

**Central Administrative Tribunal
Principal Bench**

OA No.516/2015

New Delhi, this the 16th December, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Dr. Archana U. Singh
aged 52 years,
W/o Shri U. V. Singh
R/o D-11, PUSA Campus,
IARI, New Delhi 110 012.

Employment-Principal Scientist,
NEMATODES,
ICAR,
New Delhi.

... Applicant.

(By Advocate : Shri Rakesh Nautiyal)

Versus

1. Union of India
Through its Secretary
Ministry of Agriculture,
Krishi Bhawan,
New Delhi.
2. Indian Council for Agricultural Research
Through its Director General
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi 110 001.
3. Agricultural Scientists Recruitment Board,
(Indian Council of Agricultural Research)
Through its Secretary
Krishi Anusandhan Bhawan-I,
Pusa, New Delhi.
4. Dr. R. K. Walia
Project Coordinator (NEMATODES)
ICAR-IARI, Division of NEMATOLOGY,
L.B.S. Building,
PUSA Campus,
New Delhi 110 012. Respondents.

(By Advocate : Shri S. K. Gupta)

: O R D E R (ORAL) :**Justice Permod Kohli, Chairman:**

The applicant is a Scientist holding Doctorate Degree in Nematology. At the time of filing of this OA, she was working as Acting Project Coordinator (Nematodes) in All India Coordinated Research Project at Project Coordinating Cell, Pusa Campus, ICAR-IARI, New Delhi. She claims to be associated with eight reserved projects and more than 185 publications to her credit including research papers (national and international). She has also presented papers in different conferences, popular articles, lead papers, review articles, technical bulletin, annual reports, biennial reports and proceedings etc. It is also stated that the applicant was awarded with Young Scientists Award by Bioved Society of India. She also received DAHS Challenge Cup in the year 2000 from Delhi Agri-Horticulture Society of India in the year 2005. She is also the recipient of other prizes and fellowships.

2. An advertisement No.02/2014 was issued on 14.06.2014 notifying various scientific posts for recruitment under different institutions of the Indian Council of Agriculture Research Institute (ICAR). One of such posts was Project Coordinator (Nematodes), ICAR, New Delhi. As regards the age limit prescribed for all the scientific posts is concerned, it is stated in the advertisement that the candidates must not have attained the age of 60 years as on 18.07.2014. The retirement age for the post was 62 years. The closing date is also 18.07.21014, and for the applications posted from abroad/notified remote areas, closing date was notified as 31.07.2014. Though the advertisement is silent about holding of screening test, however, the Agricultural Scientific Recruitment Board for screening of the applications has issued separate guidelines. A copy of the said guidelines has been placed on record as Annexure-E. The

aforesaid guidelines provide for constitution of a screening committee, which reads as under:-

“1. CONSTITUTION OF THE SCREENING COMMITTEE

Two or more subject matter experts as Members, one of whom may be designated as Chairman of the Committee by the ASRB. In addition, one more scientist who need not necessarily be a subject matter expert will be designated as the Member Secretary of the Screening Committee.

The quorum for the Screening Committee shall be three including Chairman and the Member Secretary.”

The guidelines further provide for preliminary appraisal for fulfilling essential qualifications (by ASRB staff), as also guidelines for the screening committee for screening of applications. As a matter of fact, these guidelines laid down the procedure for selection which *inter alia* includes screening as well. In terms of the guidelines, the candidates who are cleared by the screening committee were to be called for the final phase of selection, based upon which, the interview is to be conducted by the constituted selection committee. Criterion has been laid down both for screening as well as final selection.

3. It is admitted case of the parties that the applicant could not cleared the screening test at the threshold itself and thus was not called for interview. After having made various representations, the applicant has filed the present OA seeking following reliefs:-

- “(a) Direct the Respondent No.2 to reconstitute the screening committee and to direct the said committee to issue fresh interview letters to the candidates in most transparent manner.
- (b) Set aside the interview list prepared by the Respondent No.3.
- (c) Set aside the interview if any to be held on 13.02.2015; and
- (d) any other order, direction or relief, which this Hon’ble Tribunal deems fit, just and proper be also passed/granted to the applicant under the facts and circumstances of the case and in the interest of justice.”

4. It appears that initially when this Application was filed, selection process had not taken place. However, during the pendency of this OA, the selection process was completed and one Dr. R. K. Walia was appointed as Project Coordinator (Nematodes), ICAR-IARI, Division of Nematology. The applicant accordingly amended the OA by impleading said Dr. R. K. Walia as party respondent No.4.

5. Counter affidavits have been filed by the official as well as by private respondents.

6. The Challenge in the present OA to the selection of Respondent No.4 and non selection of the applicant is primarily on four counts; (i) that the applicant was not granted marks according to the true valuation of work; (ii) two out of three selectors were immediate officers of the respondent No.4, and selection of respondent No.4 is on account of bias against the applicant with a view to facilitate selection of respondent No.4; (iii) Screening Committee has not followed the guidelines and (iv) the respondent No.4 is ineligible for appointment by deputation being barred by age in terms of Department of Personnel and Training OM No.AB 14017/48/92-Estt. (RR) dated 17th November, 1992.

7. Insofar as grant of appropriate marks are concerned the applicant has mentioned in para (h) (II) & (III) of the Application, the methodology for evaluating the work of the Scientist who participated in the selection process. It is admitted case that minimum 50% marks are required for qualifying the screening test and only such candidates who secured the minimum prescribed benchmark become eligible for interview. The interview was held on 13.02.2015 to which the applicant was not called for. As regards the allegations of malafide and bias are concerned, it is alleged that the applicant was deliberately, intentionally and malafidely

rejected by the Selection Committee under the influence of Dr. Uma Rao, Head Nematology Division, Indian Agricultural Research Institute (IARI) and Dr. R. K. Jain, Ex-Project Co-ordinator/re-employed Pensioner of All India Coordinated Research (N) Project, who for no reasons have been harassing the applicant in AICR (N) Project and have good understanding amongst each other.

8. From the averments made in the OA, it appears that all allegations are in fact projected against Dr. R. K. Jain, erstwhile Project Coordinator right from paras 4 (n) to para 4 (v) of the OA. Reference is made only to Dr. R. K. Jain who is alleged to have misguided the Chairman of Agricultural Scientists Recruitment Board, i.e., Respondent No.3, and Dr. Uma Rao was included in the screening committee. Even though allegations have been made against Dr. R. K. Jain and Dr. Uma Rao, they have not been impleaded as party respondents to this OA. Otherwise also, we have examined the nature of allegations, except making general allegations of harassing the applicant and acting malafidely against her, there is not specific instance or allegations worth taking cognizance by this Tribunal.

9. Shri S. K. Gupta, Learned counsel appearing for the respondents has however, referred to the rejoinder filed by the applicant to the counter affidavit filed by official respondents. In para (7) of the said affidavit under the heading preliminary objections again reference is made to Dr. R. K. Jain who was working as Project Coordinator of All India Coordinated Research Project on Nematodes under Indian Council of Agriculture Research. It is further stated that the All India Coordinated Research Project was under Dr. T. P. Rajendran, ADG (PP&B), Indian Council of Agriculture Research. After retirement of Dr. Rajendran the project is now under Dr. P. K. Chakraborty ADG (PP&B), Indian Council of Agricultural

Research. It is accordingly stated that respondent No.4 was in-charge of the Project at Hisar and was initially directly reporting to Dr. T. P. Rajendran and after his retirement to Dr. P. K. Chakraborty, and they being members of the screening committee, possibility of undue influence and arbitrariness cannot be ruled out. These are the only allegations of malafide contained in the rejoinder. Again, these two officers, namely, Dr. T. P. Rajendran and Dr. P. K. Chakraborty have not been impleaded as party respondents, nor there is any specific instance or allegations that may require to be taken cognizance of.

10. Learned counsel for the applicant has vehemently argued that despite various representations made by her she has not been disclosed the marks secured by her in the screening test. It is further submitted that in absence of disclosure of marks by the respondents, the applicant approached the former expert Professor Dr. D. Prasad who was Ex-Professor and Head, Nematology Division, ICAR-IARI, New Delhi, and the said expert has evaluated the work of the applicant and awarded 68 marks out of 100 to her. A copy of the certificate issued by said Dr. D. Prasad has been placed on record as Annexure-W (colly). Learned counsel further submits that Dr. D. Prasad used to be called as expert even by the respondents. He has also acted as member of the screening committees in some selections. It is accordingly submitted that the evaluation made by Dr. Prasad should be taken as true and correct evaluation of the work of the applicant.

11. Learned counsel for the respondents has strenuously opposed the contentions of the applicant. In the reply filed by the official respondents, it is stated that ICAR is an autonomous body having its own rules and bye-laws in respect to the selection in question. Reference is made to the advertisement whereby various posts including that of Project Coordinator

(Nematology), Indian Agricultural Research Institute, New Delhi was advertised vide Advertisement No.02/2014 dated 14.06.2014 at Item No.99.

12. It is the case of the official respondents that in all 14 candidates applied for the post of Project Coordinator (Nematodes), IARI, New Delhi, the applicant being one of candidate for the said post. The ASRB has framed guidelines for screening of applications for different scientific posts including the post in question using revised score card for selection to the scientific position. A copy of the said guidelines has been placed on record as Annexure-E to the OA. It is further stated that the Screening Committee is empowered to assign marks following the detailed guidelines. As per the criteria for short listing of candidates to be called for interview, first ten ranking candidates for each post subject to a minimum of 50% marks in the screening test were eligible for interview call for the post in question. The final selection was to be made giving weightage to the score card marks and interview marks, i.e., minimum 50% marks for interview for the post of Project Coordinator.

13. It is stated that 8 out of 14 candidates secured minimum benchmark, i.e., 50% marks in the screening test and were recommended by the expert screening committee, and five candidates who secured less than 50% marks have not been recommended for interview. The applicant having secured less than 50% marks was not called for interview. The name of the expert screening committee has already been disclosed, and three expert members are Dr. P. K. Chakraborty, Asstt. Director General (PP&B), ICAR, Krishi Bhawan, New Delhi, Dr. T. P. Rajendran, Officer on Special Duty, National Institute of Biotic Stress Management, Raipur (Chhattisgarh) and Dr. S. K. Sharma, retired Senior Plant Nematologist, Punjab Agricultural University, Ludhiana (Punjab). It is also stated that

Dr. Uma Rao, Head Nematology Division, IARI, was not a member of the screening committee. The respondents have denied the allegations of bias or malafide.

14. During the course of hearing, we have asked Mr. S. K. Gupta, learned counsel for the respondents to disclose the record of selection. Shri Gupta has provided record to us in two sealed covers. The first sealed cover contains the result of the screening test. We find that the applicant whose name figures at Sl. No.2 secured much less than the required benchmark of 50% marks. Since selection process is already over, there is no impediment for disclosing the marks secured by the applicant. Out of 100, she has secured 38.16 marks which is less than 50% required for qualifying the screening test. The second envelope contains the marks secured by respondent No.4. He has secured 67% marks and has been selected. As a matter of fact, he has secured the maximum marks in the selection process. (After examining the selection record, both the sealed covers are returned to learned counsel for the respondents).

15. As far as the first contention of the applicant is concerned that she has not been awarded marks according to her work, suffice it to say that the Tribunal in exercising power of judicial review does not sit as a court of appeal over the selection process. The Tribunal in exercising judicial review can only examine the manner and method of exercise of jurisdiction by the selection bodies. Award of marks in a process of selection that too in a scientific arena is the job of experts, and the court cannot either assume the jurisdiction of the experts or sit as a court of appeal over the selection body.

16. It is equally well settled legal position that while exercising the power of judicial review of administrative action, the court is not to act as an appellate authority or to direct or advise the executive in matters of policy or to sermonize any matter which may be within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. Reference in this connection may be made to the decision of the Apex Court in ***Ashif Hamid v State of Jammu & Kashmir*** [(1989) 14 OA-1268/2016 Supp 2 SCC 364]. In ***Ekta Shakti Foundation v Government of NCT of Delhi*** [(2006) 10 SCC 337], the Hon'ble Supreme Court held that scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provision or is violative of the fundamental rights of a citizen or is opposed to the provisions of the Constitution. Therefore, even if the decision taken by the Government may not appear to be agreeable to the court, the same cannot be interfered with. The Apex Court further held that the correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another, is not a matter of concern in judicial review. Learned counsel for the applicant has not been able to point out any violation of the laid down guidelines, contravention of any statutory rules enabling us to interfere in the process of selection. The contention of the learned counsel appearing for the applicant in this regard is thus liable to be rejected.

17. Insofar as the question of malafide is concerned, contention of the applicant needs to be rejected on two counts; firstly, the persons against whom malafides have been alleged have not been impleaded as party respondents, secondly, even the allegations of malafide are without any specific instances or specific nature enabling us to take cognizance of the

same. Vague allegations of harassment and malafide are not sufficient to enable us to interfere in the matter of selection by the experts.

18. Apart from the above, we find that in the OA, the allegations were only against one Dr. Uma Rao and Dr. R. K. Jain. After the counter affidavit has been filed and the names of the members of the selection committee are disclosed, some reference is made in para 7 of the rejoinder filed by the applicant against two out of three members of the expert committee and again the allegations are simply that "In the aforesaid Coordinated Research Project Dr. R. K. Walia, was in-charge for the project at Hisar and was initially directly reporting to Dr. T. P. Rajendran and after his retirement to Dr. P. K. Chakraborty, thus the immediate head of Dr. Walia was the member of the Screening Committee and the possibility of undue influence and arbitrariness cannot be ruled out."

19. In sum and substance, the allegations are based upon only suspicion, surmises and conjectures that is the possibility of undue influence and arbitrariness. We are of the considered view that such allegations do not constitute the malafide/bias for interference in selection process. Thus, we do not find that the applicant has succeeded in persuading us to interfere on the ground of malafides and bias.

20. Insofar as the question of evaluation by Dr. D. Prasad is concerned, Dr. Prasad was privately approached by the applicant. He had no official capacity and such evaluation by a private person who is admittedly retired cannot be considered to be the basis for selection. In any case, the screening test was evaluated by three experts whereas the evaluation produced by the applicant is only by one single expert that too is a retired person. We do not find that this can be a basis for us to interfere in the process of selection.

21. One of the contentions of the applicant is that the appointment by deputation was permissible only up to the age of 56 years. For this purpose, he has relied upon Establishment and Administration Manual issued by ICAR. Appendix 2 of the aforementioned manual contain the deputation norms notified by Government of India, Department of Personnel & Training vide OM No.AB 14017/48/92-Estt. (RR) dated 17th November, 1992. These are the general guidelines issued by the Government of India for deputation. At page 777 of the said Manual, the deputation norms restrict the deputation to officers below 56 years of age. This OM was issued on 17.11.1992. We have been informed by both sides that the retirement age of the employees at that time was 58 years and thus 56 years was kept as the maximum age for deputation, i.e., for a minimum period of two years. However, presently retirement age of the central government employees has been enhanced to 60 years and for Scientists it is up to the age of 62 years. Thus, the general norms issued for deputation in the year 1994 will have no application to the present case. Otherwise also, from the advertisement we find that the age prescribed for deputationist is up to 60 years as on the last date of receipt of the application. This fact has not been disputed by the applicant. Thus, there is no contravention of any rule or norms so far the age of deputationist is concerned.

22. The OA is without any merit, dismissed accordingly.

(Shekhar Agarwal)
Member (A)

/pj/

(Justice Permod Kohli)
Chairman