

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1935 OF 1999

New Delhi, this the 13th day of February, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

Shri Vishnu Singh Bora Sr. Clerk,
Vivekanand Krishi Anushandhansala,
(ICAR) Almora U.P.,
at present House No.211, Sector-1,
R.K. Puram, New Delhi.

.....Applicant

(By Advocate : Shri D.R. Gupta)

Versus

1. Director General,
ICAR, Krishi Bhawan, New Delhi.
2. Director,
Vivekanand Parvatiya Krishi Anushandhansala,
(ICAR) Almora, U.P.
3. Shri S.D. Dubey,
Officiating Director,
Vivekanand Parvatiya Anushandhansala,
ICAR Almora, U.P.

.....Respondents

(By Advocate : Shri V.K. Rao with Shri Satish Kumar)

ORDER

HON'BLE SHRI SHANKER RAJU, MEMBER (J) :

This OA directed against the order passed on 30.4.1996 whereby under Rule 19 (1) of CCS (CCA) Rules, 1965 applicant has been removed from service on account of his conviction in two criminal cases.

2. Applicant, who was working as Senior Clerk in ICAR, was involved in case No.1977/1992 under Sections 294 and 506 of IPC as well as in case

No.276/93 under Sections 323, 427 and 501 of IPC. By an order dated 1.12.1995 passed by the Chief Metropolitan Magistrate and even order in another criminal case, applicant was convicted for the offences.

3. By show-cause notice dated 19.3.1996 issued by the respondents under Rule 9 of the rules *ibid*, a punishment of removal from service was proposed. This has been responded to by a representation, resulting in confirmation of the punishment proposed vide order dated 30.4.1996.

4. Applicant filed OA 1029/1996 without availing the statutory remedy. By an order dated 9.8.1996, said OA was held pre-mature and RA 172/1996 filed was also rejected on 5.12.1996.

5. Applicant preferred an appeal, which was turned down on 28.1.1998.

6. Appeals preferred against the convictions before the Additional Session Judge were dismissed confirming the punishment vide order dated 21.8.1998 in both the cases.

7. Applicant filed the present OA before us alleging that as he has been appointed by the Director, the authority, who was only performing the current duties of the Director of the Institute, without any competence passed the aforesaid order is in violation of Article 311 (1) of the Constitution of India, being authority subordinate to the appointing authority.

8. By the orders passed by this Tribunal on 23.5.2000 in this OA, the orders of the authorities were quashed with the liberty to pass an

appropriate order. The aforesaid order was carried before the Hon'ble Delhi High Court vide CWP No.4603/2000 wherein the High Court holding that the Rules of ICAR are non-statutory and there is no embargo against delegation or the exercise of those powers by any officer of equal status. Insofar as equivalence of the Director with the person who was performing the current duties of Director, i.e., Principal Scientist, the matter has been remanded back for fresh consideration.

9. Learned counsel of the applicant states that under Article 311 (1) of the Constitution of India, one cannot be removed/dismissed by an authority subordinate to the appointing authority. By referring to Note 2 of Rule 12 of the rules *ibid*, it is stated that the post of Principal Scientist is a feeder post for the post of Director and all the Principal Scientists have no vested right to be appointed as Director unless a Board on their merit through selection post them as Directors.

10. In this conspectus, referring to the order dated 22.2.1995, it is stated that the Administrative as well as financial powers as exercised by the Director of Institute thought entrusted upon Dr.S.D. Dubey, Principal Scientist, there is no formal appointment of Dr.S.D. Dubey as Director. As such, Dr.S.D. Dubey is not competent to exercise the powers of Director, which includes administrative powers of appointment or removal.

11. Insofar as equivalence of the post is concerned, it is stated that in the light of the decision of the Apex Court in the case of *Sub Inspector Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi*

and Others, 2000 Supreme Court Cases (L&S) 213, the pay scale, though same of Principal Scientist and Director, cannot be the sole criteria for equation of the post. Referring to the aforesaid, it is stated that Principal Scientist cannot be equivalent to the Director unless he has been appointed to the post and the pay scale is personal to them.

12. In this view of the matter, it is stated that an order of dismissal/removal passed by incompetent authority, subordinate and not of equal rank of Director, who is the appointing authority of the applicant, is liable to be set aside.

13. Learned counsel of the applicant has also relied upon the decision of the Apex Court in CA No.648/1985 in the case of *Ram Kishan Prajapati Vs. State of U.P.* decided on 0.3.1999 wherein one of the appointing authority was District Magistrate, but the appellant was appointed by the Commissioner, who is the higher authority than the District Magistrate and the orders have been set aside, taking cognizance of Prevention of Corruption Act.

14. On the other hand, respondents' counsel vehemently opposed the contention and stated that an affidavit has been filed by the Director, ICAR wherein it has been stated that pay scale of Principal Scientist, who had been entrusted with the powers of Director of Institute, was equivalent in rank of Director. According to Shri V.K. Rao, learned counsel for the respondents, though the Directors are selected among the Principle Scientists but the administrative and financial powers, as the pay scales of

both the posts are equivalent, had been entrusted to the Principal Scientist and the earlier Director was also Principal Scientist, who had been after completing of his tenure, has been sent back as Principal Scientist. According to him, the posts are inter-changeable and are equal in all respects.

15. In the rejoinder, applicant has reiterated his pleas taken in the OA.

16. We have heard rival contentions of the parties and perused the material available on record.

17. Insofar as the delegation of powers are concerned, as in view of the observations made by the High Court in its order that the Rules of ICAR are non-statutory, there is no embargo against delegation or the exercise of those powers by any officer of equal status, holding the charge, the issue no more is *res integra*.

18. Article 311 (1) of the Constitution of India protects the Govt. servant for being dismissed and removed by an authority subordinate or lower than the appointing authority.

19. It is equally settled that it is not necessary that the same authority, which had appointed, may dismiss or remove a person. What is relevant is that the authority should be of the equivalent rank and should not be lower in rank than the appointing authority. The Apex Court in *Jai Jai Ram and Others Vs. U.P. State Road Transport Corporation, Lucknow and Others*, (1996) 4 Supreme Court Cases 727, made the following observations:-

"5. It was next contended that the officers who had taken action against the appellants had no power to make appointments in government service or on civil posts while they were on deputation with the corporation and, therefore, they could not have taken any action against the appellants in view of the protection afforded by Article 311. It was submitted that the authority contemplated by Article 311 is the authority which should have power to appoint a person on a civil post under the Union or a State, as the case may be. We do not find any substance in this contention also. Article 311 gives protection of a member to a civil service of the Union or an all-India service or a civil service of a State or to a person holding a civil post under the Union or a State against dismissal or removal by an authority subordinate to that by which he was appointed. Article 311 does not provide that a member of a civil service or a person holding a civil post either under the Union or a State cannot be dismissed or removed by an authority except the appointing authority. There is no requirement that the authority which takes disciplinary action must continue to have the power of making appointment to the civil service or on a civil post under the Union or a State. It can be any other authority so long as it is not subordinate in rank or grade to the authority by which the delinquent government servant was appointed. That is the only requirement of Article 311 and we cannot read anything more into it. In *State of U.P. v. Ram Naresh Lal*, (1970) 3 SCC 173, this Court has in clear terms held that there is nothing in the Constitution which debars a Government from conferring powers on an officer other than the appointing authority to dismiss a government servant provided he is not subordinate in rank to the appointing officer or authority."

If one has regard to the above, nothing debars a Govt. from conferring the powers of an officer other than the appointing authority to dismiss a government servant, the only safeguard provided is that such authority should not subordinate in rank to the appointing authority.

20. Insofar as the issue regarding whether Dr.S.D. Dubey, Principal Scientist, who had been entrusted with the powers, i.e., administrative and financial powers of Director is equivalent in rank to the Director or is competent to exercise the powers of appointing authority, which includes power of removal or dismissal is concerned, the Apex Court in *Sub-Inspector Rooplal's* case (supra), insofar as equivalence is concerned, has held as follows:-

“17. In law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the posts should be equivalent. One of the objections raised by the respondents in this case as well as in the earlier case of Antony Mathew is that the post of Sub-Inspector in BSF is not equivalent to the post of Sub-Inspector (Executive) in the Delhi Police. This argument is solely based on the fact that the pay scales of the two posts are not equal. Though the original Bench of the Tribunal rejected this argument of the respondent, which was confirmed at the stage of SLP by this Court, this argument found favour with the subsequent Bench of the same Tribunal whose order is in appeal before us in these cases. Hence, we will proceed to deal with this argument now. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than “pay” will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of *Union of India v. P.K. Roy*, AIR 1968 SC 850. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are : (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any

way make the post "not equivalent". In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the Tribunal in the impugned order that the two posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in the case of Vice-Chancellor, L.N. Mithila University v. Dayanand Jha, (1986) 3 SCC 7, wherein at SCC para 8 of the judgment, this Court held: (SEE pp.10 &11)

"Learned counsel for the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded to equal status and responsibility.... The True criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts."

21. Apex Court in *V.N. Meenakshi Vs. UOI*, (1999) Supreme Court

Cases (L&S) 669, insofar as equivalence is concerned, has held as follows:-

"Respondent 5 was holding a substantive post in the Office of the Comptroller and Auditor General of India as Junior Accounts Officer. He was brought on deputation to the Border Security Force. He was absorbed in the Organisation of the Border Security Force as Joint Assistant Director. The appellant is an employee under the Border Security Force. The absorption of Respondent 5 in the post of Joint Assistant Director was challenged by the appellant before the Central Administrative Tribunal, inter alia, on the ground that according to the Rules in force, Respondent 5 could not have been so absorbed. The Tribunal, by the impugned judgment and order, came to hold that the post which Respondent 5 was holding in the parent organisation is an analogous post to the post of Joint Assistant Director and therefore, there was no illegality in the absorption of the said Respondent 5 as Joint Assistant Director. From the relevant rules in force at the point of time, it is clear that unless the two posts are analogous posts, it is not possible for absorption of an officer from another organisation. Looking at the duties of the two

different posts in question, the scale of pay which the post carries as well as the category to which the two posts belong, it is difficult for us to sustain the conclusion of the Tribunal that Respondent 5 was holding an analogous post in the parent organisation. The Tribunal having committed error in holding that Respondent 5 was holding an analogous post in the parent organisation, the ultimate decision gets vitiated. Having examined the relevant criteria of the two posts in question with which we are concerned, we are of the considered opinion that Respondent 5 on the date of his absorption as Joint Assistant Director in the Border Security Force was not holding an analogous post under the Comptroller and Auditor General of India and therefore, he was not entitled to be absorbed permanently in the Border Security Force. The said absorption, therefore, is vitiated and must be set aside. We, accordingly, set aside the order of absorption of Respondent 5 as Joint Assistant Director under the Border Security Force. The impugned order of the Tribunal is accordingly quashed. Since the appellant claimed to be otherwise entitled for promotion to the post of Joint Assistant Director but in the meantime has retired on superannuation, her claim may be considered for promotion to the post of Joint Assistant Director in accordance with law and if ultimately she is promoted to the post of Joint Assistant Director, then she would be entitled to the consequential enhancement in retiral benefits but will not be entitled to any arrears of salary on that score. Appeal is accordingly allowed but there will be no order as to costs."

22. For ascertaining whether the post is analogous, the criteria for determination is not only the pay scale but also comparison of nature of duties, responsibility and powers exercised, minimum qualifications and mode of recruitment to the post as well as salary. The pay scale cannot be the sole criteria for the same.

23. High Court of Delhi while remanding the case back insofar as equivalence of post is concerned in paragraph 9 of the judgement has observed as under:-

"9. We do not however propose to consider the abovesaid alternative contention of respondent as set out in para 7 above, since it requires a determination of the aspect of equivalence, which we feel should be done by the Tribunal in the first instance."

24. High Court has also made following observations for equivalence of rank:-

"10. We may however note that while in the impugned judgment, the Tribunal observes in para 6 that "it is not in dispute that Dr. Dubey who was the Principal Scientist of the Institute was lesser in status than the Director of the Institution", at the same time we also have before us, on record, an additional affidavit dated 13.4.2000 filed on record of the Tribunal by Dr.H.S. Gupta, Director, UPKA Almora, categorically stating that Dr.S.D. Dubey, Principal Scientist was in the pay scale of Rs.4500-7300 which was also the pay scale of the predecessor Director. It is further mentioned in the affidavit that Dr. S.D. Dubey was of the equivalent rank of Director. At page 49 of the record of this Court, we also find an office order dated 22.2.1995 which directs that one Dr. K.D. Karanne, Director of this very Institute, is being transferred to the post of Principal Scientist at Central Institute for Cotton Research, Nagpur, w.e.f. 1.3.1995 and that he will hand over charge of Dr.S.D. Dubey, Principal Scientist and that the latter will exercise all the financial and administrative powers as exercised by the Directors of the Institution till further orders.

11. It could well be therefore that an individual who is holding the post of Director, can be posted to another Institution or to the Head Quarters, as a Principal Scientist. Once the equivalence of posts is established, thereafter it may not be open for the respondent No.1, to contend that order of removal has been passed by a person below the rank of his appointing authority. Since Dr. Dubey appears to have been in the same pay scale as that of predecessor Director, and had been assigned current duty charge of looking after the financial and administrative matters relating to the post of Director, it would therefore follow that various staff members including disciplinary matters, (which would all be covered by the term "administrative" function), could be within his scope of authority, and as such there could be no question of lack of competence to act as a competent authority, once equivalence were to be established."

25. However, by remitting the case back afresh debars the aspect of statutory nature of the rules wherein precluded from going into the facts of equivalence for the purpose of Article 311 (1) of the Constitution of India, despite observations of the High Court. Moreover, the observations on equivalence only on the basis of pay scale attached to the post of Principal Scientist as well as Director.

26. It is not disputed that Principal Scientist is a feeder post for the post of Director. From the comparative study of the recruitment rules and other qualifications attached to these posts, which had been circulated by ICAR vide their letter dated 6.2.1995, for the post of Principal Scientist, the pay scale is Rs.4500-7300 (pre-revised) and the requirement is doctoral degree in the relevant subject with 10 years experience, which includes three years experience as a Senior Scientist and further specialization and research work. However, for a Director, apart from doctoral degree, five years experience as a Principal Scientist is prescribed among the specialization in the relevant subject.

27. The Principal Scientist within the powers conferred upon him cannot appoint any person. Accordingly, he cannot dismiss or remove a person, i.e., in the present case. Admittedly, the applicant's appointment was made by the Director.

28. A Principal Scientist cannot suo moto be posted as a Director unless a Board on selection basis make such an order. One has no right to be

appointed as a Director, unless his case is considered and found eligible in all respects and assessed as such by the competent authority.

29. The current charge of duty does not vest an authority with the powers of dismissal/removal. Govt. of India's Note 2 under Rule 12 of CCS (CCA) Rules, 1965 provides as under:-

"(2) Officers performing current duties of a post cannot exercise statutory powers under the rules.- The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of parliament (i.e., Income Tax Act) or Rules, Regulations and By-Laws made under various Articles of the Constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc.)

[G.I., M.H.A., O.M. No.F 7/14/61-Ests. (A), dated 24th January, 1963]

It has been decided that an order appointing an officer to hold the current charge of the duties of a post should, in the absence of any specific direction of the contrary, be deemed to clothe the officer with all powers vested in the full-fledged incumbent of that post. Such an officer shall not, however, modify or over-rule the orders of the regular incumbent of the post except in an emergency without obtaining the orders of the next higher authority.

Where the appointment to hold the current duties of a post involves the exercise of statutory or such other power conferred on the holders of the post, the appointment should also be notified in the Gazette.

[G.I., M.F., O.M. No.F. 12(2)-E. II (A)/60, dated the 15th October, 1960.]

Clarification. -An officer who is merely looking after the current duties of a higher officer is not competent to exercise disciplinary or appellate powers of the latter, if he himself is not vested with such concurrent powers in his own post. The following questions have not raised in this connection:-

- (1) who should pass the final punishment or appellate orders in the absence of the Competent Authority on leave or deputation, etc.?
- (2) who should place an official under suspension in the absence of the Competent Authority?

The difficulty arises only in cases of suspension when the order of suspension has to be issued immediately. Therefore so far as (1) is concerned, necessary investigation, etc., may be completed in the absence of the Competent Authority, and final orders in the case should be held over pending the return of the Competent Authority who should pass the necessary orders in the matter. As regards (2) suspension pending investigation into alleged misconduct, etc., does not amount to a penalty. In cases which cannot brook delay, the officer holding current charge of the duties of a higher post can exercise the powers of the Competent Authority in so far as passing of order of suspension pending investigation is concerned."

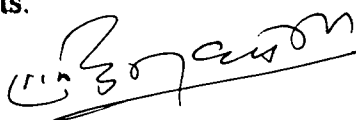
30. We find that insofar as the equivalence of the post of Principal Scientist and the post of Director is concerned, apart from pay scale, the other qualifications including experience etc. are not in *para materia* to judge the equivalence of the post. The factors are to be satisfied in the light of *SI Roop Lal's* case (supra). Moreover, because of the pay scales are identical would not be a decisive factor to treat the post as analogous.

31. Moreover, a person, who has not yet formerly appointed from the post of Principal Scientist to the post of Director, has no jurisdiction and authority to exercise all the powers of the Director, which includes administrative powers of punishment of removal. Admittedly, in the present case, the order dated 22.2.1995 whereby one Dr.K.D. Koranne was transferred as Principal Scientist and simply the authority has been handed over to Shri S.D. Dubey, but he has not been formerly appointed to the post

of Director. As such he has not point, not being equated post analogous to the Director and being a Principal Scientist, to exercise the administrative powers. Moreover, we have been informed that subsequently, Dr.S.D. Dubey has failed in selection and has not been appointed as a Director.

32. As it has not been established that the post of Principal Scientist and Director are analogous. In absence of equation of post, the Principal Scientist, being a subordinate authority lower in rank to the Director, cannot assume the powers of appointing authority to remove the applicant, on being current charge duties, it offends Articles 311 (1) of the Constitution of India. The order passed is without any competence and jurisdiction.

33. In the result, the present Original Application is allowed. The impugned orders are set aside. The respondents are directed to reinstate the applicant forthwith and the intervening period would be decided as per FR. However, this shall not preclude the respondents from passing a fresh order in the light of our observations as mentioned above. There shall be no order as to costs.



(R.K. Upadhyaya)
Member (A)

/ravi/



(Shanker Raju)
Member (J)