

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1588/2004

This the 25th day of January, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

V.K.Dhingra,
R/O Flat No.144 Kewal Kunj Apartment,
Sector 13, Rohini, New Delhi.

... Applicant

(By Shri M.K.Bhardwaj, Advocate)

versus

1. Union of India through
Secretary, Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi.
3. Director General,
Health Services,
Directorate General of health Services,
Nirman Bhawan, New Delhi.
4. Director,
Food Research & Standardization Laboratory,
Ghaziabad.

... Respondents

(By Shri A.C.Aggarwal, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

At the outset, the learned counsel of applicant referring to Tribunal's orders dated 2.7.2004 when this OA was filed, pointed out that the present application be considered for reliefs sought in paragraphs 8(i) and 8(iii). These read as follows:

- “i) to quash and set aside the impugned order dated 17/25.11.2003 (Annexure A-1).”

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- “iii) to direct the respondents to appoint the applicant as director FRSL, Ghaziabad Ministry of Health & Family Welfare, Department of Health with all consequential benefits.”

As such this OA is being considered for reliefs stated at para 8(i) and 8(iii) only.

2. The learned counsel of applicant stated that Union Public Service Commission (UPSC) vide its letter dated 28.2.2001 had recommended selection of applicant to the post of Director, Food Research & Standardization Laboratory (FRSL), Ghaziabad in the pay scale of Rs.14300-18300. However, vide the impugned order Annexure-I dated 17/25.11.2003, applicant was not found suitable for appointment on the said post. The grounds for such denial were that applicant was not clear from vigilance angle, a preliminary enquiry having been initiated against him, Chief Vigilance Commissioner [CVC] having recommended minor penalty proceedings etc. in the matter.

3. The learned counsel of applicant relied on order dated 6.1.2005 in OA No.1758/2004 *V.K.Dhingra v Union of India & others* whereby departmental proceedings initiated against applicant vide memorandum dated 19.6.2002 under rule 16 of the Central Civil Services (Classification, Control and Appeal Rules, 1965) were quashed and set aside. The learned counsel contended that applicant's integrity was not certified as proceedings under rule 16 *ibid* were contemplated against applicant and as such recommendations of UPSC for applicant's appointment as Director, FRSL, Ghaziabad were not accepted by the Government vide impugned orders Annexure-I. The learned counsel stated that minor penalty proceedings having been quashed, integrity of applicant should be deemed to be certified and he should be considered for appointment to the post of Director, FRSL, Ghaziabad. The learned counsel further stated that no other disciplinary proceedings are pending against applicant which should come in the way of applicant's appointment as such. The related post is stated to be still vacant. The learned counsel relied on JT 1999 (4) SC 489 *Bank of India & Another v Degala*

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Suryanarayana contending that when no enquiry is pending at the time of promotion he cannot be deprived of benefit of promotion. Now that the disciplinary proceedings against applicant have been quashed, applicant should be considered for promotion immediately.

4. On the other hand, the learned counsel of respondents stated that respondents are contemplating filing an application before this Tribunal for seeking review of Tribunal's order dated 6.1.2005 in OA No.1758/2004 whereby the disciplinary proceedings against applicant were quashed and set aside. However, it was admitted that no other disciplinary proceedings are pending against applicant at present. The learned counsel further submitted that certification of integrity does not take into consideration merely the absence of disciplinary proceedings but also other relevant materials.

5. We have considered the rival contentions of parties and also perused the material on record.

6. In Tribunal's orders dated 6.1.2005 in OA No.1758/2004 it has been observed as follows:

"17. At the risk of repetition, we may mention that alleged misconduct pertains to the year 1994 and the applicant was exonerated by the order of 1997. But without valid reasons, another Committee was set up. The earlier report was not set aside by any other competent authority to do so. Therefore, there is an inordinate delay and the prejudice alleged would be obvious because after so many years, it is difficult for a person to contest the matter particularly when it is not a matter of embezzlement or investigation which taken time to detect.

18. For these reasons, we allow the present application and quash the impugned order."

The disciplinary proceedings initiated against applicant on the basis of memorandum of 19.6.2002 under rule 16 of the CCS (CCA) Rules have been quashed. Respondents have not stated that there are any other disciplinary proceedings pending against applicant. Obviously, in our view, at this stage, no

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disciplinary proceedings are pending against applicant. The impugned order Annexure-I has taken into consideration the aforesaid minor penalty proceedings against applicant for holding that applicant's integrity and credentials do not inspire credibility and as such UPSC's recommendations for applicant's appointment to the post of Director, FRSL, Ghaziabad were not accepted. True that Government may consider other relevant material in addition to disciplinary proceedings for denying integrity certificate, however, in the present case, apart from the aforesaid disciplinary proceedings, no other material was brought to our notice to deny certification of applicant's integrity. Now that the disciplinary proceedings have been quashed and set aside by this Tribunal, in our view, at present there is no other disciplinary proceedings pending against applicant nor is there any other relevant material to withhold certification of integrity of applicant. In the case of *Degala Surayanarayana* (supra) the Hon'ble Supreme Court has made the following observations:

"13. In the case at hand a perusal of the order dated 5.1.1995 of the Disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own finding setting out the evidence already available on record in support of the finding arrived at by the Disciplinary authority. The finding so recorded by the Disciplinary Authority was immune from interference with the limited scope of power of judicial review available to the Court. We are therefore of the opinion that the learned Single Judge as well as the Division Bench of the High court were not right in setting aside the finding of the Disciplinary Authority and restoring that of the Enquiry Officer. The High court has clearly exceeded the bounds of power of judicial review available to it while exercising writ jurisdiction over a departmental disciplinary enquiry proceeding and therefore the judgments of the learned single Judge and the Division Bench cannot be sustained to that extent. The appeal filed by the Bank of India deserves to be allowed to that extent.

14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of

promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see **Union of India etc. etc. v K.V.Jankiraman etc. etc.** AIR 1991 SC 2010, 2113). As on 1.1.1986 the only proceedings pending against the respondent were criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986."

In the facts of the present case too when no other disciplinary proceedings are pending against applicant, consideration of promotion of applicant to the post of Director, FRSL, Ghaziabad cannot be denied.

7. In the light of the above discussion, Annexure-I dated 17/25.11.2003 is quashed and set aside. Respondents are directed to consider applicant's case for promotion to the post of Director, FRSL, Ghaziabad on the basis of the existing recommendations of UPSC within a period of one month from the date of communication of these orders. In this manner, in case of appointment of applicant on the basis of recommendations of UPSC at this stage, applicant's promotion shall be subject to the Court's orders in the review application to be made by the respondents against the Tribunal's orders dated 16.1.2005 in OA No.1758/2004.

8. The OA stands partly allowed in the above terms.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A) 25.1.05

/as/