

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2181/99

New Delhi this the 25th day of January, 2000.

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. R.K. AHOOJA, MEMBER (ADMNV)

R.K. Bansal,
S/o late Shri Misri Lal,
R/o H.No.15, Vivekanandpuri,
Delhi-110 007. ...Applicant

(By Advocate Shri K.C. Mittal)

-Versus-

1. Union of India through
Secretary,
Ministry of Food Processing Industries,
Panchsheel Bhavan,
New Delhi-110049.

2. Shri Kumar Bhatia,
Chief Engineer (RM),
Ministry of Food Processing Industries,
Panchsheel Bhavan, ...Respondents
New Delhi-110049.

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

ORDER

By Reddy, J.-

The applicant was holding the post of Joint Director (Consultancy). He was appointed to hold the current duty charge of the post of Director (F&VP) by order dated 25.1.91 and in the same order he was also appointed as Licensing Officer. The said order has been challenged by one Shri A.K. Paliwal, Deputy Director (F&VP) before the Tribunal in OA-772/91. Subsequently, A.K. Paliwal by order dated 14.12.94 was appointed as Director (F&VP) on ad hoc basis and the applicant was asked to hand over the current charge to him. The applicant questioned the said order in OA-2547/94. The plea of the applicant in the said case was that he was eligible to hold current charge and that he should have been given the charge as Director (F&VP) in preference to

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Sh. R.K. Bansal who was not holding any post in the regular line of promotion. The Tribunal in its order dated 25.10.95 held as under:

"In the circumstances, the impugned Annexure A order which impliedly terminates the current charge of the applicant given to him by the Annexure A-1 notification, by directing him to hand over charge to Respondent No.4, being premature, is bad in law and is quashed. We make it clear that it is open to the Ministry to terminate the current charge given to the applicant by the Annexure A-1 notification dated 25.1.1991 with prospective effect after recording that Government has decided not to amend the rules to make him eligible for consideration for promotion."

2. The applicant submits that when the matter was brought before the Supreme Court by the applicant in R.K. Bansal v. Union of India, Civil Appeal No.1172/87 the learned Senior Counsel appearing on behalf of the Union of India stated that the Fifth Pay Commission, inter alia, had made certain recommendations that the Ministry of Food Processing Industries had accepted the recommendations of the Fifth Pay Commission and that decision has to be retified by the concerned department and upon such retification the post of Joint Director (C) will be merged in the main stream of F&VP cadre and re-designated as Joint Director (F&VP) and upgraded to the pay scale of Rs.3700-5000 and thereafter the incumbent would be eligible for consideration for promotion as Director (F&VP) subject to fulfilment of the eligibility criteria. Thus the Supreme Court was assured by respondent No.1 that the recruitment rules will be suitably amended as recommended by the Fifth Pay Commission. The applicant has been working as Joint Director (F&VP) since 1980 and has been holding the current charge of Director since 1991. Surprisingly,

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however, the respondents passed the impugned order dated 4.10.99 giving the current charge of Director (F&VP) to R-2 relinquishing the same from the applicant. The applicant challenges this order in this OA.

3. It is the case of the respondents that the applicant is not entitled to continue to hold the current charge and it is open for the respondents to give the current charge to respondent No.2 as he is equally eligible for holding the same. It is also the case of the respondents that the applicant had developed certain vested interest and consequently there were consistent complaints against him. He was also issued the chargesheet for major penalty which was pending and the charges were very grave. It is also stated that the CBI has also registered a case against the applicant. Thus, it is not in the interest of public to allow the applicant to hold the current charge of Director (F&VP).

4. The learned counsel for the applicant submits that the impugned order is illegal as the Tribunal in OA-2547/94 in its order dated 25.10.95 has clearly stated that the applicant's current charge of the post of Director cannot be terminated and it could be done only if Government takes a decision not to amend the rules to make him eligible for consideration for promotion. Since no such decision is shown to have been taken by the Government the impugned order would be in deliberate violation of the above order of the Tribunal. He also contends that the above order has been approved by the Supreme Court in CA No.1172/87 in its order dated 27.1.99 and that the respondents has also assured the

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Supreme Court that the Joint Director would be made also eligible for promotion as Director. The learned counsel refutes the contention and submits that the applicant cannot be continued in the current charge of Director in view of the fact that he was accused of serious allegations and that a case has also been registered by the CBI against him.

5. Heard the arguments of the learned counsel on either side.

6. The facts are not in dispute in the present case. As stated supra the applicant filed OA-2547/94 and the main contention of the learned counsel in the said OA was that the recruitment rules will have to be suitably amended to provide that he, as Joint Director, would also be eligible for promotion to the post of Director (F&VP) and until the rules are amended the applicant could not be relieved of his current charge of the post of Director. The OA was disposed of, as stated supra, holding that the applicant's current charge should not be terminated until a decision was taken by the Government not to amend the rules. The applicant has been holding the current duty charge since 25.1.91 and the impugned order has not been passed relieving him of the current duty charge and handing it over to R-2. The only justification given by the respondents is that serious charges have been levelled against the applicant. Even assuming that serious allegations are pending against the applicant and the CBI has also registered a case against him, we are of the view that in the background of the facts as stated supra, it is not open to the respondents

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to act in the teeth of the order of the Tribunal in OA-2547/94. It is pointed out by the learned counsel for the applicant drawing our attention to the rejoinder that the allegations have been pending against the applicant since 1998 and no action has been taken against him in that regard. It is also not in dispute that the applicant was not suspended from service. In the absence of any other appropriate action having been taken by the respondents it appears to us that the impugned order is only passed to over-reach the judgement of the Tribunal. In the circumstances we have to hold that the impugned order is illegal and is liable to be set aside.

7. The impugned order is accordingly quashed and the OA is allowed, in the circumstances of the case, with costs of Rs.2,000/- (Rupees two thousand only).

R.K. Ahoja
(R.K. Ahoja)
Member(A)

'San.'

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)