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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-943/86

Date of decision: 7.6.1992

Dr. L.V. Kannan Applicant

Versus

Union of India through.... Respondents
Secy, Ministry of
Health & F.W. & Ors.

For the Applicant Shri S.S. Tiwari, Advocate

For Respondents 1-3 Shri N.S. Mehta, Sr. Advocate

For Respondent No.4 Shri Vijay Kishan, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. 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 short point for consideration is whether the Appointments Committee of the Cabinet (A.C.C.) can differ from the grading given to an officer by the Departmental Promotion Committee (D.P.C.) presided over by the Chairman or a Member of the Union Public Service Commission (U.P.S.C.) and give appointment to a person who does not figure at serial No.1 of the panel recommended by the U.P.S.C.

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2. The grievance of the applicant, who has worked as Deputy Drugs Controller (India) and who is fully qualified and eligible for appointment to the post of Drugs Controller (India), is that the A.C.C. did not accept the recommendation of the D.P.C. for appointing him as Drugs Controller (India) and instead, approved the appointment of Dr. Prem K. Gupta, who is also working as Deputy Drugs Controller (India), but is junior to him. The applicant was appointed as Deputy Drugs Controller (India) on 6.6.1973, whereas respondent No.4 was appointed as such on 11.8.1977.

3. We have gone through the records of the case and have considered the rival contentions. Undoubtedly, the applicant as well as respondent No.4 were qualified and eligible for appointment to the post of Drugs Controller (India) in accordance with the relevant recruitment rules. It is a selection post and the method of recruitment is by promotion, failing which, by direct recruitment. The applicant has stated that the D.P.C. presided over by a Member of the U.P.S.C., recommended his name for appointment to the said post. The recommendation was received by the Ministry of Health and Family Welfare. The Minister of the said Ministry also approved his appointment and referred the matter to the A.C.C. However, the A.C.C. did not approve the appointment of the applicant and instead, approved the appointment of Respondent No.4.

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4. The minutes of the D.P.C. or of the A.C.C. have not been placed before us. It would, however, appear that the D.P.C. had prepared a panel of 2 names in the order of merit and on the basis of their assessment based on the confidential reports. The name of the applicant No.1 figured at serial No.1 and that of respondent No.4, at serial No.2 of the panel prepared by the D.P.C. The Union of India have stated in their counter-affidavit that applicant No.1 has been graded consistently as 'Good' during 1981, 1982, 1983 and 1984, whereas during the same period, respondent No.4 had been graded as 'Good' twice and as 'Very Good' twice. On the basis of the service records, including the confidential reports, the A.C.C. decided to appoint and appointed Respondent No.4 as Drugs Controller of India by order dated 27.10.1986.

5. Normally, the recommendation made by the D.P.C. presided over by a Member of the U.P.S.C. is accepted by the Government except in cases where the appointment also requires the approval of the A.C.C. The A.C.C. consists of the Prime Minister, the Home Minister and the Minister of the administrative Ministry concerned. The A.C.C. is the ultimate authority to decide whether or not the recommendations of the D.P.C. are to be accepted. There have been instances in the past where

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the Government did not accept the recommendations made by the D.P.C. presided over by a Member of the U.P.S.C. Such cases will figure in the report of the U.P.S.C., which will be laid before Parliament, as envisaged in Article 323 of the Constitution. Article 323 itself indicates that the advice of the U.P.S.C. is not final and that it is for the Government to take a decision on whether or not the same should be accepted.

6. The learned counsel for the applicant, relied heavily upon the judgement of the Supreme Court in *Jatinder Kumar and Others Vs. State of Punjab and Ors.*, 1985 (1) S.C.C. 122. A perusal of the said judgement would indicate that the selection made by the U.P.S.C. is only a recommendation and the final authority for appointment is the Government. The Supreme Court observed that "The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission, the Constitution enjoins the Government to place on the Table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution." The Supreme Court, however, observed that the Government has to make appointment strictly adhering

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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. The Government also cannot appoint a person whose name does not appear in the list. In that case, the Supreme Court had no occasion to consider the role of A.C.C. in appointments. 7. Relying upon the aforesaid judgement of the Supreme Court, the Principal Bench of this Tribunal had given relief to an applicant by judgement dated 20.7.1988 in OA-344/87 (Dr.(Mrs.) Anandita Mandal Vs. Secretary to the Govt. of India, Ministry of Health & Family Welfare). After careful consideration, we are of the opinion that Dr. Mandal's case is clearly distinguishable. In that case, the U.P.S.C. had recommended the names of two persons for appointment to the post of Professor which also included the name of the applicant. The A.C.C. did not approve the appointment of the applicant. Thereafter, the post was advertised for direct recruitment and the applicant appeared and got selected. The A.C.C. approved the said appointment. In the peculiar facts and circumstances of the case, the Tribunal took the view that the applicant should have been appointed as Professor by way of promotion from the date the other person who had also been recommended by the D.P.C., was appointed.

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8. In our considered opinion, there is nothing illegal or improper in the Appointments Committee of the Cabinet in approving the appointment of respondent No.4 to the post of Drugs Controller of India. The name of Respondent No.4 had figured in the panel prepared by the U.P.S.C. though the name of the applicant figured at serial No.1 of the list in the order of merit. The allegation of mala fides made by the applicant against the respondents, has not been substantiated. We, therefore, see no merit in the present application and the same is dismissed. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 7/8/52
Administrative Member

P.K. Kartha
7/8/52
(P.K. Kartha)
Vice-Chairman(Judl.)