

6

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Registration O.A.No. 123 of 1986.

1. Director, Central Bureau  
of Investigation,  
New Delhi
2. The Secretary,  
Ministry of Home Affairs,  
New Delhi

Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This petition under Section 19 of the Administrative Tribunals Act XIII of 1985 is directed to get an appointment as Senior Public Prosecutor in the Central Bureau of Investigation ( hereinafter referred to as the CBI) and pay w.e.f. 8.2.1985.

2. The material facts of this case are that the Union Public Service Commission ( hereinafter referred to as the UPSC) advertised on 14.1.1984 for three posts of Senior Public Prosecutors (in short SPP) in the CBI, Ministry of Home Affairs, Department of Personnel and Administrative Reforms. In response to the said advertisement, the petitioner had <sup>also</sup> sent an application and he was called for an interview on 25.6.1984 with other candidates. The petitioner was duly selected and recommended by the Chairman, UPSC to the Secretary,



10/2

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Department of Personnel and Administrative Reforms, Government of India and an intimation to this effect was also given to the petitioner vide letter dated 16.7.1984. The said department duly acknowledged the recommendation and asked the petitioner to fill attestation form and <sup>inform</sup> address of the nearest civil hospital vide letter dated 4.8.1984. The attestation form was duly filled and supplied by the petitioner and his medical examination was also got done by the Chief Medical Officer, Nainital, who sent his report to the concerned department on 29.8.1984. Since then the petitioner was waiting for his appointment letter but when he did not receive the same, he sent letter of inquiry on 25.1.1985, but he received no reply. Later on, the petitioner knew that two other candidates were already appointed by the respondents as SPP, he, therefore, made a representation on 8.2.1985 to the respondents and also sent a telegram to the Prime Minister on 28.2.1985. He thereafter, sent a representation to the Minister of State for Personnel and Administrative Reforms on 13.5.1985 but neither received any reply nor got a letter for appointment and as such, he filed this petition for a direction to the respondents that he should be appointed as SPP and paid his salary and other allowances w.e.f.8.2.1985.

3. The petition has been contested on behalf of the respondents and in the reply filed on their



(8)  
12/3

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behalf by Sri D.P.Bhalla, Under Secretary to the Government of India and Administrative Officer, CBI, it has been stated that the two candidates, who have been appointed as SPP on the recommendation of the UPSC were already working in the CBI in the lower rank of Public Prosecutors, but in the case of the petitioner, certain other formalities were to be got done before giving him the appointment. The appointment of the petitioner is subject to the pleasure of the President of India, who is the appointing authority and the President of India was not pleased to appoint the petitioner on the ground that he was not suitable to be appointed on the post of SPP. Mere selection by the UPSC does not entitle a candidate to any appointment. In the formalities done after receiving the recommendation of the UPSC, the petitioner could not be found suitable and as such, he could not be given the appointment. There is no case of discrimination against the petitioner and he is not entitled to maintain this petition.

4. In the rejoinder filed by the petitioner, it has been stated by him that for the 3 posts of SPP, the UPSC had recommended only 3 persons and the recommendation of the UPSC was not in the nature of <sup>as</sup> the panel. The formalities asked by the



(19)  
A2/4

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respondents were duly completed by the petitioner and it is highly discriminatory on the part of the respondents not to appoint the petitioner despite his name being at the top of the list and promoting two lower ranked Public Prosecutors to the higher posts. It amounts to victimising the petitioner and he is entitled to get his appointment from 8.2.1985. When the selection for any post is to be held through UPSC, the question of suitability of any candidate is within the exclusive powers of the UPSC under Art.320 of the Constitution and the petitioner cannot be deprived of the appointment on the ground of suitability to be judged by the respondents and he is entitled to get the appointment in accordance with the recommendation of the UPSC.

5. Before we enter into the points of <sup>3</sup>in controversy in this case, we would like to consider the admitted or undisputed facts of this case first. Admittedly, the UPSC issued advertisement for 3 posts of SPP of CBI Department. The petitioner had applied in response to the said advertisement and was recommended by the UPSC for appointment along with 2 other candidates. The other two candidates recommended by the UPSC were already working as Junior



74/5

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Public Prosecutors in the CBI and they have already been appointed as SPP on the recommendation of the UPSC. The petitioner has, however, been left over without assigning any reason for his non-appointment.

6. In reply filed on behalf of the respondents, it has been stated that the recommendations of the UPSC alone were not sufficient for giving the appointment to the petitioner and there were certain other formalities, which had to be done for giving an appointment to the petitioner on the post of SPP. It was further stated that in the said formalities, the petitioner could not be found suitable and as such, he could not be appointed. The respondents have not given any indication about the formalities in connection with which, the petitioner could not be found suitable and the contention of the petitioner is that this allegation is vague and he is entitled to know the reasons of his non-appointment. It has been further contended on behalf of the petitioner that the respondents have to accept the report of the UPSC either as a whole or not at all and by accepting the report in part and by giving appointment to two recommendees of the UPSC, there has been discrimination against the petitioner, which <sup>violates &</sup> infringes the provisions of Art. 14 and 16 of the Constitution. It has also been contended that the petitioner duly filled-up the attestation form and got the formalities of medical examination done and he was found physically fit. A report in this connection had



already been furnished to the Government by the Chief Medical Officer, Nainital and there is no reason for the respondents to disregard the recommendations of the UPSC.

7. On behalf of the respondents, an effort was made to show the reasons to this Bench to the exclusion of the petitioner, which was not acceptable to him. We, therefore, declined to go through the contents of the documents sought to be produced before us. The document was then filed by the respondents in a sealed cover claiming a privilege under Sections 123 and 124 of the Indian Evidence Act. An affidavit to this effect was filed by Smt. P.P.Trivedi, Secretary to the Government of India in the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi stating that the documents containing the reasons deciding the suitability of the petitioner are unpublished official record relating to the affairs of the State and public interest would suffer by the disclosure of the said documents. The contention of the petitioner is that the Government has no absolute privilege in such matters and a Court or Tribunal can always go through the relevant documents, if it is necessary to decide the controversy before it. It was also contended



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that the documents be seen by the Tribunal and shown to the petitioner and he be given an opportunity to produce his own documents in rebuttal.

8. The parties have placed their reliance on certain case laws in support of their respective contentions, which we will like to discuss here. In State of U.P. Vs. Manbodhan Lal Srivastava (A.I.R. 1957 SC- 912), the following observations made by the Hon'ble Supreme Court may be quoted here :-

"Unless it can be held, and we are not prepared to hold, that Art.320(3) (c) is in the nature of a rider or proviso to Art.311, it is not possible to construe Art.320(3) (c) in the sense of affording a cause of action to a public servant against whom some action has been taken by his employer.

In view of these considerations, it must be held that the provisions of Art.320(3)(c) are not mandatory and that non-compliance with those provisions, does not afford a cause of action to the respondent in a Court of law."

9. In Omprakash Vs. The State of Madhya Pradesh and another (A.I.R.1978 MP-59), a Full Bench of the Madhya Pradesh High Court had considered the nature of the recommendation of the Public Service Commission and had made the following observations :-

"..... The Government has to adhere to the order of merit in the list of candidates sent by the Public Service Commission. However, the selection



by the Public Service Commission is recommendatory in character, so that the Government may decline to accept a list of candidates selected by the Commission. But in that case, the Government has to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is answerable to the House for any departure (Art 323 of the Constitution). This, however, does not confer any right on a candidate to claim that the Government must accept the recommendation of the Public Service Commission.

Where the Government does not accept the recommendation of the Public Service Commission the matter is not justiciable except on ground of fraud or mala fide."

10. In Jatinder Kumar and Others Vs. State of Punjab and others ( (1985) 1 S.C.Cases-122), considering the scope of Art.320 of the Constitution and the nature of the recommendations of the Public Service Commission, the Hon'ble Supreme Court had held as follows :-

" The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission.



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It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character."

11. The case law on the point in issue as discussed above is that the recommendation of the UPSC is not mandatory and the Government is not bound to accept it in all cases. Even in the instant case, the letter annexure 3 dated 16.7.84 issued by the UPSC to the petitioner states that the offer of appointment will be made to the petitioner only after the Government have satisfied themselves after such inquiry as may be considered necessary that he is suitable in all respects for appointment to the service and he is in good mental and bodily health. Thus, after getting the recommendation of the UPSC, like other cases, the respondents had to inquire about the character and other antecedents of the petitioner and he had also to undergo a physical test. The letter, copy annexure 4, dated 4.8.84 issued by the Administrative Officer (E), CBI to the petitioner shows that he was required to furnish the attestation form duly filled in triplicate and to inform the name of the nearest Civil Hospital where he could be referred for medical examination. Admittedly, the petitioner made the required compliance in the light of this letter and also appeared before the Medical Board for his medical examination and vide letter dated 29.8.1984, copy annexure 5, the Chief Medical



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Officer, Nainital submitted his report of medical examination to the Administrative Officer (E), CBI.

12. Reading between the lines, we entertain no doubt in our minds that the respondents accepted the recommendations of the UPSC regarding the merits of all the 3 candidates, otherwise, they would not have asked the petitioner to comply with the other formalities as mentioned above. The petitioner appears to have been found physically fit in the medical examination <sup>but</sup> and it <sup>also</sup> appears that the report received by the respondents regarding his character verification was not to its satisfaction ; that is why it feels embarrassed in disclosing its contents . In case, the averments made in paragraphs 9 and 12 of the reply filed by the respondents are read in this light, it will be amply clear that on the basis of the result of the formalities completed after receiving the recommendations of the UPSC, the respondents did not find the petitioner suitable for giving him the required appointment. CBI is a very sensitive department and it is supposed to be <sup>inanned</sup> ~~mend~~ by the persons of not only high calibre but also of <sup>un</sup>unpeachable integrity and character. The Government has to make its own subjective satisfaction about these qualities



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and, in our opinion, it is not open to this Tribunal to go into the details to know the reasons which persuaded the Government to arrive at a decision against the petitioner.

13. The respondents have <sup>not</sup> accepted the report of the UPSC in part in the sense that out of the 3 recommendees, only 2 were found suitable and the third was found wanting on any ground on merits. In our opinion, the recommendations regarding all the three candidates were accepted by the respondents and that is why, the respondents asked the petitioner to complete other formalities. There is, therefore, no discrimination against the petitioner and the provisions of Art.14 and 16 of the Constitution have not been violated.

14. We have carefully gone through the petition and the rejoinder filed by the petitioner and find that except the allegation of discrimination and victimization, there is no allegation of fraud or mala-fide on his part against the respondents. This is yet another ground for not requiring us to know the exact report regarding the character and antecedents of the petitioner or the other reasons on the basis of which, he was not found suitable for appointment as it is within the rights of the respondents to have their own satisfaction about the same. After considering the



(17)

A2  
12

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case of the petitioner from all aspects, we have come to the conclusion that the document(s) produced before us by the respondents in a sealed cover contain(s) merely a report regarding the conduct and character of the petitioner and as it will not be permissible for us to examine whether such report is correct or not, we do not feel inclined to open the sealed envelope and go through the contents, though we could over-rule the privilege claimed by the respondents regarding these documents under the law.

15. Having thus carefully considered all the points canvassed before us on behalf of the petitioner we feel that there is no force in his petition and the same merits dismissal.

16. The petition is accordingly dismissed without any order as to costs.

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19.1.1987

Member (A)

*[Signature]*  
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(Member (J))

Dated 19.1.1987  
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