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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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திகதி } 08-02-2018
Date }

T.K.D. Tennakoon
No.15, Visakha road,
Gampaha

Complainant

Complaint Number: HRC/3120/14

vs.

Chairman
National Aquatic Resource Research and
Development Agency (NARA),
Crow island,
Mattakkuliya,
Colombo 1;

Respondent

A. THE COMPLAINT

1. The Complainant was the principal scientist of the National Institute of Oceanography and Marine Sciences (NIOMS) of NARA.
2. The Complainant applied for the position of Deputy Director General, Research and Development. There were two candidates, including himself, who applied for this vacancy.
3. The Complainant was not selected for the said post, and claims that the selection panel was biased, and acted in an unfair manner during the selection process.

B. RELEVANT FACTS

4. The position of the Deputy Director General, Research and Development was advertised on 28.04.2014 calling for both internal and external applications. The advertisement for internal candidate's states *inter alia* that a candidate should have **served a minimum of five years in a managerial position.**
5. The Complainant sent his application for the said position with his curriculum vitae. At

the time the candidate made his application, he was serving as the Principal Scientist/Head NIOMS. Page 4 of the Complainant's CV shows that he was serving as the Head of the Oceanography Division since 2001.

6. Another candidate named Dr. Palitha Kithsiri also applied for the same position. Dr. Kithsiri was serving as Deputy Director General, Research and Development (Acting) when he applied for the said position. Dr. Palitha Kithsiri joined NARA in 1991 as a Research Officer and was later promoted to a Managerial Grade from 29.08.2008.
7. The qualifications of both candidates are summarised by a document submitted by the Respondent.
8. On 4th July 2014, both candidates were interviewed by a six-member panel consisting of the Director General of NARA, the Director General (Tech) and four board members.
9. The panel selected Dr. Palitha Kithsiri for the position of Deputy Director General, Research and Development. The panel allocated marks for the two candidates in the following manner:

Name	Relevant Additional Experience (30 marks)	Relevant Additional Educational/ Professional Qualifications (30 marks)	Other achievements/ skills (15 marks)	Performance at the interview (25 marks)	Total (100 marks)
Dr. H. M Palitha Kithsiri IARD Division	18	05	12	25	57
Dr. T.D.K.D. Tennakoon NIOMS Division	25	05	06	10	46

The Scheme of Recruitment at para 4.5 mentions the aforementioned four broad categories but does not include subcategories as to how marks are to be allocated. The Respondent submissions dated 30.05.2016 states that there were no subcategories for each heading.

10. The Complainant resigned on 29.09.2014 after he was not selected for the position of Deputy Director General, Research and Development.

C. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION

11. Inquiries were held on 02.04.2015 and 12.12.2017. At the inquiry held on 02.04.2015, the Complainant stated that the Chairman and the Director (Admin.) did not sit in the interview panel. He further states that all those who sat in the interview panel were Biologist and there was no one from his field of expertise i.e. Oceanography. The Complainant states that he was not given the opportunity to submit reports and presentations which he prepared to submit to the interview panel.
12. At the inquiry held on 12.12.2017 the Respondent, now a new Chairman of NARA, made the following observations on how marks may have been allocated at the interview. The Respondent stated that as he was not serving as the Chairman of NARA when the interview took place in 2014, the following observations are made based on the recruitment practices followed by NARA:

Category I: Relevant Additional Experience

The Respondent stated that it was unclear on what basis marks were allocated to the first category. The Respondent stated that according to the practice followed by NARA in addition to the basic qualifications additional training and relevant experience are taken into consideration.

Category II: Relevant Additional Educational/ Professional Qualifications

The Respondent stated that both candidates hold PhD's but the Complainant has an additional qualification of a Diploma in International Affairs. Therefore, the Respondent pointed out that it is questionable how both candidates received 5 marks for this category.

Category III: Other Achievements/ Skills

The Respondent stated that by comparing the CV's of the two candidates, it is evident that the Complainant is a member of 7 international and national professional bodies. The Complainant has produced 16 international publications and produced 19 scientific papers at international conferences. The Respondent states that academic publications and scientific writings are of utmost importance to NARA and the Complainant has produced over 30 scientific reports and writing.

The Respondent stated that currently when they are recruiting scientists they allocate 3 marks for international publications and 2 marks for national publications. The Respondent questioned the manner in which the interview panel has allocated 12 marks to Dr. Palitha Kithsiri who has only published 7 papers while allocating less marks to the Complainant who has produced over 30 international and national publications.

Furthermore, the Respondent stated that the established practice at NARA is to obtain copies of all scientific publications, documents relating qualifications and period of service, and allocate marks accordingly. However, there is lack of transparency in the

marking procedure followed by the interview panel; as such, documents and the breakdown of the mark allocation have not been disclosed.

Panel Recommendation:

The Respondent stated that after an interview panel comes to a decision as to which candidate it selects, the name of the selected candidate is expressly indicated. However, the recommendation of the mark sheet does not indicate the name of the chosen candidate but merely discloses the marks that each candidate received. Furthermore, reasons should be given as to why a candidate was selected and the name of the selected candidate must be approved by the Board.

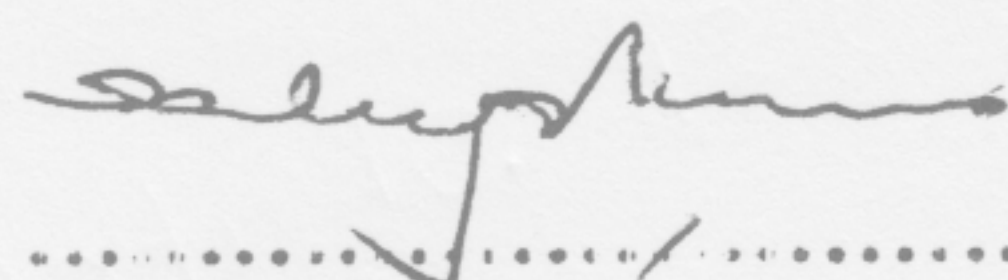
D. OBSERVATIONS

13. The grounds on which the two candidates were individually evaluated is unclear, as the interview panel has not used any subcategories in allocating marks for the candidates. The observation of the new Chairman of NARA discloses that there are certain practices adopted by NARA where marks are broken down based on subcategories (international publications/ national publications etc.).
14. The Complainant had more publications, professional qualifications than Dr. Palitha Kithsiri but he received 50% less than Dr. Kithsiri. (Dr. Kithsiri received 12 marks while the Complainant received 6 marks). Therefore, the basis for allocating marks under the category of relevant additional professional/ educational qualifications and other achievements is unclear.
15. Furthermore, the interview panel while submitting one mark sheet for all 6 members, has failed to provide reasons as to which candidate it has selected. In the event that two internal candidates apply for the same position and have varying levels of achievements, the interview panel should have disclosed the way in which each candidate was evaluated.
16. The interview panel, while having the ability to exercise its discretion when selecting a candidate, cannot exercise its discretion in a manner that is *prima facie* unfair and unreasonable. The fact that the Complainant's extensive experience in the field was not taken into consideration at the interview shows that the Complainant did not have a fair opportunity to present himself. Therefore, it is concluded that the interview panel has allocated marks for the two candidates in an arbitrary and unfair manner.
17. For the aforementioned reasons it can be concluded that the Fundamental Rights guaranteed to the Complainant by **Article 12(1)** of the Constitution of Sri Lanka has been infringed in this regard

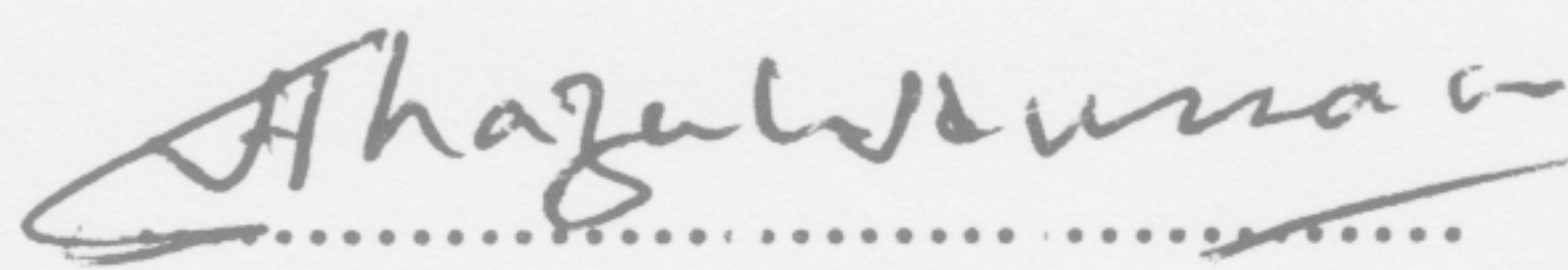
E. RECOMMENDATIONS

On a finding of a violation of Article 12(1), the Commission makes the following recommendations:

- a) Since the Complainant by now, has resigned from NARA, the Commission is unable to recommend that he be appointed as Deputy Director General Research and Development. However in terms of the provisions of Section 15 (4) (b) , the Commission recommends that the Respondent may consider the Complainant for an appropriate position at the NARA in terms of the Scheme of Recruitment of NARA, if such position is vacant and if the Complainant so desires to apply for the same.
- b) In terms of the provisions in section 11 (g) of the HRC Act, the Commission recommends that the Respondent public body pay the Complainant a sum of Rs. 100,000/ as compensation, in the event recommendation (a) is not acted upon.
- c) In terms of Section 15(7) of the HRC Act, the Commission hereby recommends the Respondents to report to the Commission regarding the actions taken to implement the recommendation within 3 months from the date of this recommendation.



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Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka



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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka