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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA 161/2005

In

OA 2877/2004

New Delhi, this the 17th day of February, 2006

**Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri N.D. Dayal, Member (A)**

Sushil Kumar Sharma
S/o Shri Shanti Nandan Sharma
Ex-UDC,
Deputy Commissioner
Central District Central
Government of NCT of Delhi
R/o DA-116-C, Hari Nagar, New Delhi.

...Applicant

(By Advocate Shri S.N. Anand
proxy for Shri S.K. Arya)

V E R S U S

1. Govt. of NCT of Delhi
through Chief Secretary
Delhi Sachivalaya
Players Building, IP Estate
Delhi.
2. The Divisional Commissioner
Govt. of NCT of Delhi
5, Sham Nath Marg
Delhi - 110 054.
3. The Deputy Commissioner
Govt. of NCT of Delhi
14, Darya Ganj
Old Employment Exchange Building
New Delhi - 110 002.

...Respondents

(By Advocate Shri Rishi Prakash)

ORDER

Shri N.D. Dayal, Member (A):

This Review Application has been preferred on 1.8.2005 for review of orders passed by this Tribunal in OA 2877/2004 on 2.6.2005 by which the OA was dismissed on merits. It is submitted that the certified copy of the order dated 2.6.2005 was available on 4.7.2005 after vacation and as such the RA is within

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time. The respondents have not contested except by a brief comment in general contained in their counter reply. The specific grounds submitted by the applicant, are found acceptable in view of Rule 17 (1) of CAT (Procedure) Rules, 1987.

2. The applicant in this RA has advanced the following reasons for seeking review: -

(i) That invoking of Rule 19 (1) of CCS (CCA) Rules, 1965 can be done only by the appointing authority which was the Chief Secretary and not by any lower authority. As such the dismissal order could have been passed only by the Chief Secretary who had appointed him as LDC and not by the Divisional Commissioner. It was an erroneous interpretation of Article 311 (i) of the Constitution to have held that since the applicant was promoted as UDC subsequently by the Divisional Commissioner, the latter was his appointment authority

(ii) The Tribunal could not have relied upon the Gazette Notification effective 12.8.1976 incorporating the amendment in respect of disciplinary, appointing and appellate authorities of Class-III and Class-IV because the applicant was appointed on 22.12.1969 as LDC, which was much before such Notification.

(iii) The Tribunal has observed that the order of dismissal from service was passed after he was served with a show cause notice and taking into consideration his representation. The applicant has pointed to his letter dated 29.9.2003 wherein he had made certain requests, copy of which is at annexure RA-2.

(iv) The applicant had raised as many as 10 substantial and legal grounds in the OA but all of them have not been taken into consideration.

3. In a counter reply filed by the respondents, the prayer of the applicant has been opposed inter alia pointing out that the appointing authority of UDC was not the Chief Secretary who is the appellate authority as per Notification of 12.8.1976 and, therefore, the applicant could not take the plea that it was not possible for the Divisional commissioner, by whose order, the applicant was promoted as UDC, to pass the order of dismissal. As such there is no error nor any new matter which could be said to give any cause for review of the orders already passed by the Tribunal in the OA.

4. We have heard the learned counsel for both sides. It appears that the applicant has called into question the order passed by the Tribunal in OA

2877/2004 by bringing to notice the existing Rules and various grounds already taken in the OA. But, it is noted that the learned counsel for the applicant has pointed out to the Gazette Notification dated 12.8.1976 at pages 45-47 of the OA and particularly to the proviso against Sl. No.5 which reads as under:-

"Provided that in the case of those employees who were appointed by the Chief Secretary/Chief Commissioner, the powers to remove or dismiss them shall vest in the Chief Secretary/Administrator."

5. In this regard, the case of Ram Krishan Prajapati Vs. State of U.P. 2000 10 SCC 43 annexed at page 30 of the OA has been stated to be relevant. The Apex Court was dealing with a matter wherein the appellant, a Supply Inspector in Department of Food and Civil Supplies, UP, was prosecuted under the Prevention of Corruption Act, 1947 and had contested that the sanction for prosecution had not been issued by the proper appointing authority. The Court noticed Rule 2 of the CCS (CCA) Rules, 1965 which contains the definition of appointing authority as under-

"In the rules, unless the context otherwise requires,-

(a) "Appointing authority", in relation to a Government servant, means-

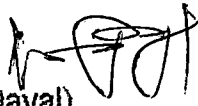
- (i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or
- (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
- (iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or
- (iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,

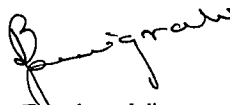
whichever authority is the highest authority;"

The Court held that the Commissioner, who had promoted the applicant from

Clerk to Supply Inspector would be the appointing authority being higher authority than the District Magistrate, who was the earlier appointing authority of the appellant when the incident took place.

6. The ratio of this judgement is applicable to the specific question under consideration in the present RA that the Chief Secretary would be the appointing authority of the applicant. With due respects, it is our considered opinion that in this view of the matter the RA would succeed. The Registry is directed to take steps for listing of the OA before an appropriate Bench for re-hearing by issue of notice to parties. No order as to costs.


(N.D. Dayal)
Member (A)


(B. Panigrahi)
Chairman

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