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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2632/2004
Miscellaneous Application No.204/2005

New Delhi, this the 25th day of July, 2005

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

Dr. A.R.Nikam
S/o late Shri R.S.Nikam
R/o F-83, Tulsi Nagar
Bhopal.

... Applicant

(By Advocate: Sh. G.D.Gupta, Sr. Counsel with Sh. S.K.Gupta)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat
Players Building, I.P. Estate
New Delhi - 110 002.
2. Director
Prevention of Food Adulteration
A-20, Lawrance Road Indl. Area
Delhi - 110 035.
3. Union Public Service Commission
Through its Secretary
Dholpur House
Shahjahan Road
New Delhi.

.. Respondents

(By Advocate: Sh. Vijay Pandita)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (Dr. A.R. Nikam), by virtue of the present application seeks quashing of the order of 27.4.1995 passed by the Lieutenant Governor, Delhi declining to appoint him as Public Analyst. The applicant further seeks a declaration that he is





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entitled to be appointed to the post of Public Analyst as recommended by the Union Public Service Commission and he further seeks to direct the respondents to appoint him to the said post.

2. Indeed it has a long litigation. The applicant, who joined as Assistant Public Analyst, Bhopal, had passed the Public Analyst Examination and was appointed as Public Analyst at Bhopal in the State of Madhya Pradesh.

3. Government of National Capital Territory of Delhi were in need of Public Analyst. In the year 1982, the Ministry of Health & Family Welfare sent a list of all the candidates who had passed the Public Analyst Examination. The applicant was appointed on ad hoc basis. On 20.2.1984, the Recruitment Rules for the post of Public Analyst were framed and notified under the proviso to Article 309 of the Constitution of India.

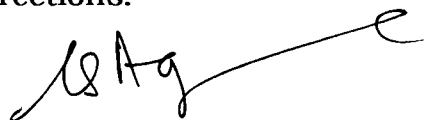
4. As per the said Rules, the post was required to be filled up by way of promotion or transfer on deputation. No departmental candidate fulfilling the eligibility for promotion, was available. Office of Respondents No.1 and 2 circulated a requisition to all the States inviting the candidates for filling up the post of Public Analyst. The applicant was appointed on deputation. After completing his three years tenure, as no candidate was available, it was intended that the post should be filled up by way of third method, i.e., direct recruitment (on deputation). The Delhi Administration circulated the requisition to all the States with a view to make the appointment to the post of Public Analyst by way

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of transfer on deputation. A request was made to the Union Public Service Commission to proceed with the recruitment. The UPSC had published an advertisement for the post of Public Analyst.

5. One Smt. Mohini Srivastava challenged the aforesaid method of filling up the post. She had filed OA 1662/1990. On 10.9.1990, the said OA was disposed of at the admission stage and matter was remitted to the Office of Respondents No.1 and 3 to have further consultation. The applicant contends that he was selected for the post of Public Analyst by UPSC by way of direct recruitment. The above said Smt. Mohini Srivastava again filed OA 2734/1990. In 1991, the applicant came to know that Respondents 1 and 2 have decided not to appoint him and asked the UPSC to send the name of the next available candidate in the panel. The applicant had also filed OA 1431/1991 and Smt. Mohini Srivastava even filed OA 154/1992. On 30.1.1995, it is claimed that this Tribunal was pleased to club all the OAs and the application filed by the applicant, i.e., OA No.1431/1991, was allowed. Respondents filed a Special Leave Petition with the Supreme Court against the order of this Tribunal. Thereafter, the Lieutenant Governor passed a fresh order on 27.4.1995. During the pendency of the SLP, the respondents' counsel had made a statement that the Lieutenant Governor has passed a fresh order. Resultantly, the SLP was disposed of. The applicant filed another OA 2270/1995 seeking quashing of the order of the Lieutenant Governor. The same was disposed of by this Tribunal on 16.7.2001 with the following directions:



"we dispose of this OA with the direction that in the event that Applicant makes a representation to Respondent No.1 in regard to his appointment as Public Analyst Respondent No.1 should give him a reasonable opportunity of being heard, and decide by means of a detailed, speaking and reasoned order as expeditiously as possible and preferably within 3 months from the date of receipt of such representation, under intimation to Applicant whether any modification is required in his earlier Order dated 27.4.1995."

6. The applicant submitted a representation. The Annual Confidential Reports of the applicant were called. Even the applicant was heard. The impugned order was passed by the Lieutenant Governor, Delhi authenticated by Special Secretary, which reads:

"Reference judgment of the Hon'ble Central Administrative Tribunal, in OA No.2270/1995 dated 16/07/2001, wherein the Hon'ble Lt. Governor, Delhi (Respondent No.01) was directed to give Dr. A.R. Nikam, the Applicant, a reasonable opportunity of being heard and decide by means of detailed, speaking and reasoned order whether the applicant should be appointed on the post Public Analyst in the department of PFA, Delhi Government.

In pursuance of the said order the Hon'ble Lt. Governor, Delhi, heard the applicant in person on 02/04/2004. The Hon'ble Lt. Governor, Delhi, passed the following order on 01/06/2004:-

"Though the Vigilance Cases in which Dr. Nikam had been associated have now been closed, reappointing Dr. Nikam in the department as the sole Public Analyst after a passage of thirteen years needs to be placed in perspective. In a job such as that of a Public Analyst, it is imperative to ensure that only an official with impeccable credentials, of integrity

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occupies the post. Dr. Nikam's reputation has not remained unscarred after the vigilance cases were dealt with. Even the slightest indulgence of the officer or a minor indiscretion would create doubt about his functioning. An official who comes with this baggage may not be able to lead his team and function effectively in the department. To err on the side of prudence, I would think, is a wiser course. We may write to UPSC to make another selection for the post of Public Analyst."

Sd/-
(V.K.SINGHO
SPECIAL SECRETARY
DIRECTOR (PFA)"

7. It is in this backdrop that the present application has been filed.

8. The application is being contested.

9. Respondents plead that the recommendations are directory in nature and do not bind the appointing authority. The applicant had only a right to be considered and not a right to be appointed. Respondents contend that the appointing authority was justified in passing the order.

10. We have heard the parties' counsel and have seen the relevant record.

11. Before proceeding further, some of the relevant orders that have been passed in the present case of long drawn litigation can also be delineated. When the applicant had filed OA 1431/1991, the same was disposed of by this Tribunal with the following directions:

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"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 song 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 the 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 - 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."

12. It is these directions, which are being relied upon by the applicant. But Respondents No.1 and 2 had filed an SLP No.13494/95 in the Apex Court. Meanwhile, since a fresh order had been passed by the Lieutenant Governor, the Supreme Court had disposed of the SLP. The order of the Supreme Court reads:

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"Mr. Chandrasekharan, learned senior counsel for the Delhi Administration states that as directed, the Lt. Governor, Delhi Administration has passed fresh orders. If this is so, then the present Special Leave Petition, in our view, need not be perused. Mr. Chandrasekharan, however, is apprehensive of the statements of law made in the impugned order of the Tribunal. We make it clear that the decision on those questionnaire not final and are open. The order of the Lt. Governor if favourable to the respondents gives him no cause of action and if it is adverse, the matter might have to be re-agitated and those question of law can be gone into afresh. The Special Leave Petition thus stands disposed of."

13. This order clearly shows that the Supreme Court had made it clear that the decision on the questions were not final and were left open.

14. The order that was passed by the Lieutenant Governor was to the following effect:

"4. The position of the Public Analyst is vital to the functioning of the PFA Department as prosecution is launched on the basis of this report and such report is in the nature of crucial evidence in the trial proceedings. It is, therefore, imperative that a person of high and unquestioned integrity is appointed to this post. Considering the record of Dr. Nikam during his tenure in the P.F.A. Department, it is clear to me that his appointment to the post of Public Analyst in the P.F.A. Department would have been a mistake. I, therefore, uphold the decision taken earlier by my learned predecessor."

15. The same was again challenged and this Tribunal had disposed of the application for reconsidering the matter to which we have already referred to above.

16. On behalf of the applicant, it was pointed that the Lieutenant Governor was earlier a Chief Secretary, Delhi

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Administration. He could not thus consider the appointment of the applicant being the same authority now holding the higher post. In our considered opinion, this particular contention has no legs to stand. The doctrine of necessity comes into play. The Lieutenant Governor had been directed by this Tribunal and only he could consider being the appointing authority. Therefore, only the Lieutenant Governor could decide the matter and the plea in this regard had to be stated to be rejected.

17. The proposition of law is that a person only has a right to be considered and no right to be appointed can hardly be the subject matter of controversy. The Supreme Court in the famous case of **SHANKARSAN DASH v. UNION OF INDIA**, 1991 (2) SLR 779 had considered this question. It was held that a candidate whose name appeared in the merit does not acquire an indefeasible right to be appointed as Government servant even if the vacancy exists. The Constitution Bench held:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no



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discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana versus Subhash Chander Marwaha and others* (1974) 1 SCR 165, *Miss Neelima Shangla v. State of Haryana and others*: (1986) 4 SCC 268, or *Jitendra Kumar and others v. State of Punjab and others* (1985) 1 SCR 899."

18. Similarly, in the case of **SABITA PRASAD AND OTHERS** v. **STATE OF BIHAR AND OTHERS**, 1993 (1) SLR (SC) 44, the same view was reiterated that mere fact that the candidate has been brought on the final panel and had been sent for training at the Government expense, would not imply that any indefeasible right had been accrued in his favour for appointment. The findings in this regard are:

"The mere fact that the candidates who had been brought on the panel had been sent for training at the Government expense, would also not imply that any indefeasible right had been created in their favour for appointment after they had completed their training and their names were entered in the panel because the training was merely intended to confer eligibility on the candidates for being brought on the list. In the facts and circumstances of the case, we, therefore, hold that the panel prepared in the present case was only in the nature of an eligibility list of qualified trained teachers arranged according to their merit in a chronological order."

19. Same view had been reiterated by the Supreme Court in the case of **R.S. MITTAL** v. **UNION OF INDIA**, 1995 (2) SCR SC 437. It held that there has to be justifying reasons to decline the appointment. The question raised therein was for appointment to Income Tax Appellate Tribunal. It was in this backdrop that after selection, such findings were recorded which read:

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"It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was whole unjustified."

20. No different was the view expressed in the case of **STATE OF BIHAR & ORS. v. MD. KALIMUDDIN & ORS.**, JT 1996 (1) SC 271.

21. From the aforesaid, it is clear that a person, as referred to above, has a right to be considered and not of appointment. If he has been selected in accordance with law, for justifiable reasons, the appointment can even be declined.

22. In the present case before us, we have already reproduced above the impugned order passed by the Lieutenant Governor. It was not in dispute that the applicant was served with a recordable warning. It is this fact which seemingly weighed with the authorities. When it is being pointed that the job of the Public Analyst requires an official with impeccable credentials of integrity,

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this indeed is a matter to be looked into by the concerned authority. The case of **DELHI ADMINISTRATION THROUGH ITS CHIEF SECRETARY AND OTHERS v. SUSHIL KUMAR**, (1996) 11 SCC 605 advises us more on the subject. The question therein was that whether a person who has been acquitted, could be considered as a proper person to be appointed. The Supreme Court held that antecedents have to be seen by the appointing authority. The findings of the Supreme Court reads:

“3. It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service.”

(Emphasis added)

23. Indeed similar is the position herein and, therefore, we find that it is not a fit case for interference. It was pointed that if that was so, the applicant had been granted extensions on ad hoc

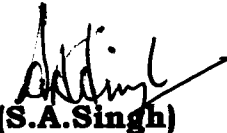
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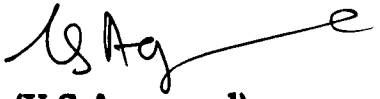
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basis. But the said argument also is not of any significance. The reason being that appointment on regular basis necessarily is different from extension on ad hoc basis to meet the exigencies.

24. Resultantly, in our considered opinion, there is no merit in the Original Application. It fails and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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