

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2953/97 with
T.A.No. CP 9/98

199

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DATE OF DECISION 29.6.99

Dr. B.M. Sharma

....Petitioner

Shri M.K. Gupta

....Advocate for the
Petitioner(s)

VERSUS

Lt. Governor, Govt. of NCT,
Delhi & Ors.

....Respondent

Shri Vijay pandita and
Mrs. B. Rama

....Advocate for the
Respondents.

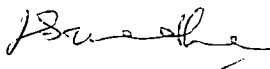
CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A).

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

~~The Hon'ble Shri~~

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.


(Smt.Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. No. 2953/97
and
CP 9/98

New Delhi this the 29 th day of June, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 2953/97

Dr. B.M. Sharma,
S/o Shri J.L. Sharma,
R/o 36, Govt. Officers Flat,
Greater Kailash-I,
New Delhi-48.

... Applicant.

By Advocate Shri M.K. Gupta.

Versus

1. Lt. Governor,
Govt. of National Capital
Territory of Delhi,
Raj Niwas,
Delhi.
2. Govt. of National Capital
Territory of Delhi,
through
its Chief Secretary,
5, Sham Nath Marg,
Delhi.
3. Union Public Service Commission,
through
its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.
4. Dr. V.K. Gupta,
Ex Principal, Nehru Homeopathic
Medical College & Hospital,
B. Block, Defence Colony,
New Delhi.
5. The Secretary,
Govt. of NCT, Delhi,
5, Sham Nath Marg,
Delhi-54.

... Respondents.

By Advocate Shri Vijay Pandita - for Respondents 1,2 & 5.

By Advocate Mrs. B. Rana - for Respondent 3.

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CP 9/28

Dr. B.M. Sharma,
S/o Shri J.L. Sharma,
R/o 36, Govt. Officers Flat,
Greater Kailash-I,
New Delhi-48.

.... Applicant.

By Advocate Shri M.K. Gupta.

Versus

1. Shri Tejender Khanna,
Lt. Governor,
Govt. of National Capital
Territory of Delhi,
Raj Niwas,
Delhi.
2. Shri P.V. Jayakrishnan,
Chief Secretary,
Govt. of National Capital
Territory of Delhi,
5, Sham Nath Marg,
Delhi.
3. Shri Ramesh Chandra,
Principal Secretary, (Medical)
Govt. of National Capital Territory
of Delhi,
5, Sham Nath Marg,
Delhi.
4. Dr. V.K. Khanna,
Principal,
Nehru Homeopathic Medical College,
and Hospital,
"B" Block, Defence Colony,
New Delhi.

... Respondents.

By Advocate Shri Vijay Pandita - for Respondents 1,2 & 3.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(JL)

The applicant has challenged the action of Respondents and proceedings of the Departmental Promotion Committee held under the Chairmanship of Member, UPSC, on 22.10.1997 for recruiting eligible officers to the post of Professor (Homeopathic), NHMC and Hospital. He has contended that Respondent 4, Dr. V.K. Gupta, who was Ex-Principal of NHMC and Hospital, had spoiled his ACRs for the year 1988-89 when he was working there which were later

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on expunged after he had made representation in this regard. His main contention is that the Selection Committee's recommendations in which this respondent had also sat as an expert were thereby vitiated as Respondent 4 was biased and bore a grudge against him. According to the applicant, he has objected to Respondent 4 being a part of the Selection Committee and he had submitted a detailed representation to the UPSC on 27.10.1997. He has stated that this has not been considered by them. His grievance is that in spite of his representation, the UPSC had made recommendations and appointed certain other persons in the cadre of Professor (Homeopathic) by order dated 16.12.1997 when he had been ordered to be reverted to his original post on the same date. Hence this O.A. had been filed on 22.12.1997 in which a prayer had also been made for an interim order to stay the operation of order dated 16.12.1997 reverting him to the post of Assistant Professor. By Tribunal's order dated 23.12.1997, it was observed that in view of the serious allegations made and on perusal of file, by way of ad interim relief, the respondents were restrained to implement the order dated 16.12.1997 if not already implemented.

2. The applicant has submitted that Respondent 4 who was then the Principal of NHMC had spoiled his ACR for the year 1988-89 which was conveyed to him by order dated 19.7.1989. According to him, these remarks were motivated as he had filed a detailed complaint against Respondent No. 4 on 31.1.1987. He has also referred to the various representations made by him against Respondent No. 4 and his contention is that the ACR for the year 1988-89 written by Respondent No. 4 was biased and mala

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fide. There were adverse remarks for the year 1989-90 which were conveyed to him belatedly in 1995 against which also he made the representation of 1.5.1995. The adverse remarks for the year 1989-90 were expunged by order dated 23.6.1995. He has also submitted that he made another representation on 8.3.1990 drawing the attention of Respondent No. 5. i.e. The Secretary, (Medical), Govt. of NCT, Delhi towards the biased, partisan and prejudiced attitude of Respondent 4, requesting him to prohibit Respondent 4 from writing his ACR. He has submitted that by letter dated 23.9.1997 he had been directed to report to the UPSC on 22.10.1997 and when ^{he} entered the room of the UPSC Member who was presiding in the DPC, he found three persons there, including Respondent 4. According to him, he had politely objected to the presence of Respondent 4 in the DPC but none paid attention to him. Hence, he submitted a detail representation to Respondent 3 on 27.10.1997 objecting to the presence of Respondent 4 in the Selection Committee. He has submitted that the presence of Respondent 4 in the UPSC vitiates the entire proceedings. He states that Respondent 1 on the basis of the recommendations of UPSC vide impugned order dated 16.12.1997 has appointed three Assistant Professors as Professors and simultaneously ordered his reversion as Assistant Professor. According to him, because of the fact that he had proceeded on leave from 18.12.1997, the impugned reversion order dated 16.12.1997 has not been put into operation although a copy of the same has been annexed as Annexure 'A-I'. The applicant has also submitted that under the relevant rules and instructions no interview of candidates is permissible by the DPC and hence the "Personal Talk" held by UPSC was outside the recruitment

Rules. Shri M.K. Gupta, learned counsel, has, therefore, submitted that for these reasons the proceedings held on 22.10.1997 for recruiting/regularising the eligible candidates for the post of Professor (Homeopathic), NHMC and Hospital are illegal and should be quashed and set aside.

3. Respondents 2 and 5 i.e. Govt. of NCT and Secretary (Medical), have submitted that they have acted in accordance with the recommendations of the UPSC and after taking approval of the Lt. Governor with regard to the impugned promotions. They have also relied on the reply filed by the UPSC/Respondent No. 3. Respondent 3 have submitted that they had received the applicant's representation dated 27.10.1997 which was duly considered by them at the highest level. They had come to the conclusion that the allegations made therein were false and there was nothing wrong with the selection procedure. They have submitted that they have followed this procedure in all similar cases and there was no deviation from the general practice adopted by the UPSC. They have also submitted that the Members of the Selection Committee are very high ranking officers of merit and integrity who had made recommendations for the selection of candidates strictly in accordance with the relevant Rules and procedure, leaving nothing to the subjective satisfaction of the Committee. They have stated that the Committee on the basis of the Confidential Reports, Bio-data and the "Personal Talk" had evaluated the merits of the candidates and made recommendations accordingly. The personal prejudices and predilections are not allowed to creep into the method of selection. They have clarified that

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Respondent 4 was only assisting the Commission in the Selection Committee Meeting whereas there were also other senior officers of the Government present with the Member of the UPSC as Chairman. They have, therefore, refuted the allegations made by the applicant that the course of selection was biased stating that these were baseless allegations. On directions of the Tribunal dated 22.4.1999, the UPSC has also submitted the original records of the Selection Committee for our perusal of which the Chairman of the UPSC had sworn an affidavit claiming privilege from disclosure of these unpublished records relating to the Selection Committee Meeting. This has also been disputed by the applicant who had submitted that no public interest would suffer from the disclosure of the documents contained in the Selection Committee file.

4. We have also seen the rejoinder filed by the applicant to the replies filed by the respondents, in which he has reiterated his stand in the O.A., namely, that the DPC proceedings were illegal, arbitrary and mala fide and should be quashed and set aside. He has also relied on the judgements of the Supreme Court in A.K. Kraipak Vs. Union of India (1969 (2) SCC 262) (Para 15) and State of West Bengal and Others Vs. Shivananda Pathak & Ors. (1998(5) SCC 513). Shri M.K. Gupta, learned counsel, has very vehemently submitted that the presence of Respondent 4 in the Selection Committee vitiated the proceedings as there was a reasonable suspicion in the mind of the applicant that he was prejudiced against him.

5. The Supreme Court has in a catena of judgements held that the courts should not normally interfere with the Selection Committee recommendations which consist of experts on the subject (See *The Chancellor and Anr. Vs. Dr. Bijayananda Kar and Ors.* (1994(1) SLR 17) and *Madan Lal and Ors. Vs. State of Jammu and Kashmir & Ors.* ((1995(2) SLR 209)) In *Madan Lal's case (supra)*, the Supreme Court has also held that it is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, although the applicant has submitted that he had politely objected to the Chairman of the Selection Committee when he entered the room on 22.10.1997 itself to the presence of Respondent 4 in the Selection Committee, but nobody paid attention to him, taking into account the totality of the facts and circumstances, we are of the view that this appears to be an after thought as he had made a detailed representation in this regard to the UPSC only on 27.10.1997 i.e. about five days later. It is also well settled law that a candidate after having taken a chance at the interview and ^{having¹⁸} appeared in the same cannot turn round and object to the interview that it was unfair, not properly conducted and so on later on, when he finds that he has not been successful in that selection. Besides, we find that the Committee consisted of more than one person, all of very high rank, including a Member of the UPSC who chaired the meeting on 22.10.1997. Dr. Gupta, a retired Principal of NHMC and Hospital had

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appeared as an Advisor but the decision was that of the Committee which had not recommended the applicant's case as he was not found upto the mark.

6. We find from the notings in the official records submitted by the UPSC that they have considered the representation made by the applicant subsequently with regard to the presence of Dr. Gupta in the Selection Committee in detail and have rejected the same at the level of the Chairman of the UPSC after the Hon'ble Member who was Chairman of the Selection Committee had also seen it. It is also clear from the notings in the file that the performance of the individual was assessed on the basis of ACRs, bio-data and "Personal Talk" by the Committee and not merely on the interview held on 22.10.1997. In the circumstances of the case we reject the allegations made by the applicant that the Selection Committee Meeting decision has been biased or arbitrary because of the presence of one Member namely, Respondent 4 whom the applicant feels ^{is} prejudiced against him. It would have been another matter if the selection was done purely by Respondent 4, which is not the case here as the Committee consisted of several eminent persons including the Chairman who was a Member of the UPSC. Therefore, taking into account the facts and circumstances of the case and the aforesaid judgements of ^{on proceedings of Selection Committees} the Apex Court, we see no ground to set aside the recommendations of the Selection Committee on the ground of alleged bias of Respondent 4. The facts and situation in A.K. Kraipak's case (supra) are quite different from the facts in the present case. In that case, the Selection Committee consisted of a person who was himself a candidate for the selection and in that context the Supreme Court

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observed that there was a conflict between his interest and duty inasmuch as he had participated in the deliberations of the Selection Board when the claims of the rivals were considered in preparation of the list of selected candidates in order of preference. In the circumstances, in that case, it was observed that "the real question is not whether he was biased, for it is difficult to prove the state of mind of a person. There must be a reasonable likelihood of bias and a mere suspicion of bias is not sufficient. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased". In the present case, these facts are not available here. The facts in the other case, **State of West Bengal Vs. S. Pathak (Supra)**, relied upon by the applicant, are also distinguishable from the facts in the present case as that case dealt with a Judge discharging his judicial functions and will not assist the applicant in the present case which deals with the proceedings of the Selection Committee.

7. The second ground urged by the learned counsel for the applicant based on the "Personal Talk" held has also to be rejected. There is nothing in the relevant recruitment Rules prohibiting this procedure to be adopted by the UPSC to assess the suitability of a candidate in case of promotion to the post of Professor (Homeopathic) and such a procedure does not in any way supplant the Rules and is, therefore, valid. The allegation of the applicant that this was in contravention of the Rules is accordingly rejected.

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8. In the facts and circumstances of the case, the applicant cannot successfully challenge the recommendations of the Selection Committee held on 22.10.1997 as he had taken a chance to get selected in that very interview. **Further,** he made the representation against Respondnt 4 somewhat belatedly only on 27.10.1997 on perhaps apprehending that he was finding himself unsuccessful. Following the decision of the Apex Court in the aforesaid two cases mentioned in Para 5 above, we do not find any justification to interfere with the decision of the Committee. We are satisfied that the conduct of the Selection Committee for the purpose of selection to the post of Professor (Homeopathic) is in order. In the circumstances of the case, the prayer of the applicant to the contrary is rejected, along with the prayer for total disclosure of the relevant proceedings to the applicant as it will not serve any useful purpose.

9. In the result, for the reasons mentioned above, the O.A. fails and is accordingly dismissed. No order as to costs.

CP 9/98

10. In CP 9/98, the applicant has alleged that the respondents have wilfully and contumaciously violated the interim orders passed by the Tribunal dated 23.12.1997. This order, inter alia, directed that in view of serious allegations made and on perusal of file, by way of adinterim relief, the respondents are restrained to implement the order dated 16.12.1995 if not already implemented. According to the applicant the copy of the order together

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with OA was served on the respondents on 24.12.1997. He has submitted that Respondent 4 in the C.P. has sent two orders, namely, the reversion order dated 16.12.1997 and pay fixation order dated 27.12.1997 by Registered post which was despatched on 2.1.1998 which according to him violates the interim order dated 23.12.1997. An allegation has also been made that the respondents are manipulating the records to save their skin by stating that the petitioner has refused to accept the reversion order dated 16.12.1997 on 17.12.1997.

11. The respondents in their reply to CP have refuted the above allegations. They have submitted that the impugned Annexure A-1 order dated 16.12.1997, with 5 copies, was delivered to the applicant by Special Messenger on 17.12.1997 but he refused to accept the same in the Peon Book. Copy of the Peon Book has been enclosed and they have stated that this fact was also brought to the notice of the higher authorities on that very date. According to them, after receipt of the said order, the applicant had filed this OA on 22.12.1997 in which an ex parte interim order was passed on 23.12.1997. They have, therefore, submitted that since the order had been issued before the interim order was granted by the Tribunal, they have not violated any order of the Tribunal.

12. In the interim order itself, it has been noted that the respondents are restrained to implement the order dated 16.12.1997 if not already implemented. The applicant has himself given a copy of that order as Annexure A-1 to O.A. when he filed it on 22.12.1997. Having regard to the relevant facts and circumstances of

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the case, including the statement in the copy of the Peon Book annexed to the reply affidavit of the respondents, we are unable to come to the conclusion that the respondents have committed any deliberate or contumacious violation of the Tribunal's ex-parte interim order dated 23.12.1997 which warrants further action to be instituted against them under the Contempt of Courts Act, 1971. Accordingly, CP 9/98 is dismissed and notices to the alleged contemnors are discharged.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)
"SRD"

S.R. Adige
(S.R. Adige)
Vice Chairman (A)