

Association for Advancement of Vs. the Union of India (Uoi) Through

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Nov-16-2007

Judge : M R Vice, R A Neena

Appellant : Association for Advancement of

Respondent : The Union of India (Uoi) Through

Judgement :

1. The applicants have challenged selection of Scientists made pursuant to Notification Annexure A-2 issued by the National Institute of Science Communication and Information Resources (NISCAIR). The advertisement had appeared in the Employment News of May, 2004.

Essential qualifications and minimum experience had been prescribed and it is pointed out that the general procedure, as gatherable from the Notification, was that there would be a written test for short listing.

The selection was to be based on academic qualifications, experience and suitability as adjudged. In the process, screening, written test for short-listing the candidates and interview had been contemplated.

Particular reference is made by the counsel to the Note in the advertisement which indicated that a written test will be organized to short list the candidates to be called for interview. The candidates were expected to go through Multiple Choice Questions based on a written test and details of the areas, which were likely to be

covered, had also been given. The complaint is that the selection was done ignoring these norms. Principally, Mr. Garg, appearing for the applicants, had submitted two points, which, according to him, if acceptable, would render the selection process invalid. The selected persons have been arrayed as respondents to the proceedings as they were likely to be affected by the decision.

2. Our attention had been invited to Rule 5.3 of the CSIR Scientist Recruitment and Assessment Promotion Rules, 2001. Counsel points out that, as gatherable from the above, except for the provisions specified under the rules, the Board was free to devise its own procedures in respect of recruitment and assessments to be conducted by it. In the matter of selection, Rule 6.5.2 stipulates that for recruitment of Scientists specified officers were to constitute the Screening Committee, who were to screen the applications received and organize a written test or scrutinize, if considered necessary, for short listing the candidates to be called for interview.

3. It is revealed that altogether 2854 applications had been received and 1074 of them had been considered as eligible. Later on, a process of short listing had been done and 253 persons were so segregated as eligible for appearing in the written test. Applicants 2 to 5 were not invited for the written test as a result of the above preliminary selection. In view of certain directions passed by this Tribunal, the 6th applicant had been permitted to partake in the written test but he had not been selected. Citing judgment of the Hon'ble Supreme Court in *Madhya Pradesh Public Service Commission v. Navneet Kumar Potdar and Anr.* 1994 (6) SCC 293, counsel submits that perhaps short listing was permissible, but it was not competent for the authorities to ignore wholesale the statutory stipulations. Therefore, when the rules prescribe for elimination only after a process of written test, the methodology adopted whereby a preliminary screening had been held so as to restrict the number of candidates, and thereby to deny opportunity for a sizable number of persons even to appear in the written test, was a procedure unwarranted by the authority of rules. When statute provides that a specific method is to be employed in recruitment, there is no liberty or discretion for the authorities to deviate from the procedure and, therefore, when the admitted position was that screening had been carried out even prior to the written test, the selection was hit by procedural violation arising of statutory prescriptions which

made thereby inroads to the guaranteed rights of the applicants and consequently appointments were to be declared as irregular and illegal.

4. The second submission was on the basis of Annexure A-9 circular dated 04.01.2001. It required that paper setting and evaluation of answer sheets in respect of examinations held for selection to the CSIR were always to be done by outside agencies. This stipulation had been overlooked, as evidently in-house personnel have been employed. The Government always wanted to ensure that nepotism was not practiced, but it had been conveniently overlooked, thereby vitiating the entire selection. This, according to the applicants, was a circumstance warranting interference.

5. However, as far as we could see, respondents have sufficiently explained the situations. Although the materials produced before us indicated that there were allegations of nepotism and corruption, revolving round the selection on some of the appointees, any such consideration may be beyond the purview of this application and especially since the applicants have confined their submissions to two points, to which reference has already been made by us. Of course, the advertisement, inter alia, held out that the mode of selection will be based on a written test to be conducted for short listing the candidates to be called for interview. We do not think, especially in the light of the rules, the issue has to be approached mechanically.

The ultimate aim of a selection is to enroll candidates, who are found possessing superior merit. When large number of candidates respond to a Notification, as pointed out by the Supreme Court in Madhya Pradesh Public Service Commission's case (cited supra), some rational and reasonable basis are to be resorted to, to short list the applicants.

The only requirement, according to the Supreme Court, was that the decision regarding short listing must be based not on any extraneous consideration. The pre-condition should have been that such methods employed should not be converted into a procedure where there is alteration or substitution of eligibility criteria governed by the statutory rules or prospectus.

6. Rule 6.5.2 of Annexure A-12, according to us, sufficiently gives discretion to the respondents to adopt a short-listing policy, as per their judgment and as has been carried out. The expression used is that 'the Committee shall screen the applications received and organize a written test or seminar if considered necessary for shortlisting the candidates to be called for interview'. This cannot be understood as a mandatory requirement as having been imposed on the respondents to organize a written test, and written test alone for short listing.

7. Learned Counsel for respondents has invited our attention to the process that had been adopted, when highly qualified candidates had responded. There has been no variation of the essential elements to be followed. It could not have been insisted that all eligibles were to be subjected to a written test, as contended. The process of short listing is one stage, of selection, and when we find the rules do not insist that a written test is obligatory to weed out candidates, we have to hold that the contentions of the applicants to the contrary are not maintainable. Our finding, therefore, is that in the matter of short listing, there was no error committed vitiating the process of selection.

8. We may now examine the contention that has been raised on the basis of the circular dated 04.07.2001. The applicants submit that always, the selection job is to be entrusted to an outside agency for obvious reasons. But by the Surrejoinder, 3rd respondent has on oath, submitted that a clarification had been brought in, in the matter of setting up question papers, on 28.9.2004, a copy of which is produced as Annexure R-2. The instructions dated 04.07.2001 thereby were not to be applicable, as such, in the case of scientific posts. In other words, question papers could have been set in-house and with the help of outside experts. This might have been after recognizing the practical requirements. Therefore, there was no indiscretion in adopting the course, as authorized.

9. The two points raised, therefore, have been successfully met by the respondents to show that the selection methodology adopted was regular.

In the circumstances, O.A. is dismissed. There will be no order as to costs.