

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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NEW DELH THIS THE 30th DAY OF JANUARY, 1995.

MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN (J)
MR. B.N.DHOUDIYAL, MEMBER (A)

(1) OA No.2734/90

Smt.Mohini Srivastava
W/o Sh.C.S.Srivastava
Public Analyst
Prevention of Food Adulteration Deptt.
Delhi Administration
Delhi. APPLICANT

BY SENIOR ADVOCATE SHRI S.C.GUPTA,
WITH SHRI K.N.R.PILLAY, COUNSEL. vs.

1. Delhi Administration
through the Chief Secretary
Delhi.
2. The Union Public Service Commission
through its Chairman
Dholpur House
New Delhi.
3. Shri A.K.Nikam
C-58, D.A.Flats,
Timarpur, Delhi. ... RESPONDENTS

RESPONDENT NO.1 THROUGH MRS.AVNISH AHLAWAT, COUNSEL.
RESPONDENT No.2 THROUGH MRS.RAJ KUMARI CHOPRA, COUNSEL.
RESPONDENT NO.3 THROUGH SHRI G.D.GUPTA, COUNSEL.

(2) OA No.154/92

Smt.Mohini Srivastava
W/o Sh.S.C.Srivastava
Public Analyst
Prevention of Food Adulteration Dept.
Delhi Administration, Delhi. ... APPLICANT

BY SENIOR ADVOCATE SHRI S.C.GUPTA
WITH K.N.R.PILLAY, COUNSEL. Vs.

1. Delhi Administration
through the Chief Secretary
Delhi.
2. The Union Public Service Commission
through its Chairman
Dholpur House
New Delhi.
3. Shri A.K.Nikam
C-58, Delhi Administration Flats
Timarpur, Delhi-7. ... RESPONDENTS

RESPONDENT NO.1 THROUGH MRS.AVNISH AHLAWAT, COUNSEL.
RESPONDENT NO.2 THROUGH MRS.RAJ KUMARI CHOPRA, COUNSEL.
RESPONDENT NO.3 THROUGH SHRI G.D.GUPTA, COUNSEL.

(3) OA No.153/91

Dr.G.C.Raha
S/o late Shri C.C.Raha
Local Health Authority
Prevention of Food Adulteration Deptt.
Delhi Administration,
Delhi. ... APPLICANT

BY SENIOR ADVOCATE SHRI S.C.GUPTA
WITH SHRI K.N.R.PILLAY, COUNSEL. vs.

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Delhi Administration
through the Chief Secretary,
Delhi ...

RESPONDENT

BY ADVOCATE MRS.AVNISH AHLAWAT.

(4) OA No.1431/91
Dr.A.R.Nikam
S/o Shri R.S.Nikam
R/o C-58,Delhi Administration Flats
Timarpur,Delhi-110054. ... APPLICANT

BY ADVOCATE SHRI G.D.GUPTA.

vs.

1. The Lt.Governor/Administrator
Union Territory of Delhi,
Raj Bhavan
Delhi-110054.
 2. Delhi Administration
through its Chief Secretary
5,Sham Nath Marg,
Delhi-110054
 3. Union Public Service Commission
through its Secretary,
Dholpur House
Shahjahan Road,
New Delhi-110011. ... RESPONDENTS
- RESPONDENTS 1&2 THROUGH MRS.AVNISH AHLAWAT,COUNSEL.
RESPONDENT NO.3 THROUGH SHRI P.H.RAMCHANDANI, SR.COUNSEL

ORDER

JUSTICE S.K.DHAON:

These four OAs are inter-related,they have been heard together and, therefore, they are being disposed of by a common judgement.

2. The controversy relates to the appointment of a Public Analyst in the Prevention of Food Adulteration, Department of the Delhi Administration. The appointment is regulated by a rule framed under the proviso to Article 309 of the Constitution. The method of appointment is promotion/transfer on deputation failing which by direct recruitment. Therefore, it is evident that the process of promotion/transfer on deputation has to be undergone first and thereafter the process of direct recruitment has to commence. The rule provides for relaxation of the same in consultation with the Union Public Service Commission (hereinafter referred to as the Commission).

3. Indisputably,Smt.Mohini Srivastava, who was at the relevant time, a Deputy Public Analyst in the

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Prevention of Food Adulteration Department of the Delhi Administration, was not qualified to be considered for promotion to the post of a Public Analyst. Her grievance, in substance, is that the Commission proceeded to fill up the post of the Public Analyst by the process of direct recruitment in spite of the withdrawal of the requisition by the Delhi Administration in that behalf well-in-time. The grievance of Dr.G.C.Raha is that even though he was fully qualified to be appointed as a Public Analyst by transfer on deputation, the Delhi Administration illegally eliminated him from the zone of consideration thereby taking the view that no one was found fit to be appointed by the process of promotion or transfer on deputation and, therefore, illegally sent a requisition to the Commission to take steps to fill up the said post by direct recruitment. The grievance of Dr.A.R.Nikam is that in spite of the recommendations of the Commission, the Delhi Administration has declined to issue a letter of appointment to him. Instead, it has asked the Commission to recommend some other candidate from the panel, if any.

4. We shall first deal with the case of Smt.Mohini Srivastava. According to her, in case the post of the Public Analyst is filled up by adopting the process of direct recruitment, her future chances of promotion would be blocked. If, however, an appointment is made either by promotion or by transfer on deputation, there is a possibility of a vacancy arising thereafter and in that vacancy, there is the possibility of her being considered for promotion as a Public Analyst.

5. A mass of documents have been produced before us. From a perusal of the same, it appears that in the beginning, the Delhi Administration wrote to the Commission that the process of promotion/transfer on deputation had been tried but it failed in so far as no suitable candidate was available and accordingly that Administration

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sent a requisition to the Commission asking it to take steps to fill up the post by the method of direct recruitment. The Commission wrote back to the Delhi Administration that there appears to be a contradiction between the recruitment rules and the rules framed under the Food Adulteration Act in so far as the qualification of a candidate for being given a promotion to the post of Public Analyst ^{was} is concerned, and, therefore, the matter may be looked into. At one stage, the Commission wrote to the Delhi Administration that due publicity of the vacancies for the post of a Public Analyst had not been given by publishing an advertisement in the Employment News and advertisement should be made afresh and thereafter, the process of promotion/transfer on deputation may again be adopted. Later on the Delhi Administration changed its mind and again asked the Commission to go ahead with the process of direct recruitment. Finally, on 16.2.1990, the Delhi Administration wrote to the Commission that it should stay its hands for some time and should not take steps to fill up the post by the method of direct recruitment. According to the Commission, the communication dated 16.2.1990 was received too late by the department concerned and in the meanwhile, the department of Publicity had been asked to publish an advertisement which was eventually published on 24.2.1990.

6. We have before us, an affidavit of Shri S.K. Purkayastha, Additional Secretary acting as Secretary to the Commission, filed in OA No.1431/91. The endorsement on the affidavit shows that the copies of the same were given to the learned counsel of the various parties.

7. In the affidavit, the details of the procedure under which a requisition is to go through has been given. It is not necessary to refer to them. However, we take notice of the material averments in the said affidavit,

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which are these. In response to the Commission's letters dated 4.12.1989 and 13.12.1989, the Delhi Administration communicated their final decision through their letter dated 20.12.1989 requesting the Commission to go ahead with the process of direct recruitment as the other two primary methods viz. by promotion/transfer on deputation had failed despite their best efforts. The Commission took a final view on 8.1.1990 to set in motion the process of direct recruitment in order to fill up one vacant post of Public Analyst. The file was accordingly transferred to the Appointment Wing of the Commission which was dealing with the promotion/transfer on deputation case to the Recruitment Wing which ^{was} to deal with the direct recruitment process. The Commission is required to send the advertisement to the DAVP of the Ministry of Information and Broadcasting for publication about 2 weeks in advance of the date of publication in order to enable them to complete the process of getting it printed in the national/regional newspapers and Employment News all over India. The R(A) Section had, therefore, issued the advertisement for publication to DAVP on 13.2.1990 which was duly published in the newspapers on 24.2.1990. The Delhi Administration had sent a letter dated 16.2.1990 to the Commission in a routine way, which was delivered at the Dak counter of the Commission's office on 19.2.1990 requesting the Commission to keep their proposal for filling up the post of Public Analyst by the method of direct recruitment in abeyance "for the time being". In the same letter, the Delhi Administration also mentioned " a fresh proposal will be sent as soon as the action of filling up the post by transfer on deputation is completed". As already stated, the aforesaid letter dated 16.2.1990 was actually delivered in the Commission's office only on 19.2.1990 by a Dak messenger. The said letter bore no priority

grading^s such as 'Immediate', 'Most Immediate', 'Top Priority' etc. nor it was addressed to any particular officer by name for immediate attention. Since the letter was not addressed to any particular officer^{it} nor had/any priority grading, it took its own time to reach the appropriate authorities in the Recruitment Branch after 28.2.1990 as it had to traverse through the entire Appointments Branch right from the Section level upto the Additional Secretary(Appointments) as the letter quoted the reference to the said Appointment Branch(AU -II)'s letter of 4.12.1989 and not the reference of the Recruitment Branch which was at that time dealing with the case. Since the letter dated 16/19-2-1990 of the Delhi Administration reached the correct Section after 28.2.1990, it was too late either to arrest the process or to withhold it because the Commission had already set the process of direct recruitment in motion on 13.2.1990, the moment they issued the advertisement to the DAVP for publication. As a matter of fact, the actual process of direct recruitment had commenced as early as 20-12.1989 when the Delhi Administration had submitted a proposal for direct recruitment and it is only the various steps of the process which took some time before the final advertisement was issued on 13.2.1990. Subsequent to the receipt of the letter of the Delhi Administration dated 16.2.1990 in the Recruitment Branch, a host of representations, addressed to the Chairman and Members of the Commission, the Secretary and one of the Joint Secretaries(Sh.M.P.Singh) by name were received against the move of the Delhi Administration to withdraw the post of Public Analyst from direct recruitment. After consideration of the entire matter in depth, it was decided at the level of the Chairman on 17.4.1990 not to accept the request of the Delhi Administration to stop direct recruitment to the post. They were informed of this on 25.4.1990. A letter written by Sh.Navin Chawla, Secretary

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(Medical), Delhi Administration, and addressed to Shri S.K.Lal, Secretary of the Commission by name was delivered on 23.4.1990 requesting ^{him} for keeping in abeyance the process of direct recruitment to the post of Public Analyst. The Chairman of the Commission who is a Constitutional authority had already taken a final decision on 17.4.1990 after carefully examining all points and other relevant facts and circumstances. The Delhi Administration was accordingly informed on 25.4.1990. The Delhi Administration had requested the Commission not less than six times on different occasions to fill up the post of Public Analyst by the method of direct recruitment. First requisition from the Delhi Administration for making direct recruitment was sent on 8.12.1987. The second request was made on 6.12.1988. The third request for the same purpose was made on 18.9.1989. They repeated their request for the fourth time on 4.10.1989. Their fifth request for the same purpose was made on 31.10.1989. Their sixth request was made on 20.12.1989.

8. The learned counsel for the Commission has placed the entire record of the Commission for our perusal and we have perused the same. We find that the averments made by Shri Purkayastha, in his affidavit, which we have considered in the preceding paragraph, are corroborated by the documents on record.

9. We may briefly refer to the letter dated 20.12.89 of Shri Ashok Bakshi, Joint Secretary (Medical) of the Delhi Administration to the Under Secretary of the Commission. The subject of this communication is "Selection of an officer for appointment through direct recruitment to the post of Public Analyst in the Prevention of Food Adulteration Department, Delhi Administration, Delhi."

It is recited in this letter that the same is being issued in continuation to their letter dated 18.9.1989 and letters dated 4.12.1989 and 13.12.1989 of the Commission. We

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consider it appropriate to extract the contents of the letter, as material:

"I am directed to inform you that the above mentioned post was advertised vide our circulars dated 11.7.1989 and 13.6.1989 but no one has been found suitable for this post on deputation basis. The two applications both from S/Shri R.S.Sharma and G.C.Raha have not been received through their departments. And as such the question of sending their C.R.s does not arise."

You are therefore again requested to kindly fill up the post from the next method of recruitly, that is Direct Recruitment at the earliest, because the deputation period of present incumbent has also expired. An early action is requested."

10. We may now examine the letter dated 16.2.1990 which appears to be ^{the} sheet-anchor of Smt.Mohini Srivastava's case. This is a letter from Shri Ashok Bakshi, Joint Secretary(Medical) of the Delhi Administration to the Secretary of the Commission. The subject of this communication is " Selection of an officer for appointment through direct recruitment to the post of Public Analyst in the Prevention of Food Adulteration Department, Delhi Administration, Delhi". We are extracting the material portion of the letter:

" With reference to your commission letter No.F.3/31(2)/87-AU2 dated 4th December, 1989 and in continuation to this Admn.letter of even number dated 20.12.1989, on the subject noted above, I am directed to state that the Directorate of Information and Publicity, Delhi Administration was requested to publish the vacancy of Public Analyst in Employment News at the time of inviting particulars from various organisations/Departments. The Directorate has now stated that the said vacancy could not be published because the same could not reach in the concerned Branch. They have asked for a fresh letter for publication for the post which is being sent to them.

Therefore, it is requested action to fill up the post by direct recruitment as proposed by this Administration vide letter of even number dated 18.9.89 may kindly be kept in abeyance for the time being. A fresh proposal will be sent as soon as the action of filling up the post by 'transfer on deputation' is completed."

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11. A reading of the aforesaid letter brings out the following:

No change or amendment in the recruitment rules is proposed. No change in the policy of recruitment is proposed. On the contrary, it is emphasised in the letter that the post of the Public Analyst has to be filled up in accordance with the existing rules. It only indicates that the Directorate of Information and Publicity has asked for a fresh letter for publication for the post. We may note at this stage that earlier due publication had taken place.

12. OA No.1662/90 was presented by Smt.Mohini Srivastava in this Tribunal praying therein that the proceedings initiated by the Commission for direct recruitment for the post of Public Analyst may be quashed. The application was presented in this Tribunal on 17.8.1990. On 21.8.1990, an interim order was passed to the effect that the respondents in the said OA were directed not to act upon the selection of the Public Analyst that may be made by the Commission. On 10.9.1990, this Tribunal finally disposed of OA No.1662/90. The Tribunal observed in paras 20 & 21 of its judgement as under:

"20. In the conspectus of the facts and circumstances of the case, we feel that the method of transfer on deputation provided for in the Recruitment Rules was not properly resorted to. The letter dated 18.7.1990 from the Chief Secretary to the Chairman, U.P.S.C refers to the proposal of the Delhi Administration to process the case of the departmental candidate for promotion reducing the length of service in the feeder grade from 8 years, in the Recruitment Rules. He had, therefore, requested the intervention of the Chairman, U.P.S.C. to withhold the process of direct recruitment. Despite this, the U.P.S.C. conducted interviews for direct recruitment.

21. In the interest of justice and fairplay, we remit the case to the Chief Secretary, Delhi Administration and the Chairman, U.P.S.C. to have further consultations in the matter and arrive at an appropriate decision. They should do so as expeditiously as possible

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but not later than 31.12.90. Till then, the interim order passed by this Tribunal on 21.8.90 directing the respondents not to act upon selection of Public Analyst that may be made by the U.P.S.C., will continue to remain in force."

13. In pursuance of the aforequoted directions of this Tribunal, a meeting of the Chief Secretary and the Chairman of the Commission took place on 20.12.1990. The proceedings of the meeting have been placed before us by the Commission. The proceedings are signed by the Chairman of the Commission and the Chief Secretary of the Delhi Administration. The material recitals are these. A proposal for filling up the post by direct recruitment was received from the Delhi Administration on 8.12.1987. It stated that there was no eligible officer in the feeder grade who could be considered for promotion and none of the candidates, who had applied in response to the Administration's circular/advertisement, was eligible for appointment on transfer on deputation. Delhi Administration also clarified that an earlier effort to get a person on deputation had also proved infructuous. The matter was examined in the Commission, in consultation with the Delhi Administration from time to time. All along Delhi Administration had been reiterating their proposal of filling the post by direct recruitment. On the basis of information and documents sent to the Commission, it was, therefore, held that the method of recruitment by promotion/deputation had failed and accordingly the post was advertised for direct recruitment. The Chief Secretary referred to his letter dated 18.7.1990 and pointed out that the Commission in its letter of 4.12.1989 had advised Delhi Administration to advertise the post in Employment News for filling it by transfer on deputation basis. He admitted that there was a fair amount of avoidable delay in advertising the post, however, this was done in the Employment News issue of 7-13 April,

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1990. His argument was that having given a particular advice on 4.12.1989, the Commission ought not to have initiated action for filling the post through direct recruitment. In fact, Delhi Administration had in its letters dated 16.2.1990, 20.2.1990, 23.4.1990 and 7.5.1990 requested the Commission to terminate their action for direct recruitment so that further steps to get a person on deputation basis could be taken. He also drew Chairman's attention to the letter dated 20.8.1990 from the Lt. Governor of Delhi reiterating the same position and also pointing out Commission's own advice under its letter dated 23.5.1988 that direct recruitment method was to be used as a last resort and only after it was absolutely clear that the deputation method had failed. The Chairman appreciated the arguments put forward by Shri Kapoor (the Chief Secretary). He, however, pointed out that the case has had a chequered history, during which enough efforts had been made by Delhi Administration to fill the post through the primary method of recruitment, namely, promotion/transfer on deputation. Moreover, there had been representations from candidates also urging one or the other method of recruitment. The Chairman also emphasised the fact that while the Chief Secretary has referred to Commission's letter of 4.12.1989 and their subsequent letters written in 1990, he has omitted to mention Delhi Administration's letter of 20.12.1989 in direct response to Commission's letter of 4.12.1989 stating that Delhi Administration had tried to fill up the post through deputation but had failed. The Chairman drew Shri Kapoor's attention to the fact that once a decision is taken by the requisitioning authority and the Commission initiates action in pursuance thereof, changing the course of action thereafter is very likely to be interpreted as a biased act and was very likely to affect the credibility of the Commission. He further assured Shri Kapoor that the recruitment action had been properly conducted with the

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help of independent Advisers and that he saw no reason why the Commission should cancel its IBR and quash the completed direct recruitment action. He, therefore, informed Shri Kapoor that Commission now intended to forward the recommendation letter to the Delhi Administration and that the Delhi Administration may thereafter take whatever action it considered most appropriate having regard to the Commission's recommendations, along with the laws, rules and regulations for the time being in force.

14. This Tribunal by its judgement dated 10.9.1990 in OA No.1662/90 intended that the controversy should come to an end and the Chief Secretary of the Delhi Administration and the Chairman of the Commission should arrive at an appropriate decision. The proceedings of the meeting between the Chief Secretary of the Delhi Administration and the Chairman of the Commission held on 20.12.1990 clearly indicate that a decision was arrived at on that day and the Chief Secretary of the Delhi Administration by necessary implication ultimately agreed that the post of Public Analyst should be filled up by the method of direct recruitment. Otherwise, there was no other impediment in his way to record a note of dissent which he did not do for reasons best known to him. He, however, contented himself by signing the minutes. The proceedings of 20.12.1990 should, therefore, in the normal course have closed the chapter.

15. In OA No.2734/90 presented by Smt.Mohini Srivastava on 28.12.1990, the grievance is that no meeting of the Chairman of the Commission and the Chief Secretary of the Delhi Administration had taken place in spite of the directions of this Tribunal and, therefore, the prayer is that this Tribunal may extend the injunction granted on 28.9.1990 not to act upon the selection of Public Analyst that may be made by the Commission by the method of direct recruitment till the final decision

and implementation of the directions given in the judgement dated

by

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10.9.1990. However, on 31.12.1990 this Tribunal(Hon'ble Sh.P.K.Kartha,VC(J) & Hon'ble Sh.D.K.Chakravorty,M(A)) passed an interim order directing the respondents not to act upon the selection to the post of Public Analyst that may be made by the Commission.

16. OA No.154/92 was presented by Smt.Mohini Srivastava on some date prior to 23.1.1992. The prayer in the said OA is that the Tribunal may quash the proceedings initiated by the Commission for direct recruitment for the post of Public Analyst as premature and in infringement of the statutory recruitment rules. In this OA,Smt.Mohini Srivastava had scrupulously avoided to state whether any meeting between the Chairman of the Commission and the Chief Secretary of the Delhi Administration had taken place in pursuance of the directions of this Tribunal even though she has made a mention of the order passed by this Tribunal in OA No.1662/90. In para 4(xii)of the OA, it is recited that on account of the intransigent attitude taken by the Commission in insisting upon continuing with the process of direct recruitment, no agreement could be arrived at and ultimately on 26.12.1990 the Commission took the unilateral action of communicating the name of respondent No.1 as the candidate selected by the Commission. In para 4(xiii), the material averments are these:

"Since the Tribunal's order directing the Delhi Administration and the UPSC to arrive at an appropriate decision had not been complied with, and the validity period of the interim order passed by the Tribunal, namely upto 31.12.1990, was coming to an end, the applicant had to file before this Hon'ble Tribunal OA 2734/90 praying inter alia that the injunction granted by the Tribunal on 28.9.1990 restraining the respondents from acting upon the selection by direct recruitment to the post of Public Analyst made by the UPSC should be continued."

17. We may revert to the letter dated 16.2.1990 of the Delhi Administration to the Commission wherein a request was made to the Commission to keep the process

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of selection by direct recruitment in abeyance. We have already referred to the details given by the Additional Secretary acting as Secretary of the Commission in his affidavit. We are satisfied that the Commission could not, in the facts and circumstances indicated in the affidavit, retrace its steps to prevent the publishing of the advertisement on 24.2.1990. We are also satisfied that necessary steps to issue the advertisement had been taken by the Commission much before the said communication dated 16.2.1990 reached the proper quarters of the Commission. The Commission is an independent body having a Constitutional status. It is not subordinate to the executive. In the absence of any change of policy and in the absence of any material change in the statutory rules, the Commission was not expected to act at the whims and caprice of the Delhi Administration. By its letter dated 20.12.89 the Delhi Administration had clearly given a signal to the Commission to fill up the post of Public Analyst by the method of direct recruitment. To say the least, the Delhi Administration by issuing its letter dated 16.2.1990 acted without any justification and rather acted arbitrarily.

18. Smt. Mohini Srivastava admittedly was not qualified to be promoted to the post of Public Analyst. Her grievance is founded upon the fact that in case the post of Public Analyst is filled by direct recruitment, her future chances of promotion may be blocked. She has really no legal grievance and she is not entitled to complain in these proceedings that the method of promotion/transfer on deputation has been illegally by-passed. Once she is not qualified to be considered for promotion, she is out of the arena. Her grievance, if any, that her chances of promotion may be blocked in future is far-fetched. None of her rights are, therefore, being directly affected by the non-observance of the rule of promotion/transfer

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on deputation. She has, therefore, neither any grievance within the meaning of Section 19 of the Administrative Tribunals Act, 1985 nor she has sufficient interest to maintain a writ petition for the purpose of invoking Article 226 of the Constitution.

19. We have given a thoughtful consideration to the conduct of Smt. Mohini in coming to this Tribunal by means of OA Nos. 2734/90 and 154/92 after the meeting of the Chief Secretary of the Delhi Administration and the Chairman of the Commission on 20.12.1990 in pursuance of the directions given by this Tribunal on 10.9.1990 in OA No. 1662/90 filed by her. It appears to us that she was fully aware of the proceedings of the meeting even before she came to this Tribunal on 28.12.1990 in OA No. 2734/90. She has, in our opinion, abused the process of the court.

20. To sum up, there is no merit in the case of Smt. Mohini Srivastava. She is neither a person aggrieved within the meaning of Section 19 of the Administrative Tribunals Act nor she has sufficient ^{interest} to maintain a writ petition within the meaning of Article 226 of the Constitution. In any view of the matter, her conduct entitles us to say that we shall not interfere at her instance.

21. In OA No. 153/91, a counter-affidavit has been filed on behalf of Dr. A. R. Nikam stating therein that Dr. G. C. Raha (applicant in OA No. 153/91) was not qualified to be considered for appointment as a Public Analyst by transfer on deputation. We may note the Delhi Administration, in one of its communications, had mentioned the fact that Dr. Raha had not submitted his application through his department. This assertion of the Delhi Administration is borne out by the comments on para 4(iii) of the OA of Dr. Raha wherein he had stated that he (Dr. Raha) handed over the application personally to Shri Ashok Bakshi, Joint Secretary in the Medical & Public Health Department on 10.5.1990. He has not stated in the OA

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that he submitted his application by any other process. Therefore, by necessary implication, he admits the fact that he did not submit his application through the proper channel i.e. through the department in which he was working. The material averments in the counter of Dr.A.R.Nikam are these. Dr.Raha does not fulfil the minimum condition of eligibility of recruitment rules. He also does not fulfil the qualifications of a Public Analyst prescribed under the Prevention of Food Adulteration Act. Rule 6(b) of the P.F.A.Act remains uncomplied with in his case in so far as he has not been declared qualified by the Board constituted under the provisions of the said Act. The Board constituted under the said Act conducted an examination consisting of theory papers followed by practical test and only successful candidates in the said examination are declared qualified to function as Public Analysts. Dr.Raha never appeared in the said examination and, therefore, could not be declared to be qualified for appointment to the post of Public Analyst by the Board notified under the said Act.

22. A counter-affidavit has also been filed by the Delhi Administration in opposition to the OA of Dr.Raha. In it, the material averments are these. Dr.Raha has not been declared qualified for appointment as Public Analyst by a Board appointed and notified for the same. His application for appointment by transfer on deputation basis had been duly considered but he was not found eligible as he did not possess the requisite qualifications.

23. It is to be noted that the relief claimed by Dr.Raha in his OA is that this Tribunal may direct the respondents to fill the post of Public Analyst strictly in accordance with the recruitment rules, namely by first adopting the method of promotion/transfer on deputation and only if this process fails to give a suitable candidate, should the second method of direct recruitment be resorted

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24.. Thus, the grievance of Dr.Raha in the OA is not that he was illegally or irrationally not found fit. On the contrary, his grievance is that the respondents should not switch over to the method of direct recruitment without first resorting to the method of promotion/transfer on deputation. As already indicated, it is the categorical stand of the Delhi Administration in the counter-affidavit that Dr.Raha was duly considered in the method of promotion/transfer on deputation but he was not found fit. There is no challenge in the OA to the decision of the relevant authority for finding him unfit. Dr.Raha is, therefore, not entitled to any relief in this OA.

25. We are now left with the OA of Dr.A.R.Nikam (OA No.1431/91). It is an admitted position that the Commission after resorting to the method of direct recruitment considered the case of Dr.Nikam and selected him for being given an appointment as a Public Analyst. Indeed, on 26.12.1990, Sh.S.G.Saxena, an Under Secretary of the Commission, sent a communication to him(Dr.Nikam) stating therein that he(Dr.Nikam) had been recommended to the Chief Secretary, Delhi Administration for appointment to the post of Public Analyst. However, it was made clear to Dr.Nikam that the offer of appointment will be made only after the Government had satisfied themselves after such enquiry as may be considered necessary that he was suitable in all respects for appointment to the service and that he was in good mental and bodily health and free from any physical defects likely to interfere with the discharge of his duties. It was also made clear that the offer of appointment to be issued will be subject to court orders, if any.

26. A counter-affidavit has been filed in opposition to the OA of Dr.Nikam. This affidavit purports to be

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filed on behalf of the respondents in the OA. The Lt. Governor, Delhi Administration and the Commission are respectively cited as respondents 1,2 & 3. This affidavit has been filed by Mrs. Shailaja Chandra, Secretary, Medical, Delhi Administration. The material averments in this affidavit are these. The Commission is only a recommendatory body and it ^{is} for the appointing authority to decide depending upon the number of vacancies, as to how they are to be filled up. When the Delhi Administration had specifically requested the Commission not to proceed with the direct recruitment method, it was obligatory on them to put a full stop to the ^{process of} direct recruitment. The Commission had no authority or logical reason to go ahead with the selection process even when the indenting authority i.e. the Lt. Governor had asked them to stop the process. The Commission proceeded to select a Public Analyst by the method of direct recruitment. Since the selection of the applicant was not as per rules and procedure, the Delhi Administration is of the opinion that on account of vigilance reports against Dr. Nikam, they would not like to accept Dr. Nikam to be appointed as a Public Analyst in Delhi Administration. The Commission has decided not to file a separate counter-affidavit but have asked the Delhi Administration to defend their interests. The matter was placed before the Lt. Governor, who approved the decision not to accept Dr. Nikam for the post of Public Analyst. As the Lt. Governor did not accept Dr. Nikam for appointment to the post of Public Analyst, the decision of the Lt. Governor was communicated to the Commission on 29.5.1991 which decision is accepted by the Commission as nothing has been heard from them. In fact, they have asked the Delhi Administration to defend them before this Tribunal which clearly indicates that they have accepted the decision of the Lt. Governor. Dr. Nikam is not fit for appointment because of vigilance reports against him. There were a number of complaints against

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Dr.Nikam and a detailed enquiry was held by the vigilance department which later on even issued a recordable warning to him(Dr.Nikam). Since it is a very sensitive post and there is only one Public Analyst in the Delhi Administration to certify all cases where samples for purposes of food adulteration are lifted, any person with slightest doubts in integrity cannot be permitted to hold this post because any intentional misadjustment can play havoc with the lives of the people since all edible items are involved in food adulteration cases. The overall record of Dr.Nikam compels the Delhi Administration not to accept him for the post of Public Analyst.

27. A separate counter-affidavit has been filed on behalf of the Commission(respondent No.3) by its Under Secretary, Shri S.G.Saxena. The material averments therein are these. The Commission did not commit any illegality or irrationality in resorting to the method of direct recruitment and in selecting Dr.Nikam for the post of Public Analyst. The Commission, at no stage, authorised the Delhi Administration to file a counter-affidavit on its behalf. The Commission did not give its approval to the decision of the Delhi Administration not to issue a letter of appointment to Dr.Nikam in pursuance of its recommendations(Commission's). In this affidavit, the allegation made/on behalf of the Delhi Administration that in spite of the letter of the Lt.Governor to the Commission to stay its hands in the matter of direct recruitment the Commission proceeded with the direct recruitment, has been refuted. Substantially, the averments made in the additional affidavit filed on behalf of the Commission by Shri P.K.Purkayastha, Additional Secretary acting as a Secretary have been reiterated.

28. We reiterate that the Commission, in the facts and circumstances of the case, did not commit

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either any irregularity or irrationality in proceeding with the requisition sent by the Delhi Administration to fill the post of Public Analyst by the method of direct recruitment. The Delhi Administration, in our opinion, not only acted illegally but also took extraneous matters into account while considering the recommendations made by the Commission to fill up the post of Public Analyst. At that stage, the Delhi Administration had no jurisdiction whatsoever to question either the legality or propriety or the genuineness of the proceedings taken by the Commission to fill the post of Public Analyst by the method of direct recruitment. The only question which the Delhi Administration had to decide was whether the past conduct and other antecedents etc. of the applicant disentitled him for being given an appointment. Moreover, the Delhi Administration, in our opinion, was bound by the proceedings of 20.12.1990 which were reduced to writing and its Chief Secretary and the Chairman of the Commission had appended their respective signatures.

29. Counsel for the Delhi Administration has placed relevant files for our perusal and we have perused the same. We have not been able to lay our fingers on any specific order containing reasons as to why in spite of the recommendations of the Commission Dr. Nikam is not being given an appointment as a Public Analyst. We have already indicated that in the counter filed on behalf of the Delhi Administration, the burden of proof appears to be that the very process by which Dr. Nikam had been appointed by the Commission was illegal and irregular. This, in our opinion, is an extraneous consideration. In the facts and circumstances of this case, one cannot speculate as to what would have been the decision of the Delhi Administration if irrelevant and extraneous considerations had not been taken into account. Vague allegations have been made in the counter-affidavit about some vigilance cases against Dr. Nikam

but no care has been taken to annexe to the counter-affidavit the copy of such a report. We, therefore, come to the conclusion that the decision taken by the Delhi Administration that Dr.Nikam should not be given an appointment on the recommendations of the Commission is not sustainable. Non-acceptance of the report of the Commission is a serious matter. We, therefore, direct that the Lt.Governor shall himself look into the matter and pass a speaking order, if he comes to the conclusion that Dr.Nikam is not a fit person to be appointed as a Public Analyst in spite of the recommendations of the Commission. He shall do so as expeditiously as possible but not beyond a period of two months from the date of production of a certified copy of this order before the Lt.Governor. The Chief Secretary of the Delhi Administration shall see to it that our directions in this behalf are carried out.

30. OA No.2734/90, OA No.153/91 and OA No.154/92 are dismissed. OA No.1431/91 succeeds and is allowed. The decision of the Delhi Administration not to issue the letter of appointment to Dr.Nikam in pursuance of the recommendations of the Commission is quashed. The respondents shall act in accordance with the directions given above and within the time specified above.

31. The parties are left to bear their own costs.

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

S.K. Dharon
(S.K.DHARON)
VICE-CHAIRMAN(J)

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