

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.2174/2013

Friday, this the 12th day of May 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Dr. R K Agarwal
S/o Mr. S S Agarwal
Aged about 57 years
r/o M/6, Vrindavan, Izatnagar, Bareilly and working as
Principal Scientist under ICAR and presently posted at IVRI
Bareilly and Officiating as Head of Veterinary Bacteriology and
Mycology Division at IVRI.

..Applicant

(Mr. S S Tiwari, Advocate)

Versus

1. Indian Council of Agricultural Research
Through its Secretary
Krishi Bhawan, Dr. R P Road, New Delhi
2. Director (Personnel)
ICAR, Krishi Bhawan, New Delhi
3. Agricultural Scientists Recruitment Board
Through its Secretary
Krishi Anuisandhan Bhawan-I
Pusa, New Delhi – 110 012

..Respondents

(Mr. S K Gupta and Mr. Vikram Singh, Advocates)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“a) To set aside and quash the impugned order dt. 9/5/13 by which applicant's case of appointment as HOD, Division of Bacteriology and Mycology, IVRI on regular basis has been closed.

b) To direct the respondents to implement the recommendations of the ASRB experts.

c) To direct the respondents to further give consequential benefits like re-fixation of his pay & allowance.”

2. The brief facts of the case are under:-

2.1 The applicant joined Agricultural Research Service (ARS) on 04.04.1984 as a Scientist S-1 in the Division of Veterinary Public Health (DVPH) of Indian Council of Agricultural Research (ICAR). He was placed as Senior Scientist w.e.f. 27.07.1998 and later as Principal Scientist w.e.f. 27.07.2006. He did PhD in Veterinary Public Health (VPH) during the period 1992 - 1996 and was awarded PhD degree on 29.07.1997 by Indian Veterinary Research Institute (IVRI) – a deemed university.

2.2 The applicant was transferred from the DVPH to the Division of Bacteriology & Mycology (DBM) on 26.10.2005. By an order dated 09.05.2011, he was asked to look after the work of Head, DBM until further orders.

2.3 The Agricultural Scientists Recruitment Board (ASRB), which is a part of ICAR, issued an Advertisement No.04/2011 (Item No.250) dated 15.10.2011 (Annexure D) inviting applications for the post of Head, DBM, IVRI, Izatnagar. The ASRB is an independent recruitment agency catering to the requirements of ICAR.

2.4 As indicated in the Advertisement No.04/2011, the post of Head, DBM was in Pay Band-4 – `37,400-67,000 + RGP `10,000/-. The tenure of the appointment was of 5 years. The age limit indicated was that the

candidate must not have attained the age of 60 years as on 15.10.2011, which was the closing date for receiving the applications. The essential qualifications prescribed was as under:-

“Qualifications Essential (i) Doctoral degree in Veterinary Bacteriology and Virology or Veterinary Bacteriology/ Veterinary Microbiology including relevant basic sciences.

(ii) A Scientist in the pay scale of (Rs.16400-20000) (pre-revised) or in an equivalent position.

OR

8 years experience as a Senior Scientist (Rs.12000-18300) (pre-revised) or in an equivalent position.

OR

An eminent scientist having proven record of scientific contribution working in a reputed organization/institute having at least 13 years experience in the relevant subject.

iii) Evidence of publication/activities/contribution to suggest that the candidate has a broad vision / perspective on agricultural research.

Desirable:- Specialization & research experience in the field of Veterinary Bacteriology.”

2.5 The applicant applied for the *ibid* post. He along with 5 others was called for interview on 18.06.2012 by ASRB. The selection was to be done by interview only. He was selected to the post and was recommended for appointment vide Annexure G letter dated 25.06.2012 of ASRB to ICAR.

2.6 The recommendation of ASRB was questioned by the ICAR on the ground that the candidate recommended does not have the essential Doctorate degree in Veterinary Bacteriology and Virology or Veterinary Bacteriology/ Veterinary Microbiology and his publications are in broad field of Veterinary Microbiology. A communication to this effect was sent by

the ICAR to ASRB vide Annexure I letter dated 29.10.2012 and the ASRB was asked to make specific comments on this issue for enabling the ICAR to take a final view in the matter.

2.7 The ASRB considered the said Annexure I communication dated 29.10.2012 and replied to ICAR vide its letter dated 27.11.2012, informing therein that the qualification of the applicant was duly considered and analyzed by ASRB and a conscious view was taken that he possessed the required essential qualification. It was mentioned in the said letter that the applicant is a PhD holder in VPH, a discipline which is cross-cutting in areas of veterinary bacteriology, virology, mycology, immunology and animal disease of zoonotic nature. Accordingly, he has been recommended for appointment. The contents of ASRB's reply are extracted below:-

“In connection with the above and in pursuance of Council's request thereby, the case has been got reexamined in the Board and I am directed to reproduce herein below the specific comments of the concerned Member, ASRB who had also chaired the said Board:

1. Dr. R.K. Agarwal's PhD was not in Vet Bacteriology and Virology or Veterinary Bacteriology or Veterinary Microbiology.
2. Dr. Agarwal's PhD was in Veterinary Public Health, a discipline which is cross-cutting in areas of Veterinary bacteriology, virology, mycology, immunology and animal disease of zoonotic nature.
3. Dr. Agarwal has worked for nearly 25 years on bacterial diseases of animals as is evident from his list of publications.
4. Dr. Agarwal was officiating as HoD of Bacteriology and Mycology Division for almost one year prior to his interview by ASRB. If ICAR found Dr. Agarwal suitable to officiate as HoD for more than a year now, there should not be any doubt after he has been recommended by ASRB for regular appointment to the same post.

5. The Board recommended his selection through a fair and transparent process of evaluation of his candidature followed by interview by a panel, comprising three external subject matter experts besides other members in the panel. He was found to be the most suitable candidate for the post unanimously by all the members of the interview board.”

In view of the above, further necessary action may kindly be taken at your end in the matter.”

2.8 ICAR apparently was not satisfied with the clarification of ASRB and vide its impugned Annexure A letter dated 09.05.2013 informed ASRB as under:-

“This has reference to your D.O.No. Scr/Secy /ASRB/DR/MB/12/2, dated the 25th June, 2012, sending therewith the recommendations in respect of Dr. R.K. Agarwal, Principal Scientist, Indian Veterinary Research Institute, Izatnagar for appointment to the post of Head, Division of Bacteriology & Mycology, Indian Veterinary Research Institute, Izatnagar.

Since the Competent Authority in the Council did not accepted the recommendations of the ASRB, it was decided to readvertise the post and the requisition for filling up of the said post has already been sent to ASRB. Therefore, the recruitment folder of Dr. R.K. Agarwal is returned herewith for your record.”

2.9 In terms of the Annexure A letter of ICAR, the ASRB re-advertised the post in question in May 2013 vide Advertisement No.1/2013 (Item No.23).

Aggrieved by the action of the ICAR in rejecting his selection to the post of Head, DBM, IVRI, Izatnagar, the applicant has filed the instant O.A. praying for the reliefs indicated at paragraph (1) above.

3. The main grounds pleaded by the applicant in support of his reliefs prayed for by him are as under:-

3.1 The applicant is a Principal Scientist in IVRI and has been discharging the functions of Head, DBM, IVRI.

3.2 The recommendations of ASRB are binding on ICAR and cannot be ignored/rejected. The administrative authorities cannot overrule the recommendations of an expert body like ASRB.

3.3 The DVPH & DBM of IVRI are interchangeable as they have common subjects. For this reason only, the applicant was transferred from DVPH to DBM with the consent of ICAR in 2005. The applicant has been discharging functions of Head, DBM since 26.10.2005 and he has been made Incharge of the post.

4. Pursuant to the notice issued, the respondents entered appearance and filed their reply. They have opposed the prayers of the applicant primarily on the following grounds:-

4.1 ASRB is only a recommendatory body and its recommendations are subject to the approval of the competent authority.

4.2 The President, ICAR, who is also Union Minister of Agriculture, is the competent authority/appointing authority and he decided not to accept the recommendations of ASRB as the applicant did not fulfill the essential eligibility conditions.

4.3 As per Advertisement No.04/2011 (Item No.250) dated 15.10.2011 (Annexure D), only those candidates were to be considered for appointment who possessed the Doctoral degree in Veterinary Bacteriology and Virology or Veterinary Bacteriology/ Veterinary Microbiology, including relevant

basic sciences. The applicant possessed Doctoral degree in VPH and as such he could not have been considered for the post in question.

4.4 The decision of the competent authority in rejecting the recommendations of the ASRB and to re-advertise the post of Head, DBM cannot be faulted upon.

5. The applicant filed his rejoinder to the reply filed on behalf of the respondents, in which he has argued that the recommendations of the experts of ASRB cannot be rejected by the President or any other non-expert person without any valid reasons. The rejection would amount to arbitrary action. Hence, the ASRB's recommendations are binding. The ASRB had selected the applicant through a conscious decision making process, which it had subsequently reinforced by clarifying that the applicant's Doctoral degree in VPB cuts across the fields of veterinary bacteriology, virology, mycology, etc.

6. On completion of pleadings, the case is taken up for hearing today. Arguments of the parties are heard.

7. Mr. S.S. Tiwary, learned counsel for applicant, besides reiterating the averments made in the O.A. and rejoinder, submitted that the applicant has been selected for the post of Head, DBM by ASRB, which is an expert body. In regard to the qualification of the applicant for the post in question, the ASRB has clarified to ICAR that the Doctoral degree of the applicant in VPH cuts across disciplines, such as veterinary bacteriology, virology, mycology, immunology and animal disease of zoonotic nature. The learned counsel vehemently argued that the recommendations of expert committee,

like ASRB cannot be rejected/ignored without any valid reasons. In this regard, he placed reliance on the judgment of Hon'ble of High Court of Delhi in **Hima Sood v. Government of NCT of Delhi & others** (W.P. (C) No.7889/2014) decided on 17.11.2014 wherein it has been observed as under:-

“6. This Court has carefully considered the submissions. The first and third contentions really are part of the same submission. In this regard, the CAT considered the submissions of the applicant/petitioner and was of the opinion that since all aspects of the matter were gone into by the expert committee which was technically competent to do so, its jurisdiction to entertain and examine such matters in exercise of judicial review power was extremely limited. In doing so, the CAT confirmed to an established line of authority that Courts or Tribunals cannot sit in judgment over decisions of expert bodies, or over the decisions taken by the technically competent and empowered authorities. Though the petitioner's arguments appear to be facially merited, this Court cannot find any infirmity in the CAT's decision that such aspects are best left to the judgment of the expert bodies. In the absence of demonstrated caprice or patent consideration of irrelevant factors, or non-consideration of the materially relevant factors, the decision based upon such technical committee's recommendations cannot be interfered with.”

Concluding his arguments, Mr. Tiwary prayed for allowing the O.A.

8. *Per contra*, Mr. S.K. Gupta with Mr. Vikram Singh, learned counsel appearing for respondents submitted that the applicant was not possessing the Doctoral degree in Veterinary Bacteriology and Virology or Veterinary Bacteriology/ Veterinary Microbiology, as he did his PhD in VPH. Hence, the recommendations of ASRB could not have been accepted by the President, ICAR. He vehemently argued that the recommendations of the ASRB are only recommendatory in nature and the competent authority is fully within its powers to accept or reject them.

9. On the issue of recommendations of ASRB being binding on ICAR or otherwise, Mr. Gupta submitted that the Hon'ble Supreme Court in the case of **Union of India & others v. N.P. Dhamania & others** [1995 Supp (1) SCC 1] has observed as under:-

“18. It will be clear from the above that the recommendations of the DPC are advisory in nature. Such recommendations are not binding on the appointing authority. It is open to the appointing authority to differ from the recommendations in public interest. That is beyond doubt.”

10. Regarding the alleged deficiency in the qualification of the applicant for the post of Head, DBM, Mr. Gupta stated that the applicant not having PhD in Veterinary Bacteriology and Virology or Veterinary Bacteriology/ Veterinary Microbiology was not eligible for consideration for the post of Head, DBM. To buttress his argument, the learned counsel relied upon the decision of the Hon'ble Apex Court in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & another v. M. Tripura Sundari Devi** [1990 SCC (L&S) 520] wherein it has been observed as under:-

“6. It must further be realised by all concerned that 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 even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons 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 the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

Concluding his arguments, the learned counsel submitted that since the applicant did not have the essential qualification for the post of Head, DBM, the competent authority was well within its rights to reject the ASRB's recommendations for appointment of the applicant to the said post, and hence the O.A. may be dismissed.

11. We have given due consideration to the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

12. Admittedly, the Advertisement No.04/2011 (Item No.250) dated 15.10.2011 (Annexure D) issued by the ASRB for the post of Head, DBM, IVRI, Izatnagar, prescribing the qualification for the post, had stipulated that the candidates applying for the post must be possessing Doctoral degree in Veterinary Bacteriology and Virology or Veterinary Bacteriology/ Veterinary Microbiology including relevant basic sciences. It is also admitted fact that the applicant is PhD in VPH. We also notice from the records that when ICAR had a doubt with regard to the eligibility of the applicant in regard to his qualification for the post of Head, DBM, it had written Annexure I letter dated 29.10.2012 to ASRB seeking clarification. ASRB has replied to ICAR vide its letter dated 27.11.2012 clarifying that "Dr. Agarwal's PhD was in Veterinary Public Health, a discipline which is cross-cutting in areas of Veterinary bacteriology, virology, mycology, immunology and animal disease of zoonotic nature". This letter makes it absolutely clear that the ASRB had come to a definitive conclusion that the applicant possessed the requisite qualification and thus had consciously

selected him for the post of Head, DBM and made recommendations accordingly to ICAR for his appointment.

13. There cannot be any controversy with regard to a recommendation being recommendatory in nature. The recommendation of ASRB cannot be an exception. But then, any recommendation and more particularly that of an expert body like ASRB cannot be rejected without any valid ground, as observed by the High Court of Delhi in **Hima Sood** (supra). Proper justification/reasons are required to be recorded by the competent authority in rejecting such a recommendation.

14. It is very important to note that ICAR had harbored some doubt with regard to the eligibility of the applicant for appointment to the post of Head, DBM, as it had felt that the applicant, being a PhD holder in VPH, was not eligible for the post. Hence, ICAR chose to write Annexure I letter dated 29.10.2012 to ASRB on the issue. The ASRB, in its reply to ICAR vide letter dated 27.11.2012, has made it amply clear that the applicant was eligible for appointment in terms of his educational qualification and that selection of the applicant for the post by ASRB was its conscious decision. The ASRB has clarified that VPH encompasses the disciplines, like Veterinary bacteriology, virology, mycology, immunology, etc. In view of the clarification of ASRB, it was unfair on the part of the competent authority to have rejected the recommendations of ASRB. The said letter of ASRB convinces us beyond any doubt that the applicant did possess the requisite qualification for the post in question and as such the ASRB's recommendation for his appointment to the post of Head, DBM was absolutely in order.

15. We have gone through the two judgments cited by the respondents in support of their averments. In **N.P. Dhamania's** case (supra), the Apex Court was dealing with the case of a Telecommunication Officer, who had joined the Posts & Telegraph Department in September 1963 in Indian Telecommunication Service (ITS). He was selected through Union Public Service Commission (UPSC). The Departmental Promotion Committee (DPC) of the Department was considering eligible officers for promoting them from Junior Administrative Grade (JAG) to Senior Administrative Grade (SAG) Level II of ITS Group 'A' Service. The empanelled officers for the years, 1984, 1985 and 1986 were to be considered against 5, 24 & 25, totaling 54, respectively of the vacancies in these 3 years. In all, 104 officers were in the zone of consideration. The DPC in UPSC found that 59 officers were eligible for promotion on the basis of them crossing threshold in terms of their ACR gradings. Thus, for the years 1984, 1985 and 1986, the DPC recommended 5, 24 & 30 candidates respectively against the vacancies of 5, 24 & 25. The recommendation of the DPC was sent for approval of the competent authority, i.e., Appointments Committee of Cabinet (ACC). The ACC was not happy with such a recommendation and directed that the recommended panel should be returned to UPSC for more "rigorous review". The DPC in UPSC, however, in its letter dated 07.02.1986, informed that the panel had been prepared strictly in accordance with the instructions issued by the Department of Personnel and there was no scope for review. Accordingly, the UPSC had no further advice to offer in the matter. When the proposal was re-submitted to ACC, it approved the panel of 54 officers for appointment to SAG Grade 'A' Level, out of 59 officers recommended in the panel. One of these 5 officers approached this

Tribunal in O.A. No.1191/1986. The Tribunal, in its judgment, held that it was incumbent on the Government to give reasons for excluding the applicant and 4 others, who were in the select panel prepared by the UPSC, and finally directed the respondents to promote the applicant therein to SAG Level II of ITS with effect from the date his immediate junior was promoted to the said Grade. The said order of the Tribunal was challenged before the Hon'ble Supreme Court, who directed as under:-

“25. The Appointing Authority shall consult the UPSC once again by making reference back to them indicating the reasons for making a departure from the panel recommended by the Commission and also forward the material on which it has reached the conclusion not to appoint the respondent and obtain their views before taking final decision in the matter. In case after consultation with the UPSC, in the manner indicated above, the name of the respondent is restored to its original position as recommended by the UPSC, the case of the respondent for promotion to the post of Commissioner of Income Tax, shall be considered on merit and necessary orders be passed within 3 months from the date of the receipt of the file from the UPSC.

26. The Appointing Authority shall make a reference back to the UPSC indicating the reasons for making a departure from the panel recommended by the Commission and obtain their views before taking a final decision in the matter. In case after consultation with the UPSC in the manner indicated above, the name of the respondent is restored to its original position as recommended by the UPSC the case of the respondent for promotion to the post of Commissioner of Income Tax (Level 11), shall be considered on merit and necessary orders be passed within 3 months from the date of receipt of the file from the UPSC.”

It is quite clear that in the case of **N.P. Dhamania** (supra), the reason of rejection of 5 recommended candidates by the UPSC was not clear and hence the Hon'ble Supreme Court was pleased to direct the appointing authority to consult UPSC once again in the matter.

16. On the contrary, in the present case, the ASRB, which is the designated expert body for recruiting Agricultural Scientists for ICAR, on a reference from ICAR, had clarified that the applicant was possessing the requisite qualification for the post of Head, DBM. Hence the rejection of ASRB's recommendation by ICAR was not at all in order. We are also clear that the dictum in **N.P. Dhamania's** case (supra) is not applicable in the present case.

17. In **M. Tripura Sundari Devi's** case (supra), the Hon'ble Apex Court was seized of a case wherein a candidate was appointed to the post of Post Graduate Teacher (PGT) in Hindi. The essential qualification prescribed was second class degree in MA whereas the selected candidate was holding third class degree in MA. On document verification, this was noticed. Consequently, she was denied the appointment. The Hon'ble Supreme Court upheld the denial of appointment to the candidate on this ground. This judgment is not applicable to the instant case for the simple reason that the ASRB had noted that the applicant was possessing the requisite educational qualification, as iterated by it in its letter dated 27.11.2012 to ICAR. As such, there is no controversy in regard to the qualification of the applicant in the present case.

18. We also notice that the Selection Committee constituted by ASRB comprised of 5 members; one of which was Dr. N C Sharma, a nominee of Director General, ICAR. Obviously Dr. Sharma was aware of the educational qualification of the applicant. If there was any deficiency in the educational qualification of the applicant, Dr. Sharma could have pointed out at the time of the selection itself. The selection of the applicant by the

Interview Board was unanimous. In the conspectus, we feel that ICAR was not at all justified in holding that the applicant was not qualified for the post of Head, DBM.

19. For the reason discussed in the preceding paragraphs and considering the fact that ASRB, being an expert body specifically created for selecting the Agricultural Scientists for ICAR, consciously selected the applicant for the post of Head, DBM, we are of the view that the respondents have grievously erred in rejecting the recommendation of ASRB. Accordingly, we quash and set aside the Annexure A communication dated 09.05.2013 from Indian Council of Agricultural Research (ICAR) to Agricultural Scientists Recruitment Board (ASRB). We direct the respondents to appoint the applicant to the post of Head, Division of Bacteriology & Mycology, Indian Veterinary Research Institute, Izatnagar in accordance with recommendations of ASRB dated 25.06.2012 (Annexure G).

20. The O.A. is allowed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

May 12, 2017
/sunil/