

(2007) 05 DEL CK 0014

In the Delhi High Court

Case No : Writ Petition (C) 14438-39 of 2005

Dr. B. Mishra and Another

APPELLANT

Vs

Director General ICAR and Others

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21(1)

Criminal Procedure Code, 1973 (CrPC) — Section 145

Forest Service (Initial Recruitment) Regulations Rules, 1966 — Regulation 3

Citation : (2007) 05 DEL CK 0014

Hon'ble Judges : Mukul Mudgal, J; Aruna Suresh, J

Bench : Division Bench

Advocate : Parag Tripathi and Jayant Mehta, for the Appellant; P.P. Malhotra, Addl. Solicitor General, Praveen Swaroop, V.K. Rao, Chetan Chawla and Gaurav Sharma and P.S. Patwalia Aman Preet Singh Rahi, Ekta Nijjar and VSR Krishna, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—This writ petition challenges the orders of the Central Administrative Tribunal (hereinafter referred to as the "CAT") dated 24th March, 2005 and 12th August 2005 by which the CAT dismissed the two O.A.s filed by the petitioners Dr. D Mishra (O.A 1192/2005) and Dr. Hari Shankar Gupta, (O.A. 1193/05) challenging the order of the CAT dated 24th March 2005 by which the CAT quashed the order of the Indian Council for Agricultural Research (hereinafter referred to as the ICAR) dated 30th November, 2004 whereby the recommendations of the Agricultural Services Recruitment Board (hereinafter referred to as the "ASRB") for appointment to the post of the Deputy Director General, Crop Science [hereinafter referred to as "DDG (CS)"] were rejected and a fresh advertisement was issued for filling up the said post.

2. The present writ petition raises an important question as to the bias of a member of a Selection Committee and whether such bias vitiates the selection process?

3. The brief facts of the case as per the case set up by the petitioner are as follows:

a) On 27th December 2003, the Indian Council of Agricultural Research (hereinafter referred to as the ICAR) issued an advertisement for the post of the DDG (CS). Several applicants, including the petitioner and the respondent No. 4, Dr. B.S. Dhillon applied for the post of DDG (CS).

b) Both the petitioner and the respondent No. 4 qualified in the Objective phase consisting of 75 marks and were called for the interview which was to be held on 16th April 2004 which consisted of 25 marks. The Interview Committee consisted of 8 persons including the Respondent No. 5, Dr. A.S. Khera.

c) The two ex officio members of the ASRB abstained from signing the proceedings of the interview on the ground that the proceedings were not conducted in a fair manner and the Chairman had failed to communicate the marks of the various candidates as was required by the selection procedure. The ASRB recommended the name of the Respondent No. 4 for the appointment to the post of DDG (CS) by the President ICAR, (hereinafter referred to as the "Competent Authority"). The above mentioned two ex-officio members forwarded their dissent notes separately to the Competent Authority.

d) By an order dated 9th May 2004 of 18th May 2004 the Competent Authority rejected the recommendation of the ASRB recommending the name of the respondent No. 4 for the appointment to the post of DDG (CS). The Competent Authority further ordered that the post of DDG (CS) may be re-advertised. The reasons given by the Competent Authority for the rejection of the recommendation of the ASRB are extracted below:

20. We now take up the question of the reasons for rejection of the recommendations of the ASRB. We have had the benefit of the relevant file (made available to us by the respondents) and the reasons recorded for rejecting the recommendations of the Selection Committee by the Agriculture Member (President of ICAR) in his note dated 9th May 2004 and they are as under:

I have gone through the note on page 10-11/n and other facts available on the file. I have also perused the dissent notes separately submitted by Secretary (Agriculture & Cooperation) and Secretary (DARE) & DG ICAR regarding the lack of transparency lack of impartiality and fair play, and lack of objectivity in the selection process. Both of them have also recommended that the selection process system be improved to make it merit oriented, objective and impartial. On perusal of the recommendation submitted by the ASRB, it is clear that the recommendation has not been signed by 2 members of the interview board, i.e., Director General, ICAR and Secretary (A&C) who by virtue of being ex-officio members of the interview board are bound to be represented on the interview board (other members are to be nominated by the ASRB itself) and whose concurrence for the selection becomes most important.

The Director General ICAR has also adversely commented upon the constitution of interview board by the ASRB by nominating relatively junior members on the board. In the circumstances, the recommendation of ASRB for selection to the post of DDG (CS) lacks transparency and may not reflect the selection of the best available candidate. Therefore, I am compelled to reject the recommendation of the ASRB. The selection process to be post of DDG (CS) may begin afresh by re-advertising post.

21. From the above it is apparent that the President ICAR has set aside the recommendations of the ASRB by considering the notes recorded, separately, by Secretary (A&C) and Secretary....

e) The respondent No. 4 approached the CAT against the order of the Competent Authority by O.A. No. 1752/2004. On 23rd November, 2004 the CAT allowed the application of the respondent No. 4 and directed the reconsideration of his nomination de hors the dissent notes of the two ex-officio members. Thus, the candidature of the respondent No. 4 was again forwarded to the Competent Authority for reconsideration.

f) The Competent Authority once again rejected the recommendation of the candidature of the respondent No. 4 by an order dated 30th November, 2004 on the grounds of the clear and intimate linkage between the respondent No. 4, the recommended candidate and the respondent No. 5 who was one of the members of the Selection Committee. The relevant portion of the said order reads as follows:

...Whereas the Hon''ble CAT, Principal Bench vide their order dated 23rd November, 2004 in O.A. No. 1572/2004 had inter alias directed the respondents to place before the President ICAR the recommendation of the Selection Committee as forwarded by ASRB vide their letter dated 16.4.2004 for taking fresh view. It was further mentioned that the notes recorded by Secretary DARB and Secretary (A&C) or any other functionary should be ignored as they cannot be considered to be part of the selection proceedings and the file containing the recommendations of ASRB be submitted to the President, ICAR without nothings of Secretary (A&C) and Secretary (DARE) or any other functionary.

Whereas in compliance of the said orders of the Hon''ble CAT, the recommendations of the Board as forwarded vide their letter dated 16.4.2004 was placed before the competent authority, i.e., the President, ICAR Society and the Hon''ble Union Agriculture Minister for taking a fresh view ignoring the dissent note.

Whereas the competent authority has now considered the said recommendation afresh and after careful application of mind, independent of the earlier decision of the then Union Agriculture Minister, has observed that transparency and fairness is an essential requirement of any selection process. Clear and intimate linkage emerges between Dr. B.S. Dhillon, the recommended candidate and Dr. A.S. Khera, one of the members of the said Selection Committee.

Now, Therefore, the competent authority after taking into consideration the facts and circumstances in its totality is convinced that the instant recommendation of the ASRB is unacceptable and Therefore deserves to be rejected. Accordingly, the competent authority has decided to reject his recommendation and to re-advertise the post.

This order is accordingly issued with the approval of the competent authority in compliance to the directions of the Hon''ble CAT, Principal Bench, New Delhi, with reference to their order dated 23rd November, 2004 in the O.A. No. 1752/2004.

g) On 21st December, 2004 a second advertisement for appointment to the post of DDG (CS) was issued by the ICAR. The petitioners and the respondent No. 4 submitted their applications pursuant to the said advertisement.

h) The respondent No. 4 once again approached the CAT by filing an O.A. bearing No. 184/2005 seeking inter alias quashing the order dated 30th November, 2005 and the advertisement dated 21st December, 2004.

i) On 24th March 2005, the CAT allowed the O.A. 184/2005 filed by the respondent No. 4.

j) The petitioner aggrieved by the order dated 24th March 2005 filed a writ petition (Civil) No. 8212-8213/2005 in this Court against the same. This Court by its order dated 11th May 2005 stayed the operation of the order dated 24th March 2005 for a period of four weeks. The respondent No. 4 raised a preliminary objection during the course of the hearing of the writ petition regarding the maintainability of the writ petition in view of the judgment of the Hon''ble Supreme Court passed in K. Ajit Babu and others Vs. Union of India and others, , thus this Court directed the petitioner to approach the CAT in accordance with the said judgment of the Hon''ble Supreme Court.

k) On 27th May 2005, the petitioners approached the CAT in respect of O.A. No. 1192/2005 titled as Dr. B. Mishra v. D.G. ICAR and Ors. and O.A. No. 1193/2005, titled as Dr. H.S. Gupta v. D.G. ICAR and Ors.

l) On 12th August 2005, the above O.As. were rejected by the CAT.

It is against these orders of the CAT dated 12th August, 2005 and 24th March, 2005 that the present petition has been filed.

4. The learned Senior Counsel for the petitioner, Sh. Parag Tripathi submitted as follows:

a) The presence of the respondent No. 5 vitiated the interview process on the ground of bias and non-transparency as the respondent No. 5 was the guide of the respondent No. 4 and had co-authored more than 100 papers with the respondent No. 5.

b) The impugned order dated 12th August 2005 fails to appreciate the process of the interview dated 16th April 2004 was vitiated for the reasons of bias and non-

transparency which is evident from the unusual difference in the marking of the respective members of the interview board. This is because Dr. P. Satyanarayana at Serial No. 1 received 4 marks from the evaluator No. 1 and that Dr. N.B Singh received 24 marks from the same evaluator (hereinafter referred to as the Vertical Variation) and Dr. P.K. Singh at Serial No. 6 received 5 and 8 marks from the evaluator Nos. 1 and 8 respectively, he received 25, 24, and 23 marks from the evaluator Nos. 3, 5 and 7 respectively (hereinafter referred to as the Horizontal Variation). The petitioner No. 1 secured the highest marks in the written examination but lowest in the interview. In the same way, the petitioner No. 2 secured the third highest marks in the written examination but the second lowest in the interview. Such variation in the marking pattern are incomprehensible as all the candidates were accomplished senior scientists and had appeared for the interview after qualifying the written examination. It is to be noted that the candidates who had been called for the interview could have appeared for the same only if they had obtained a minimum of 60% marks in the written examination. However the candidates obtained as low as 20% marks in the interview. Such a variation in the marking scheme demonstrates gross arbitrariness and thus, vitiates the entire selection process.

c) The impugned order of the CAT proceeds on an erroneous application of the principle of law regarding the presence of bias, as the test of bias is not whether bias has affected the judgment but whether a litigant could reasonably apprehend bias attributable to a member of the Interview Committee, which might have operated against him in the final decision. Actual proof of prejudice is not necessary to enable the litigant to effectively raise the argument of bias even though it may make the case of the litigant stronger. The learned Counsel for the petitioner relied upon the position of law laid down by the Hon'ble Supreme Court in the following cases to submit that the test of bias is that of "reasonable apprehension" in the mind of a reasonable man:

i) A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

15. It is unfortunate that Naquishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all can one of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the

preparation of the list of selected candidates in order of preference. At every stage of this participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund.

(ii) Manak Lal Vs. Dr. Prem Chand,

4. Shri Daphtary contends that the tribunal appointed by the learned Chief Justice of the High Court of Rajasthan to enquiry into the alleged misconduct of the appellant was improperly constituted and all proceedings taken before the tribunal, the report made by it and the subsequent order passed by the High Court pursuant to this report are all invalid. This point arises in this way. The tribunal consisted of three members with Shri Chhangani as its Chairman. It is common ground that Shri Chhangani had filed his vakalat on behalf of Dr. Prem Chand in proceedings u/s 145 of the Code of Criminal procedure on August 23, 1952, and had in fact argued the case on that date. Shri Daphtary contends that since Shri Chhangani had appeared in the criminal proceedings in question for the opponent he was disqualified from acting as member of the tribunal and this

disqualification introduces a fatal infirmity in the constitution of the tribunal itself. There is some force in this argument. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave L.C. has observed in *Frome United Breweries Co. v. Bath Justices* [1926] A.C. 586 "this rule has been asserted not only in the case of Courts of Justices and other judicial tribunals but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of other". In dealing with cases of bias attributed to members Constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "memo debet esse judex in causa propria sua precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice there in" [Halsbury's Laws of England, Vol. XXI, p. 535, para 952]. In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties.

d) The principles of natural justice know of no exclusionary rule and that the non-observance of the principles of natural justice is in itself a prejudice to any man. He relied upon the position of law laid down by the Hon^{ble} Supreme Court in the following cases:

i) *Ranjit Thakur Vs. Union of India (UOI) and Others*,

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?" but to look at the mind of the party before him.

ii) *S. Parthasarathi Vs. State of Andhra Pradesh*,

14. The test of likelihood of bias which has been applied in a number of cases is

based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed see *R. v. Huggins* [1895] 1 Q.B. 563.; *R. v. Sussex JJ.*, ex. p. *McCarthy* [1924] 1 K.B. 256.; *Cottle v. Cottle* [1939] 2 All E.R. 535.; *R. v. Abingdon JJ.* ex. p. *Cousins* [1964] 108 S.J. 840. But in *R. v. Camborne JJ.*, ex. p. *Pearce* [1955] 1 Q.B. 41., the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

15. The question then is : whether a real likelihood "of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision see per Lord Denning, M.R. in *Metropolitan Properties Company (F.G.C.) Ltd. v. Lannon and Ors. etc.* (1968) 3 W.L.R. 694. We should not, however, be understood to deny that the court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings.

iii) *S.L. Kapoor Vs. Jagmohan and Others*,

24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's *Natural Justice* (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasised in many cases.

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of

the rules of natural justice or as itself forming one of those rules. Both Explanations of the significance of the maxim are found in Lord Widgery C.J.'s judgment in *R.V. Home Secretary, Ex. P. Hosenball* (1977) 1 W.L.R. 766, 772, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice."

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the Court is concerned not with a case of actual injustice but with the appearance of injustice, or possible injustice. In *Altco Ltd. v. Sutherland* (1971) 2 LR 515 Donaldson J said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In *R.V. Thames Magistrates Court, ex.p. Polemis* (1974) 1 W.L.R. 1371, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defense. The Divisional Court rejected the argument that, in its discretion it ought to refuse relief because the applicant had no defense to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say : "Well, even if the case had been properly conducted, the result would have been the same". That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at p. 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

5. The learned Counsel for the respondent No. 4 Shri Pattwalia submitted as follows:

a) The CAT in its order dated 24th March 2005 had specifically rejected the argument of bias of the Respondent No. 5. The relevant portion of the order of the CAT reads as follows:

16. One fact that was not disputed at either end was that the applicant in his application had disclosed all the facts pertaining to different publications that are to his credit, some of which were Dr. A.S. Khera. The long list indicates that there are large number of publications issued by him. It was also not disputed that the persons, who are closely related, are not supposed to be in the Selection Committee.

27. As has been noticed above, the applicant had disclosed all the facts in his application. He had given the reference of Dr. Khera. In other words, there has been no fraud or misrepresentation on the part of the applicant. If despite the same, the Committee thought it appropriate to retain Dr. Khera as one of the Members in the Selection Committee, we find nothing illegal in this regard as would be noticed hereinafter. We find little ground that Dr. Khera could not be in the Selection Committee.

28. As has been noticed from various precedents recorded above, a person can always work with eminent scientists or at times with their Guides and teaches but it does not debar them from being in the Selection Committee. In fact, the Supreme Court, as noticed above, had recorded that once they have worked with senior Scientists, the senior Scientists, cannot be debarred from holding the selection. In fact, if this proposition was to be accepted in that event when for senior posts like the present one, Selection Committee has to be comprised, it will be difficult even to find senior scientists because one person or the other must have worked or drawn some joint papers with him. It cannot be described, Therefore, to be a linkage with the candidate to debar him from being selected.

b) Another bench of the CAT in its order dated 12th August 2005 in O.As. 1192/05 and 1193/05 examined the ground of bias afresh and held that the respondent No. 5 was not guilty of bias in favor of the respondent No. 4.

c) A perusal of the marks awarded in the written examination as well as in the interview would show that the Respondent No. 4 did not secure highest marks in either the written examination or the interview. The fact that he was at No. 2 in the written examination and at No. 4 in the interview and had secured the highest rank only when the marks of both the written examination and the interview were added. Thus, the respondent No. 4 got selected on the basis of the consistent performance in both the written examination and the interview. In the interview, the highest marks i.e., 24 to the respondent No. 4 were awarded by two members of the Selection Committee. The other candidates secured highest marks in the range of 23 to 25.

d) The plea of bias is an afterthought. The dissent notes written by the two ex-officio members did not mention any bias by the respondent No. 5 which was submitted to the Competent Authority and also the first order of the cancellation

of selection dated 18th May 2004. When the ex-officio members realized that their favorite candidate was not selected they got the scorecard changed and the marks allotted for the interview were increased and those for the academic and career achievements were reduced. The original and the modified score cards are as under:

INDIAN COUNCIL OF AGRICULTURAL RESEARCH KRISHI BHAWAN, NEW DELHI.

NO. 21(45)/2001-Per.IV Dated the 31st July, 2003

To,

The Chairman,

ASRB,

Krishi Anusandhan Bhawan,

Pusa,

New Delhi.

Sub:- Implementation of Score-Card system in direct selection to various scientific posts in ICAR.

Sir,

I am directed to refer your D.O. letter No. 9-7/2001-RA dated 28th April, 2003 on the subject cited above and to inform you that the revised Score Card proposed by the board has been approved by the Hon"ble AM subject to the following:

1. Instead of completely deleting the provision for looking the Annual Confidential Reports (ACRs) of the candidates, the same may be seen wherever available and adverse remarks in the ACRs, if any may be taken note of while making selection of the candidate for appointment as Scientists in ICAR.
2. Wherever ACRs are not being maintained, a brief proforma for inviting Confidential Report/reports on the work and conduct of the Scientists covering essential attributes on the pattern of ICAR ACR Proforma may be developed by the ASRB. The proforma will be used for the candidates where the system of writing ACRs is not in vogue.

Further necessary action may accordingly be taken in the matter.

Yours faithfully

Sd/-

(K.K. BAJPAI)

Director (Personnel)

SCORE CARD FOR DDG/NATIONAL DIRECTOR CADRE POSTS

1. Academic Qualifications Maximum: 15 marks i) 10 + 2 1st Class 2 marks 2nd Class 1 mark 3rd Class 0 mark ii) Bachelor's Degree 1st Class 3 marks 2nd Class 1.5 mark 3rd Class 0 mark iii) Master's Degree 1st Class 5 marks 2nd Class 2.5 mark 3rd Class 0 mark iv) Ph.D. Degree in relevant field 5 marks 2. Experience Maximum: 8 marks 1/2 mark for each year of service as Principal Scientist, 1 mark for each year of service as Head/PC/ZC or equivalent and 1 1/2 mark for each year as ADG/Director/Jt. Director of deemed universities or NAARM/Dean or equivalent.

3. Research/teaching/extension/publication relevant to the field in the present most.

Maximum : 20 marks i) For each full length article in referred scientific/professional journal 1/4 mark ii) For each research note/short communication/symposium paper/popular article 1/10 mark iii) For each research bulletins/extension bulletins/ extension leaflets 1/10 mark iv) For each book published/edited by individuals 1/2 mark if more than one editor/author 1/4 mark v) For each manual & teaching aid 1/4 mark vi) Teaching/extension 5 marks 4. In service special award/medals/fellowships/recognitions only for academic excellence (research/teaching & extension education)

Maximum : 8 marks i) International/national level 2 marks for each ii) Institutional/professional academic /society level 1 mark for each iii) Others 1/2 for each 5. Special Attainment Maximum : 9 marks

Release of a variety/technology/prototype developed/citation index - one mar for each the. gets 1/2 mark. For every 5 citations in Science Citation index 1/4 mark.

6. Externally founded Projects obtained as PI/CoPI

Maximum : 5 marks

i) For each project costing Rs. 20 lakhs and above

1 mark for P1, 1/2 mark for Co-P1/RMP

ii) For each project costing below Rs. 20 lakhs

1/2 mark as P1, 1/4 mark for Co-P1/RMP

7. symposium/seminar/summer institute/winter institute/refresher course training organized as organizer/course Director and International Export 1/2 for each.

Maximum : 5 marks

8. Institutional Building in terms of discipline contribution:

Maximum : 5 marks i) For each major facility created 1 mark ii) For human resource development program 1 mark iii) For each major project executed 1 mark iv) For each major event organized in respect of Scientists/students under

his jurisdiction 1 mark v) Performance in ARS/SRF/NET, if qualified 1 mark iv) National level/institutional level/society level award 1 mark and recognition by faculty/scientist

9. Confidential report for last 5 years Satisfactory Overall grade awarded in the confidential report for each year.

10. Interview/Personality Test Maximum : 25 marks Knowledge of the candidate in the concerned and related field has to be evaluated. Power of expression, team working, leadership quality and overall smartness of candidate has to be assessed at the time of interview to know his/her personality.

Note : i) Any scientist getting of 60% and above (1-8 above) marks out of 75 marks (25 marks are for interview) will be eligible to be called for interview.

ii) The score of the candidate should not be made available to the members of the selection committee at the time of interview. However, the same will be made available to them after the interviews are over to tabulate the total marks and to finalize the recommendations for the selection.

iii) Annual Confidential Reports (ACRs) for immediate past 5 years will be looked by the ASRB at the time of selection of candidates for different posts of Sr. Scientists and above up to National Institutes Directors/DDGs, etc.

a. Where ACRs are written abstracts of the ACRs with overall grade awarded will be called from the competent authority of the institute/organization where the candidate is working.

b. Where ACRs are not written the competent authority of the institute/organization where the candidate is working/worked in the last 5 years will be requested to give year wise assessment in the proforma developed by the ASRB regarding work and conduct of the candidate.

c. The adverse remarks in the ACRs, if any, during immediate past 5 years will be taken into account and appropriate decision will be taken by the competent authority in the ASRB keeping in view the nature of adverse remarks.

REVISED SCORE CARD

Score Card adopted by the ASRB for direct selection to the Senior Level Scientific Positions including Research Management Positions in I.C.A.R.

Attribute	SCORE	CARD	SS	PS	HOD/PC/ZC	DIR/ADG	DDG/ND
1. Academic Qualifications	10+2	B.Sc	Ph.D.	Medals/Awards	JN	Award	20 15 10 03 02
2. Experience	05 05 05 07 08						3. Service in Remote areas 03 03 02 02 0
4. Publications	20 25 15 12 12						5. Teaching/Ext. 02 02 0 0 0
6. In service Awards	04 04 02 02 02						7. Special Attainments 04 04 04 02 02
8. Ex. Funded Project	02 02 03 03 03						9. Seminar/Symp. Organized 0 0 02 02 02
10. International Exposure	0 0 03 03 04						11. Institution Building 0 0 02 02 03
12. Inter-disp/Inst. Proj.	0 0 02 02 02						Total (1-12) 60 60 50 40 40
13. Interview	40 40 50 60 60						Gross Total 100

100 100 100 100

e) The forged representation dated 5th June 2004 which was submitted by the petitioner after 50 days of the interview does not mention the name of the respondent No. 5.

f) Since the Competent Authority had rejected the minutes of the Selection Committee on the ground of a clear and intimate linkage between the respondent No. 4 and the respondent No. 5 but the CAT had held otherwise, the decision making process was vitiated and the quashing of the order dated 30th November, 2004 of the Competent Authority was a necessary consequence.

g) The respondent No. 4 has categorically denied the allegations of embezzlement of funds and selection for an ex-cadre position by filing an affidavit.

h) The petitioners fully participated in the selection process and did not approach this Court for more than a year. They filed WP(C) 8212-13/2005 on 11th May 2005 on the prompting of the ICAR. They are proxy litigants and are estopped from challenging the selection. Both Dr. Mishra and Dr. Gupta have been awarded Plum Posting after they initiated the litigation.

The learned Counsel for the respondent relied upon the position of law laid down by the Hon"ble Supreme Court in the following cases:

i) G. Sarana Vs. University of Lucknow and Others,

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the Constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favorable recommendation from it. Having done so, it is not now open to him to turn round and question the Constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal Vs. Dr. Prem Chand, where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

It seems clear that the appellant wanted to take a chance to secure a favorable report from the tribunal which was constituted and when he found that he was confronted with an unfavorable report, he adopted the device of raising the present technical point.

ii) Dr. A.K. Doshi Vs. Union of India,

In this case the facts indicate that, even though the Selection Committee made a recommendation, the appointment of that candidate was got rejected/stalled. Thereafter even though directed to do so by the Appointments Committee,

process of fresh selection was not initiated. The file was kept pending till name of the Appellant could be sent to the Appointments Committee. The facts lead to the only conclusion that there was rank favoritism and a blatant attempt to get the Appellant appointed as Member (Technical), Company Law Board. On these facts the ratio in Aggarwal's case has no application. Also in the present case there is no office memorandum requiring selection from the reserve panel.

iii) G.N. Nayak Vs. Goa University and Others,

33. Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially. "If however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, Therefore, by definition, are prejudices.

34. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self interest - whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principle of nature justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the Courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

35. In A.K. Kraipak and Ors. v. Union of India and Ors. the Selection Committee had been constituted under Regulation 3 of the Indian Forest Service (Initial Recruitment) Regulations, 1966 for the purpose of making selections to any State cadre of the All India Forest Service. The Chief Conservator of Forests was selected. Setting aside the selection, this Court held that the Chief Conservator of Forests being himself one of the candidates seeking to be selected to the All India Forest Service should not have been included as a member of the Selection Board because of the possibility of bias.

36. As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. For example, if a senior officer expresses appreciation of the work of a junior in the Confidential Report, it would not amount to bias nor would it preclude that senior officer from being part of the Departmental Promotion Committee to consider such junior officer along with others for promotion.

37. In this case, the respondent No. 5 has relied on the note quoted earlier to allege bias against the respondent No. 2. No doubt the respondent No. 2 has, in the note, lavished praise on the performance of the appellant. As the Head of the

Department it would be but natural that he formed an opinion as to the abilities of the Readers working under him. It is noteworthy that it was not the respondent No. 5's case that the respondent No. 2's praise of the appellant was unmerited or that the respondent No. 2 had any extraneous reasons or reasons other than the competence of the appellant for selecting the appellant's as Professor. We are also not persuaded as the High Court was, to infer bias merely because at the previous selection in September 1995 the appellant was found unsuitable. If the outcome of the previous selection was conclusive as to the non-suitability of the appellant for all times to come, it was conclusive as far as the respondent No. 5 as well. Yet the respondent No. 5 applied again because he knew that a reappraisal by a new Selection Committee at later point of time might yield a different result.

i) All the earlier Selection Committees were constituted in the same manner as the present one but the petitioner never raised the issue of bias on the ground such linkage on the part of the members of the committee. In the selection committee constituted for the appointment of Dr. Mangla Rai present DG ICAR, as DDG(CS), Dr. R.S. Paroda, the then DG, ICAR was one of the members, even though both Dr. Paroda and Dr. Rai had joint publications.

j) In the present case, 7 out of 8 candidates who appeared in the interview, have professional linkage with one to four members of the two selection committees and other candidates who appeared in the impugned selection of DDG(CS) Dr. S.P. Tiwari and the petitioner Dr. H.S. Gupta have joint publications with Dr. Mangla Rai, DG, ICAR and ex officio member of the selection committee.

k) It will be practically impossible to constitute a selection committee consisting of persons not having any profession linkage with any of the candidates as stated by the CAT.

6. After considering the submissions and the arguments advanced by the learned Counsel for the parties, we are of the view that since the respondent No. 4 and 5 had published jointly more than 100 papers out of the 300 papers published their position cannot be treated at par with that of a mere guide/teacher and the student. It has also been found that the respondent No. 4 had mentioned the respondent No. 5 as a referee in his application to the post of DDG (CS), which fact has also been noted in the judgment of the CAT dated 12th August 2005. The relevant portion of the judgment dated 12th August 2005 of the CAT reads as follows:

8...It was stated that respondent No. 4 did not have any close relationship with respondent No. 5. He had professionally worked with not only respondent No. 5 but also with respondent No. 1 and had mentioned the name of both these persons as referees in his application.

18. It is submitted that publication of over 100 papers jointly by these two respondents was never disclosed which fact has been strongly refuted on behalf of these respondents and it has been submitted that all these research papers

were duly mentioned and the name of the respondent No. 5 along with the then Director General, ICAR was mentioned in the application itself as referee.

M.P. Jain, in his Treatise on Administrative Law states as follows:

The maxim *memorandum judex in causa sua* literally means that no man can be a judge in his own cause. The maxim has come to mean that the deciding authority must be impartial. This is known as the rule against bias. The principle that bias disqualifies an individual from acting as a judge flows from the following two maxims:

- i) No one can be a judge in his own cause; and
- ii) Justice should not be done but also seen to be done.

The first maxim applies not only when the adjudicator is himself a party to the dispute he is deciding, but also when he has some interest therein. The interest may be pecuniary, personal or other type. According to the second maxim, it is not necessary to prove that a particular decision was actually influenced by bias. It is sufficient if there is reasonable suspicion about adjudicator's fairness. The fountain of justice must not only be pure but it must also enjoy public confidence and credibility. The adjudicator must not only be free from bias, but there must not even be an appearance of bias.

In Black's Law Dictionary 6th Edition, bias has been defined as under:

Inclination; bent; prepossession; a preconceived opinion; a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction. To incline to one side. Condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case.... Actual bias consists in the existence of a state of mind on part of the juror which satisfies the court, in the exercise of a sound discretion, that the juror cannot try the issues impartially and without prejudice to the substantial rights of the party challenging.

In *Kumaon Mandal Vikas Nigam Limited. v. Girja Shankar Pant* (2001) 1 SCC 182 it was held as under:

26. Bias" in common English parlance mean and imply-predisposition or prejudice.

35. The test, Therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular Court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do

record our concurrence with the view expressed by the Court of Appeal in Locabail case (Supra).

7. It has been held by the Hon''ble Supreme Court in A.K Kraipak's case (supra) that the real question is not whether one is biased or not because it is difficult to prove the state of mind of a person. Therefore what has to be seen is whether there is reasonable ground for believing that the respondent was likely to have been biased and in deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. The court also held that there was a reasonable likelihood of perception of bias in the selection process if there was a conflict between the interest and duty of the person who was selecting the candidates. In the instant case, at every stage of the selection process there was a reasonable likelihood of bias by the respondent No. 5 as there was a conflict between his interest i.e., co-authoring more than 100 articles with the respondent No. 4 and his being named as a referee in the application of the respondent No. 4 and his duty i.e., to conduct the selection proceedings in a fair manner. In S. Parthasarthy's case (supra) it was held that the question whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the concerned party aggrieved or the public at large. In Ranjit Thakur's case (supra) it was held by the Hon''ble Supreme Court that as to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. Thus, as per the position of law laid down by the Hon''ble Supreme Court, the fact that the respondent No. 4 and 5 had published more than 100 papers jointly, and more so because the respondent No. 5 was mentioned as a referee in the application of the respondent No. 4 for the post of DDG (CS) clearly indicated reasonable grounds for the belief that there was likelihood of bias. The fact that the respondent No. 5 also did not voluntarily opt out of the selection process which led to the selection of the respondent No. 4 also indicates that there were reasonable grounds for believing that the respondent No. 5 could be perceived to be biased in favor of the respondent No. 4.

8. Further, in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, the Hon''ble Supreme Court while reaffirming the test of real likelihood of bias laid down in A.K. Kraipak's case (supra) held that where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree/nearness of relationship so as to give rise to the reasonable apprehension of bias by the authority which makes the selection. The relevant portion of the said judgment reads as follows:

17. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated

from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the A.K. Kraipak and Others Vs. Union of India (UOI) and Others, happened in this case was that one Naquisbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naquisbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naquisbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naquisbund did not take part in the deliberations of the Selection Board when his name was considered, by saying:

But then the very fact that he was a member of the Selection Board must have its own impact on the decision of the Selection Board. Further, admittedly, he participated in the deliberations of the Selection Board when the claims of his rivals. were considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberation of the selection board, there was a conflict between his interest and duty.... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.... There

must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.

This Court emphasised that it was not necessary to establish as but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

9. Thus, in view of the position of law laid down by the Hon''ble Supreme Court in Ashok Yadav's case (supra) the fact that more than 100 papers were jointly published by the respondent No. 4 and 5 and the fact that the respondent No. 4 had mentioned respondent No. 5 as a referee in his application makes it very apparent that there was a close relationship between the respondent Nos. 4 and 5 to give reasonable likelihood of bias on part of the respondent No. 5. As held in Ashok Yadav's case (supra), perception of bias may arise not only from a possibility of favoring the favorite but also by the manner in which the rivals of the favorite who are coveting the relevant post may be treated.

10. Even if the plea of the learned Counsel for the respondent No. 4 that mere co-authoring of 100 published articles by the respondent No. 4 and the respondent No. 5 was not sufficient to constitute a reasonable apprehension of bias as in a specialized scientific field because of the limited number of experts, association and familiarity between them is common, is accepted, in the present case, it is not merely co-authoring of 100 Articles by the respondents No. 4 and 5 but the fact that the selected candidate, the respondent No. 4 had named the respondent No. 5 as his referee which also strengthens the perception that the likelihood of bias cannot be ruled out. Invariably, the referee's consent for being named as such in the application is obtained, unless the relationship is so close that even such consent could always be presumed and forthcoming. Thus, in either event the respondent No. 5 would be aware of the fact that respondent No. 4 was appearing in the selection process and in such an event, the respondent No. 5 ought to have disassociated himself from the impugned selection.

11. While rejecting the plea of bias raised by the petitioners in this Court before the CAT, the CAT has based its reasoning entirely upon the fact that both the respondents No. 4 and 5 had undertaken research jointly and published the papers jointly and even if the papers were about 100 in number, that itself could not give rise for a legitimate apprehension of bias. In arriving at this finding, the CAT has erred on two grounds:

(i) Firstly, it has not taken note of the fact that in its own order the CAT has noticed the fact that the respondent No. 5 was a referee of the respondent No. 4. This additional factor even though noticed by the CAT has not been dealt with in the impugned order.

(ii) Secondly, it was not mere association in one or two papers, but a joint research and publication of 100 papers which surely would leave to a legitimate assumption that the relationship between the respondent Nos. 4 and 5 was long-term, sustained and of a fairly close nature. This is another fact which the CAT has noticed but it has not been dealt with anywhere in its order.

The quantum of collaboration in 100 research papers lends substance to a reasonable belief that the association between the respondent No. 4 and the respondent No. 5 was so close so as to rule out an entirely objective assessment by the respondent No. 5 of the candidates who appeared for selection. Thus, the CAT has erred in not taking note of the cumulative effect of the respondent No. 5 being a referee of the respondent No. 4 and having authored 100 papers together, which demonstrated that the acquaintance was not just professional in our view certainly lent a legitimate ground for reasonable apprehension of bias in respect of the selection of the respondent No. 4 by the respondent No. 5.

12. The learned Counsel for the respondent has submitted that the plea of bias taken by the petitioner is an afterthought because the dissent notes written by the ex officio members and the first order of cancellation did not mention any bias by the respondent No. 5 which was submitted to the Competent Authority. In our view this plea of the respondent is liable to be rejected as according to the order of the CAT dated 23rd November 2004 the CAT while allowing the application of the Respondent No. had directed the reconsideration of his nomination de hors the dissent notes of the two-ex officio members. Thus, it did not matter whether the dissent notes of the two ex-officio members mentioned the fact of bias or not as they were according to the CAT's order to be ignored while considering the nomination of the Respondent No. 4 to the post of DDG (CS).

13. The learned Counsel for the respondent No. 4 has submitted that once the petitioner has fully participated in the process they have no right to challenge it. But in our view, this plea of the respondent No. 4 cannot be accepted since at the time of the selection, the petitioner could not have known about the relationship between the respondent Nos. 4 and 5 or the result of the selection.

14. It is also relevant to note that even the Competent Authority, i.e., the President, ICAR did not accept the recommendations of the ASRB and ordered that transparency and fairness was an essential requirement of any selection process and ordered re-advertisement of the post. The recommendation of the ASRB recommending the respondent No. 4 for appointment to the post of DDG (CS) were twice rejected by the Competent Authority, i.e., the President, ICAR, which post was held by the two different Ministers at the time of each rejection.

15. In *Dr. H. Mukherjee Vs. Union of India and Others*, it was held that the selection made by the Commission was recommendatory in nature and it was open to the Government either to accept or reject it. The relevant extract of the said judgment reads as follows:

8. It is obvious from what we have stated above that this Court clearly observed in *Surjit Singh Kalra Vs. Union of India (UOI) and Another*, that the selection made by the Commission was only recommendatory in nature and it was open to the government to either accept the recommendation or depart there from....

Further, in the case of *Jatinder Kumar and Others Vs. State of Punjab and Others*, the following position of law was laid down:

12. The selection by the Commission, however is only a recommendation of the Commission and the final authority for appointment is the Government.

Thus, in view of the position of law laid down by the Hon'ble Supreme Court in the case of *Dr. H. Mukherjee's case* and *Jatinder Kumar's case*, the recommendation of the Selection Committee in selecting the Respondent No. 4 for the post of DDG (CS) was not binding on the Competent Authority and the Competent Authority was justified in not accepting the said recommendation particularly when it was of the opinion that there was a clear and intimate linkage between the respondents No. 4 and 5.

16. Further, in the case of *Punjab State Electricity Board and Others Vs. Malkiat Singh*, it was held that mere inclusion of a candidate's name in the select list does not confer an indefeasible right upon the candidate to be appointed. The relevant para of the said judgment reads as follows:

It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in *Shankarsan Dash Vs. Union of India*, which reads:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.

Thus, in view of the position of law laid down by the Hon'ble Supreme Court in *Punjab State Electricity Board's case* (supra), the mere fact that the respondent No. 4 was selected by the Selection Committee gives him no vested right to be appointed.

17. In so far as the plea of the respondent No. 4 with respect to laches is concerned, the CAT itself has found in paragraph 11 that the writ petition was not barred by limitation u/s 21(1) read with Section 20 of the Administrative Tribunals Act, 1985. Accordingly, the plea of laches cannot be raised by the respondents who have not challenged the order of the CAT. In any case this is

not a case where the appointment has been made and the respondent is functioning on the post where a plea of laches would assume significance.

18. Further the CAT could not have merely relied upon the score card where it has itself noticed while significant fluctuations in the marks awarded by the members of the Selection Committee. It is settled law as per Ashok Yadav's case that the bias does not only manifest itself in how a favored candidate could be treated but also in the manner in which how the rivals of a favored candidate would be dealt with.

19. Consequently we find merit in the plea of the petitioner that there were reasonable grounds for an apprehension that the selection of the respondent No. 4 was vitiated by bias. The writ petition is thus allowed and the orders of the CAT dated 24th March, 2005 and 12th August 2005 are set aside. However, while allowing this writ petition, we wish to make it clear that nothing stated in this judgment is meant to cast any reflection whatsoever on the eminence, credentials and achievements of either the respondent No. 4 or the respondent No. 5. It will be open to the appointing authority to appoint a fresh Selection Committee for the purposes of selecting the candidate for the post of DDG(CS) without including the respondent No. 5. The respondent No. 4 is free to participate in any such selection process. The observations in this judgment will not come in the way of his selection afresh by the new selection committee.