

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 852 of 1986
TAX NO:

DATE OF DECISION March 19, 1987.

Dr. Hari Dev Goyal Petitioner

Mrs. Shyamala Pappu, Sr. Counsel Advocate for the Petitioner(s)
with Shri A. K. Kohli, Counsel.
Versus

Union of India and another Respondent

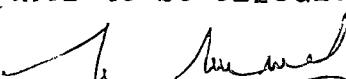
Shri M. L. Verma, Advocate for the Respondent(s)

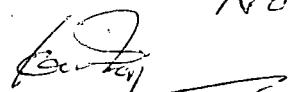
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches? No


(Kaushal Kumar)
Member (A)
19.3.87.


(K. Madhava Reddy) F. 3-87.
Chairman
19.3.87.

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 852/1986.

DATE OF DECISION: March 19, 1987.

Dr. Hari Dev Goyal Applicant.

v/s.

Union of India and
Another Respondents.

For the Applicant Mrs. Shyamala Pappu,
Sr. Counsel with
Shri A.K. Kohli, Counsel

For the Respondents Shri M.L. Verma,
Counsel.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the bench delivered by
Hon'ble Mr. Kaushal Kumar, Member.)

JUDGMENT

The applicant is a member of the Indian Economic Service, presently employed as Senior Research Officer in the Planning Commission, New Delhi, in the pay scale of Rs.1100-50-1600. Rule 8(d)(ii) of the Indian Economic Service Rules, 1961 provides that twenty-five per cent of the vacancies in Grade I of the Service, namely that of Director, shall be filled by direct recruitment through the Union Public Service Commission in the manner set out in Schedule II. The Union Public Service Commission issued an Advertisement No.38, published on 18.9.1982, inviting applications for direct recruitment to the post of Director in the Indian Economic Service Group 'A' in the pay scale of Rs.1800-100-2000. The applicant applied for the same and was duly selected by the Commission. On the basis of selection after interview held on 3rd February, 1983, the applicant was recommended on 16th February, 1984 for the said post. On 29th February, 1984, the applicant conveyed to the Commission that he was very much interested in the post of Director, for which the Commission had recommended his name.

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2. In the meantime, departmental proceedings had been initiated on 16th December, 1983 against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the charges related to the period of his service when he was working as Controller of Weights & Measures, Chandigarh. The Inquiry Officer, vide his report dated 31st May, 1984 exonerated the applicant of all the charges and the disciplinary proceedings were accordingly dropped, vide Memorandum dated 30th June, 1984. Another Memo initiating disciplinary proceedings under Rule 14 of the C.C.S. (C.C. & A.) Rules, 1965 was issued to the applicant on 10th April, 1984 relating to the period when he was working as General Manager, Industries Department, Chandigarh (UT). These proceedings culminated in the imposition of the penalty of 'Censure' vide order dated 28th May, 1986. The Review Application filed by the applicant on 10th July, 1986 against the said penalty of Censure is stated to be still pending and has not been disposed of. In the meantime, respondent No.2, who was simultaneously recommended along with the applicant and who was next in the panel was offered appointment to the post of Director on 25th April, 1984 and also appointed in the same capacity.

3. Aggrieved by his non-appointment while the second respondent was appointed, the applicant has filed this petition under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs: -

- (a) Appointment of the applicant as Director, Grade I of Indian Economic Service, as per recommendation of the U.P.S.C. with effect from 16.2.1984;
- (b) Placement of the applicant above respondent No.2 in seniority list of Grade I, IES officers; and
- (c) Monetary and service benefits accruing in the pay scale and grade of post of Director to the

applicant with effect from 16th February, 1984.

4. The above facts are not in dispute. The case of the respondents is that since vigilance proceedings were launched against the applicant, which have resulted in the imposition of the penalty of 'Censure', he had not been appointed to Grade I of the Service. Since the applicant had not been completely exonerated, his suitability for appointment to Grade I of the Service was being examined in consultation with the Department of Personnel and Training. In the counter-affidavit filed on 8.12.86, it has been stated that "the answering respondent will take a decision in the matter shortly." It has further been contended that mere recommendation by the UPSC does not confer any right of appointment on the candidate. The appointing authority, inter-alia, has to satisfy itself about the suitability of the candidate from the point of view of his character and antecedents.

5. In this case, the applicant had qualified for the post of Director, Grade 'A', Indian Economic Service, by way of direct recruitment through an open selection made by the UPSC and not by way of promotion. The question of any vigilance clearance could have arisen only in the case of a departmental promotion and not when a person is selected through open competition by way of direct recruitment. Imposition of any penalty except that of 'Dismissal' by way of disciplinary proceedings does not disqualify a person for fresh appointment or re-employment. Whereas the appointing authority has every right to withhold an appointment if after necessary verification of a candidate's character and antecedents, it is found that such an appointment will not be in public interest or otherwise not desirable keeping in view a particular candidate's involvement in some matters

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which cast a stigma on his character, it cannot assume 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 case of direct recruitment.

6. Vigilance clearance and the imposition of a penalty should be relevant considerations only in case of departmental promotions. Even there, the departmental instructions envisage that 'Censure' should not be a bar to eligibility to sit for a departmental/promotional examination or for promotion.

7. It is also accepted that seniority in the matter of selections by the UPSC has to be in accordance with the order of merit in the panel of names recommended by the Commission. In the result, the applicant is entitled to the post of Director and seniority in the said grade in accordance with the rules on the subject. Our attention was drawn to rule 9(C)(a), which reads as follows: -

"9(C). Date of Appointment: The date of appointment of a person to any grade or post on a regular basis shall:

(a) In the case of direct recruit to any grade or post be deemed to be the date on which he was recommended by the Commission for appointment to such grade or post, as the case may be.",

8. In the circumstances, the petition is allowed with the direction that the applicant shall be appointed forthwith as Director and his seniority in the grade of Director, Group 'A' fixed in accordance with the rules above respondent No.2. His pay shall also be fixed at the stage in the scale of pay which he would have drawn had he been appointed on the date when respondent No.2 was so appointed and the period from the deemed date of

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appointment shall count not only for purposes of seniority, but also for future increments. However, since the applicant has not actually worked as Director, he will not be entitled to any arrears of pay and allowances prior to the date of his actual appointment in the said grade, as held by this Tribunal in the case of Smt. Ginder Kaur Vs. Delhi Administration & another in judgment dated 19th December, 1986, since this is a case of direct recruitment and not promotion. This order shall be implemented within a period of four weeks from the date of receipt of the order by the respondents. In the circumstances of the case, there shall be no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)
19.3.1987.



(K. MADHAVA REDDY)
CHAIRMAN
19.3.1987.