

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01424/2018

DATED THIS THE 03rd DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Vinayaraya P.
S/o D.H.Raya
Aged about 34 years
Working as Technical Officer
CSIR-NIL NTAF Division
Belur Campus
Bangalore-560 017.

....Applicant

(By Advocate Sri B.S.Venkatesh Kumar)

Vs.

1. The Director General
Council of Scientific and Industrial Research
Rafi Marg, New Delhi-110 011.
2. The Director
CSIR-National Aerospace Laboratories
Kodihalli, Airport Road, Bangalore-560 017.
3. Controller of Administration
CSIR-National Aerospace Laboratories
Kodihalli, Airport Road, Bangalore-560 017
4. Union of India
represented by Secretary
Ministry of Science and Technology
Technology Bhavan
New Mehrauli Road
New Delhi-110 016.

...Respondents

(By Advocates Sri K.Ananda for R1-3)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The brief facts of the case is that the applicant with BE in Mechanical Engineering

from Visvesvaraya Technological University have joined the service in National Aerospace Laboratories (NAL) as Technical Assistant Group VI(I) on 21.1.2010. He was promoted as Technical Officer Group VI(III) in the year 2017 and he is working in the said post till date. On 17.3.2017, an advertisement No.2/2017 was published by NAL for filling up of 23 posts of Scientist and one post of Senior Scientist(Annexure-A4). The applicant being eligible applied for six posts of Post Codes NTAF 217, ACD 201, C.CADD 204, C.CADD 205, STTD 222 and CTFD 209(Annexure-A5). A notification dtd.6.8.2018 was issued by 3rd respondent in regard to list of candidates who have been shortlisted to be called for interview for 24 positions of Scientist/Sr.Scientist(Annexure-A7) wherein the applicant's name was not included in respect of any of the positions for which he had submitted his applications. Being aggrieved by his non-inclusion in the short-listed candidates, he submitted a detailed representation dtd.10.8.2018 to the 2nd respondent(Annexure-A8) stating therein about his academic qualification and experience and the fact that he has published three national level papers, NAL project document related to wind tunnel studies and technical report related high speed wind tunnel and that he designed, developed and calibrated compact mass flow controller unit (MFCU) for wind tunnel AIR INTAKE MODEL STUDIES and that he as a project leader, has completed three projects successfully and therefore prayed for an opportunity to face the interview for the post of Scientist. But so far no reply is given on the said representation.

2. Applicant submits that he has secured 86.75% marks in M.E.(Annexure-A1 series) and as per the advertisement, the educational qualification required is minimum 85% in M.E. and therefore, he fulfills the educational qualification. The age limit for all the posts is 32 years. The upper age limit is relaxable upto five years

for SC/ST candidates and for regular employees working in CSIR Laboratories/Institutes etc. The applicant belongs to SC and he is a regular employee of NAL coming under CSIR, and therefore, he is not ineligible on this score. The applicant has performed his duties and responsibilities to the best of his abilities and he has always been given 'Excellent' grading in his APARs with 90 marks out of 100 by the Reviewing Officer(Annexure-A2 series). Therefore, the applicant is unable to know the reasons for his non-inclusion in any of the six positions for which he has applied. He submits that he had been doing the job of operation and maintenance of 0.6m TWT and he was awarded CSIR-NAL Best Innovation Award in development of a quick release mechanism for HSP CREW MODULE for free oscillation tests in 1.2 M TWT for the assessment year 2014-15(Annexure-A3). For the post code NTAF 217, the job requirement is in the field of operation and maintenance of high speed wind tunnel facilities, high pressure systems and upgradation of test facilities. The applicant meets each and every criteria for this position.

3. Applicant further submits that the respondents will adopt its own short-listing criteria to restrict the number of candidates to be called for interview to a reasonable number by any one or more of the methods and one of them is the basis of higher experience in the relevant field than the minimum prescribed in the advertisement(Annexure-A4). The applicant is having more than eight years experience needed for the position NTAF 217 in which only 14 candidates have been shortlisted. Hence, non-inclusion of his name is unjust, arbitrary and unsustainable. As per the Office Memorandum dtd.30.3.2017(Annexure-A6) the competent authority in the NAL has permitted the applicant to apply for the six positions for which he submitted applications. If that be so permission could not

have been given without verifying the eligibility criteria. If the very respondents have found the applicant suitable for all the six positions as to how he has not been short-listed even for a single position cannot be understood. Therefore, being aggrieved by the inaction of the respondents, he filed the present OA seeking the following relief:

a) Call for records of the case from the respondents and on perusal;

b) Issue a writ in the nature of mandamus directing the respondents to include the name of the applicant in the short-listed candidates in the notification dtd.6.8.2017(Annexure-A7) for the six positions namely NTAF 217, ACD 201, C.CADD 204, C.CADD 205 (reserved for SC), STTD 222 and CTFD 209 (reserved for SC) and further direct them to permit the applicant to participate in the selection process.

4. Per contra, the respondents have submitted in their amended reply statement that the 2nd respondent issued the recruitment notification vide Advt.No.2/2017 dtd.17.3.2017(Annexure-R2) wherein 24 different type of posts were notified. Pursuant to which, the applicant has submitted his applications through online in respect of 6 posts of Scientists with Post Code NTAF 217, ACD 201, C.CADD 204, C.CADD 205(Reserved for SC), STTD 222 and CTFD 209(Reserved for SC). Several other candidates have also applied for each of the posts. They submit that the Screening Committee constituted under Rule-6.5.2 of CSRAP Rules, 2001(Annexure-R1), shall screen/scrutinize the applications and organize written test or seminar if considered necessary for short-listing the candidates to be called for interview. After receiving applications, the Screening Committee constituted by the Director have scrutinized the applications including that of the applicant for all the 6 posts. The Screening Committee have taken into consideration the marks/percentage obtained by the candidates for each post with the course of studies relevant to job requirement by the respective division etc. The applicant had applied to the post of Scientist – Post Code NTAF-217. As per the recruitment

notification, the job requirement of the said post is Operation and Maintenance of high speed wind tunnel facilities, high pressure systems and upgradation of the test facilities. The desirable criterion is that candidates should necessarily have 1st class in ME/MTech and should have knowledge in Operation and Maintenance of high pressure compressors, high speed test facilities with large scale air compressors and high pressure air storage facility. Therefore, the Screening Committee have fixed the criteria that the candidates who have secured 85% and above or 8.5 CGPA and above with the course of study in ME/M.Tech relevant to the job requirement are eligible for interview. Admittedly, the applicant has not secured 85% of marks in ME course and he has secured only 83.91% and hence, his name was not included in the short-listed candidates for the said post(Annexure-R3). Accordingly, for the Post Code ACD-201 to which the applicant applied, the job requirement is the selected candidates will be working in the area of design of composite parts/tooling, detail design, releases of manufacturing drawings, general of 3D CAD models, generation of surface profiles of components, design for tooling of composite parts and preparation of tool drawings and should be knowledgeable in working with CAD packages like Auto CAD, CATIA V4 & V5. The desirable criterion is that the candidates should necessarily have 1st class in ME/M.Tech with 85% or 8.5 CGPA marks and above and should also have experience atleast for a minimum of 3 years in the relevant field. Familiarity with finite element codes like Hypermesh, NASTRAN, understanding of structural optimization of aircraft structures. Admittedly, as stated earlier, the applicant has secured only 83.91% and hence his name was not included(Annexure-R4). For the Post Code C-CADD-204, the job requirement is that the candidates will be working in detail design, simulation and testing of Environmental System components and sub-assemblies for aircraft.

Candidates will be required to work in the area of Aircraft Mechanical Systems, equipping and integration and should have exposure to internal and external flow computations using CFD tools, working knowledge of CAD packages such as CATIA and AutoCAD. The desirable criterion is that the candidates should necessarily have 1st class ME./M.Tech in Mechanical Engineering with minimum 75% or 7.5 CGPA with courses of study relevant to the job requirement or PhD(Thesis submitted) in Mechanical Engineering with the knowledge of Aircraft Mechanical System, Design and manufacturing standards in aircraft industry and also 2 years experience in the relevant area. The applicant having not got requisite criteria of having courses of study relevant to job requirement, has not been included in the short-listed candidates for the said post(Annexure-R5).

5. The respondents submit that for the Post Code C-CADD-205(reserved for SC), the job requirement is that the candidates will be working in detail design simulation and testing of aircraft power plant and fuel systems. The candidates will also participate in the area of Aircraft Mechanical Systems, equipping and integration and should have exposure to internal and external flow computations using CFD tools, working knowledge of CAD packages such as CATIA and AutoCAD. The desirable criterion is that the candidates should necessarily have 1st class ME/M.Tech in Mechanical Engineering with minimum 70% or 7.0 CGPA with courses of study relevant to the job requirement or PhD(Thesis submitted) in Mechanical Engineering with the knowledge of Aircraft Power Plant and Fuel System, Design and manufacturing standards in aircraft industry and also 2 years experience in the relevant area. The applicant having not got requisite criteria of having courses of study relevant to job requirement, has not been included in the short-listed candidates for the said post(Annexure-R6). For the Post Code STTD-

222, the job requirement is that the candidates have to carry out work in design simulation and testing in the research and technology projects of the Division. The desirable criterion is that the candidates should necessarily have 1st class ME/M.Tech/MS in Aerospace/Mechanical/Civil/ Electronics Engineering with 90% or 9.0 CGPA & above with courses of study relevant to the job requirement or PhD(Thesis submitted) with emphasis/exposures to Structural Mechanics/Structural Engineering and should also have exposure to structural analysis involving dynamics, aeroelasticity and fatigue, structural testing including static, vibration and fatigue, Electronics/instrumentation involving structural testing activities. Admittedly, the applicant has not secured 90% of marks in ME Course and hence, his name was not included in the short-listed candidates for the said post(Annexure-R7). And for the Post Code CTFD-209 (reserved for SC), the job requirement is Application of CFD for ongoing National Aerospace programmes and In-house requirements, development and upgradation of In-house CFD tools. The desirable criterion is that the candidates should have ME/M.Tech/MSc(Engineering) in Mechanical/ Aerospace Engineering with minimum 60% or 6.0 CGPA and specialization in CFD and should have also done Course/project work in Computational Aerodynamics and should have experience in advanced CFD code development and application to aerodynamic design and analysis of aerospace vehicles, knowledge of CFD algorithms, geometry modeling and grid generation, high performance computing. Since the applicant was not having specialization in CFD, his name was not included in the short-listed candidates for the said post(Annexure-R8). Accordingly, in respect of 3 posts i.e., Post Code No.ACD-201, NTAF-217 & STTD-222, the applicant did not fulfil the criteria fixed by the Screening Committee i.e 85% of marks in the qualifying examination and in respect of other 3 posts i.e. Post Code

No.C-CADD-204, C-CADD-205 and CTFD-209, the applicant does not possess relevant courses as per the job requirement and hence the Screening Committee has not considered his name. And therefore, there is no illegality on the part of the respondents in not short-listing the name of the applicant for the above 6 posts.

6. The respondents further submit that after applying for the said 6 posts, the applicant has filed representation dtd.25.10.2017 requesting to relax the CSIR guidelines/rules to consider his candidature to appear before the Selection Committee for the post of Scientist in CSIR-NAL. The said representation was referred to the 1st respondent by the 2nd respondent and thereafter the 1st respondent asked CSIR-RAB(Recruitment and Assessment Board) to give its opinion on relaxation of the guidelines. But CSIR-RAB vide letter dtd.5.12.2017(Annexure-R11) did not accede to the request of the applicant that 'any relaxation of the criteria fixed by the Screening Committee for one candidate, in spite of high number of applicants possessing the requisite screening criteria being available, would be against the principles of equal opportunity and therefore, legally not tenable'. The 2nd respondent by its OM dtd.8.1.2018(Annexure-R12) informed the applicant the decision of CSIR-RAB for not acceding to his request. The applicant willfully suppressed the said fact while filing the OA and obtained the interim order from the Tribunal. Further the applicant wrongly mentioned that he has secured 86.75% in M.E by calculating the percentage of marks of the qualifying examination. But the total percentage in the subject Mechanical-Machine Design is 83.91%. The Screening Committee adopted the uniform policy to all the candidates regarding calculation of total percentage of the candidates i.e maximum marks of all the semesters and not on each semester. The applicant had nowhere mentioned his percentage of marks secured in each semester. He submitted the total marks

secured in each semester. Maximum marks are varied and not same semester wise. In view of this, the respondents cannot calculate the percentage of marks semester wise since the denomination(i.e maximum marks) are not same(Annexure-R13). Further more, since the applicant is working in the 3rd respondent institution, the competent authority gave permission to apply for 6 posts of Scientists in the 3rd respondent institution. Mere giving permission by competent authority will not say that the applicant is eligible to the said posts and it is only a permission to apply to the said posts and the competent authority cannot look into the other aspects regarding eligibility, qualification and other selection process. Further the claim of the applicant that he has been given 'Excellent' grading has no relevance for not being short-listed by the Screening Committee. Further as per Clause-23 of the advertisement, the decision of CSIR-NAL in all matters relating to eligibility, acceptance or rejection of applications etc., will be final and binding on the candidates and no enquiry and correspondence will be entertained from any individual. Being unsuccessful candidate, the applicant cannot have any right to make allegations against the selection process. The representation dtd.10.8.2018 is duly considered and the decision is communicated vide OM dtd.3.9.2018(Annexure-R4) to the applicant also. Therefore, the contention that the said representation was not considered is not sustainable in the eye of law.

7. The applicant has filed rejoinder reiterating the submission made in the OA and submits that the respondents cannot adopt a unilateral procedure in regard to the marks and they can take the percentage of marks obtained with the course of studies prescribed for the job requirement. He submits that he fulfills all the criteria laid down for each of the six posts viz., for Post Code NTAF-217, he possesses ME in Mechanical Engineering above first class with aggregate of 86.78% and he meets

the job requirement also. Annexure-A3 authenticated by the Head of the Division is proof of possessing the required qualification to meet the job requirement. He denies the contention that he secured 83.91% and not 85%. By following an incorrect procedure, the respondents contended that the applicant does not possess more than 85% marks in ME/M.Tech when in fact he does possess 86.75% of marks. For Post Code ACD 201, he possesses first class in ME and when he is having specialized qualification for post code NTAF-217, he also qualifies for post code ACD 201 in all. The respondents have prescribed the percentage of marks for post code NTAF-217 whereas for post code ACD 201, they are insisting on job requirement of the said post. Thus the respondents seems to be somehow deny the opportunity to the applicant to appear for selection. For post code C-CADD-204, the desirability is the candidates should have first class in ME/MTech and should also have 2 years experience in the relevant area. Whereas the screening committee has fixed the criteria as ME/MTech in Mechanical Engineering with minimum 75% and above with the course of study relevant to job requirements. It is relevant to note that under the provision of rules 6.5.2 the screening committee has no such powers to adopt separate criteria regarding desirability other than the criteria laid down in the advertisement. For post code C-CADD-205(reserved for SC) also the screening committee is insisting on separate criteria not at all notified in the recruitment notification. Though the applicant belongs to SC category with better experience and much above the percentage of marks as per the criteria fixed i.e. first class in ME/MTech by the screening committee itself, his name was not short-listed. Though the screening committee can adopt its own criteria for short-listing candidates, it cannot go beyond the scope of CSIR Recruitment Rules particularly para 6.5.2 thereof. As per Annexure-A7, the

number of short-listed candidates for each of the posts is not uniform. While for some posts it is 20 for some it is 17, 14 etc. The committee has not even chosen the number of candidates uniformly. Therefore, the list of short-listed candidates itself is illegal and liable to be set aside. The contention of the respondents that he filed representation on 25.10.2017 requesting to relax the CSIR guidelines/rules to consider his candidature to appear before the selection committee is false and incorrect. Nowhere in the said representation he sought for any type of relaxation. All that he sought for was for providing an opportunity to appear for interview as an internal candidate if he meets the required criteria. As such the question of suppressing the fact before the Tribunal does not arise. The applicant does not deny the applicability of several clauses in the advertisement. The averment that the applicant being an unsuccessful candidate cannot challenge his grievance is utterly false and incorrect. If he had been allowed to participate and then if he was found unsuccessful, then only this contention would have been relevant. Having denied even the basic right to participate in the selection process, it is not fair on the part of the respondents to take such contention. The applicant denies further contention that the respondents have given permission to apply for six posts pursuant to advertisement. The applicant has every right to make an application for selection and being an in-service candidate he has submitted the same through proper channel. That cannot be treated as if he has been given permission. The competent authority would not have accorded permission to him without verifying the qualification and other eligibility criteria. The contention that the representation dtd.10.8.2018 was replied vide OM dtd.3.9.2018 is not within the knowledge of the applicant. It is true that aggregate percentage of marks obtained in ME by the applicant is not entered in his online application but that was due to the fact that

there is no specific column seeking for such information in the online application format. In the working sheet produced by the respondents at Annexure-R13 it is shown the difference the percentage of marks decided as 83.96% which is not correct and no authentic procedure for such calculation is furnished. The aggregate of marks calculated in accordance with Bangalore University format ought to be declared as correct.

8. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In this case, in the interim order dtd.29.8.2018, we ordered that the respondents will keep one post vacant. The interim order was also extended on the subsequent dates of hearing. In our order dtd.19.11.2018, it was ordered as follows:

Reply has been filed now. We need to give time to file rejoinder. In the meanwhile both the counsel submit that the interview may take place during the second week of December. If the interview is slated for that period then applicant will also be interviewed and the result be kept in a sealed cover or they may decide to postpone the interview as the case may be. Post on 2.1.2019.

Interim order extended till the next date of hearing.

9. The qualifications and experience required for other posts and for the posts applied by the applicant have also been gone into detail by us. From Annexure-A8 and the pleadings made in the case, it is clear that the applicant could be considered only for the Post Code-NTAF-217 for which he has the necessary educational qualification as well as the job requirement based on his experience. Therefore, we would not like to comment on the question of the applications he had made for the other posts. The only point of contention between the applicant and the respondents is set out in Annexure-R13 where the Screening Committee calculated the pass percentage by adding the marks obtained in all the four

semesters of ME by the applicant and divided it by the maximum marks of all the semesters and arrived at the percentage as 83.91. The applicant has however taken the percentage of marks against the maximum in each semester, added the four percentages and has divided it by 4, arriving at 86.75%. The minimum criterion prescribed by the Screening Committee for this post was 85% and above in ME. As per Annexure-R3, the respondents have stated that 262 candidates had applied for this un-reserved post and therefore they had to shortlist only 14 based on the uniform application of the above criteria. From the point of view of the percentage, the calculation done by the applicant also appears to be reasonable inasmuch as the percentage of the marks obtained in each semester has been calculated on the basis of the maximum marks and the average percentage has been taken for the examination as a whole. The difference between the criterion for selection i.e. 85% and the marks obtained by the applicant i.e. 83.91%, even if we go by the respondents' contention, is very narrow. The applicant vide Annexure-A8 has also given the details of the achievements done by him which include the Best Innovation Award from CSIR-NAL in the year 2014 – individual award, obtained Excellence in APAR for all the eight years by more than 90%, publication of 3 National level papers, NAL project document related wind tunnel studies and technical report related to high speed wind tunnel and also the designing and developing of calibrated compact mass flow controller unit for wind tunnel Air Intake Model Studies and is successful in completion of three projects as a project leader. Considering the fact that the applicant belongs to reserved category and is a regular employee of NAL with apparently outstanding record during his period of service in NAL, it is unreasonable on the part of the respondents to mechanically stick to a clerical calculation of his marks in ME and deny him the opportunity to attend the

interview. We have already ordered vide order dtd.19.11.2018 that the applicant will also be interviewed and the results may be kept in a sealed cover or they may decide to postpone the interview. We are not aware as to what the respondents have done in this regard and we therefore, direct that considering all the factors, the applicant is entitled for being called to the interview and his relative merit may be considered along with other candidates who have been called for the interview. It is of course up to the Screening Committee to come to a final decision with regard to the relative merit of the applicant. However, the Screening Committee and the respondents should not be unnecessarily prejudiced by the applicant filing this OA before this Tribunal and decide the case strictly according to merit.

10. The OA is allowed to the extent as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01424/2018

- Annexure A1: Copy of ME certificate issued by Bangalore University and copies of statement of marks for all semesters
Annexure A2: Copies of Office Memorandum for the years 2009-10 to 2014-15 with grading of Excellent given by Reviewing Officer for all the years
Annexure A3: Copy of Bio data of the applicant duly certified by the Head of Division dtd.25.1.2018
Annexure A4: Copy of Advertisement No.2/2017 dtd.17.3.2017
Annexure A5: Copy of on-line application for one of the six positions
Annexure A6: Copy of Office Memorandum dtd.30.3.2017
Annexure A7: Copy of notification dtd.6.8.2018 publishing the list of candidates short listed for interview etc.
Annexure A8: Copy of representation dtd.10.8.2018

Annexures with reply statement filed by R1:

- Annexure-R1: Copy of the CSRAP Rules 2001
Annexure-R2: Copy of the Recruitment Notification dtd.17.3.2017
Annexure-R3: Copy of the recommendation of the Screening Committee for the post code-NTAF-217
Annexure-R4: Copy of the recommendation of the Screening Committee for the post code-ACD-201
Annexure-R5: Copy of the recommendation of the Screening Committee for the post code-C-CADD-204
Annexure-R6: Copy of the recommendation of the Screening Committee for the post code-C-CADD-205
Annexure-R7: Copy of the recommendation of the Screening Committee for the post code-STTD-222
Annexure-R8: Copy of the recommendation of the Screening Committee for the post code-CTFD-209
Annexure-R9: Copy of the notification dtd.6.8.2018
Annexure-R10: Copy of the OM dtd.3.9.2018
Annexure-R11: Copy of the letter dtd.5.12.2017
Annexure-R12: Copy of the OM dtd.8.1.2018
Annexure-R13: Copy of the calculation of percentage of marks of the application by the Screening Committee and the applicant

Annexures with rejionder:

- Annexure-A9: Copies of the provision tabulation sheets for ME 1st to 4th semesters

Annexures with MA for amendment of OA:

-NIL-

Annexures with amended reply:

-NIL-
