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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./XXX. NO. 1104 /1998 Decided on : 3-2-1999

Sh.S.B.Mathur ... Applicant(s)

(By Shri A.K.Dass Advocate)

versus

U. O. I ... Respondent(s)

(By Shri K.C.D.Gangwani, Sr Advocate)

CORAM

THE HON'BLE SHRI Justice K.M.Agarwal, Chairman

THE HON'BLE SHRI K.Muthukumar, Member(A)

✓ 1. To be referred to the Reporter or not ? Yes
X 2. Whether to be circulated to other Benches
of the Tribunal ?

K.M. AGARWAL
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1104/98.

NEW DELHI, THIS THE 3rd DAY OF FEBRUARY, 1999.

HON'BLE SHRI JUSTICE K.M.AGARWAL, CHAIRMAN.

HON'BLE SHRI K.MUTHUKUMAR, MEMBER (A)

Shri S.B.Mathur
S/o Shri K.B.Mathur,
R/o Flat No.23/C, C2D,
Janakpuri, NEW DELHI.

....APPLICANT.

(BY ADVOCATE SHRI A.K.DASS)

Vs.

1. Deptt. of Company Affairs,
Govt. of India,
through Secretary
Dept. of Company Affairs,
Shastri Bhawan, Dr. Rajendra Prasad Road,
New Delhi-110002.
2. Shri Jainder Singh, IAS
Joint Secretary,
Chief Vigilance Officer
Dept. of Company Affairs,
Shastri Bhawan, Dr. Rajendra Prasad Road,
New Delhi-110002.
3. Dr. A.K. Doshi,
Director Inspection and Investigation,
(Retired) Deptt. of Company Affairs, New Delhi
And also at Dalaon Ki Pole, Sirohi,
Rajasthan.
Also at G-14, Andrews Ganj,
Pingara Pole, New Delhi.RESPONDENTS.

(BY ADVOCATE SHRI K.C.D. GANGWANI AND MS. ANJU JAIN AND
MS. JASVINDER KAUR, ADVOCATES)

ORDER

JUSTICE K.M.AGARWAL:

Following two reliefs have been claimed by the
applicant in this O.A.:

(i) "That the Respondent Nos. 1 and 2 be
directed to recall the order of recommendation of
appointment and the letter of appointment issued by
the Deptt. of Company Affairs in the name of
Respondent No.3 as Member (Technical) CLB, and
further direct that matter be placed before the
Selection Committee with the correct picture for
appointment as Member (Technical), Company Law
Board, by the Selection Committee.

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(ii) "The Hon'ble Tribunal may direct Respondent No.3 to refrain from indulging in the practice of engineering anonymous and pseudonymous complaints being filed before the Establishment Officer, Secretary, Department of Company Affairs, Cabinet Secretary, Home Secretary and Prime Minister's Office."

2. Pursuant to internal circulation inviting names of eligible candidates for the post of a Member (Technical) Company Law Board, (in short, "CLB"), the applicant and the 3rd respondent, besides others, were candidates for consideration before the Selection Committee for the said post. The name of the applicant was recommended for the post and that of the 3rd respondent was recommended to be in the waiting list. Ignoring the applicant, the 3rd respondent was appointed to the said post. The present application has, therefore, been filed for the said reliefs.

3. The application is opposed by filing a joint counter by the first two respondents and by filing a separate counter by the 3rd respondent. Original records bearing F.Nos.18(35)EO/97(ACC) and 18(1)EO/98(ACC) have been produced before us by the official respondents.

4. Admittedly the applicant and the 3rd respondent fulfilled the eligibility qualifications. The method of recruitment is provided in rule 4 of the Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1991, (in short, "CLB Members Service Rules"), which reads as follows:-

"4. Method of recruitment: (1). The selection of Members shall be made by the Government of India in consultation with the Chief Justice of India or his nominee.

"(2) Nothing in this rule shall apply to the appointment of Chairman or any Member of the Company Law Board functioning as such immediately ~~before~~ before the commencement of these rules."

It appears that for selection of Members, a Selection Committee has been constituted by the Government of India, consisting of a nominee of the Chief Justice of India, Chairman CLB, Secretary of Department of Legal Affairs and Secretary of Department of Company Affairs. This Selection Committee considered the names of various persons, including those of the applicant and the 3rd respondent, for the post of a Member (Technical) CLB and also called for "Personal Talk" on 2.6.1997. The name of the applicant was, thereafter, recommended for appointment to the post of Technical Member and that of the 3rd respondent was kept in the waiting list. It also transpires from the record that the Department of Personnel & Training, (in short, "DOPT"), processed the case accordingly, but the Secretary of the Appointments Committee of the Cabinet (in short, "ACC"), recorded following note on 10.10.97 in the relevant file:

"In view of the chequered background of Shri S.B.Mathur, he does not seem to be a fit person of character and unblemished record, for occupying the position of Member, Company Law Board."

Under the said circumstances, the applicant's name was dropped and that of the 3rd respondent in the waiting list was proposed for appointment to the said post by the DOPT in spite of its knowledge that: "Subsequent to the recommendations made by the Selection Committee on 2.6.1997, Dr. A.K.Doshi was issued a chargesheet for a major penalty under Rule 14 of the CCS (CCA) Rules, 1965 on 22.9.1997 based on the advice of the CVC". In paragraph 23 of the same internal notings dated 14.5.98, it was mentioned:

"23. Regarding Shri Mathur, it may be stated that the ACC had considered him not fit for appointment as Member (Technical) in view of his chequered background and other considerations in December, 1997. The note that led to the said

decision is on pp.7-13/N (L.F.No.18(35)EO/97(ACC). In addition, it has come to light that he had been warned twice for some improprieties committed by him, as discussed in paras 17.2. and 17.3. above. It is, therefore, felt that even on reconsideration Shri Mathur's claim for the post does not merit acceptance. As regards Dr. Doshi, after his having been exonerated of all the charges against him, it appears that his appointment can be approved. ACC may like to approve the appointment of Dr. A.K.Doshi as Member (Technical), Company Law Board till the date of his superannuation on attaining the age of 60 years."

It appears that the proposal was accepted by the ACC and the Prime Minister on 19.5.1998. It does not appear from the record, if the Chief Justice of India, or his nominee was consulted before appointing the 3rd respondent to the said post of the Technical Member. It also does not appear from the record that the Selection Committee was apprised of the said facts before taking a decision to appoint the 3rd respondent to the said post.

5. We are of the view that though in view of the decision of the Supreme Court in Shankarasan v. U.O.I., AIR 1991 SC 1612 and a Full Bench decision of Patna Bench of the Tribunal in M.N. TIWARY v. U.O.I. & OTHERS, O.A. No.435/90, decided on 17.9.1998, the applicant cannot get appointment to the said post on the basis of his selection, it does not mean that the appointment of the 3rd respondent to the said post cannot be questioned. If his appointment is not in accordance with the provisions of rule 4 (1) of the CLB Members Service Rules, it is liable to be quashed.

6. Rule 4(1) is mandatory in nature. The Government of India was bound to consult the Chief Justice of India or his nominee in making the selection of Members.

Kim Only because a nominee of the Chief Justice of India was

the Chairman of the Selection Committee, the selection of the applicant or that of the 3rd respondent could not be said to be selection made in consultation with the Chief Justice of India or his nominee. Even assuming that such selection by the Selection Committee with nominee of the Chief Justice of India as its Chairman is considered to be sufficient compliance with the requirement of consultation with the Chief Justice of India or his nominee, the appointment of the 3rd respondent to the post of a Member of CLB cannot be justified, because his name was not in the merit list, but in the waiting list prepared by the Selection Committee and that the Selection Committee was not consulted or informed before his appointment in preference to the applicant, who was in the merit list of selected candidate. A candidate in the waiting list can never be preferred to a candidate in the select list. In case the selected candidate is not available, or refuses to accept appointment, a candidate in the waiting list gets an opportunity to join the service in his place. This system of making selection and keeping candidates in merit list or waiting list has been evolved with a view to avoid unnecessary delay in filling up a vacancy by fresh selection process on failure of selected candidates to join the vacant post advertised. For these reasons we are of the view that when the applicant who was in the merit list, was available for appointment, the 3rd respondent, who was in the waiting list, could not be offered or given appointment to the post of a Member of CLB. If after selection, the selected candidate was not found fit to be appointed for any reason whatsoever, the Government was, at least, bound to bring the entire facts to the notice of the Selection Committee and thereafter only

the candidate in the waiting list could be offered appointment in consultation with the Chief Justice of India or his nominee. Since this procedure was not adopted in the present case before appointing the 3rd respondent to the post of Member of CLB, we are of the view that his appointment to the said post was illegal and, therefore, liable to be quashed.

7. On perusal of original records bearing F.Nos.18(35)EO/97(ACC) and 18(1)EO/98 (ACC) produced before us, we could get no indication that the requirement of consultation with the Chief Justice of India or his nominee was fulfilled by the Government of India before appointing the 3rd respondent as Member of CLB. We, therefore, directed on 1.1.1999 for mentioning the case in the daily cause list on 5.1.1999. On 5.1.1999, the learned counsel for the official respondents could not make a definite statement if requirement of consultation with the Chief Justice of India or his nominee under Rule 4(1) of the CLB Members Service Rules was or was not complied with before appointment of the 3rd respondent to the said post of Member of CLB. Accordingly at his request, sufficient time was given to him for making a statement and on 1.2.1999 a statement was made that no further consultation was made by the Government. It has been recorded in the ordersheet dated 1.2.1999 as follows:

"Application for adjournment made on behalf of the counsel for applicant is rejected as the case was listed only for ascertaining certain facts from the official respondents, which have been supplied by saying that the papers were not sent to the C.J.I. or his nominee for consultation at the initial stage because C.J.I's nominee was the Chairman of the Selection Committee. It was further submitted that after it was decided to appoint the 3rd respondent in place of the applicant by the

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A.C.C., papers were not sent either to the Selection Committee or to the C.J.I. or his nominee for the purpose of further consultation."

As the consultation process or requirement was required to be carried out or fulfilled by the Government of India, only the Government of India could make a positive statement one way or the other in this regard. The 3rd respondent or the applicant cannot be expected to know if compliance with this requirement of consultation was or was not made by the Government. Under these circumstances, we are of the view that in the present case, the requirement of consultation with the Chief Justice of India or his nominee was not fulfilled by the Government of India before making appointment of 3rd respondent to the post of Member of CLB and, therefore, his appointment to the said post is liable to be quashed.

8. In the result, this application succeeds and it is hereby allowed by quashing the appointment of the 3rd respondent to the post of Member of CLB. Accordingly he shall cease to be a Member of CLB forthwith and hand over charge of the post to the Chairman of CLB immediately. No costs.


(K.M. AGARWAL)
CHAIRMAN


(K. MUTHUKUMAR)
MEMBER (A)