

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 273 of 1996

Date of order 15-9-1998

Dr. S.P. Seth, son of Sri Piara Lal Seth resident of B3
(New) Electricity Board Colony, P.S. Shastrinagar, Patna-23.

... Applicant

-versus-

1. The Union of India, through the Secretary, Government of India, Department of Agriculture and Co-operation, Ministry of Agriculture, Krishi Bhawan, New Delhi-110 00
2. M/s NAFED, through its Managing Director, 1-Sidhartha Enclave, Near Ashram Chowk, Ring Road, New Delhi-110 014.
3. Sri B.M. Sareen, son of not known to the applicant, at present Chairman, NAFED, 1- Sidhartha Enclave, Near Ashram Chowk, Ring Road, New Delhi-110 014.
4. The General Manager, NAFED, 1, Sidhartha Enclave, Near Ashram Chowk, Ring Road, New Delhi-110 014.
5. Secretary, Department of Personnel & Administrative Reforms, Govt. of Bihar, Patna.

.. Respondents

CORAM

Hon'ble Mr. Justice V.N. Mehrotra, Vice-Chairman

Hon'ble Mr. L.R.K. Prasad, Member (A)

For the applicant

.. Applicant appeared in-person.

Counsel for respondents 2, 3 & 4.. Dr. Sadanand Jha
Shri S.K. Ghosh.

Counsel for Union of India .. Shri J.N. Pandey

Counsel for the State of Bihar.. Shri Brajesh Yadav.

O R D E R

Hon'ble Shri L.R.K. Prasad, Member (A):-

This application has been filed for issuance of direction to respondent no.2 to sanction earned leave to the applicant from 23.8.1994 to 22.10.1994 and to pay the arrears of salary for the said period as directed vide letter dated 22.2.1996 of Establishment Officer, Ministry of Personnel, Govt. of India, along with interest at the rate of 18% per annum, for quashing that part of letter No. HQ/FA/FIN/95-96/32990 by which the applicant has been asked to make payment of telephone bills for the period from 16th November, 1992 to 15th May, 1995, cost of certain books, etc. totalling to about Rs.22,184/- directing respondent no.2 to clear all the outstanding dues of the applicant relating to children education allowance, ex gratia payment for 1993-94, cash equivalent to the cost of gifts distributed to employees during annual general meeting of 1993-94, and 1994-95-directing the respondent no.2 to make payment of their part of licence fee for the Govt. accommodation beyond August, 1994 for eight months-restraining permanently the respondent no.3 from recording his comment in the ACR of the applicant for 1992-93, 1993-94, 1994-95 and the related matter.

2. The applicant is an IAS Officer of 1975 batch belonging to Bihar cadre. Vide order dated 28th July, 1989 (Annexure-I), he was posted by the Central Govt. as Additional Managing Director, National Agriculture Cooperative Marketing Federation of India (NAFED), Delhi. He assumed the charge of the aforesaid office on 23.8.1989. In June, 1992, one Shri B.M. Sareen (respondent no.3) became

Chairman of NAFED. The applicant has stated that he had no problem in NAFED before respondent no.3 joined as Chairman of NAFED. After his joining, the alleged harassment and problems started for the applicant due to his disagreement with the Chairman in the matter of appointment of certain persons, distribution of work, import of fertilizer and DAP, etc. as has been pointed out in detail in the D.A. The applicant has alleged that as he was not succumbing to the pressure of the respondent no.3 in various matters and activities of NAFED the Chairman became annoyed with him and started creating embarrassing situation for him. He has alleged that having failed completely in his endeavour to use the applicant to serve his vested interest, the respondent no.3 illegally and irregularly appointed one Mr. Mahajan on ad hoc basis as Additional Managing Director, to act as Managing Director of NAFED on ad hoc basis in utter violation of rules and regulations. When the applicant had joined NAFED on 23.8.1989, Shri Mahajan was functioning as Executive Director, a rank below the applicant. It is the claim of the applicant that as he was senior to Shri Mahajan, he should not have been made acting M.D. He has alleged that Shri Mahajan, an ad hoc Additional Managing Director started discharging duties of Managing Director on ad hoc basis at the behest of respondent no.3 within few days of his joining as Managing Director on ad hoc basis. He brought this fact to the notice of Establishment Officer (EO), Department of Personnel, GOI vide his representation dated 22.9.1993 (Annexure-III) which further annoyed respondent no.3. The foreign tour bill of the applicant was also not allowed to be settled. The extension of central deputation of the

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applicant beyond 31.5.1994 to 22.8.1994 in accordance with amended guidelines of GOI was not allowed due to intervention of respondent no.3. The NAFED violated the terms and conditions of his deputation to this Organisation by not paying him children education allowance, leave salary, non-sanctioning of leave due, etc. mainly because the respondent no.3 was annoyed with him. He has, therefore, alleged that while at the behest of respondent no.3, NAFED refused to allow genuine and lawful claims of the applicant, the ^{selected few} close to respondent no.3 were afforded most favourable treatment by NAFED at the behest of respondent no.3. The applicant submitted his representation dated 6.4.1995 (Annexure-V) addressed to GOI giving details of malfunctioning in NAFED and the discrimination being practised in NAFED as a matter of routine while dealing with individual officers, which has further hardened the vindictive attitude of respondent no.3 to the applicant. The applicant has further alleged that under the instruction of respondent no.3, NAFED has been sending letters to the applicant for recovery of telephone bills and recovery of about Rs.22,184/-. In view of the above facts, the applicant has prayed for following reliefs:-

- msd*
- (i) To direct respondent no.2 to sanction his learned leave from 23.8.1994 to 22.10.1994 and to pay the arrears of salary for the said period as directed in D.O.No.9989-EDPS dated 22.2.1996 issued by Establishment Officer, Ministry of Personnel, GOI, along with interest at the rate of 18 ~~per~~ cent per annum with effect from October, 1994.
 - (ii) To quash that part of the letter No.HO/FA/FIN/95-96/

32990 of respondent no.4 asking him to make payment for telephone bills for the period 16.11.1992 to 15.5.1994, cost of certain books, etc. amounting to Rs.22,184/-.

- (iii) To quash that part of letter No.HO/FA/15 (45 A)/95-96/33959 dated 18.3.1996 of respondent no.4 showing an amount of Rs.22,184/- as outstanding against the applicant as sundry advance and recoverable from him and vide which further a sum of Rs.17,490.66 has been shown as recoverable against the applicant.
- (iv) To direct the respondent no.2 to clear all outstanding dues of the applicant relating to children education allowance, ex gratia payment for 1993-94, together with interest at the rate of 18% , cash equivalent to cost of gifts distributed to employees on the occasion of annual general meeting during 1993-94 and 1994-95.
- (v) To direct the respondent no.3 to make payment of their part of licence fee for Govt. accommodation, the applicant was occupying beyond August,1994 for about 8 months.
- (iv) To restrain the respondent no.3 from recording his comments in the ACR of the applicant for the period 1992-93 (part), 1993-94 and 1994-95 (part) and to command the respondent no.1 and 5 not to view the non-recording of comments in the ACR of the applicant by respondent no.3 in any adverse manner and further direct respondent no.5 to have ACR of the applicant completed on the basis of ACR for five years preceding 1993-94.
- (v) To direct respondent no.1 and 2 not to interpret any

term and condition of deputation of the applicant to NAFED suo motu.

(viii) To direct the respondent concerned to pay the cost of this application to the applicant.

The grounds for claiming reliefs have been explained in para 5 of the O.A.

3. The respondents have filed their written statement. It has been stated by respondent no. 2, 3 and 4 that the applicant was sent to NAFED on deputation ^{as} per the terms and conditions of deputation settled between Govt. of India and the NAFED. The applicant worked on deputation with NAFED from 23.8.1989 to 22.8.1994 holding the post of Additional M.D. It has been stated that initially, the NAFED was registered as a Cooperative Society in Delhi under the provisions of Bombay Cooperative Societies Act, 1925. Subsequently, on the coming in force of the Delhi Cooperative Societies Act, 1972, it was deemed to be registered under that Act. With the enforcement of the Multi State Cooperative Societies Act, 1984 (MSGSA) NAFED was deemed to have been registered under the aforesaid Act. It was further stated that it has been held in a number of judgments including those of the Hon'ble Supreme Court that a Cooperative Society is not a State or Authority. The NAFED is not an instrumentality of the State. It is neither owned nor controlled either by the Union of India or the State Govt. It is a society owned by its members, who enroll themselves in accordance with the bye-laws of NAFED. At present the Govt. of India has not contributed to the share holding of the NAFED. The management and affairs of NAFED are controlled by its Board of Directors duly elected under the provisions of the Act and the bye-laws.

All the employees of NAFED are recruited and controlled by NAFED itself. The Govt. of India has no control over the administration and affairs of NAFED. It has also been stated that any employee coming on deputation to NAFED works exclusively as an employee of NAFED. This holds good even for those who have been deputed to NAFED by Central Govt. on deputation. An officer of All India Service loses his character as a member of All India Services while working on deputation with a Cooperative Society like NAFED.

According to bye-laws of NAFED, the Board of Directors is the supreme authority responsible for the management, administration, business and functioning of NAFED. The Board of Directors is elected in accordance with bye-laws of NAFED. Out of 44 Directors, only three are Govt. nominees. The management and affairs of the NAFED are controlled by its Board of Directors. It is neither owned nor controlled by GOI/State Govt. so as to ~~attract~~ the provisions of section 14 of the Administrative Tribunals Act, 1985, It has been pointed out that so far ^{as} respondents are concerned, there is no notification under section 14 (2) of the A.T. Act, 1985 by which the provision of section 14 (3) of the Act have been made applicable to NAFED. In absence of such notification, this Tribunal has no jurisdiction to entertain the present application. These respondents have also stated that the applicant has failed to exhaust the alternative remedy available to him under section 74 of MSCSA. They have also pointed out that GOI has not extended any financial assistance by way of loan/subsidies and donation to NAFED which is to run its business by raising finance through its own sources. These respondents have asserted that while working on deputation with NAFED, the applicant was

governed by Service Regulations of NAFED in terms of regulation 2(a) and 4(XV) of the Service Regulations applicable to the employees of NAFED. Therefore, if the applicant has any grievance with regard to entitlement of benefits available to him under Service Regulations, he is supposed to exhaust alternate remedy available to him under section 74 of MSCSA. In this regard the respondents have also cited sections 101 and 105 of MSCSA. While denying all the allegations levelled by the applicant against the respondents, they have stated that this Q.A. is bad on account of misjoinder of parties as the Chairman of NAFED is neither a necessary party nor a proper party in this case. According to bye-laws of NAFED, the Chairman presides over the meeting the the General Body, Board of Directors and other Committees for taking decision on the affairs of NAFED which are implemented by M.D. who is the Chief Executive of the Organisation.

While raising the preliminary objection about the jurisdiction of this Tribunal to consider this case and denying all the allegations levelled by the applicant, the respondents have further made following submissions in support of their contention that this Q.A. should be dismissed:-

- Mr. G.P.*
- (i) This application is totally misconceived, does not lie before the Tribunal on the ground of lack of jurisdiction as well as failure on the part of the applicant to exhaust alternative remedy available to him under law.
 - (ii) The applicant was working as one of the four Additional Managing Directors (AMD). They were reporting directly to M.D. The respondent no.3 never took any arbitrary decision in violation of

rules/regulations/statute as alleged by the applicant. There is no record to show that the posts were created in NAFED at the instance of Chairman for filling up those those posts by his favourite persons. Proper procedure for recruitment of the posts in question was followed by advertising the same in newspaper, screening the application, selection by interview, etc. The applicant brought about allegations against respondent no.3 with mala fide intention. Respondent no.3 never intended to appoint any particular person of his choice as Industrial Expert. The responsibility for taking various steps for creating and filling up any post in NAFED is that of M.D. The allegation that respondent no.3 succeeded through back-door method in appointing Shri Maheshwari as Consultant in NAFED was denied, as Shri Maheshwari was engaged as Consultant by the then M.D. as per rules of NAFED. The respondent no.3 never made any request to the applicant to allot or recommend any regular work to Shri Maheshwari.

(iii) The steps for advertising and filling up the post of Financial Controller of NAFED was initiated by M.D. and not by respondent no.3 by following the established procedure applicable to NAFED. The respondent no.3 did not have any role in filling up the post of Financial Controller.

note
(iv) The allegation of the applicant that respondent no.2 wanted to import huge quantity of fertilizer and DAP at the behest of respondent no.3 has been categorically denied. It has been stated that such decision for import was taken by the M.D. and not by respondent no.3.

- (v) Shri B.N. Narayanan, who retired as Chief Executive of IFFCO, was engaged as Consultant by the then M.D. in accordance with the prescribed rules of NAFED in this regard and not at the behest of respondent no.3. Regarding other points about appointment of certain personnel in NAFED as raised in the O.A, it was stated that these were all done in accordance with prescribed rules and regulations and not at the behest of respondent no.3. It was also denied that respondent no.3 became annoyed with the applicant because the applicant was not succumbing to his pressure in certain matters, as referred to in the O.A. The respondent no.3 had neither any grudge against or any hostile attitude towards the applicant.
- (vi) The applicant being on deputation to NAFED did not have any seniority in the cadre of AMD in NAFED and in that view of the matter had no legitimate claim for the post of M.D. While filling up the post of M.D. on ad hoc basis, name of the applicant was duly considered and rejected on certain grounds as mentioned as para XXXVIII of W.S.
- (vii) The applicant had refused to submit file/paper to Shri Mahajan, the then M.D and tried to deal directly with respondent no.3 which was against the provision, act and rules. This act of the applicant created serious administrative problems and hindrance to M.D. in discharging his responsibility.
- (viii) The allegation of the applicant that his bills were kept unsettled by the M.D. at the behest of respondent no.3


was categorically denied. The TA bills of officers deputed abroad are settled by the M.D. who is the competent authority and not the respondent no.3 as alleged by the applicant. The airport tax was credited to the travel advance account of the applicant on 31st July, 1994.

- (ix) In terms of Govt. of India's letter dated 28.7.1989 the period of deputation of the applicant with NAFED was upto 31.5.1994. The GOI vide letter dated 24.3.1994 extended his deputation period upto 22.8.1994. Since the extended period did not have approval of ACC, clarification was sought from the Department of Agriculture in the matter and on receipt of clarification from that Department, the deputation was extended upto 22.8.1994.
- (x) The final terms and conditions of deputation were received from Department of Agriculture and Cooperation, GOI vide their letter dated 15.1.1992 and the applicant preferred the children education allowance claim on 21.3.1994. Since the terms of deputation were silent in this regard, clarification was sought from the Department of Agriculture and Cooperation. According to the guidelines of DAC dated 2.8.1994 the claim of the applicant for the period prior to 1992, was returned to him requesting him to give justification/valid reasons for delay in preferring the claim regarding children education allowance, but there was no reply from the applicant.
- (xi) The applicant vide his application dated 6.7.1994 had requested for sanction of leave from 23.8.1994 to 22.10.1994 on expiry of his deputation period on 22.8.1994. The applicant was informed on

15.7.1994 that he should take the earned leave from his parent Department since his deputation period was over on 22.8.1994. His application for earned leave was sent to DAC for necessary action on 20.7.1994. Vide letter dated 29.7.1994 DAC recommended grant of leave to the applicant beyond the expiry of tenure of deputation along with payment of leave salary. On 24.8.1994 NAFED informed the applicant that his leave has not been sanctioned and he should apply for the same to his parent Department. Vide letter dated 13.9.1994 DAC again asked NAFED to give leave to the applicant along with leave salary and the amount settled in respect of leave salary with respondent no.5. Vide letter dated 30.9.1994 NAFED informed DAC that leave applied for by the applicant has not been approved by its Executive Committee and it was decided that the applicant should take leave from his parent Department. Thereafter nothing further was heard from DAC till 11.11.1994 when the NAFED was directed to forward the leave salary amount to the applicant. This was accordingly done by sending Demand Draft of Rs.24,976/- to the applicant on 6.12.1996.

- (xii) While an amount of Rs.24,693.60 including Rs.20,691/- on account of ex-gratia payment of 1993-94 was payable to the applicant in January, 1995, a total amount of Rs.42,184.26 was outstanding against the applicant for recovery/adjustment on account of T.A., excess telephone calls, entertainment expenses, etc. as detailed in NAFED's letter dated 26.2.1996. In spite of outstanding dues against the applicant, an amount of Rs.15,319.85 was made to the applicant after deducting T.D.S. of Rs.8276/-.

Vide office order dated 18.9.1991 a limit of 2200 calls per month on the residential telephone of officer of the level of AMD were prescribed. It was also provided subsequently that officers including AMDs shall maintain a statement of STD/ISD calls for their residential phones in the prescribed proforma and submit the same in case the calls are excess of prescribed monthly ceiling. It was observed from the bills for his residential telephone for the period 16.11.1992 to 15.5.1994 that excess call to the extent of 1730, 1142, 9802, 239 and 2771 were made by the applicant for the billing cycle dated 1.2.1992, 1.4.1993, 1.6.1993, 1.8.1993 and 1.4.1994 respectively. The applicant had been requested to make available the statement of STD/ISD calls maintained by him failing which the requisite amount shall be debited to his account for excess telephone calls. In reply, the applicant informed that there was no question of making any payment of excess telephone calls as the competent authority has already taken a view in the matter and had cleared the bills. So far AGM's gift is concerned, a set of BPL two-in-one was sent to the applicant but the applicant refused to accept the gift and the said gift is still lying with the Patna Branch of NAFED. For the year 1994, no gift is admissible to the applicant.

-  (xiii) Since the applicant was relieved after completion of his tenure of deputation of NAFED and in absence of any request from him, the facility of telephone


was not allowed. Respondent no.4 and not respondent no.3 is the competent authority in this regard.

- (xiv) While denying the allegation of the applicant that respondent no.3 had any vindictive attitude towards the applicant, it was submitted that NAFED had paid licence fee for the residential Govt. accommodation of the applicant till 31.8.1994 and the respondents had not received any application from the applicant for payment of licence fee beyond 31.8.1994.
- (xv) The respondents have also held the applicant responsible for non-submission of various bills as mentioned in the written statement.
- (xvi) Regarding writing of ACR of the applicant, it has been stated that DAC sent CR format for the year 1992-93 to the applicant for completion of Part II thereof and submit the same to the M.D. of NAFED as the Reporting Officer. the NAFED had also requested the applicant to process his CR for 1993-94 but the applicant failed to submit the relevant CR format after filling up Part II of the format.

In view of the above facts, the respondents have maintained that this O.A. is misconceived, untenable and liable to be dismissed.

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4. Through written statement submitted on behalf of respondent no.1, it has been stated that NAFED is a Mutli State Cooperative Society registered under MSCSS, 1984. The administration of NAFED including its business operation being administered under their bye-laws. General

Body of NAFED is supreme authority. The Board of Directors of NAFED administers the affairs of NAFED subject to powers of general body. NAFED is neither a public sector undertaking nor an organisation controlled or owned by the Government. It is neither a State nor an authority within the meaning of Article 12 of the Constitution of India and as such is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. It has been clarified that NAFED does not receive any financial assistance or subsidy from the Government. It runs its own business on commercial principles raising its own funds and obtaining loans from financial institutions. It is an independent body functioning according to its bye-laws. The Central Government or any State Government does not have any control over the administration and functioning of the NAFED. According to its bye-laws, the Board of Directors is the authority responsible for the management, administration, business and functioning of NAFED. Out of 44 Directors, only three are Government nominees. These Directors do not have any veto power. It has further been stated that this D.A. is not maintainable on the ground that the applicant has failed to exhaust alternate remedy available to him under Section 74 of MSCSA. This respondent has also submitted that this Tribunal does not have any jurisdiction to entertain the present application on the ground that the management and affairs of the NAFED are controlled by its Board of Directors duly elected under the provisions of bye-laws of NAFED which is neither owned nor controlled by Govt. of India so as to attract the provision of Section 14 of A.T. Act. The employees of NAFED are recruited and controlled by NAFED. If an employee comes on deputation to NAFED, he works as an



employee of NAFED during the period of deputation. If a member of All India Services is deputed to NAFED, he loses his character as member of All India Services during his deputation with NAFED. In terms of Government of India (Department of Personnel & Training) letter dated 27.10.1989, the period of deputation of the applicant with NAFED as M.D. was upto 31.5.1994 or until further orders whichever is earlier. This deputation period was extended upto 22.8.1994. The final terms and conditions of deputation of the applicant with NAFED were conveyed to them by respondent no.1 on 15.1.1992. In reply to a query made by NAFED regarding children education allowance, the DAC advised NAFED to settle the claim of the applicant as per existing rules and orders, a copy of which was forwarded to them.

The applicant had applied for grant of two months' leave from 23.8.1994 to 22.10.1994. The DAC vide its letter dated 29th July, 1994 and 13th September, 1994 (Annexures R-9 and R-10 respectively) had asked NAFED to grant the said earned leave to the applicant but the NAFED did not agree to this on the ground that the applicant should take leave from his parent Department. Subsequently, DAC vide letter dated 11.11.1996 (Annexure R-17) directed NAFED to sanction earned leave and pay leave salary for the period from 22.3.1994 to 20.10.1994 to the applicant. Regarding representation dated 6.4.1994 of the applicant making several allegations regarding functioning of NAFED, it was stated that the same was sent for enquiry and the report of the Enquiry Officer had been received which was under process. It has been further stated that statutory remedy for redressal of his grievances were available to the applicant under Section 74 of MSCSA. Regarding the prayer of the applicant that respondent no.3 should not be associated in the completion of ACRs of the applicant for the period January 1992 to August, 1994, it was

submitted that the DAC had sent CR format for the year 1992-93 to the applicant for completion of Part II of ACR and for their onward transmission to the M.D., NAFED as Reporting Officer. The applicant failed to inform NAFED about submission of his C.R. for 1992-93. For writing of C.R. for 1993-94 the applicant was requested by NAFED to furnish his C.R. for the same year duly completed but the applicant failed to submit the same to NAFED.

As per relevant rules, the Department of Agriculture and Cooperation being the administrative Ministry has prescribed (Annexure-R-23) following authorities for completion of CRS of applicant during the period of his service on deputation to NAFED from 23.8.1989 to 22.8.1994:-

Reporting Officer - M.D., NAFED (respondent no. 2)

Reviewing Officer - Chairman, NAFED (respondent no. 3)

Accepting authority - Additional Secretary, DAC
(respondent no. 1)

In view of the aforesaid, this respondent has maintained that the applicant is not entitled to any relief in this regard.

5. Through the rejoinder, the applicant has reiterated the points which he has made in the D.A. He has stated and contested the argument made on behalf of the respondents that NAFED is neither State nor any instrumentality of the State nor authority within the meaning of Article 12 of the Constitution of India nor a Society either owned or controlled by GOI or its authority. According to the applicant, NAFED is not an independent body. The respondent no. 1 controls the functioning of respondent no. 2 because of wide power available to respondent no. 2 under the relevant Act. The NAFED is completely dependent on Government for its existence. According to the applicant, the NAFED is

M. G. S.

fully controlled by Govt. of India not only for its commercial survival but also administratively and otherwise. The GOI has also the power to issue mandatory directions in public interest to NAFED under Section 47 of the applicable Act. Under the Act, the rules are also framed by GOI for NAFED. The recruitment, remuneration, allowances and other conditions of service of officers and other employees of NAFED are required to be made by GOI. In view of the fact that the NAFED is controlled by GOI, the jurisdiction of this Tribunal to consider the instant case is attracted.

He has asserted that while on deputation to NAFED, he was not governed by Service Regulations of NAFED. On the other hand, the cadre controlling authority in case of the applicant is Department of Personnel & Training, GOI. The terms and conditions of deputation of the applicant have also been determined by GOI. Therefore, no regulation of NAFED is applicable to the applicant unless it is in accordance with the terms and conditions of deputation of the applicant to NAFED as approved by GOI. While rebutting the various submissions ^{made} on behalf of the respondents, he has reiterated his claim regarding various matters, such as, sanction of leave and payment of leave salary, alleged illegal recovery of certain amount, writing of ACRs, use of staff car, TA bill, etc. as has already been stated in the O.A.

6. We have heard the applicant-in-person and the learned counsel for the respondents and have examined the materials on record. It is admitted fact that the applicant is an IAS officer of 1975 batch of Bihar cadre. He was posted by the Central Govt. as Additional Managing Director, NAFED, Delhi. He was on deputation to NAFED from

23.8.1989 to 22.8.1994. The terms and conditions for deputation of the applicant to NAFED was issued by DAC, GOI on 15.1.1992. On expiry of his deputation, he was reverted to the concerned Government. During his deputation period with NAFED, certain problems cropped up, which have already been mentioned by the applicant in his O.A. and rejoinder. As he was aggrieved by certain actions of NAFED, he filed this O.A. before this Tribunal and appeared-in-person at the time of hearing.

7. We would like to take up first the examination of the points raised by the applicant as well as the respondents regarding jurisdiction of this Tribunal to consider this case. The applicant has asserted that this Tribunal has jurisdiction to consider his case mainly on the ground that he is an IAS Officer and the NAFED is controlled by GOI. In this regard he has quoted the order dated 31st July, 1987 of the Principal Bench of CAT in the matter of Shri Ram Prakash vs. Secretary, Planning Commission, GOI (O.A. 284/96). On the other hand, the respondents have strongly contested the assertion of the applicant regarding jurisdiction of this Tribunal to adjudicate this case. According to the respondents, NAFED is a Cooperative Society registered under Multi State Cooperative Society Act, 1984. As far as NAFED is concerned, it is not an instrumentality of the State. It is also neither owned nor controller by GOI or State Government. It is a Society owned, by its members, who enroll themselves in accordance with the bye-laws of NAFED. The Govt. of India has neither contributed to the share-holding of NAFED nor has been giving any financial assistance. The management and affairs of NAFED are controlled by its Board of Directors duly elected under the provisions of relevant Act and bye-laws.

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All the employees of NAFED are recruited and controlled by NAFED itself. It has been asserted by the respondents that any employee, who comes on deputation to NAFED, works as its employee. If he has been deputed by GOI from All India Services, he loses his character as a member of All India Service while working on deputation with NAFED. It was further asserted that jurisdiction of this Tribunal is not attracted on the ground that no notification, as required, has been issued by GOI under section 14(2) of the Administrative Tribunals Act, 1985. Therefore, in absence of such a notification, prima facie this Tribunal has no jurisdiction to entertain the instant application. In support of aforesaid argument, the learned counsel for the respondents referred to judgments of some Courts, the judgment reported in AIR 1981 SC page 1395, AIR 1981 SC 487, 1985 PLJR page 1078, ~~etc.~~

8. Section 14 of the Administrative Tribunals Act, 1985, relates to jurisdiction, powers and authority of the Central Administrative Tribunal^(CAT). It provides that CAT shall exercise on and from appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts except the Supreme Court in relation to-

- Mr. G. S. Rao*
- "(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
 - (b) all service matters concerning-
 - (i) a member of any All India Service; or
 - (ii) a person~~X~~ not being a member of an All India Service or a person referred to in clause(c)~~X~~ appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian~~X~~ not being a member of an All India Service or a person referred to in clause(c)~~X~~ appointed to any defence services or a post connected with defence;

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation } or society} owned or controlled by the Government;

- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation } or society} or other body, at the disposal of the Central Government for such appointment.

{ Explanation.-For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory. }

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations } or societies} owned or controlled by Government, not being a local or other authority or corporation } or society} controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations } or societies}.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation } or societies} all the

jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court) in relation to-

- (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation) or society); and
- (b) all service matters concerning a person X other than a person referred to in clause (a) or clause (b) of sub-section (1) X appointed to any service or post in connection with the affairs of such local or other authority or corporation X or society) and pertaining to the service of such person in connection with such affairs."

In accordance with above provision, the Central Govt. has specified the names of certain corporations/ societies, etc. which have been brought under sub-section(3) of section 14 of the aforesaid Act. We do not find any such notification issued by the Central Government in respect of NAFED. Therefore, it becomes clear that NAFED has not been notified as a Society or Agency which has been brought under sub-section(3) of section 14 of the said Act.

9. It has been clearly stated by the learned counsel for respondent no.1 that no notification has been issued by Govt. of India in terms of sub-section (2) of section 14 of the aforesaid Act with respect to NAFED.

The order/observation of the Hon'ble Supreme Court in the matter of S.S.Dhanoa vs. Municipal Corporation Delhi and others decided on 8.5.1981 (reported in AIR 1981 SC page 1395) are as follows:-

- (i) The Super Bazar at Connaught Place together with its 12 branches in Delhi is not an

instrumentality of the State. In a welfare State like ours, there is greater participation by Government in various commercial activities. Sometimes the Government directly engages itself in such commercial activities by acquiring a monopoly in trade in the public interest. Or, it may, by an Act of Legislature, establish statutory corporations like the State Trading Corporation, Life Insurance Corporation of India, the Industrial Finance Corporation, the Oil and Natural Gas Commission, etc. or it may set up Government companies under S.617 of the Companies Act, 1956 like the Hindustan Steel Limited etc. By no stretch of imagination, could it be said that the appellant was employed in connection with the affairs of the Union within the meaning of S.197 of the Code of Criminal Procedure, 1973. The Super Bazars are not owned by the Central Government. They are owned and managed by the Co-operative Store Limited.

(ii) Legally speaking, the Super Bazars are owned and managed by the Society and not by the Central Government and, therefore, the appellant was not employed in connection with the affairs of the Union within the meaning of S.197 of the Code of Criminal Procedure, 1973.

M. S. S.
10. Even though the Government of India has authority to nominate three persons on the Board of Directors of NAFED and power to issue appropriate direction in terms of Section 47 of the MSCSA, one thing is clear that NAFED is an institution which is neither controlled nor owned by the Central Government nor it is an instrumentality or agency under Article 12 of the Constitution of India. The NAFED manages its own affairs through its General Body,

the Board of Directors, its officers, etc. From time to time officers are posted to NAFED on deputation by Central Government. Even if it is presumed that some amount of control is exercised by the Central Government in terms of appointment of three nominees on the Board of Directors of NAFED, ^{and it} has the authority to issue certain directions and send officers on deputation to NAFED, as stated above, the said institution has not been notified under sub-section (2) of section 14 of the aforesaid Act by Govt. of India. The applicant though on deputation to NAFED, was not employed in connection with the affairs of the Government. On the other hand, during his period of deputation, he was discharging the functions connected with NAFED, which is a national level Cooperative Society, managing its own affairs.

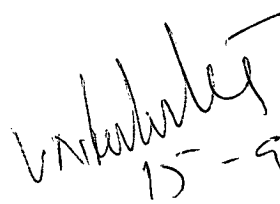
In view of the facts and circumstances ^{mentioned above} we are of the view that the jurisdiction of this Tribunal is not attracted as the grievances of the applicant is mostly against NAFED. ^{However,} he is at liberty to agitate the matter before appropriate legal forum, if so advised.

11. In view of the above ^{on jurisdiction} finding we are not going into the merit of the case. However, we would like to make an observation that this Tribunal has jurisdiction over Govt. of India and an IAS officer in terms of section 14 of the Administrative Tribunals Act, 1985. The applicant, an IAS officer of 1975 batch, belonging to Bihar cadre was sent on deputation to NAFED by GOI on certain terms and conditions (Annexure-R-4). We do not agree with the submissions of the respondents that an IAS officer loses his character as a member of All India

Services, while working on deputation with Cooperative Society. Even though, this Tribunal has no jurisdiction over the activities/affair of NAFED, we would like to make it clear that an IAS officer remains an IAS officer from the date of his recruitment to the service, to the date of his superannuation. If he is posted, like the applicant on deputation to an institution such as NAFED, his terms and conditions of deputation are determined by the Central Government. In the instant case, the applicant was posted on deputation to NAFED by Central Govt. as Additional Managing Director of NAFED vide its office order dated 28th July, 1989 (Annexure-1). The terms and conditions of the applicant were also determined by the Central Government. The administrative Ministry concerned for NAFED is Department of Agriculture and Cooperation, GOI (respondent no.1). It is the duty of the lending authority to look into the genuine grievances of an officer sent by it on deputation to an institution like NAFED for their settlement as soon as possible, on expiry of his tenure of deputation with such institution in terms of the approved terms and conditions, if necessary by issuing appropriate direction in accordance with law.

12. As stated above, we have considered the entire matter keeping in view the materials on record and submissions made by the parties. We have already given our findings in the preceding paragraphs. This O.A. is disposed of in terms of these findings as stated above. There shall be no order as to the costs.


(L.R.K. Prasad)
Member (A)


15-9-98
(V.N. Mehrotra)
Vice-Chairman