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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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O.A. NO. 2911/2004

NEW DELHI THIS THE 25th DAY OF JANUARY
2005

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Dr. S K Saxena, Ph.D.
B-2/230 Ekta Garden Apartments,
9, Patparganj Delhi – 110092

.....Applicant

(By Advocate: Shri G S Lobana)

VS

1. Union of India , through
Secretary, Ministry of Health,
And Family Welfare, Department of Health,
Nirman Bhawan, New Delhi – 110011.
2. Secretary, Ministry of Personnel, Public Grievances
and Pensions, DoPT, North Block, New Delhi.
3. Chairman, UPSC,
Dhaulpur House, New Delhi – 110011
4. DGHS, Govt. of India,
Nirman Bhawan, New Delhi – 110011
5. Central Vigilance Commissioner,
Satar Hata Bhawan, New Delhi

.....Respondents

(By Advocate: Shri S N Sharma)

ORDER

BY HON'BLE SHRI S A SINGH, MEMBER (A)

The respondents on 10.5.2003 advertised for the post of Director in Central Food Laboratory Calcutta under the Directorate General of Health Services, Ministry of Health & Family Welfare . The applicant applied for this post and his name was recommended for appointment by the UPSC to the Secretary to the Govt. of India Ministry of Health and Family Welfare, New Delhi subject to Government being satisfied that

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the applicant was suitable in all respect after such inquiry as may be considered necessary. Para 2 of the letter reads as under:

"2. I am however, to make it clear that the offer of appointment will be made to you only after the Government have satisfied themselves after such enquiry as may be considered necessary that you are suitable in all respects for appointment to the service and that you are in good mental and bodily health and free from any physical defects likely to interfere with the discharge of your duties. The offer of appointment will also be subject to such conditions as are applicable to all such appointment under the Central Government."

2. The respondents did not accept the recommendations and informed the UPSC vide their order dated 21.10.2004 that the competent authority had come to the conclusion that the applicant is not suitable for appointment to the post of Director CFL, Kolkata and accordingly are unable to accept UPSC's recommendation in public interest and UPSC should provide an alternative nomination from the existing panel for the reasons mentioned below:

"While making the recommendations, UPSC in their letter had, interalia, mentioned in para 5 that the candidate named above had not been medically examined for this post and no special enquiry into his antecedents had been made. The recruitment rules of the post prescribed requisite experience apart from academic qualifications as essential requirements. As per the information available in the Dossiers furnished by UPSC, Shri Saxena has been presently working in Kejrewal Enterprises, New Delhi and has previously worked in SGS, India Pvt. Ltd. Gurgaon, FRAC, New Delhi, BEC foods Bhilai MP, Papri, Rayagada Orissa and AMU Aligarh. All the above experience has been counted as Essential qualifications by the Commission.

As per procedure, an attempt was made to check his integrity with previous employees of Shri Saxena mention in his dossiers. On examination of the reports made available by a few of the past employers of Shri Saxena, it has been concluded that this Ministry does not find his candidature suitable for being appointed for the post of Director, as the post of Director (CFL) is a critically sensitive post involving discharge of statutory responsibilities relating to assessment of the quality of the food products including providing technical advice to the judicial system in matters covered by the PFA Act, 1954 and Rules, 1955. the moot concern in the PFA Act is to ensure the quality of

good products from food safety and public health point of view. It is, therefore, critical that the incumbent to this sensitive post has a record of integrity and credentials that inspire credibility.”

3. Aggrieved by this order the applicant has filed the present OA seeking directions from the Tribunal to quash and set aside the impugned order dated 20.10.2004 and 2.11.2004 issued by Respondent No. 1 and direct respondents to ignore the so called adverse reports regarding the applicant's integrity etc. received from the previous employers and to offer the appointment of Director Central Food Laboratory Calcutta as per the recommendations of the UPSC. The grounds for seeking these reliefs are that the denial of appointment is malafide, illegal, arbitrary and in gross violations of the rules of natural justice because the respondents did not make available the adverse reports of the previous employers of the applicant to enable him to represent his case before the respondents and that they have blindly relied on the motivated, illegal and patently baseless reports of the previous employers. The respondents should have utilized the services of IB, CBI, CVC or local police to verify the credentials etc. of the applicant especially when they got adverse reports against him from his previous employers.

4. Moreover there was enough written proof to show that the work, conduct and performance of the applicant with his previous employers during the last 9 years was excellent and the governing council of FRAC in their Annual Meeting appreciated the services of the applicant and recorded minutes even after he had resigned.

5. Needless to say that respondents have contested the averments of the applicant pleading that 31 applications were received by the UPSC and a list of 6 candidates were prepared for final interview held by UPSC on 13.1.2004. Subsequently the name of the applicant was forwarded by the UPSC vide their letter dated 20.1.2004. This

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appointment was subject to the condition that applicant be suitable in all respects and in good mental and body health and free from any physical defects. It was noticed that applicant had worked with the present employer M/S Kejrewal Enterprises for about 3 and a half months and prior to that for 2 months only with SGS India Pvt. Ltd. Gurgaon but more than a year with FRAC. It was felt that the integrity of the applicant should be checked up / verified from M/s Kejrewal Enterprises, M/s SGS India Pvt. Ltd. And FRAC, New Delhi apart from verification of his character and antecedents from DCP, Delhi Police. Hence the concerned organizations were requested to verify the integrity and character and antecedent of the applicant. Out of 3 previous employers M/S SGS India Pvt Ltd. and Director, FRAC, New Delhi had given adverse reports regarding the integrity of the applicant. In addition, ADG (PFA), Dte. Of GHS, vide their letter dated 07.7.2004 stated that while examining the proposal for engaging Dr S K Saxena as WHO consultant for food laboratories, the integrity of Dr. Saxena was telephonically ascertained from Shri Amit Mitra, Secretary General FICCI, where he was then working as Director, FRAC, CIFTI, New Delhi. Shri Amit Mitra, Secy. General, FICCI New Delhi was of the opinion that Dr. Saxena is very sound technically but he had some doubts about his integrity although there was no proof to confirm the same. Shri Mitra did not send any written communication in support of his contention.

6. In view of the above adverse reports and also in view of the fact that the post of Director is critically sensitive involving discharge of statutory responsibilities relating to assessment of the quality of the food products including providing technical advice to the judicial systems in matters covered by the PFA Act, 1954 and Rules 1955, a decision was taken in the ministry that the recommendations of UPSC cannot be accepted for appointment of the applicant in public interest.



Accordingly the UPSC was asked vide letter dated 21.10.2004/2.11.2004 for alternative nominations from the existing panel for the post of Director, CFL, Kolkata.

7. We have heard counsel for the parties and perused/gone through the documents placed on record.

8. Applicant has not challenged the adverse reports of the past employers but has merely stated that he was not given a chance to explain the adverse reports received from his previous employers and also that the services of CVC, CBI, IB should have been utilized instead of only relying upon the reports of the previous employers,

9. The respondents have stated that they have followed the procedure in ascertaining the Integrity / character & antecedent of the applicant. Rules do not provide that reports asked from the previous employers have to be made available to the applicant. However, the respondents have fairly included these reports in the present OA. Keeping in view the sensitive nature of the post the competent authority has examined the issue in totality including the adverse reports of previous employers and has taken a reasoned decision which is in public interest. There was thus no illegality or arbitrariness in their actions.

10. We, in the present OA are carrying out a judicial review and not exercising the power of an appellate court. In a judicial review the decision making process can only be reviewed. The applicant has challenged this process claiming that the reports of the previous employers could not have been relied upon but the integrity of the applicant should have been ascertained through agencies like CBI, IB, CVC and that his comments should have been called for on the reports of the previous employers before rejecting his claim for appointment to the post to which he had been selected by the UPSC.

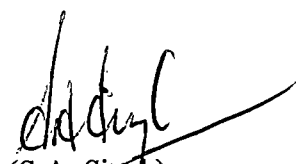
11. We first take up the question of asking for the comments of the


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applicant on the reports of his previous employers. The respondents have pleaded that rules do not require them to show these reports before taking their decision. The applicant has not been able to produce any rules which made it necessary for the applicant to show reports of the previous employers for his comments. We are in agreement that such reports have to be kept confidential otherwise the whole purpose of calling of such reports will be vitiated. As regards the question of using the services of agencies like CBI, IB, CVC is concerned, the respondents have stated that as per procedure verification was got done from the local police. It is not for the Tribunal to impose its procedure over that of the respondents for verifying the antecedents of the applicant. This has to be left to the respondents. We therefore find no infirmity in the process followed by the respondents in ascertaining the integrity, character and antecedent of the applicant. Moreover, the applicant has not shown that the decision of the respondents was vitiated by arbitrariness, unfairness or that their decision was such that no reasonable person with proper application of mind would have taken a different decision. In absence of this, we see no wrong that needs to be set right and no reason to interfere with the decision making process.

12. In view of the above we find no merit in the OA and accordingly the OA is dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman.

Patwal/