

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original application No. 266/2003

this the 24th day of October, 2003.

HON'BLE SMT. MEERA CHHIBBER, JM

HON'BLE MR. S.P. ARYA, AM

B.S. Acharya is aged about 40 years son of Sri G.C. Acharya, 3rd floor Aakansha Parisar Sector F, Jankipuram, Lucknow working as Junior Inspecting Officer (Fruit and Vegetables Preservation) Office of Senior Inspecting Officer (F&VP), Indira Nagar, Lucknow.

...Applicant

By Advocate: Sri A.Moin

Versus

1. Union of India through :-
1. Secretary, Ministry of Food Processing, Panch Sheel Bhawan, August Kranti Market, New Delhi.
2. Dy. Director (F&VP) 10/11 Jamnagar House, New Delhi.

...Respondents

By advocate: Sri G.S. Sikarwar.

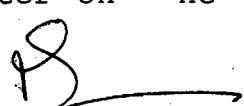
ORDER

SMT. MEERA CHHIBBER, JM

By this O.A. applicant has sought the following reliefs:-

a) to direct the respondents to issue an offer of appointment and permit the applicant to join on the post of Senior Inspecting Officer (F&VP) as per the merit list circulated by the UPSC as contained in Annexure No. A-1 with effect from the date when the persons lower down in the merit list namely Adesh Mohan was allowed to join with all consequential benefits including arrears of pay.

2. It is submitted by the applicant, initially applicant joined as Junior Inspecting Officer (F&VP) under the Ministry of Food Processing Industries on 4.2.1997 at Chennai. Later on he was transferred to



Lucknow and their he joined on 5.8.2002. Since the work of the applicant entails inspection of Fruit and Vegetables preservation units, he was on official duty at Hyderabad where an incident took place in as much as when the applicant was making arrangement to leave for Chennai headquarter on 22.9.2001, some people entered in his room along with couple of policemen in search of lethal, weapons and explosives. His belongings were taken away forcibly and he was made to sign on some papers by coercing him. This matter disturbed the applicant mentally ^{to} ~~in~~ as much ^{as} he had to apply for medical leave and joined his duties on 8.10.2001 when he made a detailed report of the incident to the Dy. Director, Chennai. (Annexure A-2). Nothing happened thereafter and he continued performing his duties.

3. On 9.2.2002, a notification was issued by the UPSC for filling up the post of Sr. Inspecting Officer to be filled from the ~~amongst~~ direct recruitment quota after ~~holding~~ interview ~~from~~ of the eligible persons (Annexure A-3). Since the applicant was eligible he gave his application through proper channel on 25.2.2002. Applicant was interviewed by the UPSC on 29.11.2002 and result of the selected candidates was published by UPSC in Employment News dated 11-17th January, 2003 wherein applicant was shown at Sl.No. 1 in the merit list of the successful candidates (Annexure No. 1).

4. Applicant thereafter was waiting for his appointment letter but no such appointment letter was issued to the applicant even though the same was issued in favour of Sri Aadesh Mohan on 28.2.2003. Who was second in the order of merit and the said Sri Aadesh Mohan has also joined on the post on 3.3.2003. Thereafter appointment letter has been issued in favour of Sri Krishan Murari in April, 2003.



who was at S.No. 3 but for reasons best known to the respondents till date no such appointment letter has been issued in favour of the applicant even though he was at Sl. No. 1 in the merit list. He has submitted that since neither there is any charge sheet issued to him nor he is involved in an FIR etc. therefore there is no justification at all for denying the appointment or withholding his appointment by the respondents. Since there were only three posts advertised by the UPSC, out of which two have already ^{been} filled, therefore, applicant had no other option but to file the present O.A claiming the relief as mentioned above.

5. Counsel for the applicant relied on the judgements given by the Hon'ble Supreme Court of India in the case of Union of India and others Vs. K.V. Janki Raman and others 1991 (4) SCC, 109 and judgement passed in O.A. No. 302/97 passed by the Lucknow Bench of this Tribunal on 6.5.2002 in the case of Ashok Kumar Singh Vs. Union of India and others.

6. This O.A. is opposed by the respondents. They have taken preliminary objection to the maintainability of the O.A. on the ground that applicant has impleaded Dy. Director (F&VP) as a respondent even though he has no say in the matter of appointment of the applicant. Therefore, O.A. is liable to be rejected on the ground of misjoinder of parties. They have further submitted that applicant had submitted a representation for being appointed as SIO which is being examined by the Ministry in consultation with the Department of Personnel and Training but without awaiting for the reply, applicant has approached the Tribunal, therefore, this O.A. is liable to be dismissed for suppressing this fact from the court.

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7. They have further submitted that as per the report forwarded by the SP, CBI, Hyderabad Sri Acharya was nabbed by the agency (CBI) while on official tour to Hyderabad in September, 2001 when he was posted as JIO at office of DD (F&VP), SR. Chennai. A case was registered against him for possession of cash amounting to Rs. 18,400/- and other gift articles which he could not satisfactorily account for. The CBI then referred the matter to this Ministry for issuing the charge sheet to the delinquent officer. The matter was referred to the CVC who advised that the officer be prosecuted. Subsequently CBI recommended departmental action and accordingly the matter is under consideration of the competent authority for issue of major penalty charge sheet. If the charge is proved against the applicant, he can even face dismissal. Therefore, it would be ironic if he is appointed to a higher post and within a few months, action is required to be taken against him for major charge sheet. They have further submitted that this case would not be covered by the Janki Raman's case as this is the case of direct recruitment wherein antecedent is verified before offer of appointment is made and since report of the CBI clearly shows his antecedents not to be clear, therefore, no offer of appointment could be made.

8. They have further submitted that recommendations of the UPSC is not binding on the Department as it is ~~incumbent~~ upon the government to satisfy itself regarding the character and antecedents of the candidates recommended by the UPSC before ~~to issuing~~ offer of appointment. Therefore, simply because his name had ^{been} recommended by the UPSC, it does not give right to ask for appointment as SIO. In support of their contentions, they have relied on the following facts:

Respondents have thus prayed that this O.A be dismissed and interim order dated 2.6.2003 may kindly be vacated whereby one post was kept reserved for the applicant. Respondents have subsequently filed a supplementary counter affidavit annexing therein the Registration Report filed by the CBI on 8.10.2001 wherein it was clearly mentioned that based on a reliable information, during a check conducted by the officials of CBI with the officials of Mahankali PO in the immediate presence of two independent witnesses, it emerges that during the check Sri B.s. Acharya was found in possession of Rs. 18400/- and the gift articles to which he could not satisfactorily account for which disclose commission of misconduct, accordingly a P.E. was registerd. They have also annexed Memorandum dated 17th September, 2003 whereby the charge for major penalty have been issued to the applicant on the following grounds:-

"During his official visit to Hyderabad for inspection of Food Processing Units relating to compliance of provisions of the Fruits Products Order, 1955 from 19.9.2001 to 22.9.2001, he had collected money and gift items from various firms/units while carrying out his official inspections. He was found in possession of the following items during the surprise check conducted by the CBI on 22.9.2001 between 5.35 PM and 9.35 PM.

1. Cash of Rs. 18400/- of which Rs. 9400/- was in an envelope, Rs. 5100/- from his brief case and Rs. 3900/- from his purse.
2. peter Scot Malt whisky 750 Ml (partially consumed).
3. Mc. Dowel Whisky 750 Ml.
4. (i) Coca Cola Company Cap (ii) Coca cola Company Wall Clock (iii) Six glass tumblers with Coca Cola monogram and (iv) Two T-Shirts with coca cola company monogram; and

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5. six packets of pickles

Sri Acharya voluntarily admitted before the independent witnesses and the CBI team members that he accepted the cash amount from the companies as mentioned below:-

- a) Rs. 500/- from M/s Sharn Products, D No. 18-153-8/A/2/b Banlaguda, Chandrayangutta, Hyderabad-500005.
- b) Rs. 500/- from M/s Vinkey Food Products, 11-4-685/5 Bazarghat Main Road, Lakadikapool, Hyderabad.
- c) Rs. 200/- from M/s SSK Food, 10-3-282/2/A/8/16/1M Bew BI 691, Humayun Nagar, Hyderabad.
- d) Rs. 500/- from M/s Tung Fong Chinese Food Products, 4210, Turga Ramjal, RR, Dist Office, 3-6-276/1, fun Chinese Hosue, Himayath nagar, Hyderabad.
- e) Rs. 500/- from M-s Safal Food Products, F-5, Road No. 4, Chandulal Baradari Industrial Estate, Hyderabad.
- f) Rs. 1000/- from M/s Exim Food Products No. 16-11-16/L/29 Teegalguda, Parshant Nagar, Moosaram Bagh, Hyderabad-36.
- g) Rs. 1000/- from Marvel Aqua Mineral Pvt. Ltd. Plot No. 174, IDA Mallapur Hyderabad-500076.

It was revealed during the surprise check proceedings drawn in the immediate presence of independent witnesses and CBI team that he had accepted money from the following firms as admitted by Sri Acharya, himself. The representative of the firms during enquiry have also accepted through thier signed statement, that they paid the amount to Sri Acharya on his demand as follows:-

- 1) Sri S.Shyam, Manager, SSK Foods, 10-3-282/2/A/16/1, new No. 691, Humayun Nagar, Hyderabad stated that he paid Rs. 200/- to Sri B.S.Acharya as demanded by Sri Acharya.

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2. Smt. P. Vedavati w/o Sri P.D.Rao 305/2RT, Vijaynagar Colony, Hyderabad 57, Proprietor of M/s Venkay food Products stated that she paid Rs. 500/- to Sri B.s.Acharya as demanded by Sri Acharya. She further added that it is a routine affair and whenever any officer from the said department visited the firm, they used to pay them on demand.

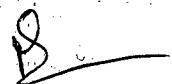
3. Sri VKV Prasad s/o Satyanarana r/o 16-11-16/2/79, Prasanth Nagar, Moosarambagh, Hyderabad of M/s Exim Food Products stated that he has paid Rs. 1000/- to Sri B.S. Acharya on a demand from his side and he further added that Sri Acharya was also instrumental in getting the FPO licence of the firm.

4. Sri M. Raghava Rao, r/o Apple House HNo. 1-9-1122/1/1 Opp. AMS Vidyanagar, Hyderabad of M/s Marvel Aqua Mineral Private Limited stated that he paid Rs. 1000/- to Sri B.S. Acharya as demanded by him.

Sri MVR Murthy R/o 6-3-188/9, New Bhoiguda, Secundarabad of M/s Sree Balaji Bottlers had accepted through his signed statement, that he paid Sri B.S. Acharya a sum of Rs. 800/- Even though Sri B.S. Acharya accepted during the Surprise check proceedings before the independent witnesses that he had accepted cash from the following firms, the following firms have denied before the investigating officer of having paid any amount to Sri B.S. Acharya.

- i) Md. Shabbir r/o 22-3-353 Mir Alam Mandi, Magarki Bowli, Hyderabad of M/s Sharan Products.
- ii) Sri M. Thirupathi r/o 3-6-276/277, Himayat Nagar, Hyderabad of M/s Tung Fond Chinese Products.

Sri B.S. Acharya also voluntarily admitted before the independent witnesses and CBI officials to have accepted gifts as mentioned below from the following firms/units during the course of his inspection of the firm/units:-



1. Peter Scot Malt Whisky M/s Priyadarshini food
750 ML (partially consumed) Products 2-131
Kompally, RR District.
2. Mc.Dowell Whisky 750 ML M/s Ess Vee Food Tech Pvt.Ltd.
1-2-43-2, Nizampur Road Hyderabad-72
Kukatpally.
3. (i) Coca Cola Company Cap M/s Hindustan Coca Cola
Beverages Pvt.Ltd.
Moulali, Hyderabad, Ammem/ir
(ii) Cocacola Company Wall Clock
(iii) Six glass tumblers of Coca Cola Monogram
(iv) Two T-shirts with Coca Cola Company monogram
4. Six Packets of pickles M/s Vaman Agro Food Pvt.
Ltd.IDA, Mallapur
Hyderabad.

During enquiry, the representatives of the above said firms were called and examined by the CBI. Examination of the representatives of the said company revealed as under:-

M/s Priyadarshini food Products: Although Sri B.s. Acharya admitted to have received Peter Scot Malt Whisky from Priyadarshini Food products but Sri Manish Kumar Awasti r/o Flat No. 404, Tan Man Apartment D.V. Colony Minster Road, Secundrabad denied to have given any such item to Sri B.S. Acharya.

M/s Ess Vee Food Tech Pvt. Ltd. Sri B.S. Acharya admitted to have received a Mc Dowells Whisky (750 ML) from M/s Ess Vee Food Tech Pct. Ltd. and Sri A. Govardhan Rao, MD of the firm also admitted that as per the request made by Sri B.s. Acharya, he had provided the same.

M/s Hindustan Coca Cola Beverages Pvt. Ltd. Moulali and Hidustan cocacola Beverages pvt. Ltd. Ammernpur:

Representatives of both the above mentioned firms have accepted to have given gift items to Sri B.S. Acharya. they have taken the plea that company's premia and memorabilia are given to visiting dignitaries and officials as compliments" Sri Acharya also admitted to have received the above said gift items.

M/s Vaman Agro Foods pvt. Ltd. During surprise check, Sri B.S. Acharya admittede to have accepted 6 packets of pickles from M/s Vaman Agro Foods pvt. Ltd. Sri MKD Prasad Managing Diretor of the firm has accepted in his written statement that he had given one pack of pickles (3 Kgs) containing six sachets of 500 Gms each .During examination of the owner of the firm, he stated that he had given the same as a complimentary gift.

Thus, while functioning as a public servant during the period from 19.9.2001 to 22.9.2001 Sri B.S. Acharya Junior Inspecting Officer, in the Office of Dy. Director, Fruit and Vegetables Processing (F&VP) Chennai abused his official position as a public servant by obtaining pecuniary advantage by way of demanding and acceping cash from various firms/units during his official tour to Hyderabad while carrying out his official inspections. He committed grave misconduct in that he demanded and accepted cash as illegal gratification from the firms/units and thus by the aforesaid acts, Sri B.s. Acharya exhibited lack of integrity and acted in a manner unbecoming of a public servant and thereby contravened rule 391) (i) and (iii) of the Central Civil Services (conduct) rules, 1964.

Further by demanding and accepting gift items as illegal gratification from the firms/units he inspected on official duty, the said Sri B.S. Acharya violated rule 3 of CCS (Conduct) rules, 1964.

9. Respondents have thus submitted that in view of the feed backs, appointment letter could not have been issued to such an individual who ~~was~~ ^{is having} ~~had~~ ^{had} alleged to be ~~a~~ ^{of} tainted character.

10. We have heard both the counsel and perused the pleadings as well. Admittedly on the date when applicant was called for interview before the UPSC, there was nothing against him as known to the applicant



but none the less when the results were declared, there was a report submitted by the CBI on check conducted on complaint made by the certain persons in which it was found that he had accepted various amounts from different firms and gift articles for which he could not account for. In the said report it was clearly mentioned that the check was conducted on the basis of reliable informations by the CBI in the immediate presence of two independent witnesses in the hotel room where the applicant had gone on temporary duty. It is correct that when the result were declared no departmental charge sheet was issued to the applicant as result was declared on 11.1.2003 whereas the charge sheet was issued on 17.2.2003 but none the less these facts were in the knowledge of the Department, definetly they will have to satisfy themselves as to whether such a person should be given a fresh appointment on a higher post with higher responsibility or not. The anxiety of the Deptt. is well founded because if a person on junior level can indulge in these activities he is likely to misuse the power on a higher post. In any case, respondents have till date neither refused nor passed the final order informing the applicant that he would not be given the appointment. As per the counter filed by the respondents, they have already referred the matter to the DOP&T and are awaiting the reply from the nodal ministry.

11. The grievance of the applicant that persons at S.No. 2 and 3 have been given appointment, cannot give him a right to claim appointment because those persons are not faced with this situation in which applicant is. Since applicant is alleged to be having a tainted character, court cannot give positive direction to the respondents to give him the Deptt. appointment straightway as it is the prorogative of

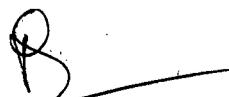


to satisfy themselves before issuing the appointment letter. Counsel for the applicant had relied on the judgements given by the Hon'ble Supreme Court in the case of K.V. Janki Raman. Case of K.V. Janki Raman was where the individual was considered in the DPC for promotion but his name was kept in the sealed cover which was challenged by the applicant on the ground that his case could not have been kept in the sealed cover as on the date when the DPC met there was neither any charge sheet issued to him departmentally nor in any criminal case. It was ⁱⁿ ~~not~~ that background that the Hon'ble Supreme Court held that the applicant ^{could} ~~have been~~ not put in the sealed cover as no departmental charge sheet were issued to him on the date when DPC met. K.V. Janki Raman's case was considered subsequently in the case of Union of India Vs. R.s. Sharma reported in 2000(4) SCC 394. wherein the Hon'ble Supreme Court held as under:-

"Admittedly the respondents has not been promoted even so far while formal sanction to prosecute him has been accorded meanwhile. Therefore, para 7 of the sealed cover procedure would entirely apply and the recommendations made by the DPC in respect of the respondents have to remain in the sealed cover until he is completely exonerated of the charges against him.

The respondent's arguments are wholly unconvincing. Firstly because what the Department did not do is not not the yardstick indicated in para 7 of the sealed cover procedure. What is mentioned therein is that it cannot apply to the governemnt servant who is not "actually promoted" by that time. Secondly the stand taken up by the Department is that in spite of delition of para 2(iv), the recommendations of the DPC must remain in the sealed cover on account of the conditions specified in para 2(iii) by virtue of oeration of para 7. One cannot say that the said stand was incorrect and, therefore, one cannot blame the Department for not opening the sealed cover immediately after 31.7.1991."

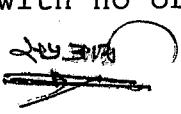
12. Therefore, the judgements of K.V. Janki Raman cannot give any benefit to the applicant as he appeared ⁱⁿ the direct recruitment quota for the post of SIO, where, as stated above, respondents have ^a ~~and~~ ^{eight} to satisfy themselves before issuing the



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offer of appointment. Whereas in the case of promotion it is a condition of the service that when other person who are junior to the employee concerned are being considered, he also has a right for the next promotion. Of course incase, there is some proceedings pending against him on account of misconduct, his promotion can be withheld till he is completely exonerated of all the charges against him. We are therefore of the opinion that the relief as claimed by the applicant in this case cannot be granted by the court. However, since respondents have themselves stated that the case of the applicant have been referred to the DOP&T, and ~~which~~ final reply has not yet been given either by the DOP&T or by the Department itself, we direct the respondents to apply their mind to all the facts and after taking the advise of the DOP&T, pass final orders in the case under intimation to the applicant within a period of 3 months from the date of receipt of copy of this order. It goes without saying that the order should be reasoned and detailed. Since respondents have yet to take a decision and ~~final~~ ^{the} final order, till time, such decision is taken, one post shall be kept vacant for the applicant as already directed.

13. With the above direction this O.A is disposed of with no order as to costs.


MEMBER (A)


MEMBER (J)

LUCKNOW:DATED:

HLS/-