

Central Administrative Tribunal
Principal Bench

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O.A. No. 2270 of 1995

New Delhi, dated this the 16th JULY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. A.R. Nikam,
S/o Shri R.S. Nikam,
R/o E-6/45, Arera Colony,
Bhopal (M.P.) .. Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. The Lt. Governor,
NCT of Delhi,
Raj Niwas, Delhi.
2. Govt. of NCT of Delhi through
the Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
3. Union Public Service Commission
through the Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011. .. Respondents

(By Advocate: Mrs. Avnish Ahlawat)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the contents of respondents' letter dated 27.7.95 enclosing a copy of orders dated 27.4.95 (Annexure A colly) passed by Respondent No. 1 declining to appoint him as Public Analyst (Rs.3000-4500 RPS) in the Dept. of Prevention of Food Adulteration, Govt. of NCT of Delhi. He seeks a direction to respondents to appoint him to the aforesaid post with all consequential benefits.

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2. This case has a long & chequered history

3. Applicant who was working in Madhya Pradesh Government was appointed to the aforesaid post of Public Analyst on ad hoc basis on 18.12.82 prior to the framing of Recruitment Rules for the post. These RRs framed under Article 309 of the Constitution were notified on 20.2.84 according to which the post was to be filled through UPSC by

'promotion/transfer on deputation failing which by direct recruitment.'

4. After the coming into force of the RRs applicant's appointment as P.A. on ad hoc basis which continued from 18.12.82 till 11.8.85, drew to a close, and with the prior approval of UPSC conveyed in their letter dated 16.7.85, he was treated as on deputation, which period of deputation was extended from time to time.

5. By letter dated 8.12.87 (Annexure P-1 Colly to rejoinder) Delhi Administration requested UPSC to initiate action to fill up the post of P.A. through direct recruitment, as there was no candidate of 8 years regular service in the grade of Dy Public Analyst for promotion as P.A. and the circular/advertisement issued in June/July 1987 inviting applications for filling up the post through

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transfer on deputation had elicited response from 11 candidates, none of whom were eligible to be appointed as per the RRs.

6. UPSC in its reply dated 16.12.87 sought for a self contained proposal for filling up the post through the preferred method in the first instance i.e. promotion/transfer on deputation, upon which Delhi Administration in its letter dated 4.1.88 (Annexure P-1 colly to rejoinder) forwarded the particulars of the aforementioned 11 candidates, but pointed out that none was eligible as per RRs and requested that no action be taken to fill up the post of P.A. and the name of particulars of suitable candidate be sponsored at an early date.

7. On 18.1.88, UPSC forwarded to Delhi Administration the representation of one Smt. Mehnri Srivastava, Dy. P.A. for consideration, but in reply Delhi Administration in its letter dated 17.2.88 (Annexure P-1 Colly to rejoinder) pointed out that she did not possess the requisite eligibility qualification of 8 years regular service as Dy. P.A and reiterated their view contained in their earlier letter dated 4.1.88.

8. Thereafter two rounds of discussions were held between UPSC and Delhi Administration on 8.4.88 and 16.4.88 for filling up the post but no final decision appear to have emerged.

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9. On 23.5.88 UPSC suggested to Delhi Administration that since direct recruitment may block the prospects of promotion of the incumbent D.P. A., they may examine the question of relaxation of the RRs, but Delhi Administration in its reply dated 8.12.88 (Annexure P-1 Colly to rejoinder) rejected UPSC's suggestion for relaxation of RRs and reiterated their earlier request for direct recruitment. This was the second clear request made by Delhi Administration to UPSC to fill up the post through direct recruitment.

10. On 1.3.89 UPSC suggested to Delhi Administration for circulation of the vacancy amongst the entire field of selection as per RRs, to which Delhi Administration in its reply dated 13.7.89 stated that advertisement of the vacancy circulated/advertised on 13.6.89 for filling up through deputation had evoked response from only two candidates, who were not found suitable, and added that there was no candidate eligible for promotion either. Hence this constituted the 3rd request for direct recruitment.

11. UPSC in its reply dated 4.10.89 called for a self-contained proposal which was sent on 13.12.89 (that should perhaps read 14.10.89 vide index of correspondence on the subject at Annexure P-2 of rejoinder). This constituted the 4th request for direct recruitment.

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12. Meanwhile on or about 18.9.89, yet another request (th 5th) was made to UPSC for filling up the post through direct recruitment, it being confirmed that there was ~~no~~¹ candidate eligible for promotion, and the method of transfer on deputation had resulted in response from only two candidates neither of whom were eligible.

13. On 1.11.89 Delhi Administration, in continuation of its earlier letter, forwarded copy of the RRs to UPSC along with the application of the two candidates received in response to the circular advertisement.

14. The UPSC in its letter dated 4.12.89 and 13.12.89 called for copy of the advertisement, the ACRs of the aforesaid two candidates, and confirmation that they had been sponsored by the Departments. Delhi Administration in its reply dated 20.12.89 informed UPSC that the post had been advertised and also circulated, but the two applications received were advance copies (not sponsored by their departments) and hence the question of sending their ACRs did not arise. It reiterated its request for filling up the post through direct recruitment for the 6th time.

15. Meanwhile in September, 1989 Delhi Administration moved Government of India for further extension of applicant's deputation as P.A. and on 4.12.89 the Director, PFA had moved Delhi.

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Administration for considering further extension of applicant's deputation for 6 months beyond November 1989.

16. Materials on record reveal that a final decision for accepting the proposal for direct recruitment for filling up this post of P.A. was taken in UPSC on/about 8.1.90 and on 13.2.90 an advertisement was issued by Recruitment Advertisement Section of UPSC to DAVP for release on all India basis, which was published in the newspapers on 24.2.90.

17. Meanwhile on 16.1.90 Delhi Administration issued orders ^{repatriating applicant?} ~~separately~~ to his parent department.

18. On 16.2.90 Delhi Administration wrote to UPSC for keeping the direct recruitment in abeyance. That letter addressed to Secretary, UPSC without any indication of contact person, or priority, was received at the UPSC dak counter on 19.2.1990 and appears to have been put up to the concerned official who was competent to take a decision in the matter, only on 28.2.90, who marked it to the concerned section for its comments.

19. On 22.3.90 the Joint Secretary in Delhi Admin. wrote to UPSC to keep the direct recruitment in abeyance, which ^{letter} was received in UPSC on 26.3.90 and on

7/13.4.90 Delhi Administration's own advertisement for filling up the post through deputation appeared in Employment News.

20. On 23.4.90 Secretary, Medical Department, Delhi Administration addressed a D.O. letter to Secretary, UPSC which was delivered to him ^{morning} that day itself, ~~mentioning~~ the request to keep the direct recruitment process in abeyance, as they were likely to get candidates on deputation in response to their advertisement dated 7/13.4.90.

21. On 25.4.90 UPSC sent its reply regretting its inability to hold in abeyance the direct recruitment action which had already commenced.

22. On 7.5.90 the Joint Secretary, Medical Dept. in Delhi Administration again requested UPSC to keep the direct recruitment process in abeyance, which was replied to by UPSC on 17.5.90, stating that the decision taken in the matter was final and not to make any further correspondence in this regard.

23. On 22.6.90 the Secretary, Medical Dept. ^{ancker} addressed yet ^{another} D.O. letter to Additional Secretary UPSC giving the information that sufficient applications had been received in response to advertisement dated 7/13.4.90 and requesting that the direct recruitment process be stopped.

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24. On 5.7.90 the UPSC supplied the summary of particulars of candidates who were to be called for interview for comments of Delhi Administration and Delhi Administration forwarded their comments on the same on 12.7.90.

25. On 18.7.90 the Chief Secretary, Delhi Administration addressed a D.O. letter to Chairman UPSC to interview in the process of direct recruitment, which was replied to on 20.8.90, stating that the UPSC had examined the entire issue ~~de rive~~ ^{ahead} and had decided to go ~~ahead~~ with the process of direct recruitment. Meanwhile on 30.7.90 UPSC informed Delhi Administration about the interview dates on 20/21.8.90 and requested the Secretary Medical Dept. to participate in the selection process.

26. Meanwhile on 20.8.90 itself the L.G. of Delhi wrote a letter to the Chairman, UPSC on the matter. As the Chairman, UPSC was out of station till 27.8.90 that letter was shown to the Member presiding over the interview board (interviews were on 20/21.8.90). L.G., Delhi's letter was replied to by the Chairman, UPSC on 13.9.90.

27. Meanwhile on 12.9.90 itself Delhi Administration sent a proposal to UPSC to amend the RRs to reduce the length of experience from 8 years to five years but on 4.10.90 ^{UPSC} sent its reply disagreeing with the proposal.

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28. Meanwhile Ms. Mohini Srivastava, Dy P.A. had filed O>A. No. 1662/90 on 17.8.90 praying that action initiated by UPSC for direct recruitment be quashed. On 21.8.90 an interim order was passed directing respondents not to act on the selections which might be made by UPSC and on 10.9.90 the ^ was disposed of remitting the case to Chief Secretary, Delhi Administration and Chairman, UPSC to have further consultation in the matter and arrive at an appropriate decision as expeditiously as possible, but not later than 31.12.90 till when the interim orders would remain in force.

29. Pursuant to the aforesaid directions a meeting of the Chief Secretary and Chairman, UPSC took place on 20.12.90. The proceedings of the meeting which were signed by both ^{official} and 'have been noticed at length in Para 13 of the CAT, P.B. written order dated 30.1.95 disposing of subsequent O.A. No 2734/90 filed by Smt. Mohini Srivastava as well as O.A. No. 1431/91 filed by applicant and other connected cases. These proceedings reveal that while Chief Secretary, Delhi Administration emphasised that the direct recruitment method was to be used as 'the last resort, and only after it was absolutely certain that the deputation method had failed, the Chairman, UPSC pointed out that it was ~~not~~ the instructions of Delhi Administration that the method of promotion/deputation having failed, direct recruitment ^{had} [^] should be resorted to, and on that basis UPSC had initiated direct recruitment, and once the process had been initiated any change in the course

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of action was likely to be interpreted as being biased and affects UPSC's credibility. The UPSC, therefore, intended to complete the recruitment process and forward its recommendation letter to Delhi Administration and it was for Delhi Administration to take whatever action it considered most appropriate, thereon in the light of the law, rules and regulations.

30. Pursuant to the aforesaid decision, the UPSC in its letter dated 26.12.90 (Annexure R-III) informed applicant, who had appeared as a direct recruitment before UPSC in the selection held on 20/21.2.90 that he had been recommended to Delhi Administration for appointment as PA. It was, however, made clear that the offer of appointment ^{would} be made to him only after Government had satisfied themselves after such enquiry as may be considered necessary, that he was suitable in all respects for the appointment.

31. Meanwhile Ms. Srivastava had filed OA No. 2734 of 1990 on 28.12.90 in which her grievance in substance was that UPSC had proceeded to fill up the post of Public Analyst through direct recruitment, inspite of withdrawal of requisition by Delhi Administration well in time. Soon after, one Dr. G.C. Raha filed O.A. No. 153/91 alleging that although he was fully qualified to be appointed as Public Analyst by transfer on deputation, Delhi Administration had illegally eliminated him from the zone of consideration. Thereafter applicant Dr. Nikam filed OA No. 1431/91 alleging that inspite of UPSC's recommendations Delhi Administration

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had declined to issue him the appointment letters and had asked UPSC to recommend some other name from the panel if any. Ms. Mohini Srivastava filed yet another O.A. bearing No.154/92 sometime prior to 23.1.92 in which she prayed for quashing of the proceedings initiated by UPSC as premature and in infringement of the statutory recruitment rules.

32. All four OAs were disposed of by CAT P.B. by common order dated 30.1.95.

33. In that order it was noticed that Smt. Srivastava had presented O.A. No.2734/90 on 28.12.90 in which her grievance was that no meeting between Chief Secretary and Chairman, UPSC had taken place despite the Tribunal's directions dated 10.9.90 and in that background an interim order had been issued on 31.12.90 in that O.A. directing respondents not to act upon the selections to the post of P.A. made by UPSC, but it appeared to the Bench that Smt. Mohini Srivastava had filed O.A. No.2734/90 and No.154/92 despite being fully aware of the proceedings of the meeting between Chief Secretary, Delhi Administration and Chairman, UPSC on 20.12.90 pursuant to the Tribunal's directions dated 10.9.90 in her own O.A. No.1662/90. Accordingly the Bench held that she had abused the process of law and there was no merit in her case, because she was neither a person aggrieved nor had she sufficient interest to maintain a writ petition. In any case her conduct disentitled her to any interference on her behalf.

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34. As regards O.A.No.153/91 filed by Shri Raha, the Bench in its order dated 30.1.95 held that as Delhi Administration in its counter affidavit had categorically asserted that his case was duly considered in the method of promotion/transfer on deputation, but he had not been found fit, to which decision there had been no challenge in the C.A., he was not entitled to any relief.

35. That left O.A.No.1431/91. In this connection the Bench noted the rival contentions. It noted the stand of Delhi Administration that UPSC was only a recommendatory body and it was for the appointing authority to decide, depending upon the number of vacancies, as to how they were to be filled up. When Delhi administrations had specifically requested the UPSC not to proceed with direct recruitment method, it was obligatory on them to stop. Since applicant's selection was not as per rules and procedure and on account of vigilance reports against Shri Nikam, they would not like to appoint him as Public Analyst. The matter had been placed before L.G. Delhi who approved the decision not to appoint Dr.Nikam as Public Analyst and the decision of L.G.Delhi had been communicated to UPSC on 29.5.91 which decision had been accepted by UPSC as nothing more had been heard from them. Since the post of P.A. was a single post in Delhi Administration and was a very post any person with slightest doubt in integrity could not be permitted to hold the post, and the overall record of Dr.Nikam compelled Delhi Administration

not to accept him as Public Analyst.

36. The Bench also noted the stand of UPSC that it had not committed any illegality or irrationality in resorting to the method of direct recruitment and in selecting Dr. Nikam for the post of P.A. The UPSC at no stage had authorised Delhi Administration to file a counter affidavit on its behalf, nor did it give its approval to the decision of Delhi Administration not to issue appointment letter to Dr. Nikam pursuant to its own recommendations.

37. After considering both stands the Bench reiterated that in the facts and circumstances of the case, the UPSC did not commit any illegality or irrationality in proceeding with the requisition sent by Delhi Administration to fill the post of P.A. by the method of direct recruitment. In the Bench's opinion, the Delhi Administration acted not only illegally, but took extraneous matters into account while considering UPSC's recommendations for filling up the post of PA. At that stage Delhi Administration had no jurisdiction whatsoever to question either the legality or propriety or genuineness of the proceedings taken by UPSC to fill up the post of PA by the method of direct recruitment. The Delhi Administration was bound by the proceedings of 20.12.90 between the Chief Secretary and the Chairman UPSC and the only question which Delhi Administration had to decide was whether the past conduct and other

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antecedents of the applicant disentitled him from being given an appointment. The Bench further recorded that counsel for Delhi Administration had placed the relevant files for their perusal, which had been perused by them, and they were not able to lay their fingers on any specific order containing reasons as to why, inspite of UPSC's recommendations, Dr.Nikam was not being appointed as Public Analyst. In Delhi Administration's reply the stand taken by them was that the very process by which UPSC had recommended Shri Nikam's name was illegal and irregular, but this in the opinion of the Bench was an extraneous consideration. The Bench further observed that vague allegations had been made in Delhi Administration's counter affidavit about some vigilance cases against Dr. Nikam but no care had been taken to annex with the counter affidavit a copy of such a report. The Bench therefore concluded that Delhi Administration's decision not to give an appointment to Dr.Nikam despite UPSC's recommendations was not legally sustainable. The Bench therefore directed the L.G. Delhi himself to look into the matter and pass a speaking order if he came to the conclusion that Dr.Nikam was not a fit person to be appointed as Public Analyst inspite of UPSC's recommendations.

38. Accordingly while OA No.2734/90, OA No.153/91 and O.A.No.154/92 were dismissed, OA No.1431/91 filed by Dr.Nikam was allowed, Delhi Administration's decision not to issue the letter of appointment to Dr.Nikam in pursuance of UPSC's decision was quashed, and respondents were directed to take action pursuant

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to the directions given in the preceding paragraph as expeditiously as possible and in any case within 2 months from the date of receipt of a copy of this order.

39. Against the aforesaid order dated 30.1.95, Delhi Administration filed SLP No. 13494/95 in Hon'ble Supreme Court which was disposed of on 13.7.95 with the following orders:

Mr. Chandrashekhran, learned senior counsel for the Delhi Administration states that as directed, the Lt. Governor, Delhi Administration has passed fresh orders. If this is so, then the present Special Leave Petition, in our view, need not be perused. Mr. Chandrashekhran however, is apprehensive of the statements of law made in the impugned order of the Tribunal. We make it clear that the decision on those questions are not final and are open. The order of the Lt. Governor if favourable to the respondents gives him no cause of action and if it is adverse, the matter might have to be re-agitated and those questions of law can be gone into afresh. The Special Leave Petition thus stands disposed of.

40. Meanwhile in implementation of the Tribunal's orders dated 30.1.95, the LG, Delhi passed impugned orders dated 27.4.95 which are the subject matter of the present OA.

41. We have heard applicant's counsel Shri G.D. Gupta and respondents' counsel Mrs. A. Ahlawat.

42. A perusal of the grounds taken by applicant in the OA reveals that he has challenged respondents' action in not appointing him as PA, mainly on the

ground that once he had been selected by UPSC for direct recruitment through open competition, Delhi Administration was precluded from deciding not to appoint him and even otherwise an opportunity should have been given to UPSC against their decision in accordance with Govt. of India, Cabinet Secretariate's Memo dated 9.12.70. Secondly, it has been contended that the allegations against applicant that he has been harassing innocent business, and that he had granted undue favours to certain firms, were vague and unsubstantiated as the Tribunal had itself recorded in paragraph 29 of its order dated 30.1.95, and furthermore the recordable warning was not a penalty which could bar his appointment.

43. On the other hand on behalf of respondents it was asserted that as Delhi Administration had advised the UPSC not to go ahead with the recruitment, UPSC was required to abide by that advice and if in spite of that advice UPSC went ahead with the selections, Delhi Administration was not bound to accept the same. It was also asserted on behalf of respondents that in the light of Lt. Governor's order dated 27.4.95 the matter could not be agitated afresh.

44. In this connection, one of the rulings relied upon by Mrs. Ahlawat was Dr. P. K. Jaiswal Vs. Ms. Debi Mukherjee & ors. JT 1992(1) SC 315 wherein it was held that where UPSC had issued an advertisement at the behest of the Govt. and pursuant to the same called a candidate for interview, the candidate had a right to be considered but not a right to be selected or to be appointed to the post in question. Furthermore the Govt. could before an advertisement was issued by

the Commission and the process of selection got under way, request the Commission to withdraw the same, in which case the decision of the Govt. to withdraw the requisition before issuance of the advertisement did not interfere with any vested right because that stage had yet not reached. It was not open to the Commission to ignore the communication of the Govt. in that behalf and set the selection process in motion and the applicant therefore did not have any vested right for appointment.

45. Another ruling relied by respondents' counsel in this very connection is J.K. & Ors. Vs. State of Punjab & Ors. 1985(1) SCC 122, wherein it has been held that the recommendations of Service Selection Board/PSC were directory in nature and the persons selected and recommended by the Board/Commission for appointment to a post had no right to be appointed.

46. Yet another ruling relied upon in this very connection is Shankarsan Dash Vs. UOI (1991) 3 SCC 47, on the point that a candidate included in merit list had no indefeasible right to appointment even if a vacancy existed but the State while filling up the vacancies had to act bona fide and not arbitrarily.

47. Yet another ruling which was relied upon by Mrs. Ahlawat is State of M.P. & Ors. Vs. Reghuvir Singh Yadav & Ors. JT 1994(4)SC 235, on the point that in the case of recruitment to the posts of Inspectors in the Deptt. of Weight and Measures in Madhya Pradesh State, when the qualification for eligibility was changed to B.Sc as against graduate earlier for which exam. was held and interview cards were issued, Govt. was entitled

to conduct selection in accordance with changed rules and no candidate had a vested right to selection because the State was entitled to withdraw the earlier notification.

48. Others rulings relied upon by Mrs. Ahlawat are Rajasthan Public Service Commission Vs. Chanan Ram JT 1998(2)SC 114 and State of Haryana Vs. Subhash Chander AIR 1973 SC 2216 to broadly support her aforesaid contention. That it is for respondents to decide how many and in what manner appointments are to be made and the mere fact that a candidate's name appeared in the list does not entitle him to be appointed but while taking the decision Govt. is required to act in reasonable and non-arbitrary manner.

49. We have considered the rival contentions.

50. We have already noticed that it was the Delhi Administration which had initiated action for filling up the post of Public Analyst by the process of direct recruitment through UPSC and indeed they had been pressing the UPSC time and again to go ahead with the direct recruitment. Under the particular facts and circumstance of this case, after the process of direct recruitment had been set well in motion by the UPSC, when Delhi Admin. suddenly changed track and asked UPSC to stay their hand, UPSC cannot be faulted for informing Delhi Admin. that having gone thus far in the process of direct recruitment they proposed to complete the exercise lest it affect their own credibility, leaving it open to Delhi Admin. to take whatever action it considered proper on UPSC recommendation in the light of the law, rules and regulations and further clarifying that the appointment offer to applicant as Public Analyst be made only after Govt. had satisfied itself after making such enquiry as it considered necessary that he was suitable in all respects.

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51. On the other hand, having regard to the aforementioned rulings cited by Mrs. Ahlawat merely because applicant was recommended by the UPSC for appointment as Public Analyst does not give him an enforceable legal right to be appointed as Public Analyst.

52. Furthermore in the light of the explicit directions contained in the Tribunal's order dated 30.1.95 the question of respondents' referring the matter back to UPSC in terms of Cabinet Secretariat's OM dated 9.12.70 does not arise at this stage.

53. However, there is one aspect of the matter which requires consideration. A perusal of the Lt. Governor's impugned order dated 27.4.95 reveals that applicant has been refused appointment as Public Analyst because of certain allegations against him of harassing innocent businessmen, extracting money from them showing undue favours to certain firms, and for having been given a recordable warning. Applicant has denied these allegations and has contended that the recordable warning could not come in his way for appointment. In this connection, we note that the Tribunal itself in its order dated 30.1.95 (supra) in implementation of which Lt. Governor had issued impugned order dated 27.4.95, has characterised these allegations as vague and unsubstantiated. This is a judicial finding which stands unaltered even after the Hon'ble Supreme Court's order dated 13.7.95 disposing of SLP No.13494/95 against the Tribunal's aforesaid order.

54. Under the circumstance, while respondents cannot be said to have acted illegally or arbitrarily if they

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decided not to appoint a candidate recommended by UPSC for appointment to the post of Public Analyst, upon concluding for good and sufficient reasons that he is not suitable for the job, in the particular facts and circumstance of this case, and specifically having regard to the judicial finding referred to in para 53 above, in our considered opinion respondents ^{~ applicant} should have taken a final view _{on} candidature for appointment as Public Analyst only after giving him a reasonable opportunity of being heard in respect of the allegations against him.

55. In our view such an opportunity can be given to applicant even now. In the result without interfering with the impugned order at this stage, we dispose of this OA with the direction that in the event that applicant makes a representation to Respondent No.1 in regard to his appointment as Public Analyst, Respondent No.1 should give him a reasonable opportunity of being heard, and decide by means of a detailed, speaking and reasoned order as expeditiously as possible and preferably within 3 months from the date of receipt of such representation, under intimation to applicant whether any modification is required in his earlier order dated 27.4.95.

56. The OA is disposed of in terms of para 55 above. No costs.

A. VedaValli
(DR. A. VEDAVALI)

MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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