

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 440 of 2000.

Dated this Thursday, the 30th day of November, 2000.

CORAM : Hon'ble Shri B.S.Jai Parameshwar, Member (J).

Hon'ble Smt. Shanta Shastry, Member (A).

Dr. Prem Kumar Jaiswal,
Director of Laboratories,
Central Agmark Laboratory,
North Ambazhari Road,
Nagpur - 440 001.

...

Applicant.

(By Advocate Shri K. Sivramakrishnan)

VERSUS

1. Union of India through
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi - 110 011.
2. Secretary to the Government
Of India,
Ministry of Agriculture,
Department of Agriculture
& Co.operation, Krishna Bhavan,
New Delhi - 110 001.
3. Chief Secretary to the
Government of the National
Capital Territory of Delhi,
5, Shamnath Marg,
Delhi - 110 054.
4. Central Vigilance Commission
through its Secretary,
Satarkata Bhavan, Block 'A',
G.P.O. Complex,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri V.G. Rege for
Respondent No. 1 and Shri V. S. Masurkar
for Respondent Nos. 2 and 4).

JG

... 2

OPEN COURT ORDER

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard the Learned Counsel, Shri K. Sivramakrishnan for the applicant, Shri V. G. Rege for Respondent No. 1, Shri V.S. Masurkar for Respondent Nos. 2 and 4. Notice^{is} served on Respondent No. 3. Called. Absent.

2. While the applicant was working as Assistant Director of Laboratories under Respondent No. 2, he offered his candidature for the post of Director, Food Research and Standardization Laboratory, (F.R.S.L. in short) , Ghaziabad, notified by the Union Public Service Commission.

3. The U.P.S.C. vide its letter dated 07.07.1997 informed the applicant that it has recommended his name for the said post. A copy of the said letter is at Exhibit A-4, page 28 to the Q.A. Para 2 of the said letter reads as follows :

"I am, however, to make it clear that the offer of appointment will be made to you only after the Government have satisfied themselves after such enquiry as may be considered necessary that you are suitable in all respects for appointment to the above post and that you are in good mental and bodily health and free from any physical defects likely to interfere with the discharge of your duties. The offer of appointment will also be subject to such conditions as are applicable to all such appointments under the Central Government."

4. As there was delay in offering appointment to the applicant for the said post, the applicant earlier approached this Tribunal in O.A. No. 242/99. The said O.A. was decided on 07.03.2000 observing as follows :

"9. In the result, the application is disposed of at the admission stage by giving direction to Competent Authority to apply its mind after getting necessary particulars from Ministry of Agriculture and/or Delhi



Administration and then pass a speaking order about giving appointment order to the applicant and whether he is suitable for appointment to the post in question or not. The post in question should not be filled up till such order is passed by Competent Authority."

5. Accordingly, the Respondent No. 1 informed the applicant by the impugned letter dated 07.06.2000 (Exhibit A-1, page 23 to the O.A.). Paras 4 and 5 of the said letter are produced below :

"4. Accordingly, the matter was taken up with the Ministry of Agriculture, Deptt. of Agriculture and Cooperation and Govt. of NCT of Delhi to furnish necessary relevant documents relating to the past record of the candidate, together with other relevant information, for enabling the Deptt. of Health to take a view on the suitability or otherwise of Dr. Jaiswal for appointment to the post of Director, FRSL, Ghaziabad. The Deptt. of Agriculture and Cooperation informed the Department of Health that Dr. Jaiswal was on probation since 14.06.1991, as the probation could not be lifted pending decision of the Delhi Administration in respect of the complaint pending against him. The Deptt. of Agriculture and Cooperation further stated that, as on date, vigilance clearance in respect of Dr. Jaiswal was not available as disciplinary proceedings are contemplated against him, as a result of investigation by the Anti-Corruption Bureau on the complaints pertaining to the period of his service in the Delhi Administration. The Govt. of NCT of Delhi has also informed the Deptt. of Health, inter-alia, that the then Chief Secretary, after weighing all the relevant facts and circumstances of the case, had rejected the representation of Dr. Jaiswal to close his case and desired that Govt. of India be informed to initiate major penalty proceedings against Dr. Jaiswal.

5. The Competent Authority has considered the entire matter relating to appointment of the applicant to the post of Director, FRSL, Ghaziabad, in pursuance to the direction given by the Hon'ble CAT, Mumbai Bench in O.A.No. 242/99 and taking into consideration the facts and circumstances mentioned above. The Govt. of India consider the post of Director, FRSL to be a critically sensitive one involving discharge of statutory responsibilities relating to assessment of the quality of the food products including providing technical advice to the judicial system in matters covered by the PFA products from food safety and public health point of view. It is, therefore, critical that the incumbent to this sensitive post has a record of integrity and credentials that inspire credibility. The allegations against the applicant in the matter pending before the Govt. of NCT of Delhi have a direct co-relation to the nature of the work that he will be called upon to supervise and discharge as Director of the Central Food Laboratory, which is the final appellate authority under the PFA Act, 1954. Therefore, based on the information available, the Competent Authority has come to the

... 4



conclusion that the applicant is not suitable for being appointed to the post of Director, FRSL. Ghaziabad and is accordingly unable to accept the recommendation of the U.P.S.C. for his appointment to the post in public interest."

6. The applicant has filed this application challenging the said letter dated 07.06.2000 and also certain action on the part of Respondent No. 2. The reliefs claimed by the applicant are as follows :

"8(a) This Hon'ble Tribunal be pleased to call for the record underlying the impugned order of 07.06.2000 and all record relating to and connected with passing of the impugned order and after examining the legality, propriety and constitutionality of the decision be pleased to quash and set aside the same. Respondent 1 may be directed to issue orders forthwith appointing the applicant as Director FRSL and to allow him seniority in that post from 7.9.1997 when he was recommended for that post.

(b) This Hon'ble Tribunal be pleased to call for the record with Respondent 2 regarding the Applicant's appointment and probation and his record of service from 1991 to date and after examining the legality, propriety and constitutionality of the decision of Respondent 2 to inform Respondent 1 that Applicant's probation has not been lifted be pleased to quash and set aside the same and declare that the Applicant had duly completed his probation satisfactorily in 1992.

(c) This Hon'ble Tribunal be pleased to call for the record underlying the enquiry held into the complaint against the Applicant and others from Respondent 3 alongwith the record of Respondent 4 relating to this enquiry and in particular that regarding the dropping of charges against Shri P.N. Gupta and after examining the same declare that the action of Respondent 4 in dropping the case against Shri Gupta and Shri Nikam while failing to do so against the Applicant is arbitrary discriminatory and without application of mind and is violative of Applicants right under Article 14 and 16 of the Constitution. Respondents may be prohibited from initiating any enquiry based on the complaint of 1989.

(d) This Hon'ble Tribunal be pleased to declare that the holding of an enquiry after 10 years is not justified as it will seriously prejudice the Applicant. It may also be declared that there is no material to hold an enquiry against the Applicant in the context of the actions taken by him. It may be declared that continuing the action against him after dropping of cases against the other officers especially Shri P.N. Gupta is arbitrary and discriminatory and reveals non-application of mind to relevant facts."



7. Respondent No. 1 has filed a reply stating that it has the absolute discretion to call for any past record of service of the applicant including vigilance clearance, in order to satisfy itself that the applicant recommended by the U.P.S.C. is fit and suitable in all respects for appointment to a senior level post involving sensitive nature of duties under the Central Government. The applicant has no absolute right to demand appointment to a senior Group 'A' post under the Central Government merely by virtue of his selection through the recruiting agency-U.P.S.C., since before making appointment, the Central Government has the necessary discretion and powers to satisfy about the suitability of the person for such appointment. Further, it justified the calling for vigilance clearance as regards the applicant. It has denied any allusion that the post of Director, FRSL, Ghaziabad, has not been filled regularly in order to allow ^{like} departmental candidates to enjoy the same in total violation of the rules. The applicant is not entitled to the post as his name has been cancelled and U.P.S.C. has been asked to re-advertise this post for being filled up on direct recruitment.

8. Respondent No. 2 has also filed reply denying the various allegations made by the applicant against Respondent No. 2. However, during the course of arguments, the Learned Counsel for Respondent No. 2 produced the letter dated 08.11.2000 issued by the Deputy Secretary of Respondent No. 2 to contend that so far as the D.M.I. is concerned, it has been decided not to initiate disciplinary proceedings against the applicant. Further a letter dated 10.10.2000 issued by the Department of Agriculture and Cooperation is also produced to contend that the matter has been



examined in detail in consultation with the Central Vigilance Commission and having taken all aspects of the case into consideration, the Commission have advised the closure of the case against Dr. Jaiswal (the applicant). By producing these two letters, the Learned Counsel for Respondent No. 2 submitted that the reliefs claimed by the Applicant at para 8(b), (c) and (d) do not remain for consideration.

9. The Learned Counsel for the applicant, during the course of his arguments, submitted that the impugned letter has been issued by an incompetent authority. That the Respondent No. 2 has not taken any action even though complaints were made in the year 1991 or 1989 ^{and that} there was no reason for the Respondent No. 1 to withhold the offer of appointment. That when the U.P.S.C. has recommended his case, they should have honoured the recommendation. In support of his contention, he relied upon the decision of the Principal Bench of this Tribunal in Dr. C.M. Jain V/s. Union of India & Another reported in 1991 (17) ATC 503 to contend that currency of departmental enquiry is not a bar against appointment on direct recruitment basis and withholding of appointment in such case amounts to double penalty. He relied upon the decision of the Hon'ble Supreme Court in the case of State of Gujarat V/s. C. Bhargav & Others (Civil Appeal No. 1273 of 1979 decided on 26.08.1987) and in the case of Income Tax Appellate Tribunal V/s. V. K. Agarwal & Another reported in 1999 (1) SCC 16. He submitted that the Respondent No. 1 need not have made enquiries with the Respondent No. 2 to withhold the offer of appointment. The applicant has made certain allegations against Respondent No. 1 for keeping the post vacant and allowing the department officials to enjoy the benefits of the post. Those allegations are not necessary to be referred.



10. The Learned Counsel for Respondent No. 1 submitted that the application is not maintainable in the manner as it is brought. That it contains multiple inconsequential reliefs. While seeking letter of appointment from the Respondent No. 1, the applicant cannot claim any reliefs against the Respondent No. 2. That the impugned letter has been issued after considering all the pro~~ng~~ and cons and also taking into consideration the suitability or otherwise of the applicant for the post. Further, he submitted that there are no justifiable reasons to interfere with the impugned letter dated 7.06.2000.

11. The point now arises for our consideration is, whether the impugned letter dated 07.06.2000 issued by the Respondent No. 1 requires to be interfered with or not ?

12. The U.P.S.C. recommended the name of the applicant for the post of Director, F.R.S.L., Ghaziabad. In that letter they have stated that this recommendation is subject to the satisfaction of the Government of India and suitability of the applicant and also to ascertain suitability or otherwise of the applicant, the Government of India was at liberty to conduct any enquiry. When that is so, we do not find any justification to hold that the Respondent No. 1 made enquiries to deny the appointment to the applicant.

13. It is submitted that the applicant has not completed his probation in the present assignment. His performance in the present assignment may be a factor which favoured with the Respondent No. 1 to issue the impugned letter. As already




observed, the Government of India is the competent authority to ascertain the suitability or otherwise of the applicant for the post of Director, F.R.S.L. In fact, as per the directions given in the O.A. No. 242/99, the Respondent No. 1 has contacted the Respondent No. 2 and formed an opinion that he is not suitable for the post. When the competent authority has taken such a decision, we feel that this Tribunal cannot interfere with the decision taken by the authorities.

14. It is now stated by the Respondent No. 2 that they are not willing to proceed against the applicant departmentally. They have produced the letters dated 08.11.2000 and 10.10.2000. These letters have come into existence after filing the O.A. It is between the applicant and the respondent no. 2.

We find no merits in this O.A. and the O.A. is liable to be dismissed. The interim order passed in the O.A. shall stand vacated.

15. Accordingly, the O.A. is dismissed at the admission stage itself. No order as to costs.


(Smt. SHANTA SHASTRY)
MEMBER (A).


30.11.2000
(B.S. JAI PARAMESHWAR)
MEMBER (J).