

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.563/94

NEW DELHI, THIS THE 30<sup>th</sup> DAY OF SEPTEMBER, 1994.

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

Dr. Murari Lal,  
S/o Late Shri Saktoo Singh,  
R/o 3, Ataur Rehman Lane,  
Civil Lines,  
Delhi-110 054.

..Applicant.

(By Advocate : Shri P.P. Khurana)

VERSUS

1. Lt. Governor, Delhi,  
Govt of National Capital  
Territory of Delhi,  
Raj Niwas,  
Delhi-110 054.
2. The Development Commissioner,  
Development Department,  
Govt of NCT of Delhi  
519, Under Hill Road,  
Delhi-110 054.
3. Shri G.C. Joshi,  
Dy Development Commissioner,  
Development Department,  
Govt of NCT,  
5/9 Under Hill Road,  
Delhi-110 054.
4. Union Public Service Commission,  
through its Secretary,  
Dholpur House,  
Shahjahan Road,  
New Delhi-110 001.

...Respondents

(By Advocate : Shri Amrish Mathur )

JUDGEMENT

Hon'ble Shri B.K. Singh, Member (A)

No.563/94

The present Application /is directed against  
the action of the Respondents for overlooking  
the case of the Applicant for appointment  
to the post of Director (Horticulture) in  
the Government of National Capital Territory

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for  
of Delhi, & not calling him/ 'Personal Talk' for which  
candidates have been called by the Respondent No.4  
(U.P.S.C.) on 28.03.1994.

2. The admitted facts are that U.P.S.C. had not included the name of the applicant for the interview. As a result of the interim order passed by this Tribunal on 23.03.1994, the U.P.S.C. (Respondent No.4) was directed to include the name of the applicant also for 'Personal Talk' on 28.3.94 provisionally. It was further directed by the Hon'ble Tribunal that the result of the selection of the applicant be not declared till 14 days and be declared only when directed by the Tribunal. On the basis of this direction his name was also included in the list of candidates who have been called for 'Personal Talk' by the U.P.S.C.

3. The Recruitment Rules issued vide Notification dated 9.2.1993 by the Government of NCT of Delhi placed in the file indicates that the post of Director (Horticulture) can be filled up through composite method of selection. If departmental candidates are eligible for promotion then their cases will be considered by the DPC presided over by the Chairman or Member of the UPSC. If it is found that no candidate is eligible, the post would be filled by 'transfer on deputation' from the other departments. The candidates are required to be an M.Sc. in Agriculture with specialisation in Horticulture from a recognised university and should have ten years experience at a supervisory level related to development of Horticulture. The qualifications desirable are experience of ornamental gardening, organising of flower shows and other

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programmes, involving flower decorations.

4. The admitted facts are that the applicant joined service on 23.02.1977 in Delhi Administration (now called the Govt of National Capital Territory of Delhi) as Project Officer in the scale of Rs.1100-1600. A copy of his appointment Order is enclosed as Annexure A-1. In the year 1981 the applicant was transferred to an equivalent post of Dy Director (Horticulture) in the Development Department of the Government of National Capital Territory of Delhi for implementation, coordination and supervision of the Integrated Horticulture and Vegetable Development Project of the Government of NCT of Delhi. He continued to work as Dy Director (Horticulture) till 13.7.89. The applicant was subsequently promoted as Joint Director (Agriculture) in the Development Department of national Capital Territory of Delhi which carries a pay scale of Rs.3000-5000.

5. An advertisement appeared in the Employment News dated 26.03.93 for the post of Director (Horticulture) in the NCT of Delhi. A copy of the advertisement has been annexed as Annexure A-2. The qualifications prescribed for the post have been indicated above in the foregoing paragraph.

6. The applicant staked his claim and forwarded his application under the cover of his letter dated 6.05.93 which is marked as Annexure A-3. As per the interm order of this Tribunal dated 22.03.94 U.P.S.C. sent a letter to the applicant bearing No.F.3/31(10) 93-AO(III) dated 9.2.1994. This is enclosed as

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Annexure A-4 of the paper book. The U.P.S.C. included the name of the applicant for 'personal talk' on the direction of the C.A.T. but his candidature was to be considered subject to provision of cadre clearance, vigilance clearance and integrity certificate. The applicant came to know that his name was not included in the short-listed candidates numbering 13, only when he met respondent No.3 and that is how the applicant moved the Tribunal. The Tribunal vide its aforementioned order i.e. 23.3.94 directed the respondents to include the name of the applicant provisionally for 'Personal Talk' on 28.3.94 but further directed that his result will not be declared.

7. While this was going on preliminary enquiry was held by one Shri S.N. Srivastava, Joint Director in August, 1991 on some so-called acts of omission and commission committed by the applicant. On the basis of the preliminary enquiry in which the applicant participated he was issued with a Memorandum dated 16.09.91, annexed as Annexure A-5. He was called to show-cause why disciplinary proceeding be not initiated against him. The applicant submitted his explanation under the cover of his letter dated 23.09.91 marked as Annexure A-6 of the paper book. The applicant was placed under suspension vide letter dated 11.12.91 on the ground of contemplated departmental proceedings. This is Annexure A-7 of the paper book. He filed a representation against the suspension order and after a personal interview with Lt. Governor i.e. (Respondent No.1), applicant's suspension was revoked by Order dated 18.2.92. This is Annexure

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A-8 of the paper book. The copy of the representation dated 2.01.92 addressed to the Lt Governor is annexed as Annexure A-9. After the revocation of the suspension order the applicant continued to perform his duty as Joint Director (Agriculture) in the Office of the Development Department i.e. Respondent No.2 and no charge memo of any sort whatsoever has been issued to the applicant till now. He further asserts that no disciplinary proceedings are pending against him. He further argued that even if disciplinary proceeding is pending against him, his case should be considered by adopting a 'Sealed Cover' procedure in his case.

8. Relief Sought

It has been prayed that the Hon'ble Tribunal may be pleased to direct the Respondents to accord Cadre clearance, vigilance clearance and integrity certificate in favour of the applicant.

9. A notice was issued to the Respondents who filed the reply and contested the application and the grant of relief prayed for. We heard the learned counsel Shri P.P. Khurana for the applicant and Shri Amresh Mathur, for the respondents. The learned counsel for the applicant argued that in view of the revocation of the suspension order and in view of the fact that no charge-sheet has been served on the applicant he has a right to be considered by the DPC for the post of Director (Horticulture). Even if a disciplinary proceeding is contemplated against him his case should be considered and a 'Sealed Cover' Procedure should be adopted as envisaged by the Circular of DOPT on the subject. The learned counsel for the

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respondents argued that the applicant has not exhausted the remedy available to him and he has also suppressed the fact regarding service of chargesheet which was sent to him by Registered A.D. post and the applicant evaded the service of the chargesheet on him. When a Registered letter with Acknowledgement Due is sent to the applicant on his address it will be deemed to have been served on him. When a Registered A.D. is sent to a person on his house address its service is presumed. It was argued that the Vigilance case is pending against the applicant and it is on account of the order of the CAT that his name was included provisionally in the list of eligible candidates for 'Personal Talk' on 28.3.94, whereas in fact and in reality he is not at all eligible. The Competent Authority has issued him the chargesheet, therefore, there was no question of competent authority recommending his case for consideration to U.P.S.C. but for the Order of the Central Administrative Tribunal to consider his case provisionally and not to declare the result unless ordered to do so by the Hon'ble Tribunal. Under these compelling circumstances, his name was included in the list of candidates who were invited for 'Personal Talk' on 28.03.1994.

10. It is an established fact that a candidate is not eligible for consideration in any DPC especially when the Chairman or the Member of the Union Public Service Commission presides over such a meeting unless ACRs are accompanied by cadre clearance, vigilance clearance and specific grant

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integrity certificate by the Cadre controlling authority. It is admitted by both the parties that the applicant has not been granted cadre clearance, vigilance clearance and has also been denied integrity certificate. In such a situation, although he is a departmental candidate but he becomes ineligible on account of non-grant of integrity certificate, cadre clearance and vigilance clearance. In a situation like this, the department and the U.P.S.C. will have to go in for an alternative method of recruiting a candidate as envisaged in the Recruitment Rules by 'transfer on deputation' on the basis of selection.

11. This Tribunal is not competent to issue any direction to the respondents to issue cadre clearance, vigilance clearance and integrity certificate since these do not come within the domain of Courts but strictly fall within the domain of the Executive who have the absolute discretion in this matter. When a vigilance case is already pending against the applicant, vigilance clearance cannot be granted. And once a vigilance enquiry is on, integrity certificate cannot be granted to him; and if these are not granted cadre clearance is automatically withheld. In the light of the aforesaid discussions we do not find any merit in the application and the same is dismissed, leaving the parties to bear their own costs.

12. The interim order dated 23.03.1994 passed by this Tribunal is vacated.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER (J)