

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA 512/1989  
OA 2473/1989

Date of decision: 09.02.1993.

(1) OA 512/1989

Shri Swadesh Kumar Bhargava

....Applicant

Vs.

U.O.I. & Others

....Respondents

(2) OA 2473/1989 with MP 637/1990

Shri Swadesh Kumar Bhargava

....Applicant

Vs.

U.O.I. & Others

....Respondents

For the Applicants

...Shri G.D. Gupta, Counsel

For the Respondents

...Shri P.H. Ramchandani,  
Sr. Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,  
Vice Chairman(J))

The parties to both these applications are the same and the issues raised therein are interconnected and it is proposed to deal with them in a common judgment. We have gone through the records of the case carefully and have heard the learned counsel of both parties. We have also duly considered the case law\* cited before us by both parties.

2. The applicant filed these applications while working as Deputy Chief Controller of Explosives in the office of the Chief Controller of Explosives under the Ministry of Industry, Department of Industrial Development. In

\* Case law relied upon by the applicant:-

1985(1) SCC 122; 1987(4) ATC 678; 1990(20) ATC 142;

1988(6) ATC 759; 1988(1) AIR 479; and AIR 1987 SC 948.

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OA 512/1989 which was filed on 10.02.1989 he has prayed for the following reliefs:-

- (i) To quash the Memo dated 20.05.1988 communicating adverse remarks from the confidential report for the year 1987;
- (ii) to quash the Office Memo dated 4.10.1988 to the extent it retains the adverse remarks communicated to him vide Memo dated 20.05.1988;
- (iii) to quash the decision of the Appointment's Committee of the Cabinet (ACC for short) in not agreeing with the selection of the applicant by the UPSC and consequently not appointing him to the post of Chief Controller of Explosives;
- (iv) to declare him entitled to be exonerated with all the adverse remarks communicated to him vide Office Memo dated 20.05.1988;
- (v) to declare him entitled to be appointed to the post of Chief Controller of Explosives in view of his selection by the UPSC with retrospective effect from the date when he was selected by the UPSC in June, 1987 with all consequential benefits;
- (vi) to direct the respondents to expunge all the adverse remarks communicated to him vide Memo dated

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20.05.1987; and


(vi) to direct the respondents to appoint him to the post of Chief Controller of Explosives on the basis of his selection by the UPSC with retrospective effect from the date when he was selected by the UPSC in June, 1987 with all consequential benefits.

3. In OA 2473/1989 which was filed on 11.12.1989, the applicant has prayed for the following reliefs:-

(i) to quash the act of the respondents in not calling the applicant for interview scheduled to be held on 12.12.1989 by the UPSC for appointment by the method of transfer on deputation (including short term contract);

(ii) to declare him entitled to be considered for appointment to the post of Chief Controller of Explosives and also entitled to be called for interview which is held by the UPSC and consequently to be appointed to the said post of Chief Controller of Explosives, if selected, with all consequential benefits; and

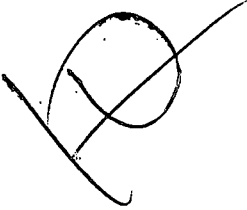
(iii) to direct the respondents to call the applicant for interview for appointment to the post of Chief Controller of Explosives which are scheduled to be held on 12.12.89 or any other date in pursuance of the Office Memo dated 17.2.1989 and appoint him to the said post of Chief Controller of Explosives, if selected, with all consequential benefits.



4. On 11.12.1989, the Tribunal passed an interim order in OA 2473/1989 directing that the applicant shall be provisionally called for interview for the post of Chief Controller of Explosives scheduled to be held on 12.12.1989 or on any subsequent date but the results of the interview as a whole shall not be disclosed and acted upon. The said interim order has thereafter been continued during the pendency of the present application.

5. The applicant filed MP 637/1990 in OA 2473/1989 seeking to amend the prayer clause as follows:-

- (i) to quash the act of the respondents in not calling the applicant for the interview scheduled to be held on 12.12.1989 by the UPSC for appointment by the method of transfer on deputation (including short term contract);
- (ii) to quash the Office Memorandum dated 7th June, 1983;
- (iii) to declare the applicant entitled to be considered for appointment to the post of Chief Controller of Explosives and also entitled to be called for interview which is held by the UPSC and consequently to be appointed to the said post of Chief Controller of Explosives if selected, with all consequential benefits;
- (iv) to declare the applicant entitled to be considered for appointment to the post of Chief Controller of Explosives even by the method of transfer on deputation (including short term contract);

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- (v) to direct the respondents to call the applicant for interview for appointment to the post of Chief Controller of Explosives and appoint him to the said post if selected with all consequential benefits; and
- (vi) to direct the respondents to appoint him to the post of Chief Controller of Explosives even by method of transfer on deputation (including short term contract).

6. We have gone through the records of the case and have heard the learned counsel of both parties. The learned counsel for the applicant submitted that in case the reliefs <sup>are</sup> granted in OA 512/1989, the OA 2473/1989 will become infructuous.

7. The facts of the case in brief are as follows. The applicant was initially appointed as Chemical Apprentice in the Indian Ordnance Factories, Ministry of Defence in 1956. He was selected for the post of Chemical Apprentice after being successful in the written test and interview held for the purpose on All India basis. He was appointed as Supervisor in 1958. He was promoted as Chargeman in 1961 and thereafter as Junior Technical Assistant in 1962. He was appointed as Senior Technical Assistant in 1963 and thereafter he was sent abroad for training in manufacture, storage, transport etc. of various types of explosives and hazardous chemicals.

8. In 1968, the applicant was selected for the post of Inspector of Explosives in the Department of Explosives, Ministry of Industry in an open selection conducted by the UPSC. He joined the said post in January, 1969. In 1973, the said post was redesignated as Deputy Controller of Explosives. In 1974 he was promoted as Controller of Explosives on ad hoc basis and in 1975 on regular basis. In 1981 he was promoted to the post of Deputy Chief Controller of Explosives on the basis of his selection on merits by a duly constituted DPC.

9. The post next higher to the post of Deputy Chief Controller of Explosives is that of Joint Chief Controller of Explosives and the next higher to the post of Joint Chief Controller of Explosives is that of Chief Controller of Explosives. According to the relevant recruitment rules for the post of Chief Controller of Explosives, the post is to be filled by promotion/transfer on deputation (including short term contract) failing which by direct recruitment.

10. The post of Chief Controller of Explosives fell vacant in 1984 and the same was proposed to be filled by method of direct recruitment as no suitable candidate was available for filling up the said post on deputation. The

applicant as well as Dr. H. Mukherjee (respondent No.4) were called for interview but neither of them was selected. The said post of Chief Controller of Explosives was to fall vacant due to the retirement of the then incumbent Shri D.R. Dave in June, 1984. <sup>Since</sup> ~~no~~ suitable candidate was available, Shri Dave was given extension for one year. The extension of one year ended in June 1985 and after he retired, respondent No.4 was appointed as Chief Controller of Explosives on ad hoc basis.

11. The post of Chief Controller of Explosives was again advertised through UPSC in 1985. The applicant was not called for interview but respondent No.4 though called for interview was not selected. Shri R.C. Srivastava was recommended for appointment by the UPSC but the ACC did not give its approval to his appointment. In the meanwhile, respondent No.4 was allowed to continue in the post of Chief Controller of Explosives on ad hoc basis.

12. The post of Chief Controller of Explosives was again advertised by the UPSC in 1987 and interviews were held in May, 1987. The UPSC called 29 candidates for the interview including the applicant. He was selected for the said post by the UPSC. The UPSC wrote to him a letter on 10.06.1987 which reads as follows:-

" With reference to your application for the above recruitment I am directed to say that you have been recommended to the Secretary, Min. of Industry and Company Affairs, Department of Industrial Development, New Delhi, for appointment to the aforesaid post. Further correspondence, if any, in this regard, may be addressed to the Ministry/Department concerned. I

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am, however, to make it clear that the offer of appointment will be made to you, only after the Government have satisfied themselves, after such enquiry as may be considered ~~satisfactory~~ necessary that you are suitable in all respects for appointment to the service and that you are in good mental and bodily health and from any physical defect likely to interfere with the discharge of your other conditions, as are applicable to all such appointment under the Central Government.

13. Thereafter, the respondents initiated action on the recommendation of the UPSC. The Government rejected his candidature for appointment as Chief Controller of Explosives. The respondents have stated that an intimation to this effect had been sent to the applicant. The applicant has stated that the reply rejecting his representations in this regard was received only after filing of the present application. In the meanwhile, the respondents continued the ad hoc appointment of respondent No.4 to the post of Chief Controller of Explosives.

14. On 17.02.1989 the respondents issued an Office Memorandum proposing to fill up the post of Chief Controller of Explosives on transfer on deputation (including short term contract) basis from amongst suitable officers. This was allegedly on the ground of repeated failure to secure suitable candidate for filling up the said post. Action taken by the respondents in this regard is the subject matter of OA 2473/1989.



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15. On 29.09.1989 the applicant had filed MP 2330/1989 wherein it has been stated that the Government has not given any reasons for not accepting the recommendation of the UPSC in regard to the suitability of the applicant for appointment as Chief Controller of Explosives. He has prayed for summoning the file of the ACC dealing with his case containing the reasons for rejection of his case and to allow inspection thereof. On 9.9.1992, Secretary, Ministry of Personnel, Public Grievances and Pensions has filed an affidavit claiming privilege under Sections 123 and 124 of the Indian Evidence Act, 1872. He has also submitted that Article 74(2) of the Constitution of India bars the disclosure of the documents mentioned in the MP. The applicant has filed his reply to the said affidavit. The relevant file was produced before us in a closed cover.

16. The basic contentions of the applicant in regard to his non-appointment as Chief Controller of Explosives are the following:-

- (i) The respondents have not given any reasons for the rejection of his case by the ACC inspite of his selection by the UPSC which is an independent body.
- (ii) Respondent No.4 had manipulated material adverse against the applicant so as to create a situation in which the appointment of the applicant will not obtain the approval of the ACC.
- (iii) The applicant was recommended for appointment as Chief Controller of Explosives by the method of direct recruitment

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in which his confidential reports cannot be looked into by the ACC to adjudge his suitability.

17. As against this, the respondents have contended that it is not incumbent on the Government to reveal the reasons for the rejection of his case by the ACC. The selection by UPSC by direct recruitment is only recommendatory. Though, conventionally Government accepts the UPSC recommendations, in exceptional circumstances, Government has the option to deviate and not to accept UPSC recommendations. While doing so, the Government can examine all the factors having a bearing on the selection of a candidate to the post. Government is required to examine all relevant matters before finalising appointments especially to a top post, that of head of a sensitive organisation. The respondents have also relied upon the Department of Personnel's OM dated 31.3.1986 and 17.6.1988, according to which proposals requiring consideration of the ACC in respect of appointments by direct recruitment on the basis of the recommendations of the UPSC are invariably to be accompanied by CR dossiers of the officers concerned. CRs of departmental candidates appearing for interview at the UPSC are also to be sent to the UPSC. The UPSC will consider CR dossiers before making their recommendations.

18. The learned counsel for the respondents submitted that the respondents sent the proposal <sup>to the ACC</sup> on the basis of

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the recommendations made by the UPSC for the appointment of the applicant as Chief Controller of Explosives on 18.6.1987. While the matter was pending with the ACC, the respondents received a report from the CBI on 7.9.1987 and in view of this on 29.9.1987, the respondents wrote to the ACC stating that the case of the applicant may not be processed further. The applicant was, however, cleared by the Vigilance Department in December, 1987.

19. No adverse remarks have been communicated to the applicant for the years 1985 and 1986. However, for the year 1987 the following adverse remarks were <sup>and the same were</sup> communicated to the applicant by OM dated 20.05.1988:-

" In the confidential report of Shri S.K. Bhargava, Deputy Chief Controller of Explosives for the year 1987 it has been reported that he has not the ability to give leadership in a department which has all India jurisdiction. He has also been orally advised not to bring outside influence in his service matters. He needs to develop a proper perspective about the role and functioning of the department. He has not done any meritorious work.

The above mentioned observation are brought to the notice of Shri S.K. Bhargava, Dy. Chief Controller of Explosives with the hope that he will take the remarks in good spirit and try to overcome them. However, in case Shri Bhargava wishes to represent against the above adverse remarks, he may do so within thirty days from the date of receipt of this OM".

20. After considering the representation submitted by the applicant on 10.06.1988, the competent authority decided to delete the portion "he has not done any

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meritorious work\* recorded in his ACR. The competent authority further decided that the remaining remarks recorded in the ACR of the applicant may stand. Accordingly, his representation against the adverse remarks except the deletion of the portion mentioned above was rejected. This was also communicated to the applicant vide OM dated 4.10.1988.

21. The applicant again made a representation for expunction of the remaining remarks which was also rejected by the competent authority by OM dated 12.1.1989. He made a further representation on 25.04.1989 on the same subject which was again rejected by the competent authority by OM dated 3.7.1989.

22. The applicant was selected by the UPSC for the post of Chief Controller of Explosives in June, 1987. In September, 1987, the CBI started an enquiry against him in regard to an incident which happened in December, 1985. According to the report received from the CBI, the applicant had written to one M/s Ashoka Vanaspathi Pvt. Ltd. owned by M/s Purohit & Company asking them to obtain a licence under Rule 3 of the Static and Mobile Pressure Vessels (Unfired) Rules, 1981 but did not pursue it to its logical end. On examination of the case, it was noticed that the basic issue of whether the factory in question at all required a licence under the aforesaid rule was a matter of dispute. It was, therefore, held that in such

circumstances, the applicant need not be held responsible and the appointment of the applicant was processed further.

23. The applicant has filed MP 2331/1989 in which he has challenged the validity of OM dated 31.3.1986 and 17.6.1988 as regards consideration of confidential reports for selection of candidates by direct recruitment and the validity of OM dated 3.7.1989 whereby the respondents informed him that his request for expunging the adverse remarks recorded in his ACR for the year 1987 cannot be acceded to.

24. The respondents have stated in their counter-affidavit that as per the conventions laid down for acceptance of UPSC recommendations, the procedure laid down in the Ministry of Home Affairs OM dated 27.11.1950 is to be followed and the Commission intimated of Government's decision. The UPSC has been informed of the non-acceptance of the recommendation in respect of filling up the post of Chief Controller of Explosives.

25. In our opinion, the selection made by the UPSC is only a recommendation and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same but if <sup>it</sup> chooses not to accept the recommendation of the UPSC the Constitution enjoins the Government to place on the Table of Parliament its reasons and report for doing so. Thus the Government is

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made answerable to Parliament for any departure, vide Article 323 of the Constitution. In *Jatinder Kumar Vs. State of Punjab*, 1985(1) SCC 120 at 128, the Supreme Court has held that "if, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character".

26. In the instant case, no adverse remarks had been communicated to the applicant at the time of the selection of the applicant by the UPSC in June, 1987 for the post of Chief Controller of Explosives. There was no investigation or enquiry pending against him in regard to any alleged misconduct on his part at that point of time. That being so, we are of the opinion that subsequent events such as communication of adverse remarks to the applicant for the year 1987 and the CBI Enquiry initiated against him into alleged acts of misconduct which was dropped, would have no bearing on the suitability of the applicant for the post of Chief Controller of Explosives. The subsequent events and developments should not be taken into account by the ACC while adjudging his suitability.

27. The applicant has not substantiated the allegation of malafides against respondent No.4. The ld. counsel for the applicant submitted that the initiation of a CBI Enquiry coupled with communication of adverse remarks to the applicant at the time of receipt of the recommendation made by the UPSC regarding the appointment of the applicant leads to the inference that there were forces at work against him. It is true that the respondents made a reference to the ACC after the applicant was cleared in the CBI

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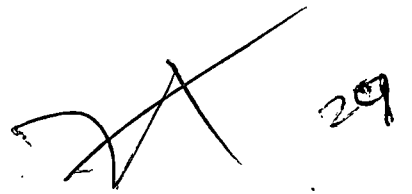
Enquiry but the fact of having held such an enquiry against the applicant was brought to the notice of the ACC in the context of adjudging his suitability for the post of Chief Controller of Explosives. Apparently, the representation made by the applicant on 10.06.1988 against the adverse remarks communicated to him on 20.05.1988 was also in the confidential dossiers of the applicant submitted to the ACC. His representation had not been disposed of by the respondents at that point of time.

28. In the conspectus of the facts and circumstances of the case we are of the opinion that the case of the applicant was not processed in a fair and just manner.

29. In Hari Dev Goyal Vs. Union of India & Another, 1987(4) ATC 678 this Tribunal has held that "while the appointing authority has every right to withdraw an appointment if after necessary verification of a candidate's character and antecedents, it is found that such an appointment will not <sup>be a</sup> in public interest or otherwise not desirable keeping in view a particular candidate's involvement in some matters which cast a stigma on his character, it cannot as to itself responsibility for assessing general suitability of a candidate for appointment to a particular post after selection has been made by the Union Public Service Commission, in a case of direct recruitment".

30. In N.P. Dhamania Vs. Union of India, 1988(6) ATC 759 this Tribunal relied upon the judgment of the Supreme Court in Jatinder Kumar's case mentioned above and observed that in cases where the appointing authority

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do not accept the recommendations of the UPSC, it should give reasons for the same. The Tribunal further observed that "it is well settled that a public authority must ensure justice and fair play in action and it cannot act whimsically or capriciously". The Tribunal relied upon the judgment of the Supreme Court in E.P. Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555 and negated the contention of the respondents that the appointing authority is competent to ignore the recommendations of UPSC without assigning any reason whatsoever.

31. In the recent case of J.N. Kaul Vs. Union of India & Another, 1992(20) ATC 142 which related to the depanelment of the name of the applicant by the ACC for undisclosed reasons, the Tribunal has held that such depanelment cannot be upheld as fair and just since no reasons had been given by the respondents in doing so.

32. We reiterate the same view. In the instant case, no reasons have been given by the respondents with regard to the rejection by the ACC of the recommendation made by the UPSC for appointing the applicant as Chief





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Controller of Explosives by way of direct recruitment. As already mentioned, neither the adverse remarks for the year 1987 nor the CBI enquiry in which the applicant was cleared would constitute good reasons for rejection of the recommendation made by the UPSC.

33. In the light of the foregoing discussion we remit the case to the respondents with the direction to again refer to the ACC the recommendation of the UPSC regarding the appointment of the applicant to the post of Chief Controller of Explosives. The suitability of the applicant for such appointment shall be considered (1) without taking into account the adverse remarks of 1987 and the CBI enquiry in which the applicant was cleared and (2) in the light of the observations contained in this judgment. The respondents shall comply with the above directions expeditiously and preferably within a period of three months from the date of communication of this order.

34. We do not consider it necessary to go into the merits of the claim of privilege by the respondents in regard to the documents summoned by the applicant through MP 2332/1989 and the prayer made by the applicant through his MP 2331/1989 calling in question the validity of the Office Memoranda dated 31.3.86, 17.6.88 & 3.7.89. These issues are left open .

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OA 2473/1989

35. In view of our directions contained in OA 512/1989, it is not considered necessary to deal with the questions raised in OA 2473/1989.

36. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

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(B.N. DHOUNDIYAL)  
MEMBER (A)  
09.02.1993

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(P.K. KARTHA)  
VICE CHAIRMAN(J)  
09.02.1993

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