

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00757/2017

Thursday, this the 30th day of August, 2018

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Dr. Jai Singh Meena, aged 49 years,
S/o Sri M.L.Meena
Deputy Director (Processing & Marketing),
(presently holding charge of Director),
National Institute of Fisheries
Post Harvest Technology
and Training, Kochi-682 016.
Residing at Qtrs.No.4,
NIFPHATT Officers Living Centre,
Kochi-682016.

Applicant

[Advocate: Sri T.C.Govindaswamy]

versus

1. The Union of India, represented by
the Secretary to Government of India,
Ministry of Agriculture, Department of
Animal Husbandry and Dairying,
Krishi Bhavan, New Delhi-110001.
2. The Union Public Service Commission
represented by the Secretary,
Dholpur House, Shajahan Road,
New Delhi-110069.
3. The Director,
National Institute of Fisheries Post Harvest
Technology and Training, Kochi-682016.
4. Sri Mithilesh Kumar Chouksey,
Central Institute of Fisheries Education,
ICAR, Ministry of Agriculture and Farmers Welfare,
Panch Marg, Off Yari Road, Versova,
Andheri (W), Mumbai-400 061

Respondents

Advocates:

Mr.P.R.Sreejith, ACGSC for R1 & 3

Mr. Thomas Mathew Nellimoottil for R2)

The OA having been finally heard on 9th August, 2018, this Tribunal delivered the following order on 30.8.2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Dr. Jai Singh Meena, Deputy Director (Processing & Marketing), National Institute of Fisheries Post Harvest Technology & Training, (NIFPHATT), Kochi, against rejection of his candidature for the post of Director of the same Institute and appointment given to the 4th respondent, despite the latter being allegedly ineligible as per the Recruitment Rules. The reliefs sought in the OA are as follows:

- i) To call for the records leading to issue of Annexure-9 Office Memorandum appointing the 4th respondent to the post of Director and to quash the same.*
- ii) To declare that the applicant is eligible and deserving to be appointed to the post of Director.*

2. Facts of the case are as below:

The applicant started his career as a Processing Technologist in the scale of pay of Rs.2000-3500 on 25.3.1994 in the National Institute of Fisheries Post Harvest Technology & Training, (NIFPHATT). He was promoted as Deputy Director (Processing & Marketing) in the scale of pay of Rs.15600-39100 with Grade Pay of Rs.6600/- with effect from 1.8.2011 and is continuing as such since then. He held the charge of Director of this Institute since 1.11.2016 following the retirement of regular Director on 31.10.2016 until the post of Director was offered to the 4th respondent, as per Annexure A9 dated 7.5.2018.

3. Annexure A1 is the copy of Govt of India GSR 154 dated 4.11.2009 setting out the rules regulating the method of recruitment to the post of Director in NIFPHATT, Kochi under the Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries. The said Rules are under the nomenclature – *'The Ministry of Agriculture, the National Institute of Fisheries Post Harvest Technology and Training, Director, Recruitment Rules, 2009'*. The respondents issued circular dated 11.8.2016 (Annexure A2) inviting applications to fill up the post of Director (Group 'A' Gazetted-Non-Ministerial) in the Pay Band-3 of Rs.15600-39100 with Grade Pay of Rs.7600/-. The recruitment was as per composite method and an extract of the same from the Circular is given below:

Composite method: Deputation (including Short-term Contract) Plus Promotion:

I. Officers under the Central Government or State Governments or Union Territories or Agricultural Universities or Recognized Research Institutes or Councils or Semi-Government or Autonomous Bodies and Statutory Organizations:-

(a)(i) Holding analogous post on regular basis in the parent cadre or department: or

(ii) with five years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.15,600-39,100 with Grade Pay of Rs.6600 (Pre-revised scale of pay of Rs.10,000-15,200) or equivalent in the parent cadre or department, and

(b) Possessing the following educational qualifications and experience:

Essential:

(i) Post Graduate Degree in Zoology or Marine Biology or Oceanography or Industrial Fisheries or Fisheries Science or Chemistry or Bio-Chemistry or Food Technology of a recognized University or Institute or equivalent;

or

Post Graduate Diploma in Fisheries Science from m Central institute of Fisheries Education, Mumbai or equivalent;

(ii) Possessing seven years experience in Fish Processing or Fish Processing Technology including five years administrative experience in a Managerial Capacity in a concern.

Desirable:

Ph.D in fish processing technology and quality assurance.

II. The Departmental Deputy Director (Processing and Marketing) in the scale of pay of Rs.15600-39100 with Grade Pay of Rs.6600 (Pre-revised scale of pay of Rs.10,000-15,200) with five years regular service in the grade and possessing qualifications at (b) (i) above shall also be considered along with outsiders and in case he or she is selected for appointment to the post, the same shall be deemed to have been filled on promotion.

4. The applicant submitted his application through proper channel for the post, copy of the application being at Annexure A5. It is maintained in the OA that he possesses all the necessary qualification and experience as below:

- a) Post Graduate Degree in Chemistry*
- b) 5 years and 2 months experience in Grade Pay of Rs. 6600/-*
- c) Possessing 22 years and 6 months experience in Fish Processing and 11 years administrative experience as Head of the Office and Drawing and Disbursing Officer and acted as Officer in charge of the Vizag Unit of NIFPHATT.*

5. The applicant claims that the 4th respondent who was ultimately selected does not possess the seven years' experience in Fish Processing or Fish Processing Technology including 5 years administrative experience in a managerial capacity and does not meet the requirement of essential or desirable qualification. The applicant maintains that respondent No.4 has made false averments of possessing the required experience and details of the same have been obtained by the applicant through the RTI route. It is further contended that the 4th respondent does not have administrative experience as required and the only administrative experience mentioned in the letter at Annexure A8 provided by the Senior Administrative Officer, Central Institute of Fisheries Education (CIFE), Mumbai is in the capacity of managerial level in the lab, which does not

amount to discharge of duties and responsibilities in a managerial capacity post.

6. The desirable qualification mentioned in the Recruitment Rules is Ph.D in Fish Processing Technology and Quality Assurance. It is maintained by the applicant in the OA that the 4th respondent does not possess Ph.D qualification in the said subject, having acquired Ph.D in *'Migration and fate of selected contaminants from anthropogenic discharges in coastal marine environment'*, which is distinct from Fish Processing, whereas the applicant is possessing Ph.D in *'Dynamics of proximate composition, value addition and utilization of economically low value Lizard fish occurring along Kerala, West Coast of India'*, which is entirely related to fish processing and the desirable qualification as per the Recruitment Rules. Besides, as is common in ICAR Institutes, Technical Officers/Chief Technical Officers do not hold any independent charge and work under the Scientist in charge, thereby discharging no administrative functions in managerial capacity.

7. In short, the applicant assails the qualification of the 4th respondent. Under *'essential'* segment, the following is prescribed:

“Possessing 7 years experience in fish processing or fish processing technology including 5 years administrative experience in a managerial capacity in a concern”.

As per Annexure A8, it is certified by Senior Administrative Officer of CIFE that *“exact period of experience of Dr.M.K.Chouksey in Administration -9 years 10 months period of experience in Administration within Lab”*. It is maintained by the applicant that this experience would not amount to the essential prescription in the Recruitment Rules extracted above.

8. In other words, while admitting that he has sufficient experience in fish processing technology, it is alleged that the 4th respondent does not possess 5 years' administrative experience in a managerial capacity. Administrative experience in a lab does not amount to managerial role in an administrative set up. The second point that the applicant has chosen to highlight is that among the desirable qualification, the Recruitment Rules prescribe Ph.D in Fish Processing Technology and Quality Assurance, which also, as already mentioned, the 4th respondent does not possess whereas the applicant is in possession of the same. Basing his arguments on the points above, the applicant assails the selection conducted by the 2nd respondent. An interview was conducted on 4.9.2017 at the office of the 2nd respondent, which was attended by both the applicant as well as the 4th respondent. Finally, as per the amended OA, Annexure A9 appointment order selecting respondent No. 4 was issued.

9. As grounds, the applicant maintains that the selection undertaken was in contravention of Annexure A1 Rules and principles of fair play. While he possesses all the qualifications necessary, the selected candidate i.e., the 4th respondent, fell short in both essential as well as desirable requirements. The qualification prescribed in a selection has to be in accordance with the Recruitment Rules which have been promulgated and it would amount to fraud to appoint someone who does not possess a particular qualification mentioned in the advertisement, unless it is clearly stated that the qualifications mentioned in the Rules are relaxable. This is not so in this case.

10. Notices were issued to the respondents. While respondents 1 to 3 entered appearance, respondent No.4 remained absent and was declared ex-parte at the hearing on 16.2.2018. Further, on 21.5.2018 when it was brought to our notice

that Annexure A9 order had been issued offering appointment on deputation basis to respondent No.4, it was ordered that the appointment of Respondent No.4 would be subject to the outcome of the OA. Respondent No.1 in their statement submitted that two applications were received against the circular calling for applications and there was one departmental candidate who was the applicant in this OA and another was an outside candidate Sri Mithilesh Kumar Chouksey - Respondent No.4 through deputation route. It was further stated that *"both the candidates found eligible as per eligibility conditions. Hence applications received were forwarded to the Secretary, UPSC who is the selection authority in this case and also respondent No.2"*. The UPSC, after conducting interview finally selected Sri Mithilesh Kumar Chouksey as Director, NIFPHATT.

11. Respondent No.2-the UPSC- for their own reasons, submitted in their reply statement that *"this respondent is not dealing with the facts of the OA para-wise and in detail"*, but went on to deny the facts stated in the OA. The statement describes the method of recruitment etc., which involves deputation or promotion, facts which are available to us from the notification published and from Annexure A1 Recruitment Rules. The statement goes on to mention that *"after scrutiny of case, the Applicant and one more candidate i.e., Respondent No.4 who fulfilled the eligibility criteria as prescribed in the Recruitment Rules and whose candidature were considered by the Department, were short-listed by the UPSC and were called for attending the Selection Committee Meeting (Personal Talk) on 4.9.2017. The Selection Committee Meeting (Personal Talk) was held under the Chairmanship of Hon'ble Member, UPSC, which also comprised of 3 Advisers, who are subject experts."*

That on the basis of assessment of ACRs. Bio-data and after holding Personal Talk with them on 4.9.2017 the short-listed candidates namely Dr.Jai Singh Meena (Applicant) and Shri Mithilesh Kumar Chouksey (Respondent No.4), the Selection Committee recommended Shri Mithilesh Kumar Chouksey for appointment to the post on Deputation (on short term Contract)."

12. After briefly contesting the merits of the applicant's arguments, the reply statement goes on to stress the inviolability of the selection conducted by the UPSC, as has been held in the following judgments rendered by the Hon'ble Supreme Court:

- (i) *R.S.Dass Vs. Union of India & Ors: 1986 (Supp) SCC 617*
- (ii) *Dalpat Abasaheb Solunke & Ors Vs. Dr.B.S.Mahajan & Ors: (1990) 1 SCC 305.*

13. The applicant filed an affidavit further emphasizing that the specific issues raised in the OA have not been answered by the respondents. To this, respondents 1 to 3 have filed a reply statement. In the additional reply statement filed by respondent No.1, it is again mentioned that administrative experience of 30 years including 9 plus years rendered by the 4th respondent in managerial capacity in fish processing has been confirmed by the CIFE, Mumbai. With respect to desirable qualification of Ph.D in Fish Processing, respondent No.1 tersely avers that *"UPSC has already considered all the facts and thereafter made the selection of Respondent No.4"*. Additional reply statement of respondent No.2 runs along similar lines, taking a somewhat hands-off position. The statement goes on to state that the qualification and experience of respondent No.4 had been duly verified by his parent organization and found eligible for consideration to the post of Director, NIFPHATT and mere non-

possession of the desirable qualification by the respondent No.4 does not make him ineligible for consideration to the post.

14. We have heard Sri T.C.Govindaswamy, learned counsel for the applicant, Sri Thomas Mathew Nellimoottil, Sr.PCGC for respondent No.2 and Sri P.R.Sreejith, ACGSC for respondents 1 & 3. All pleadings were duly considered.

15. This is a selection conducted by the UPSC for a post advertised. A composite method of selection involving promotion and deputation route was indicated. The applicant was an internal candidate who was, at the time, holding the charge of the post advertised, whereas the 4th respondent who was ultimately selected was an occupant of an analogous post in another organization. The eligibility and qualification contained in the circular dated 11th August, 2016 (Annexure A2) are strictly in accordance with Annexure A1 Recruitment Rules contained in GSR 154 issued by respondent No.1. There were 2 only applicants. Analyzing the essential qualifications prescribed, it could be seen that it has an academic quotient as well as experience quotient. Both possess the academic quotient as both are Post Graduates in the required subjects. However, in so far as experience is concerned, there is a divergence in views.

16. As mentioned already, the required essential requirement is *"possessing 7 years' experience in Fish Processing or Fish Processing Technology, including 5 years' administrative experience in managerial capacity"*. It is clear that the applicant possesses this experience in full measure. In any case, there is no challenge to his credentials on this account. But in respect of respondent No.4, it is necessary to look carefully as there is a definite challenge to the relevant experience claimed by him. It cannot be denied that he has long experience in

Fish Processing/Fish Processing Technology. He has been involved in Quality Assurance, HACCP concept, traceability issues, sanitation and hygiene, apart from traditional fish processing. He also has wide experience in teaching rendered to Post Graduate level students in relevant subjects and has several published works. But his application at Annexure A5 makes no claim about possessing the essential 5 years' administrative experience in managerial capacity in a concern. Subsequently, when the specific issue was raised by way of seeking clarification by respondent No.1 (Annexure A6), a reply is offered by his Institute - CIFE - that he possesses *"9 years 10 months period of experience in Administration within Lab"* (Annexure A8). We have no hesitation in coming to the conclusion that administrative experience in a lab does not amount to the specific managerial experience in administration, called for as essential in the notification.

17. Among the desirable qualifications, Ph.D in Fish Processing Technology and Quality Assurance is cited. As is seen from the application of respondent No.4 available at Annexure A5, his Ph.D is in Chemistry: 2002 (Thesis Title: *"Migration and fate of selected contaminants from anthropogenic discharges in coastal marine environment"*). Expressly contrasted with the subject chosen by the applicant for his doctorate thesis, the subject of respondent No.4 appears to be unrelated to what is specifically called for. *"Migration and fate of selected contaminants from anthropogenic discharges in coastal marine environment"* has no connection with Fish Processing Technology and any connection with Quality Assurance is also far-fetched except to the limited extent that fish exists in a marine environment.

18. Respondent No.2 has gone to some extent in emphasizing the inviolability of the selection conducted by the UPSC and have quoted various judgments:

- i) *National Institute of Mental Health and Neuro Sciences vs. Dr.K.Kalyana Raman and others: 1992 Supp (2) SCC 481.*
- ii) *R.S.Dass vs. Union of India and others: 1986 (Supp) SCC 617*
- iii) *UPSC Vs. L.P.Tiwardi and others: (2006) 12 SCC 317*
- iv) *Premchand Vs. Union of India (Ministry of Agriculture & Others): OA No.330/2014 CAT, Bombay Bench*

19. We have no quarrel with this averment and would wholeheartedly bow before the pronouncements of the Hon'ble Apex Court. However, the manner in which the applications had been received and forwarded. leads us to the conclusion that the process has lacked a full scrutiny. Respondent No.1 which is the Administrative Ministry, submits lamely that the application received was forwarded to the Secretary, UPSC who is the "selection authority", whereas in the additional reply statement filed by the respondent No.2 - the UPSC, it is submitted that the qualification and experience of respondent No.4 was "duly verified by his parent organization and found eligible for consideration". At least from the statement submitted on behalf of the respondents, we cannot but conclude that the responsibility for scrutiny has been passed from agency to agency and the averment made by the parent organization, CIFE in this case in Annexure A8 that the respondent No.4 possesses "9 years and 10 months period of experience in Administration (Lab)" is not a statement from which we can draw much confidence.

20. We are aware of the limitation of this Tribunal to go into the relative merit of the candidates in the selection process. We are also conscious of the fact that our task is primarily to examine the legality and procedural validity/correctness of the selection process. However, we would, from the perspective of the facts

presented in the OA, arrive at the unassailable conclusion that the respondent No.4 who was selected for the post on deputation basis, does not possess the necessary qualification as prescribed in the Recruitment Rules and the Notification for the post, issued in accordance with the same. While we fully agree that the UPSC is a statutory organization which has the mandated task of making selection for the post, we are of the view that the process in this case has been vitiated due to non-adherence of required parameters prescribed in the Recruitment Rules.

21. In view of the foregoing discussion, we quash and set aside the appointment order at Annexure A9 issued to the respondent No.4 and we direct the respondent No.1 to recommence the selection process in an objective, prudent and careful manner, strictly in accordance with the provisions of the Recruitment Rules. OA stands disposed of with no order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures produced by the applicant:

- Annexure A1: Copy of the Ministry of Agriculture, National Institute of Fisheries Post Harvest Technology and Training, Director, Recruitment Rules, 2009 issued under G.S.R.154 dated 4.11.2009.
- Annexure A2: Copy of the Circular dated 11.8.2016 inviting applications for appointment to the post of Director.
- Annexure A3: Copy of the application dated submitted by the applicant.
- Annexure A4: Copy of the letter dated 11.8.2017 requiring the applicant to appear for an interview.
- Annexure A5: Copy of the application dated 21.10.2016 submitted by the 4th respondent.
- Annexure A6: Copy of the letter No.5-9/2016 Admn-V dated 7.2.2017.
- Annexure A7: Copy of the letter No.5-9/2016/Admn-V dated 17.2.2017 issued by the 1st respondent.
- Annexure A8: Copy of the letter No.F.No.2(6)/2012/Admn/4171 dated 13.2.2017 issued by Sr. Administrative Officer, CIFE, Mumbai.
- Annexure A-9: Copy of the Office Memorandum No.5-9/2016-Admn-V dated 7.5.2018.