhere in this order.

30. The O.A. is disposed of in terms of paragraph 28 and 29 above. No order as to costs.

(Rakesh Sagar Jain)      (Gokul Chandra Pati)

Member (J)

Member (A)

Manish/-