

Central Administrative Tribunal
Principal Bench: New Delhi

(6)

OA No. 341/1997

New Delhi, this the 4th day of July, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE-CHAIRMAN (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

Vijender Singh Jafa, IAS
s/o Late Shri H.C.S.Jafa,
Chairman,
Meghalaya State Electricity Board,
Shillong (Meghalaya).Applicant

(By Advocate: Shri K.T.S.Tulsi & Sh. Vikas Pahwa)

-Versus-

1. Union of India through
The Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi- 110 001.
2. The Secretary,
Ministry of Welfare,
Shastri Bhawan,
Dr. Rajender Prashad Road,
New Delhi.
3. Managing Director,
Tribal Cooperative Marketing,
Development Federation of India,
NCUI Bldg. IIInd Floor,
Khelgoan Marg,
New Delhi.
4. Shri D.K. Manavalan,
Additional Secretary,
Ministry of Welfare,
Shastri Bhawan,
New Delhi.Respondents

(By Advocate: Shri P.H.Ramchandani)

O R D E R
(Dr. Jose P. Verghese, Vice-Chairman)

The applicant in this OA belongs to Indian
Administrative Services 1965 batch and was originally
allocated to Assam-Meghalaya cadre. During these 32 years
of service, the applicant had served for about 21 years in

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Assam, Meghalaya and Mizoram; about 9 years on deputation to Government of India and a little over two years on Academic Assignments as a Visiting Fellow at the University of Oxford, U.K. and MacArthur Fellow at the Massachusetts Institute Technology, U.S.A. He was the first 1965 batch officers to be posted as a Joint Secretary in the Government of India in May, 1983.

2. For empanelment to hold Additional Secretary level post, the applicant was considered alongwith other IAS officers of 1965 batch, in the year 1994. His case was thereafter reviewed in 1995 with other left out officers of that batch. It was contended that after due consideration, he was not approved for empanelment on both the occasions. His case was again considered for empanelment to hold the Secretary Level post in the year 1996 when the case of 1965 batch of IAS officers was taken up. However, he was not approved for empanelment. It was stated on behalf of the respondents that while considering for empanelment, due emphasis was placed on the service record including the vigilance cases pending of the officers. The counter affidavit filed by the respondents, in more than one places, indicated that the vigilance aspect relating to a land deal while the applicant was working as Executive Director in Tribal Cooperative Marketing Development Federation of India Limited (TRIFED) was one of the main factors considered, as far as the petitioner is concerned, during these aforesaid empanelments.

3. Aggrieved by the exclusion by the respondents from considering the applicant to the post of Additional Secretary and Secretary in the year 1994, 1995 and 1996 respectively, as stated above, the applicant approached this court by this OA stating that the exclusion of the applicant from consideration to the post of Additional Secretary/Secretary is due to motivated attribution of vigilance inquiry against the applicant.

4. In the counter affidavit the respondents stated that the posts of Additional Secretaries/Secretaries are not filled by way of regular promotion rather they are made under a Scheme known as Central Staffing Scheme (CSS) and the appointments made in accordance with the said Scheme are made on 'tenure deputation basis' and not by way of promotion as the posts covered under the Scheme are not reserved for any particular service participating in the Scheme. It was also stated by the respondents in para 3.6 of the counter affidavit, that the selection for inclusion in the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, is approved by the Appointments Committee of the Cabinet Secretariat. In this task, the cabinet Secretary is assisted by a Special Committee of Secretaries for drawing up proposals for consideration of the Appointments Committee of the Cabinet. As far as possible, panels of suitable officers are drawn up on an annual basis, considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels is through the process of strict selection and

evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy making process. Posts at these levels at the Centre filled according to the Central Staffing Scheme are not to be considered as posts for the betterment of promotion prospects of any service. The need of the Central Government is the paramount consideration. While due regard is given to seniority, filling up of any specific post is based on merit, competence and the specific suitability of the officer for a particular vacancy in the Central Government.

5. The respondents admitted that the case of the applicant was considered alongwith the other IAS Officers of 1965 batch in the years 1994 and 1995 for empanelment to hold the Additional Secretary-level post and in the year 1996 for empanelment to hold the Secretary-level post. It was also stated that sealed cover procedure could not be resorted to as the same was not applicable in such cases.

6. With respect to the contention of the applicant that the applicant's name was not considered for empanelment because of the motivated presentation of the case of the applicant as if there is a vigilance case pending against the applicant was, also replied to by the respondents. In their counter affidavit at para 1.3 it was stated that an International Herbal Mart Project was approved, in principle, by the Board of Directors of TRIFED on 3.7.1989, even though the detailed project report was not submitted to the Board. The land required was originally at 15 to 20 acres and subsequently it was

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raised to 50 acres. In a subsequent meeting held on 29.1.1990 the Board authorised for arranging the funds for purchase of the said land and accordingly an amount of Rs. 8.50 crores was deposited with NOIDA by TRIFED on 28.2.1990. The relevant extract from the counter affidavit is reproduced herebelow:-

"A proposal for setting up of an International Herbal Mart Project in or around Delhi was approved, in principle, by the Board of Directors of TRIFED in its meeting held on 3.7.1989, subject to subsequent approval of the project in detail in due course, as the detailed feasibility study for the project report was not submitted then before the Board. The land required was originally estimated at 15 to 20 acres, but subsequently raised to 50 acres. In its subsequent meeting held on 29.1.1990, the Board authorised for arranging funds for purchase of land from New Okhla Industrial Development Authority (NOIDA). An amount of Rs. 8.50 crores was deposited with the NOIDA by TRIFED on 28.2.1990. Out of this, Rs. 7.00 crores was taken as loan from the Syndicate Bank". (Emphasis added).

7. It was also an admitted case on behalf of the respondents that the applicant worked as Executive Director in TRIFED during the period from 26.4.1990 to 30.4.1992 as such all what is stated above had already taken place before the applicant had joined as Executive Director in TRIFED.

8. What happened subsequently was, that the Board of Directors reviewed the viability of the project and decided to shelve the same after considering that project was not viable, accordingly the amount of Rs. 8.50 crores deposited with NOIDA, was recovered on 7.5.1991, admittedly during the tenure of the applicant as Executive Director. The relevant part of the affidavit to this extent by the respondents is extracted herebelow:-

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"Later, the Board of Directors at its meeting held on 5.11.1990 constituted a Committee to assess the viability of the project. This Committee on 6.12.1990 recommended that the project be shelved because it was assessed to be non-viable. Rs. 8.50 crores was recovered from NOIDA on 7.5.1991. This bad investment decision resulted in a loss of Rs. 1.14 crores by way of interest on the loan of Rs. 7.00 crores taken from the Syndicate Bank".

9. Even though, there was nothing that could be attributable to the applicant in the above said deal since the entire deal was finalised on payments made prior to the applicant joined as Executive Director, and the only action taken at the instance of the applicant was to implement the decision to shelve the project and recover the amount deposited with NOIDA. The applicant was successful in getting the amount recovered and the respondents are now trying to imput that the original amount of Rs. 8.50 crores paid to NOIDA includes Rs. 7 crores taken as loan from Syndicate Bank and the interest amounting to Rs. 1.14 crores paid on the said amount to the Syndicate Bank was a loss to the respondents and the allegation is that the applicant is responsible for the said loss. Prima-facie, there seems to be no substance in the allegations, even though we are not dealing with the allegations as such in this petition and no finding is required to be recorded on this aspect, rather what can be said is "res ipsa loquitur".

10. When the case of 1965 batch of IAS officers was taken up for empanelment to the post of Additional Secretary/Secretary, a vigilance report was requisitioned from DOP&T(ABD-I Section) and a copy of the report was produced before us. It contains the details of the

disciplinary proceedings pending against 8 officers and it was stated that against the remaining 75 IAS officers mentioned in the list, no disciplinary proceedings are pending. It is stated that eight cases detailed in the report of DOP&T dated 29.11.1995 almost all of them are the cases where the inquiry is pending and inquiry officers are appointed but the report against the name of the applicant was as follows:-

"Ministry of Welfare had made a reference to this department on 21.10.1993 intimating that during the tenure of Shri V.S.Jafa, IAS (AM:65) as Executive Director, TRIFED, TRIFED has purchased land from NOIDA for establishing a Herbal Mart. We had requested Ministry of Welfare about the position of the administrative enquiry against Shri V.S.Jafa. Ministry of Welfare has intimated that they had asked for certain clarifications/documents from TRIFED in the matter and they were examining the same. They were reminded last on 14.6.1995."

11. It is to be seen that from the above reproduced para that there was no inquiry pending against the applicant and in our opinion the above said para, against the applicant should not have been included alongwith other officers against whom disciplinary proceedings are pending, and we are afraid that there is some substance in the contention of the petitioner that exclusion of the petitioner from consideration for empanelment was by motivated inclusion of the case of the petitioner alongwith other seven candidates against whom, disciplinary proceedings were infact pending.

12. In reply to an allegation from the applicant that no explanation with respect to the above allegations contained therein, was ever sought from the

applicant, the respondents stated at para 4(iv) that, "it is submitted that the investigation into the deal relating to purchase of land at NOIDA had not come to such a stage where any explanation from the applicant was necessary". No further explanation is forthcoming, as to why the name of the applicant was arrayed by DOP&T, alongwith those against whom disciplinary proceedings were pending and inquiry officers were appointed.

13. According to the respondents, the appointments to the post of Additional Secretary/Secretary to Govt. of India are made under a Scheme known as Central Staffing Scheme. Para 14 of the said Scheme is relevant. The same is reproduced herebelow:-

"ADDITIONAL SECRETARY/SPECIAL
SECRETARY/SECRETARY

14. Selection for inclusion on the panel of officers adjudged suitable for appointment to the post of Government of India and posts equivalent thereto, will be approved by the ACC on the basis of proposals submitted by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up proposals for the consideration of ACC. As far as possible, panels of suitable officers will be drawn up on an annual basis considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels will be through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy-making process. Posts at these levels at the Centre filled according to the Central Staffing Scheme are not to be considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government would be the paramount consideration. While due regard would be given to seniority, filling up of any specific post would be based on merit, competence and the

specific suitability of the officer for a particular vacancy in the Central Government".

14. It is settled law today that the guarantees contained in Article 14 and 16 of the Constitution of India includes that every government servant has a right to be considered for promotion and that this consideration cannot be postponed or denied except on reasonable grounds. The right of the applicant to be considered for appointment to the post of Additional Secretary/Secretary is inalienable, and it could not have been denied to the applicant except on reasonable grounds. Now the question is whether the respondents have denied the right of the applicant to be considered for empanelment to the post of Additional Secretary/Secretary alongwith his own batch-mates, on reasonable ground or not.

15. We are of the opinion that the respondents have been wrongly excluded the applicant by projecting to the authorities considering his empanelment that disciplinary proceeding are pending against the applicant, while in no sense of the terms, disciplinary proceedings can be said to be pending against the applicant. Hon'ble Supreme Court in case of Union of India vs. K.V.Janki Raman reported in 1991(4) SCC P. 109, has agreed to the findings of a Full Bench of this court that disciplinary proceedings are stated to be pending only if a charge sheet is issued. It is not the case of the respondents that in the present case a charge sheet has been issued against the applicant. Respondents, on the other hand, had taken a stand that the case of Jankiraman cited above is not applicable to the case of promotion wherein appointments were made under the Central Staffing Scheme. Respondents may be right in saying so, but the principle

applied in the case of Janki Raman is also applicable to the case of appointments in accordance with the Central Staffing Scheme to the extent that any of the otherwise eligible candidates should not be denied consideration for empanelment, on the ground of pendency of any disciplinary proceedings where even a show cause notice has not been issued against the applicant. The Hon'ble Supreme court had asserted this principle, again not in a case of Central Staffing Scheme, rather in an earlier Division Bench's case, namely Aru Mugam vs. State of Tamil Nadu reported in 1991 (Suppl.) (1) SCC at page 199. We are also in agreement with the submission of the respondents that these cases on facts may not be applicable to the case at hand but the principles underlined are certainly applicable to the present case.

16. It is further noticeable that in the Janki Raman's case a contention was advanced by the counsel for the appellate authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue chargesheet, it will not be in the interest of purity of administration to reward the concerned employee with promotion. The Hon'ble Supreme court was not impressed by such arguments. The relevant portion is extracted herebelow:-

"The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinate

long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure".

17. Thus, the right of the applicant guaranteed under Article 14 and 16 of the Constitution of India, to be considered for promotion/appointment under the Central Staffing Scheme, may be necessary to be re-conciled with the right of the respondents to hold disciplinary proceedings against erring earning officers; it is to be stated that considering the applicant for empanelment, the rights of the respondents to initiate disciplinary proceedings is in no way curtailed. In the circumstances, we are of the firm view that the respondents should consider the case of the applicant for empanelment alongwith his batch-mates as if no disciplinary proceedings were pending, and ignoring para 6 of the Note given by the DOP&T to the authorities while considering the empanelment of the officers.

18. With reference to para 14 of the Central Staffing Scheme the respondents argued that these senior level posts are not to be considered as posts for betterment of promotion prospects of any service and it is need of the Central Government which would be the paramount consideration; but the latter part of para no. 14 of the Scheme is equally important. According to this, while authorities consider the need of the Central

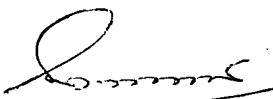
Government due regard is also to be given to the seniority, merit, competence and specific suitability. That in any case does not permit the respondents to exclude an otherwise eligible candidate on a flimsy and unreasonable ground that some petty matter is under investigation. In our opinion, on a *prima-facie* consideration, the allegations made in the counter affidavit, do not have any substance, especially on the face of the fact that the face of entire deal that was completed prior to the petitioner became Executive Director of TRIFED.

19. In the circumstances this OA is allowed to the extent that non-consideration of the applicant for empanelment to the post of Additional Secretary/Secretary on the grounds of pendency of a vigilance inquiry made is totally illegal and unwarranted. The respondents shall consider the empanelment of the petitioner as if no inquiry is pending and ignore the Note given by the DOP&T with respect to the applicant alongwith seven other officers against whom inquiry proceedings were in fact pending. Respondents are further directed to review the case of the applicant for empanelment to the post of Additional Secretary/Secretary whichever is applicable according to his seniority, merit and other criteria mentioned in para 14 of the Central Staffing Scheme. In case the petitioner is found fit with respect to the remaining criteria given in para 14 of the said Scheme, the respondents are directed to give all the benefits from the date when any of his juniors have been given similar relief with all other consequential benefits.

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20. The counsel for the petitioner stated that no specific allegation has been made against respondent no. 4 and he may be treated as a proforma respondent only.

21. With these above directions, this OA is allowed to the extent referred above, with no order as to costs.



(S.P. Biswas)
Member (A)

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(Dr. Jose P. Verghese)
Vice-Chairman (J)