

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1412/2015

Reserved on : 17.02.2017.

Pronounced on : 14.03.2017.

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

Dr. Kamalesh Narain Singh,
50 years,
S/o Sh. Chamman Singh,
Head, Division of Forecasting and
Agricultural Systems Modelling,
Indian Agricultural Statistics Research Institute,
Library Avenue, PUSA,
New Delhi-110012.

..... Applicant

(through Ms. Padma Priya, Advocate)

Versus

1. Indian Council of Agricultural Research
Through the Director General (ICAR),
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi-110001.
2. Agricultural Scientists Recruitment Board
Through the Secretary (ASRB),
Krishi Anusandhan Bhawan-1,
Pusa, New Delhi-110012.
3. Union of India through
Secretary (DARE), Ministry of Agriculture,
Govt. of India, Krishi Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110001.
4. Dr. U.C. Sud,
Director, Indian Agricultural Statistics
Research Institute,
Library Avenue, PUSA,
New Delhi-110012.

.... Respondents

(through Sh. S.K. Gupta and Sh. R.N. Singh with Sh. Amit Sinha, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The respondents issued an advertisement No. 04/2012 in November, 2012 inviting applications for the post of Director, Indian Agricultural Statistics Research Institute (IASRI). The applicant applied for the same. However, no interviews were conducted pursuant to the said advertisement. Thereafter, another advertisement No. 02/2013 was issued by the respondents in July, 2013 by which applications were again invited for the same post. The applicant applied for the same and was called for interview, which was conducted on 18.02.2014. Thereafter, the applicant did not hear anything from the respondents regarding the outcome of the interview. Subsequently, the post was again advertised in June, 2014 vide advertisement No. 02/2014. The last date for submitting applications was 08.08.2014 and the applicant submitted his application on time. While the applicant was awaiting call for the interview pursuant to this latest advertisement, the respondents vide impugned order dated 19.11.2014 appointed private respondent No. 4 (Dr. U.C. Sud) herein to the post of Director, IASRI. The applicant tried to ascertain the reason as to why this happened when a fresh advertisement had already been issued in June, 2014

superseding the earlier advertisement dated July, 2013. However, he was not successful in getting any information from the respondents. Even after filing RTI application, he could not get any satisfactory response. Thus, the applicant suspects that the respondents have acted in a totally corrupt, arbitrary, malicious and illegal manner. The applicant filed appeals before the Appellate Authority and Central Information Commission under the Right to Information (RTI) Act but satisfactory reply regarding the validity of the appointment of respondent No.4 was not received. Subsequently, vide response dated 18.02.2015 file notings related to the process of appointment were supplied to the applicant. From the aforesaid notings, it was revealed that 12 candidates had applied for the post in question in response to the advertisement issued in June, 2013. Out of these, 06 candidates were called for interview. The respondent No.2 ASRB recommended the name of respondent No. 4 for the said post. This was put up to the then Hon'ble Minister for Agriculture for approval. Hon'ble Minister ordered that fresh advertisement be issued for the said post. A letter dated 27.05.2014 was also sent to ASRB informing them about the decision regarding re-advertising the post. Thereafter, a recommendatory letter written by Hon'ble Member of Parliament Mr. Jagdambika Pal in favour of respondent No. 4 along with the representation of that respondent was received by the respondents. The matter was reconsidered and respondent No. 4

was appointed. The applicant represented against this alleged transgression of established rules on 05.03.2015 but has not received any response. Hence, he has filed this O.A. before us seeking the following relief:-

“(a) quash/set aside the Officer Order dated 19.11.2014 issued by the Respondent no. 1 herein thereby appointing the Respondent no. 4 herein as the Director of the Respondent no.1;

(b) direct to the Respondents no. 1-3 to duly consider the Applicant's application for the said post in accordance with law;

(c) Call for the entire records pertaining to the selection process adopted by the Respondents for filling up post of Director, IASRI;

(d) To award appropriate costs in favour of the Applicant and against the Respondents and any other/further relief that this Hon'ble Tribunal deems fit in the interest of justice and equity.”

2. Reply has been filed by official respondents as well as private respondent No. 4. In their reply, the official respondents have narrated the circumstances in which respondent No.4 was appointed to the post. They have stated that when the recommendation of ASRB regarding respondent No.4 was processed for approval of the competent authority, the then Secretary, ICAR observed that the constitution of the Interview Board was flawed due to inclusion of Dr. A.K. Nigam, one of the external Members who was a Principal Scientist and who had taken voluntary retirement from services and started his own consultancy service. Dr. Nigam could not go beyond the post of Principal Scientist during his service

time but sat in the Interview Board for selection of Director of that Institute. Chairman, ASRB, however, opined that there were two other outside Members, who had requisite credentials, status and stature in the field. Besides that Chairman, ASRB, Member, ASRB and Deputy Director General (Engg.) were also on the Selection Board. As such, the constitution of the Board cannot be treated as flawed. The competent authority i.e. the then Hon'ble Minister for Agriculture, however, did not accept advice of Chairman, ASRB and had ordered that the post may be advertised again. Accordingly, the post was re-advertised vide advertisement No. 02/2014.

2.1 The official respondents have further submitted that respondent No. 4 submitted a representation through Hon'ble Member of Parliament Mr. Jagdambika Pal. He prayed for review of the entire case. He also indicated in his representation that he was officiating on the post of Director, IASRI for more than a year and was also senior most in that Division in the Institute. He further submitted that he had got the highest marks in the interview on account of his academic achievements.

2.2 The official respondents, however, clarified that the Hon'ble Member of Parliament had only forwarded the aforesaid representation with the request that the matter may kindly be looked into. He had not made any recommendations. Hon'ble Agriculture Minister then sought clear advice of Director General, ICAR on this issue. Director General opined that all the three consultants in the Interview Board were renowned experts in the field of Agricultural Statistics and therefore Interview Board was rightly constituted. Thereupon,

Hon'ble Minister of Agriculture accepted the advice of Director General. Accordingly, appointment was issued to respondent No. 4 on 19.11.2014. Consequently, the requisition dated 27.05.2014 sent by ICAR to ASRB for re-advertisement of the post became infructuous and was treated as cancelled.

2.3 The respondents have further stated that the applicant herein was also duly considered by ASRB during the aforesaid selection. However, ASRB had recommended respondent No.4. Thus, the applicant has no valid claim for being appointed to this post.

2.4 Respondent No.4 has also filed reply in which it has been stated that this O.A. was bad for misjoinder/non-joinder of necessary parties. Respondent No. 4 has also submitted that this O.A. was barred by principle of estoppel in view of the fact that the applicant had participated in the selection process initiated by the official respondents and is now challenging the same after having been found unsuitable for appointment. Thus, this O.A. is nothing but misuse and abuse of the process of law. Respondent No. 4 was appointed as he was not only the senior most but was also adjudged to be most meritorious. His performance has been found to be upto the mark by the authorities concerned.

3. We have heard the parties and have perused the material placed on record. A preliminary objection has been raised by the private respondent No.4 that the applicant has no locus standi to

challenge the appointment of respondent No.4 and is also barred by estoppel from doing so. We proceed to decide this objection first.

3.1 In support of his contention, learned counsel for respondent No. 4 Sh. R.N. Singh has cited the judgment of Hon'ble Supreme Court in the case of **Madras Institute of Development Studies Vs. K. Sivasubramaniyan**, (2016) 1 SCC 454, paras- 14 to 18 of which are reproduced as hereunder:-

“14. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

15. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings

created an effective bar of waiver against him. The following observations made therein are worth quoting:

“9. It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.”

16. In *Madan Lal & Ors. vs. State of J&K & Ors.* (1995) 3 SCC 486, similar view has been reiterated by the Bench which held that:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*¹ it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

17. In *Manish Kumar Shahi vs. State of Bihar*, (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed:-

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

18. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:-

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

3.2 He has also cited the judgment of Hon'ble Supreme Court in the case of **Chandra Prakash Tiwari Vs. Shakuntala Shukla**, 2002 AIR(SC) 2322 on the same issue. Para-34 of the judgment reads as follows:-

"There is thus no doubt that while question of any estoppels by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

4. We notice that in this case also the applicant has participated in the interview held for selection to the aforesaid post. It is not in dispute that the private respondent No. 4 was recommended by the Interview Board. Now the applicant is questioning the appointment of respondent No. 4 on the ground that the Interview Board constituted for the aforesaid selection was flawed inasmuch as one of the Members of the Board Dr. A.K. Nigam was not senior enough to be included in the Interview Board. On applying the judgments cited by the respondent No. 4, as mentioned above, we find that this case is squarely covered by them. The applicant herein is precluded from questioning the selection process after having participated in the same selection himself without demur and taken his chance to be selected.

5. In view of the aforesaid finding, there is no necessity for us to go into other issues raised by the applicant.

6. In view of the above analysis, this O.A. is not maintainable. Accordingly, it is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(Permod Kohli)
Chairman

/Vinita/