

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/2706/2013

New Delhi, this the 31st day of July, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Ashok Kumar Meena
Son of Shri Jodh Raj Meena
Aged about 39 years
Resident of A-4, Krishi Vihar,
Greater Kailash I, Majid Moth,
New Delhi-110048
Presently working as Section Officer,
Indian Council of Agricultural Research,
New Delhi-110001

....Applicant

(Through Shri A.K. Behera, Advocate)

Versus

Indian Council of Agricultural Research,
Through its Secretary
Krishi Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110001

... Respondent

(Through Sh.Rajeev Sharma with Sh.Saket Chandra, Advocates)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

This OA is filed with several alternative prayers. Much, however, would turn around the alleged grievance of the applicant at the stage of his initial recruitment in the Indian Council of Agricultural Research (ICAR).

2. In the year 1995, the ICAR issued a notification for selection and appointment to the posts of Section Officer (SO) and Assistant. The applicant responded to the same and he belongs to Scheduled Tribe (ST) category. Reservation in favour of ST candidates was provided in respect of both categories of posts. The examination was held and some candidates were also selected and appointed. Later on, when it emerged that malpractices had taken place in the conduct of the examination, it was cancelled. Another examination, with reference to the same notification was held in the year 1997. However, there was a difference as to the pattern of reservation. Though reservation was made in favour of ST for the post of Assistant, it was not provided for the post of SO, on the ground that the policy of vacancy based reservation was changed to the one of post based.

3. The applicant was selected and appointed as Assistant, against a vacancy reserved for ST. Long thereafter, he went on making representations, stating that two posts of SO ought to have been reserved for ST in the selection which took place in the year 1997 and on account of the omission, he was denied the opportunity of being appointed as SO. He has also approached the National Commission for Scheduled Tribes in this behalf. He made several representations to ICAR as well as other authorities, apart from application under Right to Information Act. In the year 2012, the ICAR

constituted a Committee of officers of Deputy Secretary level, to examine the various issues raised by the applicant. In its report dated 9.01.2013, the Committee took the view that there was no merit in the applicant's claim.

4. One of the prayers in the OA is to set aside the report of the Committee. Apart from that, the applicant sought relief –

- (a) in the form of declaration to the effect that two vacancies of SO earlier reserved in favour of ST were wrongly withdrawn from the purview of selection made in the year 1997;
- (b) two ST candidates who secured highest merit position in the examination held for the post of SO ought to have been included in the select panel; and
- (c) the applicant be deemed to have been notionally appointed in the grade of SO as a direct recruit, in the year 1998.

5. Promotion from the post of Assistant is to the post of SO. While 50% of the promotion is through seniority, the remaining is through the Limited Departmental Competitive Examination (LDCE).

6. The applicant states that though a LDCE was held in 2006 and he participated therein, not a single vacancy was reserved for ST, by stating that the three vacancies

earmarked for that category are already filled up. According to him, those three candidates were promoted on their own merit, and not against any reserved vacancy.

7. The respondents filed a detailed counter affidavit opposing the OA. Strong objection is raised, as to limitation. It is stated that the relief, with reference to competitive examination held in the year 1997, and LDCE held in the year 2006 is claimed in the year 2012 and the same is not permissible in law. The respondents stated that each query made by the applicant was answered and there is absolutely no merit in the OA. It is also stated that the Committee has examined each and every grievance ventilated by the applicant and based on a detailed report running into about nine pages, the answers were furnished to him.

8. Learned counsel for the applicant, Shri A.K. Behera advanced extensive arguments. He submitted that exclusion of two vacancies from the purview of reservation in 1997 was totally impermissible in law. He further submitted that in the context of promotion also, the applicant was denied the opportunity. According to him, the three candidates who were holding the post of SO, were selected on their own merit. As regards the limitation, he submitted that the applicant went on making representations and the very fact that a detailed report was submitted in the year 2012, discloses that the issue was never treated as stale.

9. Shri Rajeev Sharma, on the other hand, submitted that mere submission of representations after more than a decade of holding of the examination, does not bring the cause of the applicant within the limitation. He stated that even now the applicant is not able to assert that he was qualified to be appointed in the year 1997 and that he is not able to establish that there existed a vacancy reserved in favour of ST in the post of SO in the year 2006.

10. The question of limitation needs to be dealt with first. The relief claimed by the applicant is with reference to an examination held in the year 1997. The selection took place simultaneously for the post of SO and Assistant. The applicant was selected and appointed in the post of Assistant. Though it would have been somewhat difficult for an illiterate or unemployed person to get the information about the selection process, the applicant could certainly have ventilated his grievance about the alleged non-selection to the post of SO, at the relevant point of time.

11. It is true that the two posts of SO were reserved for ST in the notification issued in 1995. However, there was a change of law, by the time the examination was held in 1997 and, thereby, necessity to reserve that post did not arise. The Tribunal would have certainly addressed the issue in detail, had it been raised by the applicant at the right earnest. From the record, it appears that the applicant

started making out a grievance about the alleged non-selection and appointment in the post of SO by way of direct recruitment in the year 1997, sometime in the year 2010. By that time, he appeared in the LDCE for promotion to the post of SO, in the year 2006. Before that, he did not raise the issue of reservation in the selections of 1997.

12. From a perusal of the detailed application submitted by the applicant under RTI on 16.05.2012, it is evident that when the applicant approached the ICAR ventilating his grievance about the non-selection as SO in the year 2007, a reply was given through OM dated 11.04.2011. The applicant, however, did not choose to file the same, but the gist thereof is mentioned in item 6 of the application. It reads as under:

- “6. As per the last para of the Council’s O.M. dt. 11.4.11 issued to me, it appears that some other ST candidates had qualified for S.O. that is why the benefit of ST post of S.O. will either go to those qualified candidate or to other category candidate but not to me. List of such S.T. candidates qualified for the post of Section Officer as well as reserved panel (merit wise) along with marks obtained by them subject-wise. A copy of guidelines/rule which envisage that in case of selected Assistant refuses the offer of appointment the candidate in the reserved list will be issued offer of appointment but the said rule of reserved panel does not applicable for the post of S.O.”

From a perusal of this, it becomes clear that the respondents informed the applicant that even if two posts of SO were to have been reserved for ST in the year 1997, there are other qualified ST candidates and the applicant was not qualified.

The applicant did not make any grievance out of that. However, he went on seeking information on as many as 45 aspects. Not even for a well equipped organization with a separate wing for this, it would be impossible to answer all the queries. Therefore, an order was passed permitting the applicant to peruse the record. The applicant did avail that opportunity but did not place the relevant material before the authorities.

13. If one takes into account, the question of limitation or the information supplied to the applicant that he was not qualified for the post of SO in 1997, the relief claimed by him becomes untenable. Various facets of the relief claimed in the form of declaration also become impermissible. It is fairly well settled that no Court or the Tribunal can undertake an adjudication which is in general and uncertain terms. If the applicant himself is not able to establish that he was qualified in the year 1997, the relief claimed in the form of declaration, as claimed in this OA, does not arise.

14. So far as the LDCE of 2006 is concerned, the respondents have already informed the applicant that as against the vacancies which are earmarked for LDCE, three posts were reserved, and in the year 2006 all of them were occupied by the candidates of that category. Though the applicant made an effort to plead that two candidates were appointed on the basis of their own merit, the respondents

have demonstrated that they were appointed against the reserved vacancies.

15. Another aspect is that a notification is issued for holding a LDCE. It is not in dispute that the one issued in 2006, did not mention any reservation in favour of ST candidates. If the applicant was of the view that a post ought to have been reserved, he should have approached the Tribunal at that point of time itself. He cannot raise the issue after participating therein.

16. Viewed from any angle, we do not find any merit in the OA. It is, therefore, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/