

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(d)

O.A.NO.1711/2003

This the 3rd day of October, 2003.

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri R.K. Upadhyaya, Member(A)

1. Shri G.S. Kukreja,
Section Officer,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
2. Shri Devinder Kumar,
UDC & Member,
Joint Staff Council,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
3. Shri Bhagwan Sharma,
UDC & Secretary (Staff side),
Central Joint Staff Council,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.

...Applicants.

(By Advocate: Shri V.S.R. Krishna)

Versus

1. The President,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
2. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
3. The Under Secretary (Admn.),
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
4. The Bimal Kumar Dubey,
Section Officer,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.

...Respondents.

(By Advocate: Shri V.K. Rao)

(2)

ORDER

Justice V.S. Aggarwal:-

The Indian Council of Agricultural Research (for short, "the ICAR") is a registered society under the Societies Registration Act. It is engaged with the research of agriculture, animal husbandry, fisheries etc. It has different institutes in other parts of the country. It has framed recruitment rules for different posts at the ICAR Headquarters. The said recruitment rules of course are not in exercise of any power under Article 309 of the Constitution of India. For the post of Under Secretary which is Administrative Group 'A' post in the scale of Rs.10000- 15200/-, the Rules provide:-

"9. Method of recruitment whether by Direct recruitment or by promotion or by deputation/transfer and percentage of vacancies to be filled by various modes. 100% by promotion.

10. In case of recruitment by promotion/deputation/ transfer; grades from which promotion/deputation/ transfer is to be made. Section Officers in the pay scale of Rs.6500- 10500 having rendered at least 8 years of approved/regular service in the grade, on the recommendations of Selection Committee. Provided that where juniors who have completed their qualifying / eligibility service are being considered for promotion, their seniors would also be considered, provided they are not short of the requisite qualifying / eligibility service by more than half of such

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qualifying / eligibility service or 2 years, whichever is less and have successfully completed their probation period, for promotion to the next higher grades, alongwith their juniors who have already completed such qualifying / eligibility service. Provided further that the ICAR shall have the authority to inter-change officers in this grade with the Senior Administrative Officers of Combined Administrative Cadre of ICAR on a limited scale not exceeding two in number at any time."

Respondent No.4 is stated to be an officer of the State Government of Uttar Pradesh. He had been appointed on deputation by the order of 29.5.2003. The said order reads:-

"The Competent Authority has been pleased to appoint Shri Bimal Kumar Dubey a PCS Officer of 1990 Batch of State Government of UP presently working as Addl. Private Secretary in the Office of the AM as Under Secretary at the ICAR Headquarters on usual deputation terms and conditions in the pay scale of Rs.10000-25-15200 with immediate effect and until further orders.

The detailed terms and conditions of the appointment of Shri Bimal Kumar Dubey on deputation basis will be issued separately in consultation with his cadre controlling authority.

(A.C.GHOSH)
UNDER SECRETARY (ADMN) "

Applicants have assailed the appointment of respondent



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No.4. Out of the three applicants, applicant No.1 is a Section Officer while applicants 2 and 3 are Upper Division Clerks. According to the applicants, the rules provide that the post of Under Secretary is to be filled up 100% by promotion. There is no scope for any appointment by direct recruitment or by deputation and, therefore, the private respondent could not have been appointed. They seek quashing of his appointment and to direct the respondents to effect the promotion to the vacant post of Under Secretary in accordance with the recruitment rules.

2. During the pendency of the present application, the respondents approved one time relaxation of the recruitment rules to the post of Under Secretary which is being reproduced below for the sake of facility:-

"The Committee noted that as per the orders of the Hon'ble Agriculture Minister and President, ICAR Sh. Bimal Kumar Dubey PCS Officer has already been appointed as Under Secretary in ICAR on deputation basis for the period from 30.5.2003 to 14.10.2006. The Committee approved one time relaxation of the Recruitment Rules for the post of Under Secretary to provide for deputation as a mode of recruitment for the appointment of Sh. Bimal Kumar Dubey w.e.f. 30.5.2003 to 14.10.2006 subject to adherence of related procedural requirements.

The meeting ended with vote of thanks to the Chair."

Even the said relaxation had been assailed during the

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course of submissions.

3. The application has been contested. It has been pointed that the recruitment rules and the instructions issued by the TCAr after the approval of the Governing Body are administrative in nature. They are not like the recruitment rules framed under Article 309 of the Constitution which are statutory in nature. The rules have been framed which included recruitment rules. In the absence of any mala fide, this Tribunal should not interfere in the decision of the Governing Body. It has been pointed that in the present case, appointment of respondent No.4 as Under Secretary had been made in relaxation of the recruitment rules with the approval of the competent authority.

4. We have heard the parties' learned counsel.

5. During the course of submissions, the learned counsel for the respondents asserted that the applicants have no locus standi to file the present application. Admittedly, the applicants 2 and 3 are only Upper Division Clerks, but as is apparent from the recruitment rules for the post of the Under Secretary framed, the feeder cadre for the promotion to that post is Section Officer. Applicant No.1 is a Section Officer. Therefore, so far as applicant No.1 is concerned, only he has the locus standi to challenge any appointment which affects his rights.

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6. The respondents' learned counsel eloquently pointed that the applicant No.1 was junior enough and was not in the zone of consideration and, therefore, he has no locus standi to file the application.

7. So far as this particular contention is concerned, this must be rejected for the reason that a person in the feeder cadre only has locus standi to challenge any illegal appointment which affects his rights. It need not be an immediate or imminent promotion. Keeping in view this fact, we have not the least hesitation in rejecting this particular argument.

8. As a limb of the same argument, it was asserted that this Tribunal will not entertain a Public Interest Litigation in this regard.

9. Reliance was being placed on a decision in the case of Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra, (1998) 7 SCC 273 wherein the Supreme Court held that there is significance of the word "his" occurring in Section 3(q) and when read with Section 3(b) of the Administrative Tribunals Act, 1985, he must be a person aggrieved and a Public Interest Litigation would not be permitted.

10. We do not have the slightest doubt in stating that Public Interest Litigation would not be entertained by this Tribunal. However, applicant No.1, as already

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pointed above and re-mentioned at the risk of the repetition has a grievance because he is in the feeder cadre. It, therefore, ceases to be Public Interest litigation. He is aggrieved because permanent nature of deviation with respect to the rules and giving benefit to the private respondent. We, therefore, hold that applicant No.1 has locus standi to file the application.

11. In that event on behalf of the respondents, it was urged that the respondent TCAR is competent to frame the rules and amend the same. Reliance was placed on a decision of the Supreme Court in the case of **I.C.A.R. v. Satish Kumar and Another**, AIR 1998 SC 1782. The Supreme Court held:-

"However, retrospective operation of service rules could not be given by mere Executive instructions. In the present case before us the respondent is not governed by any statutory rules. Here it is the competent body of the appellant which frames rules laying down conditions of service of its employees. Rules framed by the Society are not statutory rules and they can be amended by a resolution of the competent body and any legislation or framing of rules under Article 309 of the Constitution is not required. Scientists of the appellant had been agitating for grant of UGC pay scales. When a decision was taken on the basis of reports of the various committees and in consultation with the Ministry of Finance and UGC scales of pay were granted from January 1, 1986 the challenge to such decision could not be entertained."

Keeping in view the ratio deci dendi of the decision of the Supreme Court, there is not the least hesitation that

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the rules can be amended by a resolution by the competent authority. But the resolution so passed can always be challenged by appropriate persons who are affected. It cannot be termed that the concerned authority has unfettered power to defeat the law of the land by any resolution.

12. We have already pointed above that during the pendency of the present application, one time relaxation in the recruitment rules was given which has been reproduced above. Applicants' learned counsel challenges the same. On behalf of the respondents to the said challenge, it was pointed that if there is no mala fide or arbitrariness alleged, the amendment cannot be challenged. He further contended that this Tribunal cannot sit as a court of appeal because it is for the authority concerned to effect the changes and to see what is good for the institution and lastly in the original application that was filed, one time relaxation granted had not been challenged. He relied upon a decision of the Supreme Court in the case of Maj.Genl. IPS Dewan v. Union of India and Others, 1995 (29) ATC 579 and another decision of the Apex Court in the case of All India State Bank Officers Federation v. Union of India and Others, (1997) 9 SCC 151.

13. We do not dispute, as already pointed above, the right of the concerned authority to make the necessary amendments in the recruitment rules. The decision of the

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Supreme in the case of All India State Bank Officers Federation (supra) was confined to the peculiar facts. The Supreme Court had held that there is nothing wrong if the bank devised a policy defining the eligibility norms on a realistic basis. The changes made cannot be termed to be arbitrary. It is for the bank authorities to decide as to what is good for the institution. That indeed would be the legal position as held by the Supreme Court.

14. But as would be noticed hereinafter, if a decision had been taken in an arbitrary manner ignoring the settled principles and is based on extraneous facts, the ratio deci dendi of the said decision will not apply.

15. Similarly the case of Maj. General IPS Dewan (supra) is distinguishable. That pertained to a controversy where the person was not selected. The members of the selection committee had filed an affidavit explaining the circumstances. There was no allegation of arbitrary conduct of the selection board. The Supreme Court held that it was not a case for interference. Even the said principle has no application to the facts of the present case before us.

16. Of course, the last submission in this regard noted above provides food for thought. We are conscious of the fact that if a fact happens during the pendency of the application, in that event, in accordance with the

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settled principles, the original application should have been amended claiming, if necessary quashing of the one time relaxation that had been granted. However, ^{here} when the fact took place during the pendency of the application and the parties were given full opportunity to address arguments, the respondents have filed written submissions and facts were not disputed. Nothing is brought to our notice to show that any prejudice is caused. Therefore, we consider the relevant factors pertaining the validity of the same.

17. We have already reproduced above the recruitment rules for the post of Under Secretary. It only provided one method of filling up the post i.e. by promotion from the post of Section Officer. The private respondent is not a Section Officer and, therefore, his initial appointment was totally against the recruitment rules.

18. As regards the relaxation granted to respondent No.4 during the pendency of the application which we have reproduced above, it clearly notes that the promotion order was passed not by them but as per the orders that were passed and conveyed to them by other authority.

19. Rule of law clearly provides that when power had been given to amend the rules, the said authority has to be left absolutely free to deal with the matter to its judgement. That authority can amend the rules keeping in view the interests of the ICAR. It is of essence and

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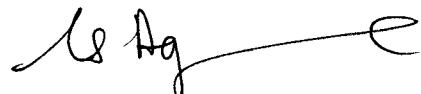
fair administrative law that decisions are taken free from extraneous guidance and considerations. If this is discretionary and is controlled or fettered by any other authority, it may not be a valid and good exercise of discretion.

20. In the present case, as is apparent from the sequence of events and the facts mentioned, it is obvious that the discretion has been so exercised not independently as is apparent from the nature of the order that had been passed and reproduced above in paragraph 2 above. At this stage, it cannot, therefore, stand scrutiny.

21. For these reasons, we allow the present application and quash the appointment of private respondent and also the one time relaxation that had been granted. As a result thereto, further promotion shall only be made, in accordance with the existing recruitment rules. By way of abundant caution, we make it clear that nothing said herein would restrict the power of the authority to validly amend the provisions of the recruitment rules. No costs.



(R.K. UPADHYAYA)
MEMBER (A)



(V.S. AGGARWAL)
CHAIRMAN

/sns/