CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2508/2004
M.A.No.1170/2005

New Delhi, this the 11th day of **July**, **2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

Dr. Sunita Kalra
W/o Dr. Neeraj Kalra
R/o L-37, Kalkaji
New Delhi – 110 019. ... Applicant
(By Advocate: Mr. Raj Birbal, Sr. Counsel with Mr. Satish Kumar and Shri B.R.Bansal)

Versus

1. Union of India through
Secretary
Ministry of Health & Family Welfare
Deptt. of Health
Nirman Bhawan
New Delhi.

2. UPSC through its
Chairman
Dholpur House
Shahjahan Road
New Delhi.

3. Dr. Gayatri Rath
Head of Deptt. (Anatomy)
VMML & (Vardhman Mahavir Medical
College)and associated Safdarjung Hospital,
New Delhi. Official respondents

4. Dr. Vandana Mehta
Assistant Professor
Department of Anatomy
Vardhaman Mahavir Medical College
Safdarjung Hospital
New Delhi.

5. Dr. Jyoti Arora
Senior Research Associate
Department of Anatomy
Vardhaman Mahavir Medical College
Safdarjung Hospital
New Delhi.

6. Dr. Hitender Kumar
Senior Lecturer
Institute of Rehabilitation & Medical Sciences
Sheikh Sarai
New Delhi.

7. Dr. Anita Mahajan
Senior Lecturer
Amity Physiotherapy College
5th Floor, Yashobhavan
Okhla Centre 25
New Delhi. ... Respondents

(By Advocate: Sh. V.S.R.Krishna for R-1, Sh. H.K.Gangwani for R-2, Sh. Devesh Singh for R-3, Sh. P.P.Khurana, Sr. Counsel with Ms. Seema Pandey and Shri C.Hari Shankar for Respondents Nos.4 to 7)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (Dr. Sunita Kalra) is a Master of Surgery in Anatomy from the Lady Hardinge Medical College. An advertisement was issued by Respondent No.2 in the Employment News for recruitment to 6 posts of Assistant Professors (Anatomy) with Respondent No.1. The recruitment was to be by way of interview. Out of six posts, one each was reserved for Scheduled Caste, Scheduled Tribe and OBC. The applicant claims that she fulfills all the prescribed qualifications and had submitted her application. The following persons were part of the Selection Committee/Board, which met on 14.9.1994:

(a) Air Marshall Satish Govind Inander (Retd – Chairman.

(b) Dr. Zerger - Expert

(c) Dr. Gajender Singh - Expert

(d) Dr. Gayatri Rath (respondent No.3 – Observer."

2. It is claimed that as per the Rules of procedure, where recruitment to a service is to be made by selection and consultation within the Commission, the Commission has to constitute interview board. One Specialist/Expert is also to be associated.

3. The grievance of the applicant is that Respondent No.3 had been associated with as Observer. Her role is confined solely to apprise the Board and the candidates of the requirements of the posts, service conditions, career prospects, etc. but when the Board met, Respondent No.3 raised all the questions. She even shouted at the applicant and made sarcastic remarks stating that "MS KARKE BHI TUMKO KUCH BHI NAHIN AATA". Respondent No.3 had already told other four candidates that they would be selected. It is asserted that Dr. Jyoti Arora, Dr. Dinesh, Dr. Vandana and Dr. Hitender Kumar were all closely related to Respondent No.3. Dr. Jyoti Arora had been associated with Respondent No.3 since June 2003. She did her Sr. Residency under Respondent No.3 and is working as Senior Research Associate under her. Dr. Dinesh and Dr. Vandana are working as Assistant Professor on contract basis under Respondent No.3 since December, 2001. While Dr. Hitender Kumar is known to Respondent No.3 so well that he had various articles published with Respondent No.3. Respondent No.3 has even signed the attestation form of Dr. Hatender Kumar along with those of the 3 other candidates. According to the applicant, because of the bias,

the conduct referred to above and the close association of Respondent No.3 with the aforesaid candidates, the selection is improper. She prays that the selection proceedings should be quashed for the post of Assistant Professor (Anatomy) and direct Respondent Nos.1 and 2 to hold the fresh selection after excluding Respondent No.3

4. The application has been contested.

5. The Union Public Service Commission denies the assertions. Respondent No.3 also denies the averments made against her and clarifies that she signed the identity certificates of Dr. Hitender Kumar and Dr. Jyoti Arora only. This was so done to keep the secrecy and not to inform that she has to participate in the interview. Private respondents No.4 to 7 also denied the averments in this regard.

6. So far as the question of bias is concerned, the administrative law took a turn with the decision of the Supreme Court in the case of **A.K. KRAIPAK AND OTHERS** v. **UNION OF INDIA AND OTHERS**, 1969 (2) SCC 262. The facts in the cited case were that one of the candidates himself was in the Board. The Supreme Court held:

> "15. .. .. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At

> every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates."

Thereafter, the Supreme Court went on to hold that:

> "16. .. .. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the selection board functioned like computers. ....."

7. In terms of the Supreme Court, the matter has to be seen from the viewpoint of fair play.

8. The expression `bias' by itself requires no further elucidation. In a Society governed by the rule of law, fair play is one of the basic ingredients but mere allegations by itself will not be enough. In the case **ELECTION COMMISSION OF INDIA AND ANOTHER** v. **DR. SUBRAMANIAM SWAMY AND ANOTHER,** (1996) 4 SCC 104 where the matter was concerning bias attributed to the Election Commission, the Supreme Court held:

"15. The next question then is if the Chief Election Commissioner, for reason of possible bias, is disqualified from expressing an opinion, how should the Election Commission conduct itself? As pointed out earlier Shri Sanghi, the learned counsel for the appellant, has very frankly and with his usual fairness stated that the Chief Election Commissioner preferred this appeal only because he genuinely believed that the scheme of Article 324 did not conceive of a decision by majority, but if the Court comes to the conclusion that a decision can be reached without the Chief Election Commissioner participating in decision – making in the special circumstances of the case, the latter is not at all keen or anxious to hear and adjudicate upon the matter at issue before the Election Commission. We are quite conscious of the high office the Chief Election Commissioner occupies. Ordinarily we would be loath to uphold the submission of bias but having regard to the wide ramification the opinion of the Election Commissioner would have on the future of Ms J. Jayalalitha, we think that the opinion, whatever it be, should not be vulnerable. The participation of the Chief Election Commissioner in the backdrop of the findings recorded by the learned Single Judge as well as the Division Bench of the High Court would certainly permit an argument of prejudice, should the opinion be adverse to Ms. J. Jayalalitha."

Thereafter the Supreme Court even considered the doctrine of necessity and held:

"16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the

course of justice itself and the defaulting party would benefit thereform."

9. Similarly in the case **STATE OF W.B. AND OTHERS** v. **SHIVANANDA PATHAK AND OTHERS,** (1998) 5 SCC 513, the same controversy had come up for consideration. The Supreme Court in this regard referred to the various precedents and held:

> "31. This Court has already, innumerable times, beginning with its classic decision in A.K.Kraipak v. Union of India, (1969) 2 SCC 262 laid down the need of "fair play" or "fair hearing" in quasi-judicial and administrative matters. The hearing has to be by a person sitting with an unbiased mind. To the same effect is the decision in S.P.Kapoor (Dr) v. State of H.P., (1981) 4 SCC 716. In an earlier decision in Mineral Development Ltd. v. State of Bihar, AIR 1960 SC 468 it was held that the Revenue Minister, who had cancelled the petitioner's licence or the lease of certain land, could not have taken part in the proceedings for cancellation of licence as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case against the petitioner. This principle has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. In Financial Commr. (Taxation), Punjab v. Harbhajan Singh, (1996) 9 SCC 281 the Settlement Commissioner was held to be not competent to sit over his own earlier order passed as Settlement Officer under the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The maxim memo debet esse judex in propria sua causa was invoked in Gurdip Singh v. State of Punjab, (1997) 10 SCC 641."

10. Thereupon the Supreme Court went on to hold that it may not be possible to give proof of actual bias at times. There are many ways to discover the same and the Supreme Court consequently held:

"33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias". De Smith in Judicial Review of Administrative Action, 1980 Edn., pp. 262, 264, has explained that "reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities.

34. In Metropolitan Properties Co. v. Lannon, (1968) 1 WLR 815 it was observed "whether there was a real likelihood of bias or not has to be ascertained with reference to right-minded persons; whether they would consider that there was a real likelihood of bias". Almost the same test has also been applied here in an old decision, namely, in Manak Lal v. Dr Prem Chand Singhvi, AIR 1957 SC 425. In that case, although the Court found that the Chairman of the Bar Council Tribunal appointed by the Chief Justice of the Rajasthan High Court to enquire into the misconduct of Manak Lal, an advocate, on the complaint of one Prem Chand was not biased towards him, it was held that he should not have presided over the proceedings to give effect to the salutary principle that justice should not only be done, it should also be seen to be done in view of the fact that the Chairman, who, undoubtedly, was a Senior Advocate and an ex-Advocate General, had, at one time, represented Prem Chand in some case. These principles have had their evaluation in the field of administrative law but the courts performing judicial functions only cannot be excepted from the rule of bias as the Presiding Officers of the court have to hear and decide contentious issues with an unbiased mind."

11. Similarly in the case of **KUMAON MANDAL VIKAS NIGAM LTD.** v. **GIRJA SHANKAR PANT AND OTHERS,** (2001) 1 SCC 182, the Supreme Court went into the same controversy and

referred to the fact that the doctrine of natural justice implies that it is not to secure justice but to prevent miscarriage of justice. The expression `bias' had been considered and in paragraph 10, the Supreme Court held:

> "10. The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation means and implies "spite" or "ill-will" (Stroud's Judicial Dictionary, 5th Edn., Vol.3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice."

12. Thereupon while scanning through the various propositions, the Supreme Court held that mere apprehension of bias or danger of bias is not enough. In paragraph 35, this principle had been explained:

> "35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom – in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case, 200 QB 451."

13. In another decision in the case of **STATE OF PUNJAB** v. **V.K. KHANNA AND OTHERS,** AIR 2001 SC 343, the Supreme Court again held that it is not mere apprehension of bias but there has to be something more to establish the same. The Supreme Court recorded:

> "8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and out to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise."

14. From the aforesaid, it is clear that bias is something as a preconceived opinion to decide the case on an issue in a particular manner. It is a condition of mind which weighs the judgement and renders the person concerned unable to exercise the impartiality in the matter. However, mere apprehension will not be a substitute for establishment of bias. In day-to-day working, a person can come across many officers and he has to deal with them all.

15. So far as the attestation forms of certain persons who were working with Respondent No.3 are concerned, in our opinion, the explanation is correct because it is a normal procedure for the Head of Department to sign the attestation forms. It has been explained that if she had not done that, they would have come to know that she is participating as member of the Selection Board,

which was meeting in this regard. In our opinion, this will not be a ground thus to set aside the selection.

16. It has vehemently been alleged that Respondent No.3 took active part in the selection and made sarcastic remarks to the applicant. This has been denied. What is important is that the applicant even had submitted a complaint. The counsel for the UPSC made available to us the examination made by the UPSC. Not only the facts were denied but the UPSC found that there was precious little in the assertions. In this backdrop, it cannot be held that Respondent No.3 even had not acted as Observer.

17. It has been pointed that some of the respondents, who have been selected, had been working under Respondent No.3 and she had given extension to some of them. Can this be taken to be a ground to quash the selection? In all fairness, it must be stated that the applicant laid great stress on the fact that Respondent No.3 could not have acted as observer in such events. But the Apex Court has held otherwise:

18. In the case of ***Dalpat Abasaheb Solunke and others vs. Dr. B.S. Mahajan and others,*** 1990 SCC (L&S) 80, certain persons were the Guides of Dalpat Abasahed Solunke while he was doing his M.Sc. The question for consideration was if they would influence their decision in selecting him or vitiate the selection. The Supreme Court held that senior teachers would necessarily be Guides to the students. The Selection Committee has to be drawn from eminent persons and they will not disqualify them from being

Members of the Selection Committee. The findings of the Supreme Court are:

> ".....We are unable to understand as to how the fact that they were his guides when the appellant was doing his M.Sc. would influence their decision in selecting him, or vitiate the selection made. They must have been guides to many who had appeared for the interview. As senior teachers in the faculty in question, it is one of their duties to guide the students. In fact, very often the experts on the Selection Committees have to be drawn from the teaching faculty and most of them have to interview candidates who were at one or the other time their students. That cannot disqualify them from being the members of the Selection Committees."

19. From the aforesaid, conclusions can conveniently be drawn that in the judicial review, the scope of interference would be limited. Respondent No.3 was an observer. It is difficult to believe that she was in a position to influence the choice of Board. If incidentally some of the private respondents were working with Respondent No.3, that by itself would not permit us to conclude that selection was bad. In fact, she would know better about their performance. It would not even debar her to be a member of the Selection Board. It is not a case where she was closely related and therefore, this contention must fail.

20. The other limb of the argument was that Respondent No.3 had published some papers and thus she was deeply interested. Even in this regard, we take liberty in referring to another decision of the Supreme Court in the case of ***G.N. Nayak***

vs.Goa University and Others, JT 2002 (1) SC 526. The Supreme Court held that it is not every kind of bias, which in law is taken to vitiate an act. It must be a prejudice, which is not founded on reason and actuated by self interest. The Supreme Court held that if a senior officer expresses appreciation of work of the junior in the confidential report, it would not amount to bias nor prevent him from taking part in the selection. We reproduce the said findings of the Supreme Court as under:

> "34. As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. For example, if a senior officer expresses appreciation of the work of a junior in the confidential report, it would not amount to bias nor would it preclude that senior officer from being part of the departmental promotion committee to consider such junior officer alongwith others for promotion."

21. Similarly, in the case of ***Union of India and another vs. Ashutosh Kumar Srivastava and another,*** (2002) 1 SCC 188, the Supreme Court held that in judicial review against the selection Committee, the Tribunal was only required to consider if there was compliance with relevant rules in the conduct of the interview. The Supreme Court held that on mere allegation that a member of the Selection Committee was closely related to an officer who was suspended on the basis of report submitted, such inference should not be drawn. Similarly, it was held that merely presuming that it was probable that Secretary could have

influenced the Chairman against the applicant would not be correct.

22. In the present case before us, the record reveals that Respondent No.3 had acted as observer and thus simply because if they have been writing certain papers jointly which were literary in nature from medical point of view, would not prompt us to quash the selection.

23. Similar question had come up before this Tribunal in the case of **DR. B.S.DHILLON** v. **INDIAN COUNCIL OF AGRICULTURAL RESEARCH, D.G. & OTHERS**, OA No.184/2005, decided on 24.3.2005. It was held that merely because some papers were published together will not be a ground to quash the selection. In all fairness to the applicant's learned counsel, reliance was placed on the decision in the case of **K. M. AGRAHARI** v. **CHIEF SECRETARY, DELHI ADMINISTRATION AND OTHERS**, (1989) 9 ATC 325. This Tribunal held that justice has to be seen to have been done. Presence of a member who has bias and had strained relations with the candidate, would quash the selection. It is true that this Tribunal held that litigant could apprehend bias attributed to a member. But perusal of the decision clearly shows that there was history of acrimony between the candidate and the persons in the Selection Board. Thus, this decision is distinguishable.

24. Resultantly, in the peculiar facts, it would not be possible for this Tribunal to hold that there was a bias in the Selection. The application must fail and is dismissed.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/