

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2738/1990.  
T.A. No.

199

(6)

DATE OF DECISION 17.9.1991.

Shri U.D. Dwivedi

Petitioner

In person.

Advocate for the Petitioner(s)

Versus

U.C.I. & Anr.

Respondents.

Shri P.H. Ramchandani,


Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K.Rasgotra, 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? *—*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

  
(Amitav Banerji)  
Chairman  
17.9.1991.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(7)

OA NO.2738/90

DATE OF DECISION: September 17, 1991

SHRI U.D. DWIVEDI

...APPLICANT

VERSUS

UNION OF INDIA & ANOTHER

...RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

IN PERSON

FOR THE RESPONDENTS

SHRI P.H.

RAMCHANDANI, SENIOR

COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

The issue raised in this Original Application for adjudication is whether the employment of Professor S. Sampath, who was formally a Member of the Union Public Service Commission (UPSC for short) as Chairman of Selection Board at the Recruitment and Assessment Centre (RAC for short) constituted for conducting the assessment can be held as constitutional in view of the provisions made in Article 319 (c) of the Constitution of India.

In this O.A., filed by Shri U.D. Dwivedi under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the result of assessment year 1988, a part of which was declared vide Gazette No.1148 dated 31st July, 1989 published in Part-I, Section-4 of

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Gazette of India dated 26th August, 1984.

2. The facts of the case in brief are that the applicant is employed in Defence Research and Development Organisation (DRDO) since 1974 and is presently working as Scientist 'B' in the pay scale of Rs.2200-4000, gazetted Group 'A', DRDS Service at Solid State Physics Laboratory, Delhi w.e.f. 1st July, 1983 and has been working under the charge of respondent No.2 since the last quarter of 1984. The applicant was assessed by the RAC on 1.2.1989 for the service period July, 1983 to June, 1988 for promotion to the post of Scientist 'C' in the pay scale of Rs.3000-4500 (assessment year 1988 for short). The result of the assessment was declared in May, 1989. The applicant, however, did not figure in the list of the successful candidates. The applicant discussed the cause of his failure with respondent No.2, after seeking appointment and on not being satisfied in the personal interview with respondent No.2 he submitted a representation on 7.9.1989, to which there has been no response. The burden of the challenge to the selection lies on the ground that the appointment of Professor S. Sampath as Chairman of RAC is unconstitutional being infraction of Article 319 (c) of the Constitution of India. The other grounds of challenge taken up by the applicant are:-

- a) The assessment was devoid of any valid criteria and, therefore, the result is arbitrary.
- b) The assessment proceedings are vitiated by the lack of fair play, malafides and

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bias and Again that the assessment board is not valid.

By way of relief the applicant seeks direction from the Tribunal to set aside the impugned result of the assessment year 1988 and to order the respondents to place the applicant at par with the best officers of his batch (selection year 1983).

3. The stand of the respondents in the counter-affidavit is that DRDS is a Group 'A' Service, constituted under Article 309 of the Constitution of India and comprises Scientist 'B' Rs.2200-4000, Scientist 'C' Rs.3000-4500, Scientist 'D' Rs.3700-5000, Scientist 'E' Rs.4500-5700, Scientist 'F' Rs.5100-6300, Scientist 'G' Rs.6900-7300 besides the post of Scientific Adviser to the Raksha Mantri. The appointment and promotion to the various posts was excluded from the purview of the UPSC vide GSR No.512 dated 1.6.1985 when these functions were entrusted to RAC, constituted at DRDO headquarters which provides Secretariat service to the assessment board, constituted to assess the candidates for recruitment to scientific and technical posts and promotion of Scientists to higher posts. The Assessment Board, consists of Chairman, nominated by the Government, two departmental officers of appropriate status nominated by the Director General, Research and Development as members and two outside experts nominated by the Government. The promotion to the higher grade is based on the assessment made by the Assessment Board, after taking into consideration individuals' merit and accomplishment.

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All Scientists who had rendered 5 years' service in the grade are eligible for assessment along-with Scientists with three years' service having all 'Outstanding' reports during the period and with 4 years' service having all 'Very Good' reports. The respondents have refuted the applicant's contention that Professor S. Sampath was the Chairman of the RAC under DRDO and that his appointment is barred by Article 319 (c) of the Constitution of India. They further deny that Professor S. Sampath was in the employment of the Central Government and affirm that he is not holding any appointment under the Government. Simultaneously, they admit that Professor S. Sampath was a "full-time non-official Consultant on contract basis" to advise DRDO on the matters of recruitment and assessment of Scientists and Engineers and that "he functioned as the Chairman of the assessment board, constituted for the purpose of the recruitment to scientific and technical posts under DRDO and promotion of Scientists of DRDS to higher grades." They affirm that the appointment of Professor Sampath as Chairman of Assessment Board is valid. They have also raised the preliminary objections to the effect that the applicant has not exhausted all the departmental remedies before coming to the Tribunal and that the application is time barred, as the result of the Assessment Board was declared vide letter dated 26th May, 1989 which is more than one year old.

4. We have heard the applicant in person and Shri P.H. Ramchandani, Senior Counsel for the respondents.

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The resolution of the issue involved rests on whether the appointment of Professor Sampath who was formally a Member of the UPSC is constitutional in view of the provisions made in Article 319 (c) of the Constitution of India. Before we go into this, it would be relevant to view the rule position as far as the selection board for the recruitment and promotion of the Scientists in DRDS is concerned. The DRDS Rules notified on 30th December, 1979 are framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule-2 defines the Assessment Board as the board "constituted under sub-rule 2 of rule-8." Sub-rule-2 of Rule-8 makes the following provisions:-

"(2) Department promotions shall be made from amongst the officers possessing the broad educational qualifications as given in Schedule III and serving in the next lower grade. Selection of officers for promotion shall be made in accordance with the following manner on the basis of individual's merit or accomplishments in the particular grade as assessed by the Assessment Board constituted as at Schedule-1 and not based on seniority consideration only."

The constitution of the Assessment Board as per schedule-I is as under:-

"The Assessment Board shall be constituted as under:-

(1) Chairman appointed by the Government

.....Chairman

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(2) Two departmental officers of appropriate status nominated by the Director General, Research and Development.

.....Member

(3) Two experts to be nominated by the Government

.....Member

Note:

(i) The officers mentioned at Serial No.(2) should normally be at least one level above the level for which the persons are to be considered for promotion.

(ii) The absence of a member of the Board other than the Chairman shall not invalidate the proceedings of the Assessment Board."

From the above it is observed that the Chairman is the appointee of the Government. The Chairman also provides the continuity in the Selection Board, as the other members nominated, keeping in view the requirement of expertise in the related area of science to which the Scientists who are being assessed belong. The rules framed do not give any other clue in regard to the terms and conditions of appointment of the Chairman. The rules were amended vide SRO No.11E dated 10th August, 1991 but that is not our concern at the moment.

The Article 319 (c) of the Constitution of India which prohibits holding of the office by a member of the UPSC on ceasing to be such member reads as under:-

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"319(c) A member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as a Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State."

The above Article thus debars from employment the Chairman or Member of the UPSC from employment after the termination of his office in the Commission to any other office under the Government of India or of a State. The objective of the above provision has been elaborately set out by the Hon'ble Supreme Court in the case of **Hargovind Pant v. Dr. Raghukul Tilak & Ors. AIR 1979 SC 1109**. P.N. Bhagwati J. (as he then was) speaking for the Constitution Bench observed:-

"It is true that by and large the Chairman and members of the union and State Public Service Commission would be men of proven merit and integrity and no allurements, howsoever attractive, would deflect them from doing their duty without fear or favour, but even so, the possibility of obtaining employment under the Government in future may consciously or unconsciously induce them to fall in line with the wishes of the executive or the politician. The office

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of the Chairman and members of the union and the State Public Service Commission must, therefore, be zealously kept beyond the reproach and above suspicion.

It was pointed out as far back as 1924 by the Royal Commission on Superior Services in India, popularly called the Lee Commission.

'Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influence and give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument, by which governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the 'spoils system' has taken its place, an inefficient and disorganised civil service has been the inevitable result and corruption has been rampant."

The provision thus prohibiting the Chairman and Members of Union/State Public Service Commissions in the Constitution was enshrined to insulate these offices from political or personal influence and to ensure highest degree of rectitude and integrity in the discharge of their duties. Having thus set out the *raison d'être* of the constitutional provision their Lordships proceeded to analyse the meaning of the phrase 'employment under the Government of India.'

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"Semantically, the word 'employment' is not a word with a single fixed meaning but it has many connotations. On the one side it may bear the narrow meaning of relationship of employer and employee and on the other, it may mean in its widest connotation any engagement or any work in which one is engaged."

In order to apply the prohibition in accepting employment under the Government that the new appointment after the person ceases to be in the Commission must satisfy two conditions that:

- a) it must be an employment
- b) It must be under the Government.

In either case the Hon'ble Supreme Court has applied the test of :

- i) Relationship of master and servant and
- ii) control of the employer over the employee.

Considering the appointment of respondent No.1 in **Hargovind Pant v. Dr. Raghukul Tilak** (supra) the Constitution Bench held:-

"The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language to a breaking point, be regarded as an employee or servant of the Government of India. If, therefore, the word 'employment' were construed to mean relationship of employer and

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employee, the office of Governor would certainly not be an 'employment' within the meaning of Cl. (d) of Art. 319."

Viewing the matter in the context of the wider meaning of the employment their Lordships observed that the office of the Governor would clearly be an employment but this, however, would not be enough to attract the applicability of this profession. For determining the circumstances in which the applicability of the constitutional provisions would be attracted their Lordships relied on the decision in **Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court AIR 1956 SC 285** where the question was as to whether the officers and members of the staff of the High Court could be said to be persons serving under the Government of India or the Government of State in a civil capacity.

"This Court, speaking through Jagannadhadas, J., pointed out: "the phrase 'a person serving under the Government of India or the Government of a State' seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor or of a Rajparamukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is

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clearly vested in the Chief Justice."

A similar question arose in **Baldev Raj Guliani v. Punjab and Haryana High Court AIR 1976 SC 2490** where it related to the applicability of Article 320 (3) (c) to judicial officers in the State. Referring to **Pradyat Kumar Bose (supra)** the Hon'ble Supreme Court held just as the High Court staff are not serving under the Government of State, the judicial officer are also not serving under the State Government. In conclusion their Lordships held:-

"It will, therefore, be seen that the employment can be said to be under the Government of India if the holder or incumbent of the employment is under the control of the Government of India vis-a-vis such employment. Now if one applies this test to the office of Governor, it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties . His is an independent, constitutional office which is not subject to the control of the Government of India."(emphasis supplied)

From the above it would be seen that **Hargovind Pant v. Dr. Raghukul** (supra) spells out

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the essential attributes which does not constitute employment under the Government of India.

- i) There should be no master and servant relationship between the former member of the UPSC and the Government.
- ii) The office held should not be subordinate or subservient to the Government and should not be accountable to the Government in the discharge of its duties and functions.
- iii) His office should be independent and insulated from political and personal influence.

Applying the above test the Hon'ble Supreme Court held that a constitutional office that is an office which is held under terms laid down by the Constitution such as that of Governor or a High Court Judge cannot be said to be employment under the Government of India even though appointed by the President because they hold office under the Constitution without being subordinate to the Government of India.

Against the above back drop we may now consider the office held by Professor S. Sampath. According to the respondents' own submission the office held by Professor Sampath was "a full time non-official Consultant on contract basis." "He functioned as a Chairman of Assessment Board constituted for the purpose of recruitment and promotion of Scientists of DRDS." According to rules the Chairman of the Selection Board has to

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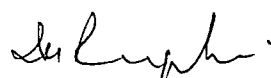
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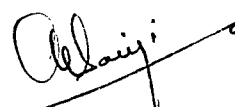
be an appointee of the Government which Professor Sampath is.

It is, therefore, obvious that the office held by Professor S. Sampath has no constitutional or statutory safeguards, as available in regard to the conditions of service etc., as are available in the case of Governors, Judges etc. The terms and conditions of the post are not regulated by any of the provisions in the Constitution of India or any other specific enactment. Professor S. Sampath was an appointee of the Government and functioned as Chairman of Assessment Board on regular basis, even though a contract subsisted between the Government and Professor S. Sampath. Accordingly, we are of the view that in the circumstances in which Professor S. Sampath is placed would constitute an office held under the Government of India. His appointment as such, therefore, would be unconstitutional and invalid. We order accordingly. Consequently, the assessment held under the Chairmanship of Professor S. Sampath would also be null and void.

In the facts and circumstances of the case, we set aside the impugned selection held for the assessment year 1988 declared vide Gazette No.1148 dated 31st July, 1989.

There will be no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER(A)  
17.9.91.

  
(AMITAV BANERJI)  
CHAIRMAN  
17.9.91.

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