

Central Administrative Tribunal  
Principal Bench

O.A. 2154/2000

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New Delhi this the 3rd day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

Shri Chander Prakash,  
Senior Environmental Engineer-I,  
R/o III-M/41, Nehru Nagar,  
Ghaziabad (UP).

... Applicant.

(By Advocate Mrs. Avnish Ahlawat)

Versus

1. Lt. Governor of Delhi,  
through Joint Secretary (Vigilance),  
Govt. of NCT of Delhi,  
MSO Building,  
Delhi.

2. The Chairman,  
Delhi Pollution Control Committee,  
Vikas Bhawan, A-Block,  
Second Floor, New Delhi.

... Respondents.

(By Advocate Mrs. Meera Chhibber)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This is a reference made under Section 26 of the  
Administrative Tribunals Act, 1985.

2. I have heard Mrs. Avnish Ahlawat, learned  
counsel for applicant and Mrs. Meera Chhibber, learned  
counsel for respondents. I have also considered the  
documents on record and the opinions recorded by Hon'ble  
Shri S.R. Adige, Vice Chairman (A) and Hon'ble Dr. A.  
Vedavalli, Member (J).

3. The applicant has impugned the order issued by  
the Lt. Governor of Delhi dated 11.10.2000 placing the  
applicant under suspension. This has been done in

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exercise of the powers conferred by sub-rule (1) of Rule 10 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the 1965 Rules').

4. The main contention of Mrs. Avnish Ahlawat, learned counsel, is that the Lt. Governor has no power to issue the impugned order of suspension and it is only the Chairman, Delhi Pollution Control Committee (DPCC) who has the power. She has submitted that the applicant is an employee of the DPCC and not an employee of the Government of NCT, Delhi. She has referred to the provisions of Section 4 (4) of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Pollution Act'). According to her, the DPCC is an autonomous body. However, she has also submitted that it is a part and parcel of the Central Pollution Control Board (CPCB) which has been constituted under Section 3 of the Pollution Act. In relation to <sup>the</sup> Union Territory, like the Government of NCT, Delhi, under the proviso to Section 4 (4) of the Pollution Act, the Central Board may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify. Learned counsel has submitted that by Notification dated 15.3.1991, in exercise of the powers conferred by Section 4 (4) of the Pollution Act and similar Sections under the Air (Prevention and Control of Pollution) Act, 1981, the DPCC has been constituted. The Committee so constituted is specified by the Central Government which shall consist of the Chairman, Member-Secretary and two other Members. Learned counsel has very vehemently submitted that the

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Memorandum dated 5.3.1993 by which the applicant has been appointed as Environmental Engineer in the DPCC is by the Chairman of the Committee who alone, therefore, has the power conferred under Rule 10 (1) of the 1965 Rules to place the applicant under suspension and not the Lt. Governor of Delhi. She has submitted that merely because in the Recruitment Rules for various posts in the DPCC, which is stated to be under the Department of Environment, Govt. of NCT, Delhi or the fact that the appointment letter/Memorandum issued to the applicant dated 5.3.1993 has in its letter-head stated that it is from the office of the DPCC, Department of Environment, Government of NCT, Delhi, will have no effect whatsoever to show that the applicant is an employee of the Government of NCT. She has contended that the DPCC being a delegate of the CPCB and headed by the Chairman, he alone has the power to suspend the applicant. She has also referred to the Office Order dated 14.1.1998 issued in respect of the applicant and two other officers in which it has been stated that the Chairman, DPCC is pleased to promote them as Senior Environmental Engineers which order has been issued by the Member-Secretary, DPCC. According to her, these letters, therefore, show that it is only the Chairman, DPCC, who is the appointing authority and has also issued promotion orders, who can, therefore, exercise the powers under Rule 10(1) of the 1965 Rules.

5. Another ground taken by learned counsel for the applicant was under Section 12 of the Pollution Act. She has contended that with regard to the terms and conditions of the service of Member-Secretary and officers

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and other employees of the CPCB, the State Government cannot make the Rules. According to her, reliance placed by the learned counsel for respondents on the Rules notified on 30.8.1994, wherein it has been stated that the Recruitment Rules for various posts in DPCC under the Department of Environment, Government of NCT of Delhi, have been done with the previous approval of the Lt. Governor of Delhi, has no significance because the DPCC is not under the Govt. of NCT, Delhi and nor is the applicant.

6. With reference to Articles 239(1) and 239AA of the Constitution, learned counsel for applicant has submitted that in the facts and circumstances of the case and the aforesaid provisions of the Pollution Act, under which the DPCC has been constituted, the question of the Lt. Governor exercising the power to suspend the applicant under the Rules does not arise. Learned counsel has relied on the judgement of the Allahabad High Court in **Ilam Singh Vs. District Magistrate, Muzaffarnagar and Ors.** (SLR 1999 (7) 666). She has, therefore, submitted that in the circumstances, the reasoning of Hon'ble Member (J) in the dissenting note dated 21.5.2001 is the correct view.

7. Mrs. Meera Chhibber, learned counsel for respondents has, on the other hand, disputed the above submissions. She has submitted that from the documents annexed by the applicant himself in the O.A., for example, Memorandum dated 5.3.1993, order dated 1.6.1993 and promotion order dated 14.1.1998, it is seen that all these have been issued from the office of the DPCC in the Department of Environment, Govt. of NCT, Delhi. She has

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stressed on the fact that under the proviso to Section 4 (4) of the Pollution Act, as no State Board can be constituted for a Union Territory, the Central Board is to exercise the powers and perform the functions of a State Board for that of Union territory, subject to the power of the Central Board to delegate all or any of its powers and functions under this sub-section to such person or body of persons, as the Central Government may specify. She has, therefore, submitted that the Notification dated 15.3.1991 delegating the powers and functions of the Central Government to the Union Territory of Government of NCT, Delhi is only in respect of exercise of the powers and functions of the Central Board, i.e. CPCB. She has stressed on the fact that under Chapter 2 of the Pollution Act, the CPCB has been constituted to exercise the powers and functions conferred on it by the Act, which is for prevention and control of water pollution and in the other Act of 1981, prevention of pollution of air. She has submitted that the Chairman of the DPCC so constituted as a delegate of the CPCB, is the Secretary Environment of the Department of Environment, Government of NCT and the Member-Secretary is the Director-Environment of the same Department. She has, therefore, submitted that although the DPCC may be an autonomous body, it is fully under the control of the Government and even the salaries of employees are met from the Government of NCT, Delhi, in the form of grant-in-aid through the Department of Environment. During the hearing, learned counsel for both the parties have submitted that the DPCC has been following for its employees all disciplinary rules, including the 1965 Rules applicable, as there are no other separate Rules. Learned counsel for respondents has

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submitted that the appointment order as well as the promotion order relied upon by the applicant show that the same have been issued by the Secretary, Department of Environment-cum-Chairman, DPCC. The same is <sup>in</sup> ~~the~~ position in the order dated 31.5.2000 which is an order issued by the Secretary, Environment-cum-Chairman, DPCC against another officer. She has submitted that the DPCC has been constituted of officers who are ex-officio, Secretary of the Department of Environment and Director, Environment with other two nominees, as mentioned in the Notification dated 15.3.1991.

8. Learned counsel for respondents has also drawn my attention to the representation dated 18.10.2000 filed by the applicant against the impugned order, praying for review of the suspension order and for withdrawing the same. She has submitted that this representation has been filed immediately after filing the O.A. on 16.10.2000. The Lt. Governor after due consideration of the representation has rejected the same. She has, therefore, submitted that there has been acquiescence and waiver on the part of the applicant in agitating the issues raised in the present O.A. that the Lt. Governor does not have the power to place the applicant under suspension. She has relied on the judgement of the Supreme Court in **Suneeta Aggarwal Vs. State of Haryana and Ors** (2000(2) SCC 615). Learned counsel has also pointed out that after the suspension order dated 11.10.2000 has been issued, the applicant has been issued the Memorandum of Charges dated 5.2.2001. In the circumstances, she has submitted that the suspension order should not be quashed as there is no illegality in it.

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9. Learned counsel for the respondents has also relied on the judgement of the Supreme Court in **Abraham Jacob and Ors. Vs Union of India** (1998 (4) SCC 65) that the Draft Recruitment Rules can be followed. According to her, the applicant has been appointed as Environmental Engineer under the Recruitment Rules issued by the DPCC under the Department of Environment which he himself has enclosed. Her contention is that the Recruitment Rules were notified on 30.8.1994 and he has been appointed on the basis of the Draft Recruitment Rules. She has emphasised that the Recruitment Rules of 1994 have not been challenged by the applicant.

10. Another argument submitted by Mrs. Meera Chibber, learned counsel, is based on Articles 239(1) and 239AA of the Constitution of India. She has submitted that the ex-officio Chairman of the DPCC is Secretary of the Department of Environment, Government of NCT, Delhi, who is subordinate to the Lt. Governor. In any case, she has also submitted that under the provisions of Article 239 read with Article 239AA of the Constitution, the Lt. Governor of Delhi can exercise the powers to suspend any officer working in any of the Departments of Government of NCT, Delhi on behalf of the Central Government/CPCB. Therefore, learned counsel has submitted that taking into account the provisions of the Pollution Act, the Constitution and Rule 10 (1) of the 1965 Rules, there is no infirmity in the order of suspension passed against the applicant by the Lt. Governor of Delhi.

11. After carefully considering the aforesaid provisions of law and submissions of the learned counsel

for the parties ~~and~~ the facts, I agree with the views expressed by Hon'ble Shri S.R. Adige, Vice Chairman (A) that it cannot be held that the Lt. Governor of Delhi is not competent to exercise the powers vested by law in the Central Government who in turn have delegated the powers and functions to the DPCC whose Chairman happens to be the Secretary, Department of Environment.

12. Section 4(1) of the Pollution Act empowers the State Governments to constitute State Pollution Control Board. Under sub-section (4) of this Section, it is provided that no State Board shall be constituted for a Union Territory and in relation to a Union Territory, the Central Board shall exercise the powers and perform the functions of a State Board for that Union territory. The proviso further provides that the Central Board may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify. It is under this proviso that the Notification dated 15.3.1991 has been issued. Under this, the CPCB has delegated all the powers vested in it under the Pollution Act and Air (Prevention and Control of Pollution) Act, 1981 in respect of the Union Territory of Delhi to a Committee which has been specified by the Central Government. The ex-officio Chairman of the Committee is Secretary of the Department of Environment, Government of NCT and it is not done by name but by virtue of the fact that he holds the post of Secretary in that Department. It is relevant to note that the appointment of the applicant to the post of Environmental Engineer by

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Memorandum dated 5.3.1993, and the promotion order promoting him on ad hoc basis to the post of Senior Environmental Engineer have been done by the Chairman, DPCC who is also the Secretary, Department of Environment. The DPCC itself is, therefore, a delegate of the Central Government to exercise the powers and functions of CPCB under sub-section (4) of Section 4 of the Pollution Act. Having regard to the provisions of Article 239(1) read with Article 239AA of the Constitution with regard to the Union Territory of Delhi, the President may act to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify and in the case of Government of NCT, Delhi, the Administrator appointed under Article 239 is designated as the Lt. Governor. The relevant portion of Rule 10(1) of the 1965 Rules reads as follows:

"The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension...." disciplinary authority or any.....

Therefore, having regard to the aforesaid provisions of law, the Lt. Governor exercising the power of suspension in the present case is in order.

13. The contention of Mrs. Meera Chibber, learned counsel that the Recruitment Rules under which the applicant has been appointed as Environmental Engineer in the office of Chairman, DPCC, Department of Environment, have not been challenged by the applicant, is relevant as

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also the fact that he had made a representation to the Lt. Governor of Delhi to review the suspension order within two days of filing this O.A. The judgement of the Allahabad High Court in Ilam Singh's case (supra) relied upon by the learned counsel for applicant, is not relevant to the facts in this case because nowhere she has contended that the Lt. Governor has not applied his mind properly to the facts of his case. It is also relevant to note that the respondents have also issued Memorandum dated 5.2.2001 initiating Departmental proceedings against the applicant for major penalty under Rule 14 of the 1965 Rules.

14. During the hearing, Mrs. Avnish Ahlawat, learned counsel had submitted a copy of the advertisement dated 14.1.1993 following which the applicant had been appointed as Environmental Engineer. She has also submitted the minutes of the meeting of DPCC held on 30.10.1992, in which a sentence has been included that the DPCC is an autonomous organisation. Mrs. Meera Chibber, learned counsel, has, relying on the judgement of the Supreme Court in Union of India Vs. EID Parry (India) Ltd. (2000 (2) SCC 223), submitted that this document, that is the minutes of the DPCC is neither signed nor has been filed by way of an affidavit and so it cannot assist the applicant as it cannot form part of the pleadings. I see force in the submissions made by the learned counsel for respondents that there is no indication as to how the applicant has obtained the minutes of the DPCC meeting held on 30.10.1992 from the file of the Department nor is

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this document signed or attested as a true copy. There is also no document placed on record by the applicant to rebut the submissions made on behalf of the respondents that the DPCC is fully under the control of the Government and even the salaries of employees are met from the Government of NCT, Delhi, in the form of grant-in-aid through the Department of Environment. Therefore, looking at the issue from any angle, I agree with the views expressed by Hon'ble VC (A) that the O.A. warrants no interference.

15. In the result, for the reasons given above, the O.A. is dismissed. No order as to costs.

*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

'SRD'