

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

Transfer Application No.1/2003
(In W.P. No. 5093 of 1997)

Jabalpur, this the 4th day of December, 2003

Hon'ble Shri M. P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Prof. J.N. Poddar, aged about 51 years,
s/o Late Shri B.N. Poddar
r/o 12, I.I.F.M. Residential
Complex, Kotra Sultanabad
Bhopal (MP). ... Applicant

(By Advocate: Sh. Ajay Gupta)

Versus

1. The Indian Institute of Forest Management Society (A Society registered under the M.F. Societies Registration Act, 1956, through its Member Secretary Indian Institute of Forest Management, Nehru Nagar Bhopal (MP)).
2. The Chairman Board of Governors Indian Institute of Forest Management, Nehru Nagar Bhopal (MP).
3. Indian Institute of Forest Management, through Director Nehru Nagar, Bhopal (MP).
4. Director Indian Institute of Forest Management, Nehru Nagar Bhopal (MP).
5. Mr. Vinod Vaish, aged about 55 years, Additional Secretary Ministry of Environment & Forest Government of India r/o D1/35 - Satya Marg Chanakyapuri, New Delhi. ... Respondents

(By Advocate: Sh. R.S. Yadav, proxy of Sh. S.Yadav)

O R D E R (oral)

By G. Shanthappa, Judicial Member -

The above original Application is filed for relief seeking the (i) to declare the action of the respondents as null and void as it suffers from the vice of malafide and victimisation and is without authority and necessity and is bad in law. It is further prayed (ii) to declare the proceedings initiated against the

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applicant as illegal as they are in contravention with the faculty service bye laws of the Institute and without proper application of mind, (iii) to issue a writ in the nature of certiorari or any other writ order or direction thereby quashing the order of suspension (Annexure P-15) and the departmental proceedings initiated against the applicant as illegal, null and void, and (iv) to award compensation for the harassment and victimisation being caused to the applicant by the illegal action of the respondents.

2. The case of the applicant is that he joined the respondents office in the year 1986 as an Associate Professor, in the faculty of Financial Management, Accounting and Control. Since the post of Professor was not being filled at that time, the applicant got an opportunity for being considered for professorship later as he was initially called for interview for the post of Professor FMAC. The service condition of the faculty members of the Institute are governed by the Faculty service Bye-laws, 1988 (Annexure P-3). The service bye laws provided for internal promotion and accordingly the applicant should have been considered for the post of Professor in the year 1991 itself, but it did not so happen, despite several representation, which will be termed as an administrative lapse. The applicant is serving under the respondents with dedication, commitment and is concerned about the betterment and well being of the Institute. During his working tenure in the Institute, specifically when there was no regular Director, the applicant always felt concerned about the Institute and desired it to acquire international acceptance, wrote various letters to the President, the Chairman and the Director of the

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Institute, concerning the areas where he thought some improvement could be initiated. The applicant was encouraged for making such suggestions by the Minister of Environment and Forest, Government of India who happens to be an Ex-Officio President of IIFM Society.

3. The matters in the Institute were going smoothly till the process of recruitment of regular Director was activated. It was in April 1997 when the annual increment of the applicant was released, car loan was sanctioned and immediately before that many prestigious assignments were given to the petitioner and also his nomination was made on the India International Centre, a special privilege, enjoyed by the Vice Chairman, Board of Governors only. The problem really started with the advertisement which was released in January, 1997 for recruitment to the post of Director, which virtually debarred all faculty members from the zone of consideration against the provisions of Memorandum of Association of IIFM Society in an illogical manner. The applicant though applied for the post of Director but protested to the qualifications and inherent contradictions in the advertisement. A copy of the advertisement is/Annexure ^{at} P-14, dated 13.01.1997. The then Director in current charge of the Institute, Mr. Vinod Vaish, respondent No. 5 issued a circular clarifying that the qualifications laid in the advertisement would not apply to the faculty members, but contrary to this, he invited junior faculty members for interview and did not invite the applicant and other senior faculty members. The applicant therefore objected to this manner of conducting interview wherein rules were not strictly adhered to, as junior members of the faculty were called for interview and the same opportunity was denied to the senior members like

the applicant. The objections were written to the President of the Society and Chairman of Board of Governors, vide Annexure P-15.

4. The entire selection process of the regular Director was being managed by the respondent No. 5. Because of pointing out of anomalies in the process of raising objections by the applicant against the respondent No. 5, some explanations were called by the President from the respondent No. 5 on the points raised by the applicant. The respondent No. 5 got annoyed beyond proportion and in order to teach lesson and also to silent the applicant, issued an order of suspension dated 10.05.1997 without assigning any reason and merely mentioning that some disciplinary proceedings were contemplated, vide Annexure P-16.

5. The applicant had challenged the order of this suspension on the ground that the respondent No. 5 has issued the order of suspension with malice. Hence it is not acceptable in the eye of law. The said order of suspension has been issued under Rule "a" of Rule 21 of the Faculty Service Bye Laws, 1988 (unamended) read with Sub Rule (1) of Rule 10 of the CCS (CCA) Rules, 1965. The said order of suspension gets strength from the fact that the important jobs like negotiating collaboration with foreign institutions, preparation of IXth 5 year Plan for the institute, inducting SAARC student to the institute, and establishing bilateral cooperation with states would not have been given to the applicant had there been any contemplation of initiating disciplinary proceedings against the applicant.

6. The suspension order was issued as an act of

victimisation and the hot haste with which it was issued clearly demonstrates the malafide intention and the i.e. respondent No. 5 biased attitude of the then Director in current charge/^{up} against the applicant. The malafides are clear from the fact that when the regular Director was selected on 8th May, 1997 and duly approved by the Board of Governors on 9th May, 1997, there was no occasion for the then Director in current charge to have taken such an important decision like suspending the petitioner, a permanent senior faculty on 10.05.1997.

7. The applicant pointed out the illegalities committed by the respondent No. 5 vide his representation dated 28.05.1997 and 21.08.1997, on the basis the order of suspension was issued.

8. Subsequently after 52 days a charge sheet was issued under Clause 18 of the Faculty Services Bye-laws, 1988 (as amended on 09.05.1997) read with Rule 14 of CCS (CCA) Rules, 1965, alleging 9 charges of trifles and baseless nature. All the charges levelled against the applicant was baseless, bias and malafide in nature. The said charges were issued only on the ground that the applicant should not participate in the said selection process under the notification above referred.

9. A departmental enquiry has been ordered by the respondents without even considering the reply submitted by the applicant in its true spirit. The biased man Shri A.H. Mooavi, Retd. FCCF (Member BOG) has been appointed as one man Enquiry Committee. The applicant submitted an objection to the appointment of Shri A.H. Mooavi as Enquiry Officer for the reason of bias against the applicant. The representation dated 03.11.1997 is

produced as Annexure P-22.

10. The provisions of faculty service Bye-Laws have been amended in undue haste without consultation/ discussion with the concerned parties. It is full of lacuna and hence not valid. It cannot be legally enforced for the reason that the same is yet to be approved by the Registrar of Societies. The representation in this respect by the applicant has not been disposed of so far. The amendment of the Faculty Service Bye-Laws, 1988 was done in the Board of Governors meeting dated 09.05.1997 i.e. prior to the issuance of the suspension order, but to the best knowledge of the applicant the amended service Bye-Laws are not yet approved by the Registrar of the Society as required by law for making them implementable. Therefore any action taken under the amended provisions of the Faculty Service Bye-Laws is illegal and void ab initio.

11. The applicant submitted his objections dated 17.11.1997 (Annexure P-26) regarding issuance of the suspension order, charge sheet and initiating disciplinary proceedings against the petitioner on the ground that they are not in consonance with the provisions of service bye-laws, 1988 under which the suspension order was issued, but no heed has been paid till date. The applicant submitted that the dates of correspondence regarding call for the notification Annexure P-14 dated 13.01.1997, the objections submitted by the applicant vide Annexure P-15 dated 01.05.1997, 22.04.1997 and 11.12.1996, and the order of suspension dated 10.05.1997 clearly shows that there was a malafide and bias attitude against the applicant by the respondent No. 5, who has

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an issued ~~the~~ ^{an} order of suspension vide Annexure P-16.

Though the respondent No. 5 has powers under the un-amended provisions, but subsequently on 20.06.1997 the rule was amended. The charge was made on 26.06.1997 vide Annexure P-20 and the said correspondence and the action of the respondent No. 5 clearly shows that the order of suspension and also ^{for} ~~the~~ implementation of the charges ^{which} ~~gr.~~ levelled against the applicant/are biased and malafide ^{gr.} in nature. Hence the charges framed against the applicant are not sustainable in the eye of law and the same are liable to be quashed.

12. Per contra the respondents Nos. 1 to 4 have filed their objections/reply denying the allegations and averments made in the Application. There was no bias or any kind of illegality while issuing the orders of the suspension. The respondent No. 5 has got powers under the rules to issue the order of suspension. The respondents have supported their action by submitting the reply and also the necessary documents vide Annexure R-1 to Annexure R-7. The respondent No. 5 has been impleaded in his personal capacity as malafides were urged against him.

13. The order of suspension and also the departmental enquiry initiated against the applicant are subject to prove. The applicant can prove his case before the enquiry officer and he can defend himself under the respondents in accordance with the law. The averments of the applicant being devoid of substance cannot withstand ^{under} ~~the~~ judicial scrutiny of this Tribunal and as such the application is liable to be dismissed. The official respondents have also supported the action of the Respondent No. 5. The order of suspension is supported

is supported by certain documents. Hence this Tribunal should not interfere in respect of the order of suspension and accordingly the application is liable to be dismissed.

14. After filing the reply the applicant has submitted his rejoinder and submitted certain other documents to consider his case. In the rejoinder the applicant repeated the earlier facts mentioned in the application. His submission in the rejoinder to the articles of charge is extracted below :

"The Faculty Service Bye-Laws framed by the respondent Institute do not have force of law and petitioner is not entitled to assert his claims on the basis of unamended Service Bye-Laws.

The question is that, if the service bye-laws do not have force of law (amended or unamended) and the petitioner cannot make claims on the basis of this law, how can the respondents proceed to conduct enquiry on its basis by surreptitiously amending it on the back date after suspension order dated 10.05.97 having been issued, based on the unamended bye-law. And for this reason also the enquiry proceedings need to be scrapped.

11.3 That, the enquiry instituted against the petitioner to somehow justify the earlier action of suspension, is a motivated action & done in a planned manner, which can be born by the fact that inspite of BOG meeting on 9th May 1997 (the day on which they claim to have amended the Bye Laws), the suspension order issued on the very next day, i.e. 10th May 1997 (a holiday), is based upon subrule (a) of rule 21 of the unamended Faculty Service Bye-Laws, 1988. This cannot be termed as a clerical error also, as the chairman BOG being on leave, director himself was managing the whole affair. The amendment to the Faculty Service Bye law, was not included in the agenda of the BOG meeting circulated, to the best of the information of the petitioner. It is only when the respondents realised later-on, that it would be difficult to sustain their action, as they may not be able to influence the three member committee (one of them being a faculty member) and obtain their choice-report from it, that they decided to change the FSBL itself, with a back-date and instituted enquiry under clause 18 of this changed FSBL which they claim to have amended on 9th May 1997. This amendment was circulated

to the faculty members much later, on 1st July 1997 and as they were in hot-haste to justify their action, they committed further mistakes, while making correction by overwriting dates thereon. The whole amendment was ironically made in respect of disciplinary proceedings and promotion aspect only, which directly affected the petitioner & the present case. Had there been a genuine amendment, a comprehensive view would have been taken & broad-based amendment made, in consultation with the Academic Council & the faculty members by a regular director. Rushing through this ad-hoc approach by a part-time director in current charge, who was to be replaced by a regular director very shortly, as the regular director was already selected on 8th May 1997 & selection was confirmed by BUG on 9th May 97, speaks volume about his intentions/actions. The malafides on the part of respondents is also confirmed by the fact that at the time of suspension an enquiry against the petitioner was already going on. Had the respondents desired a genuine enquiry to be conducted, the matters could have been referred to the existing Enquiry committee itself. Why was a new enquiry committee constituted, after changing the bye-laws and thereby replacing the 3 member committee by a Single member committee? The intentions are quite obvious. Since they were not able to influence the three member committee for their choice-report, they constituted a Single member committee, so that they could some-how implicate the petitioner by influencing the one man committee. This action with malafied intention needs to be deplored, and the enquiry by maneuvering the facts etc. with an intention of causing loss to the petitioner, be quashed."

15. After hearing the advocate for the applicant and the advocate for the respondents, the said application is restricted only to decide the articles of charge that to Article No. 4 only. Remaining articles are subject to prove before the enquiry officer.

20. The article of charge No. 4 is extracted below :

"Article-4 - That the said Shri J.N. Poddar, Associate Professor, has sent letters No. IIFM/JNP/General/96 dated March 02, 1996, No. IIFM/JNP/32/96 dated 28.03.96 and IIFM/JNP/43/97 dated 22.04.97 addressed to the Chairman, Board of Governors, with a copy to the President, IIFM Society and Members of Board of Governors of IIFM, wherein he attempted to run

down the administration, the management and even the Board of Governors. The said Shri J.N. Poddar vide letter No. IIFM/JNP/93 dated 22.10.93/21.12.93 and letter No. 1072 dated 10.10.94/12.10.94 and No. 326 dated 11/12.03.96 and No. IIFM/JNP/32/96 dated 28.03.96 has shown bad behaviour by wilfully criticising the decisions and policies of the Board of Governors."

The impugned order of suspension Annexure P-16 dated 10.05.1997 is also extracted below :

"Whereas a disciplinary proceeding against Shri J.N. Poddar, Associate Professor in the area of Financial Management, Accounting and Control is contemplated.

Now, therefore, the undersigned, in exercise of the powers conferred by sub-rule (a) of Rule 21 of the Faculty Service Bye-laws, 1988 read with sub rule (i) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Shri J.N. Poddar under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri J.N. Poddar, Associate Professor, should be Bhopal and the said Shri J.N. Poddar shall not leave the headquarters without obtaining the previous permission of the undersigned."

21. It is pertinent to mention here that the unamended faculty Service Bye-laws, 1988 is extracted below :

"Faculty Service Bye-laws - 1988, so has been approved by Board of Governors of IIFM in its meeting on 27.07.1989 for your information and record.

However, while approving the above document, the Board resolved as under :-

The faculty service rules put up to the Board of Governors were approved except for the essential qualification for the post of Professors and Assistant Professors in whose case the essential qualification should be in conformity with the prevailing rules in Indian Institute of Management/IITs as the pay scales of the faculty members were equivalent to the pay scales of IIM/IITs.

It was also decided that character verification of individual entrants should be done as per Govt. rules."

22. The procedure of disciplinary proceedings is also extracted below :

(a) The Director may, when he deems it necessary suspend a faculty against whom a disciplinary proceeding is contemplated or initiated as per rules and procedures applicable to Central government employees governed by CCS(CCA) Rules, 1965 as amended from time to time. He shall report such suspension to the Board of Governors in the next meeting.

(b) The Board of Governors shall appoint an Enquiry Committee consisting of three members of which one shall be a faculty member of the Institute. The impugned person shall be intimated in writing about the constitution of the Enquiry Committee the charges against, and the allegation on which they are based and shall be given not less than three weeks time to submit his explanation in writing.

(c) The Committee shall hear the faculty if he so wants and take such evidence as it considers necessary. The faculty shall, if he desires, be given opportunity of seeking all relevant documents. The Committee shall after conclusion of the enquiry submit a report to the Board of Governors stating its finding clearly.

(d) After duly considering the explanation of the faculty, the Board of Governors shall finally impose such penalty as it deems fit by framing a suitable resolution to that effect."

23. The relevant portion of the letter dated 20th June, 1997 relating to amendment in the bye-laws is extracted below :

"The Board of Governors in their XLVI meeting held on 9.5.97 considered the Minutes of the Standing Committee dated 4.10.96 which included amendments in the Faculty Service Bye Laws 1988. A copy of the amended Faculty Service Bye Laws approved by Board of Governors is enclosed for information and guidance of faculty members."

The amended procedure of disciplinary proceedings is extracted below:

(a) Till the Institute frames its own rules for disciplinary matters, the Institute would follow the Rules and procedures applicable to the Central Government employees governed by CCS(CCA) Rules, 1965 as amended from time to time in disciplinary cases against the Faculty Members.

(b) The Chairman, Board of Governors shall be the disciplinary authority and the Board of Governors shall be the Appellate Authority.

(c) The Director, after scrutiny of the gravity of the offence levelled against the faculty member, may suspend such faculty member as per rules and procedure applicable to the Central Government employees governed by CCS(CCA) Rules, 1965 and report at the earliest to the Chairman about such suspension.

(d) The Chairman, after scrutiny of the gravity of the offence may decide upon whether the faculty member should be charge sheeted for major or minor penalties and accordingly issue charge sheet, as per Rules and procedures applicable to the Central Government employees governed by CCS(CCA) Rules, 1965 as amended from time to time.

(e) The Chairman, after scrutiny of the reply received from the charged officer may appoint one of the members of the Board of Governors as Enquiry Officer to look into the charges levelled against the faculty member.

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(f) The Enquiry Officer shall conduct the enquiry as per the CCS (CCA) Rules and procedures, submit a report to the Chairman, Board of Governors stating the findings clearly.

(g) After duly considering the explanation of the faculty the Chairman shall finally impose the penalty as per CCS (CCA) Rules."

24. After seeing all the chronological dates before issuing the order of suspension, the authority who had issued the order of suspension has malice in his mind. The impugned order of suspension is passed only on malafides. In this respect the Hon'ble Supreme Court has held that the powers exercised under malice is not sustainable in the eye of law. Regarding malafides the CAT, Lucknow Bench has decided the case of B.B. Biswas vs. Union of India and Others, reported in 2003 (3) ATJ 36, relying on the judgment of the Hon'ble Apex Court in the case of State of Punjab vs. Gurdyal Singh reported in AIR 1980 SC 319.

The relevant portion of the judgment of the Hon'ble Apex Court is extracted below :

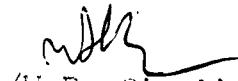
"The question then is what is malafides in the jurisprudence of power ? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and often time overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object, the actuation of catalysation by malice is not regicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the courts calls it a colourable exercise and is undelieved by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated, "I repeat....that all power is a trust-That we are accountable for its exercise-that, from the people and for the people all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power whether this be malice

laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act."

25. After seeing of the services rendered to the Institution by the applicant, the notifications, the unamended rules, powers given to the respondent No. 5, the objections submitted by the applicant, the rules amended to curtail the interest of the applicant to participate in the selection as per notification and also the impugned order of suspension dated 10.05.1997, clearly shows that the charge No. 4 framed by the respondent No. 5 is in a bias nature. Hence the charge No. 4 is quashed. The remaining charges under the memorandum dated 26.06.1997 shall be dealt by the enquiry officer.

26. The impugned order of suspension dated 10.05.1997 at Annexure P-16 is also quashed. The respondents are directed to pass appropriate order to continue the enquiry in respect of all the remaining charges levelled against the applicant in pursuance to the memorandum of charge dated 26.06.1997 at Annexure P-20. Since it is a charge for the year 1997, the respondents are directed to conclude the enquiry within a period of four months from the date of receipt of copy of this order. Accordingly the Original Application is allowed. No costs.

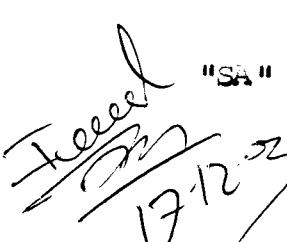

(G. Shanthappa)
Judicial Member

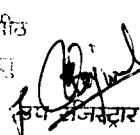

(M.P. Singh)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जवलपुर, दि.....
प्रतिलिपि अध्यो दिलातः—

- (1) सचिव, उच्च अदालतजवाब वार एसोसिएशन, जवलपुर
- (2) अधिकारी वी/दीजीवी/कु..... के काउंसल
- (3) प्रार्टी वी/दीजीवी/कु..... के काउंसल
- (4) सचिव, उच्च अदालत, जवलपुर अध्याधीन
संसदीय अधिकारी कार्यालयी द्वारा

Ajay Gupta, Adv.
S. Yadav, Adv.


"SA"
17/12/97


S. S. S. 17/12/97