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Central Administrative Tribunal
Principal Bench, N. Delhi

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OA No. 91/95

New Delhi, this the 16th Day of Feb., 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI B.K.SINGH, MEMBER(A)

Indranil Chakraborti
S/o Shri B.M.Chakraborti,
Aged about 49 years,
R/o Anand Villa,
SA-142, Shastri Nagar,
Ghaziabad-201002.

And employed as

Chief Technical Officer in the
Food Research and Standardization
Laboratory(F.R.S.L.),
Ministry of Health and Family Welfare,
Govt. of India.

Applicant

(By Advocate:- Shri B.B.Raval).

Versus

Union of India through,

1. The Secretary,
Govt. of India,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.

2. The Director-General of Health Services,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi-110 001-

3. Shri S.R.Gupta,
Joint Drugs Controller,
(India), North Zone,
Central Drugs Standard Control Organization,
C.G.O. Building No.1,
Hapur Road,
Ghaziabad.

Respondents.

(By Advocate: Shri E.X.Joseph)

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JUDGEMENT

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The applicant is working as Chief Technical Officer(CTO) in Food Research and Standardization Laboratory (F.R.S.L.), Ghaziabad, Ministry of Health and Family Welfare, Govt. of India. The Govt. of India issued a notification dated 7th December, 1994 in pursuance of clause (iv) of Section 2 of the Prevention of Food Adulteration Act, 1954 whereby Dr. S.R.Gupta was notified as Director of the Central Food Laboratory, Ghaziabad. Said Dr. S.R.Gupta is Deputy Drug Controller of India, Northern Zone and he has been conferred is the duties of Director of F.R.S.L. The applicant/also authorised to function as Alternate Director under the said notification to carry out the functions entrusted to the Central Food Laboratory.

2. The applicant is employed as C.T.O., a post which is immediately below the post of Director, in F.R.S.L. since 15th November, 1989. In April, 1978 Dr. D.K.Dhingra was holding the post of Director, F.R.S.L. and he was also notified as Adul- Director C.F.L.Ghaziabad under the Prevention of Food /teration Act, 1954. Said Dr. Dhingra retired on 31.1.1988 and Shri R.K.Rao succeeded him who was declared as alternate Director of C.F.L. w.e.f. 1.2.1988. When Shri R.K.Rao retired w.e.f. 30.6.1989 the name of the applicant was notified as Director, C.F.L. w.e.f. 1.7.1989 and Dr. V.K.Dhingra, Senior Analyst

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as alternate Director, C.F.L. w.e.f. the same date. This position continued till 6.12.1994. After the retirement of Shri R.K.Rao, Assistant Director General(PFA) the charge was handed over to the applicant. The applicant is also working on the post till a regular Director is appointed or until further orders and is a Controlling Officer as Head of the Office under rule 14 of the Delegation of Financial Power Rules, 1978. He was also delegated the powers of the Head of the Department as Director F.R.S.L. by the order of Ministry of Health and Family Welfare dated 19th September, 1985 pending the appointment of a regular Director in F.R.S.L. However, with effect from 9.3.1993 Dr. P.N.Verma, Director of Homeopathic Pharmacopoeia Laboratory, Ghaziabad was asked to look after the duties of Director, F.R.S.L., Ghaziabad in addition to his own duties. The applicant, however, continued to look after the work of Director C.F.L. Ghaziabad from 9.3.1993 till 6th December, 1994. From 31st May, 1993 Dr. P.N.Verma was replaced by aforesaid Dr. S.R.Gupta and has been looking after the work of Director, C.R.S.L., Ghaziabad. At that point of time aforesaid Dr. S.R.Gupta was also looking after the work of Director, Central Indian Pharmacopoeia Laboratory Ghaziabad. On the above basis the applicant has challenged the aforesaid notification appointing Dr. S.R.Gupta as Director and the applicant as alternate Director. The applicant has prayed that the aforesaid notification be quashed with costs to the applicant.

16

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3- A notice was issued to the respondents who filed their reply and preliminary objections have been taken that the application is not maintainable in view of Sub section (2) of Section 20 & Section 14 of the A.T.Act,1985. The applicant has no cause of action as the notification was issued by the respondents under executive powers of Govt. of India in the administration of the Prevention of Adulteration Act, 1954 and the rules made thereunder. The C.F.R.S.L. has been declared as C.F.L. under section 2(iv) of the P.F.A., 1954 with marked jurisdiction under the provisions of sub section (2) of section 13 of the said Act, ^{for} from the States of Uttar Pradesh, Madhya Pradesh, Maharashtra, and Union Territory of Puducherry. The notification has been issued in the public interest. It is further stated that Dr. S.R.Gupta was fully qualified for the post and he is a Senior Officer in the scale of 4500-5700/-. The Director attached to F.R.S.L./C.F.L. performs in addition to its administrative work of running the Laboratory, carries out statutory obligation entrusted to the C.F.L. under the provisions of P.F.A., 1954 in analysing samples received from the court. After Dr. S.R. Gupta assumes the charge of Director, C.F.L., Ghaziabad, the respondents issued the notification which is a formal legal requirement to enable him to function as a fulfilled Director of the Central Food Laboratory. The applicant has also been authorised to function as alternate Director, thus,

the applicant has no case.

4. The applicant has also filed the rejoinder reiterating the facts already taken in the application. The applicant has also filed the relevant recruitment rules issued on 27th November, 1989 for the post of Director in C.F.L., Calcutta. The applicant has also filed the letter dated 31st March, 1994 addressed to Director General of Health Services by Dr. S.R.Gupta for filling of the post of Director, F.R.S.L., Ghaziabad on regular basis as he has been over-burdened with the duties of the post of Deputy Drug Controller.

5. He has also referred to another communication to the Director General of Health Services of dated 1st Sept., 1994 copy of the same has also been enclosed. Certain other documents regarding qualifications of the applicant has also been filed both with the Original Application as well as with the Rejoinder.

6. We have heard the learned counsel for the parties at length and perused the record. Firstly, we find that the notification has been issued by the Central Govt. under the specific provisions of section 2 sub-section(iv). This provision provides that the Director of C.E.L. means a person appointed by the Central Government by notification in the Official Gazette as the Director of C.F.L. and includes any person appointed by the Central Govt. in like manner to perform all or any of the functions of the Director under this Act. This clearly goes to show that this notification is issued under P.F.A., 1954. This has no

connection with the recruitment to the post of Director of C.F.L. which is totally governed by the recruitment rules issued on 13th July, 1990 and a copy of which has been filed by the applicant with the O.A. as Annexure A-10. For the post of Director, certain essential and desirable qualifications have been prescribed. This notification has not been issued for appointing Dr. S.R.Gupta under the aforesaid recruitment rules. It is admitted to the applicant that Dr. S.R.Gupta replaced Dr. P.N.Verma and said Dr. P.N.Verma had replaced the applicant and took charge of the post of Director, F.R.S.L., Ghaziabad on 9th March, 1993 though the applicant continued to look after the work till 6th December, 1994.

7. In view of these facts, when there is no clear appointment for the post of Director and the notification issued by the Central Govt. under Prevention of Food Adulteration Act, 1954 cannot be a question before the Central Administration Tribunal as it does not concern with the recruitment to the post of Director. Central Govt. has been given discretion to notify any person as Director and only restriction is that said person should have no financial interest in the manufacture, import for sale of any article of food. This provision does not provide any qualification, eligibility for being notified as Director. This application, therefore, is not maintainable for questioning of the notification issued under Section 2(iv) of the Prevention of Food Adulteration Act, 1954.

18
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8. The applicant by this notification also has been appointed as Alternate Director. The arguments of the learned counsel is that Dr. S.R.Gupta wants to be relieved cannot by itself make the notification issued by the Central Government as illegal or not in accordance with the provisions of Section 2(iv) of the P.F.A., 1954. But as said above, the Tribunal has no jurisdiction to decide about illegality of this notification which does not pertain to the service matter of the applicant. There is no rule to the effect that the applicant has to be appointed to the post of Director while he is holding the post of C.T.O. in the same Laboratory.

9. The application is, therefore, dismissed having no merit leaving the parties to bear their own costs.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(B)

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