

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ¹⁷ DAY OF APRIL 1997

Original Application No. 758 of 1996

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER (A)

1. B. Shahi, T-6 (Trg. Assoc. Horticulture)
K.V.K. in Indian Veterinary Research
Institute, Izatnagar, U.P.
2. Ram Prasad, T-6 (Breeding) LPR (Pigs)
In Indian Veterinary Research
Institute, Izatnagar, Bareilly (U.P.)
3. Rakesh Pandey, T-6 (Trg. Assoc.-Agronomy)
K.V.K. in Indian Veterinary Research
Institute, Izat Nagar, Bareilly (U.P.)
4. Dr. P.K. Bhatnagar, T-6 (Tech. Officer-
Para-Haemoprotesta) N.B.C in Indian
Veterinary Research Institute, Izatnagar (U.P.)
5. B.P. Singh, T-6 (Resp. Calorimetry)
A.N. Division, in Indian Veterinary Research
Institute, Izatnagar, U.P.
6. Bhagwat Charan, T-6 (Blood Group) A.G.
Division in Indian Veterinary Research Institute
Izatnagar, U.P.
7. S.S. Bharatiya, T-6 (Tech. Officer-DNA Recombinant)
N.B.C in Indian Veterinary Research Institute
Izatnagar, U.P.
8. Dr. (miss) M.Z. Siddiqi, T-6 (Tech. Officer Monoclonal
Antibody) N.B.C. in Indian Veterinary Research
Institute, Izatnagar, U.P.
9. Surendra Nath, T-6 (Electron, Microscope
Photo Unit) E.M. Section in Indian Veterinary Research
Institute, U.P.
10. Dr. Avneesh Kumar, T-6 (Radiation Scientillation System)
A . N. Division in Indian Veterinary Research
Institute, U.P.
11. S.S. Tripathi, T-6 (Trg Associate-Aggil Engg)
in Indian ~~in~~ Veterinary Research Institute, U.P.

... Applicants

(By Advocate Dr. R.G. Padia)

Versus

1. Director, Indian Veterinary Research Institute
Izatnagar, Bareilly, U.P.

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2. Asstt. Administrative Officer(Estt.I)
Izatnagar, Bareilly, U.P.
3. Indian Council of Agriculture Research
Krishi Bhawan, New Delhi, through its
Director-General.
4. Departmental Promotion Committee (duly promoted
the petitioners from Grade T-5 Tech. officer to
Grade T-6 Tech. Officers) through its Director,
Indian Veterinary Research Institute, Bareilly, U.P.
5. Union of India, through the Secretary,
Ministry of Agriculture, Krishi Bhawan,
New Delhi.

... Respondents

(By Advocates: Shri J.N. Tewari,
Rakesh Tewari & N.P. Singh.

O R D E R(Reserved)

JUSTICE B.C.SAKSENA,V.C.

These 11 applicants in the O.A had been promoted in T-5 Grade from different grades in the Indian Veterinary Research Institute Izatnagar, Bareilly(I.V.R.I. in short). Their case is that a Departmental Promotion Committee was constituted to make recommendations for departmental promotions against 33 1/3rd % quota as per Technical Service Rule from T-5 grade to T-6 Grade. The Departmental Promotion Committee met on the 23rd of March 1996 and recommended the promotion of the applicants. The applicants case further is that the Director of the I.V.R.I. accepted the recommendations of the Departmental Promotion Committee and a promotion order dated 28.6.96 was issued to the applicants promoting them from T-5 grade ~~to~~ (Tech. officer) to T-6(Tech. Officers. The applicants case further is that they joined to the respective T-6 grade posts on 28.6.96. However, the respondent no. 1 passed an order on 16.7.96 by which

the earlier order of promotion dated 28.6.96 was kept in abeyance for implementation with immediate effect and a further direction was given ~~to the applicants~~ ^{Bel} that the concerned persons mentioned in order dated 28.6.96 were thereby reverted to their original posts in grade T-5 until further orders. This order of 16.7.96 is under challenge and the applicants have sought its quashing. They have also sought a direction to be issued to the respondents not to interfere with the functioning of the applicants as Technical

Officers in Grade T-6.

2. The respondents 1 to 5 have filed counter affidavit. Their case is that after the DPC was held and order of promotions was issued representations were received that persons junior and persons also ^{who} do not possess essential qualifications for the posts of T-6 have been promoted. It has been stated in the counter affidavit that the Competent Authority decided to keep the promotion in abeyance till the complaints were investigated. The stand of the respondents is that the recommendations of the Departmental promotion Committee has not yet been set aside, only the promotion orders have been kept in abeyance.

3. The applicants have filed a rejoinder affidavit. In the rejoinder affidavit the applicants state that they have not been furnished with the copy of the complaints nor have been given any opportunity. On behalf of the respondent no. 4 and 7 of the OA Misc. application No. 995/97 was filed to stay the operation of an order dated 6.2.97. The respondents filed objections against the said M.A. through M.A. 1235/97. However, the learned counsel for the parties agreed that if the OA is taken up for final hearing there would be no need to take up for consideration the aforesaid two M.As, on the question whether the interim order granted has been violated or not that is the subject matter of a contempt petition no. 101/96 which is still pending disposal. We are, therefore avoiding to deal with the pleadings on the question whether the applicants on the date ^{the} ~~of~~ interim order ^{was} ~~was~~ passed had joined and were working as grade T-6 or not.

3. We have heard the learned counsels for the parties on the merits of the OA. The learned counsel for the applicants cited a decision of the Hon'ble Supreme Court reported in A.I.R 1978 S.C. 851 Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and Others. He had cited the decision specifically to rely on Paragraph 8 of the said decision. In the said paragraph the following observation is made:

" When a statutory functionary

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makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by addl. grounds later brought out."

In the earlier paragraphs the notification issued by the Secretary of the Election Commission have been reproduced and the averments made by the Chief Election Commissioner as also the Secretary of the Commission were also detailed. The said observation will not be attracted with the present case. The order in question is not in exercise of the statutory power but is related to an administrative power of passing an order of promotion or keeping the same in abeyance. ~~xxxxxx~~

4. The learned counsel for the applicants submitted that the principles of natural justice have to be complied with before any order ^{civil consequences is for} ~~being~~ passed. He in this behalf cited the following four decisions.

(1) Bhagwan Shukla Vs. Union of India and Ors 1994 Supreme Court Cases(L&S) 1320

In the said case the pay had been fixed on promotion but without giving any opportunity to show cause an order reducing his basic pay was passed. In the circumstances, the Hon'ble Supreme Court held the order to be violative of principles of natural justice. The applicability of the said decision in view of the disputed questions of fact would be doubtful. There is no material on record to show that the applicants have drawn pay of the T-6 Grade on the contrary the material on record goes to show that the applicants have received salary of T-5 Grade.

(2) Dr. Smt. Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, A.I.R 1987 Supreme Court 2186.

The appellant was dismissed from the post of Principal of the college. Order was sent to the Vice Chancellor for approval. The order of dismissal was disapproved and order for reinstatement had been passed. Subsequently, the Vice Chancellor reviewed the order and approved the dismissal order. In view of these facts the Hon'ble Supreme Court laid down that;

"It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice Chancellor in considering the question of approval of an order of dismissal of the Principal acts as a quasi judicial authority. The Provisions of the U.P. Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice Chancellor. In the circumstances it must be held that the Vice Chancellor acted wholly without jurisdiction in reviewing the order and the order is a nullity."

The learned counsel for the respondents in our opinion have rightly pointed that this decision would not be applicable since the matter of selection is neither judicial ~~or~~ nor quasi judicial it is in the nature of an administrative power.

5. The learned counsel for the respondents cited a decision of the Hon'ble Supreme Court in the case of Federation of Registered Societies for Pilgrims (Regd) Vs. Union of India and Ors reported in 1992 (Supp) (2) Supreme Court Cases 476. In the said case the question of administrative review on the basis of complaint in selection of Pilgrims had come up for consideration and it was observed:

"That on complaint about non observance of

government guidelines alleged- Lt. Governor, Delhi Administration was entitled to consider the complaints in the light of recommendations made and pass orders who were ~~not~~ to be selected."

6. The learned counsel for the respondents has⁵ cited a decision of the Hon'ble Supreme Court in Sultan Singh Vs. State of Haryana and another reported in (1996) 2 Supreme Court Cases 66. He relied on paragraphs 4 and 6 of the said decision. ~~which is not~~ ^{Bel}

~~which is not~~ ^{Bel}

*The facts of the said case would show that the State Govt initially had refused to refer a dispute u/s 10 of the Industrial Dispute Act. Subsequently the State government reviewed its decision and made a reference. In the said case the question was whether a state government can review its decision and make reference without hearing ~~of~~ the parties concerned. The relevant observations in para 4 and 5 made by the Hon. Supreme court are as follows:

" The appropriate Govt. is entitled to go into the question whether an industrial dispute exists or is apprehended. It would be only a subjective satisfaction on the basis of the material on record. Being an administrative order no lis is involved. Therefore there^{is} neither any need to issue any notice to the employer nor to hear the employer before making a reference or refusing to make a reference. Sub Section (5) of Section 12 of the Act does not enjoin the appropriate government to record reasons for making reference under Section 10(1). It enjoins to record reasons ~~only~~ when it refuses to make a reference.* The need for hearing is obviated, if it is considered on second occasion as even then if it makes reference, it does not cease to be an

administrative order and so, ^{it} is not incumbent upon the State Government to record reasons therein. Therefore, it is not necessary to issue notice to the employer not to consider his objections nor to hear him before making a reference. Therefore the High court was wholly wrong in its conclusion that before making reference on the second application, it was incumbent upon the State Government to give notice to the employer and to give an opportunity to the employer and record reasons for making reference."

7. The learned counsel for the applicant cited the following ^{other} two decisions:

- (1) N.S. Nagarajan Vs. Union of India (1991) 17 A.T.C 690.

This is a decision by a Division Bench of the Madras Bench of the Central Administrative Tribunal and the second decision is;

Jiten Kumar Swain Vs. Union of India and Ors
(1987) 4 A.T.C. 147.

In both the cases an order of promotion was cancelled ~~without~~ without affording prior opportunity ^{it was to be} held violative of principles of natural justice and the order of cancellation was quashed. These decisions have no applicability to the present case inasmuch as the order of promotion has only been kept in abeyance. The recommendation of the D.P.C has still not been interfered with and the promotions have not been cancelled. No doubt ^{whose} it has been indicated that those names occur in the promotion order were ~~order~~ to be reverted to T-5 grade. As explained in the counter affidavit this was provided so that till after the investigation into the complaints and a final decision being taken since the order of promotions were kept in abeyance as a logical consequence the promotees were to continue in T-5 grade only.

8. The learned counsel for the ~~xxx~~ respondents in reply to this has invited attention to a decision of Hon'ble Supreme

Court in Hanuman Prasad & Ors Vs. Union of India and Ors. reported in 1996 (8) J.T. S.C. 510. In the said case an examination was cancelled on the ground of mass copying and malpractices committed in the examination without hearing the candidates who appeared at the examination. The Hon'ble Supreme Court held that it was not necessary to give prior opportunity in cases of mass copying and the recommendations given by the Selection Committee do not give vested right or legitimate expectation to candidates till they are appointed according to rules. The learned counsel for the respondents submitted that the function of the Selection Committee was administrative and not judicial or adjudicatory. Similarly the function of the Director of the I.V.R.I. in accepting or not accepting recommendations of the DPC are also administrative and neither judicial nor quasi judicial hence he was not required to give reasons for keeping the order of promotions in abeyance. He has also relied on the decision in National Institute of Mental Health and Neuro Sciences Vs. Dr. V. Kalyana Raman and Ors reported in A.I.R 1992 Supreme Court 1806.

9. It needs to be noted and emphasised that the OA has been filed against an order, by which the promotion order has been kept in abeyance and no final order cancelling or maintaining the order of promotion has yet been passed. Since the order has been passed in exercise of administrative power, as the discussion hereinabove would show neither the principles of natural justice are attracted nor it was incumbent upon the authority which passed the order to record reasons for the same.

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10. The learned counsel for the applicants submitted that in view of the provisions contained in D.P. & A.R O.M. dated 26.3.80 an extract of which has been filed as Annexure 6 would show that once the recommendations of the DPC are accepted by the appointing authority it shall be final. The said O.M. further provided that if any question is to be raised or disagreement with regard to the merit of assessment by the DPC is to be expressed it should be done only before the recommendations of the DPC are accepted or acted upon. The learned counsel ~~for~~ submitted that in view of the said provision the Director having accepted the recommendation of the DPC the recommendation became final and cannot be reopened.

In the first place the applicability of the O.M. issued by the Department of Personnel and Administrative Reforms would govern the situation in hand or not is doubtful. Even assuming that it would apply it cannot prevail over the judicial decision referred to hereinabove. In exercise of administrative power of review the Director is well within his power to have the complaints investigated and pending the final outcome of the investigation have passed the impugned order keeping the promotion in abeyance.

11. In the result, there is no merit in the O.A. It is accordingly dismissed. Parties to bear their own costs. The interim order is vacated.

MEMBER (A)

Belakse
VICE CHAIRMAN

Dated: April. 17th. 1997

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