

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

OA No. 3325/2014

This the 3rd day of September, 2015

**Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member(A)**

1. H.K.Joshi S/o Sh. P.D. Joshi aged 50 Yrs.
R/o 11B, Shivakhand, UDC
Vivek Vihar, Ph-II, Delhi-95
2. S.S. Dogra S/o Sh. Bihari Lal, aged 50 Yrs.
R/o H.No. C-114, Krishi Vihar, UDC
New Delhi-48. Applicants

(By Advocate: Shri Srigopal Aggarwal)

Versus

1. ICAR through
Secretary,
ICAR, Krishi Bhawan,
New Delhi-14
2. ASRB
Through Chairman
ASRB, Krishi Anushandhan Bhavan-1
Pusa, New Delhi 12. Respondents

(By Advocate: Shri Praveen Swaroop)

ORDER (ORAL)

By Hon'ble Shri A.K. Bhardwaj, Member (J):

Vide Notice No. 2(1)/2012-Exam-II/B dated 03.05.2013 the Agricultural Scientists Recruitment Board (ASRB), Indian Council of Agricultural Research (ICAR) invited applications from the interested persons who are eligible to appear in the Limited Departmental

Competitive Examination (LDCE) for the post of Assistants (UR -06) in the PB-2 Rs. 9300-34800 + Grade Pay of Rs. 4600/-. The applicants herein applied for the said post and participated in the examination. Nevertheless, since they could not secure 45 per cent or more marks in the examination, the ASRB did not declare them qualified in the examination.

2. Thus, the applicants filed the present Original Application (OA) praying therein:

- “i) to set aside the impugned order as detailed vide Annexure A-1 Colly. (i.e. as discussed under para No.1 of the OA)
- ii) to order/direct the respondents to consider the case of the applicants for promotion to the post of ‘Assistant’ from the date two officials were promoted on notional basis and on effective basis from the date of the orders as done in the matter of OA no. 34/2011 by the co-ordinate Bench, Hyderabad vides its order dated 21-3-2013.
- iii) to allow any other relief which this Hon’ble Tribunal deem fit under the facts and circumstances of the case.
- iv) to allow costs.”

3. According to the learned counsel for the applicant, in the examinations i.e. 2008, 2009, 2010, 2011 and 2012 the qualifying percentage was only 40%. According to him, there is no justification for prescribing higher minimum qualifying marks for the year exam held in the year 2013.

4. On the other hand, Mr. Praveen Swaroop, learned counsel for the respondents submitted that in terms of rules of examination, it was for the ASRB to fix minimum merits.

5. We heard the learned counsels for the parties and perused the record.

6. It is seen that in the rules for Limited Departmental Competitive Examinations held by the ASRB for the post of Assistants, it has been specifically provided that the ASRB to fix the minimum or maximum qualification marks.

7. Once in exercise of the discretion, the Board fixed the qualifying marks as 45 per cent, it is not for this Tribunal to interfere with the same. It is stare decisis that it is not for the Courts or Tribunal to interfere in the selection process unless the same is vitiated by arbitrariness, mala fide or glaring illegality.

8. The qualifying marks prescribed by the Board were equally applicable for all the candidates in the Examination and no infirmity can be found in determination of the same.

9. Even otherwise also, when the right to consideration for promotion may be the fundamental right, the right to promotion may

not be so. Also in the case of P.U. Joshi vs. Accountant General, Ahmadabad & others 2003 (2) SCC 632 the Hon'ble Supreme Court ruled that the criteria to be fulfilled for promotion pertain to the field of policy and is within exclusive discretion/jurisdiction of the state.

Para 10 of the judgment reads thus:

“We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

10. Nevertheless since on 29.9.2014 the ASRB issued another notice inviting the applications to fill up 7 posts of Assistant (UR-4,

SC-1 and ST-2) and in the said Notification the cut-off marks for qualifying the written examination were mentioned as 40% for UR (General) and 30% for SC/ST, the respondents in their own wisdom may consider “whether the candidates, who participated in 2013 LDCE and got 40% or more marks, can be considered against unfilled vacancies on the basis of their performance in the said examination”.

11. Subject to aforementioned observations, the OA is dismissed.
No costs.

(K.N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

Bhupen/