

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**TA No.37/2013
With
TA No.38/2013**

Reserved on 28.01.2016
Pronounced on 15.11.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

TA 37/2013

Sarpal Singh, Joint Director,
National Council for Cement and
Building Materials,
R/o Block III, 53, Second Floor,
Eros Garden, Suraj Kund Road,
Faridabad.

.. Applicant

(By Advocate : Mr.H.K.Gangwani)

VERSUS

1. Union of India through its Secretary
Department of Industrial Policy and
Promotion, Ministry of Commerce
and Industry, Udyog Bhawan,
New Delhi.
2. National Counsel for Cement and Building
Materials, 34 K.M.Stone, Delhi Mathura Road,
Ballabgarh (Haryana) through its Secretary.
3. Chairman,
National Counsel for Cement and Building
Materials, 21, Strand Road,
Kolkata-700 001.
4. Shri M.Vasudeva,
107, South Block,
My Home Glory Apartment,
Masab Tank, Hyderabad.
5. Chander Pal, Inquiry Officer,
R/o C-2/2324, Vasant Kunj,
New Delhi-110 070.

... Respondents

(By Advocates: Shri Jos Chiramel and Mr. B.S.Mathur)

TA 38/2013

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- ... Respondents

(By Advocates: Shri Jos Chiramel and Mr. B.S.Mathur)

ORDER**Per Mr. Sudhir Kumar, Member (A):**

These two TAs of the same applicant were registered as Transferred Applications in this Tribunal after their having been transferred from the Hon'ble High Court of Punjab and Haryana at Chandigarh, were heard together, and reserved for orders together, and are, therefore, being disposed of through a common order.

2. Since, TA no. 37/2013 was registered after transfer of CWP No. 16430/2008, which was prior in point of time to the CWP

no.1603/2009, from which TA no. 38/2013 was registered, we shall take up the discussion of the facts to the case from the case earlier filed, and then only discuss the distinguishable features in the second TA.

TA 37/2008

3. When this case was registered as CWP no.16430/2008, the applicant was a Group Manager (GM in short) with the respondent No. 2 National Counsel for Cement and Building Materials situated at Ballabhgarh (Haryana). He had filed that CWP under Article 226 of the Constitution praying for issuance of writ in the nature of Certiorari, seeking quashing of the order of his suspension dated 5.03.2008 (Annexure P-9), charge sheet issued to him dated 30.04.2008, (Annexure P-15) and the order dated 4.06.2008 (Annexure P-17), through which an Inquiry Officer had been appointed, and also the order dated 25.08.2008 (Annexure P-33), whereby his subsistence allowance had been reduced.

4. Under the Administrative Tribunals Act, 1985, normally the Original Applications with multiple prayers are not allowed to be entertained. However, this being a case transferred from the Hon'ble High Court of Punjab and Haryana at Chandigarh, this case was heard even though multiple prayers were involved, as has been included in the Writ Petitions. Therefore, in the peculiar circumstances of the case, this case is not being rejected outright under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987, which prescribes that an application

shall be based upon a single cause of action, and that an applicant may seek more than one reliefs only if that they are consequential to one another.

5. The applicant had joined the National Council for Cement and Building Materials (NCCBM, in short) respondent no.R-2, in 1995, as a Group Manager, and was thereafter selected as General Manager. Through order passed on 31.03.2001, with retrospective effect from 1.12.2000, he was appointed to the post of Joint Director (Group D-1). Private respondent R- 4 had also been appointment in Group D-1 through the same order dated 31.03.2001, and had joined as Joint Director on that date.

6. The applicant, thereafter, sought permission to do a Ph.D. from Dr. BR Ambedkar University, Agra, which permission was granted to him on 19.02.2002. However, as he could not get admission in that University, he wrote on 1.04.2004 requesting the official respondents that he may be allowed to change the University, for getting registration in Ph.D. from GG University, Bilaspur, or any other University. That permission was granted to him on the same day. But as he still could not get a proper external as well as internal guides, he further requested that he wanted to change the University to KITT/Roch Ville University, and also sought permission to change the subject from Physics to Chemistry, although the topic of his Research would remain more or less the same. He has not mentioned in writ petition/now T.A. as to after giving such a request on 11.05.2005, how, where, and in what manner he went about pursuing the research work required for such a Ph.D. Degree.

7. On 9.06.2007 an advertisement was published in the newspapers for the post of Director General of NCCBM (Annexure P-3). Both the applicant, as well as the private respondent R-4 applied, though the applicant has specifically stated in this writ petition/now T.A. that private respondent R-4 was not eligible to apply for the same, as he was already more than 57 years of age.

8. The process of selection could not be completed in time, and the outgoing Acting Director General handed over charge of the post as Acting Director General to private respondent R-4 on 16.05.2007, which was approved by the Chairman, NCCBM, on 25.05.2007 (Annexure P-4). The applicant has mentioned that the post of Director General is a horizontal promotion post, and cannot be filled up by vertical promotion, and any officer of any of the other similar organizations could also have applied for the said post for consideration of his candidature. Even private respondent R-4 was given only administrative and financial powers of the Director General only as an Acting Director General, till the same was ratified by the Board of Governors of NCCBM, and a letter was issued accordingly on 28.05.2007. It was further ordered through the letter dated 28.05.2007 issued by the official respondents that the charge had been handed over to private respondent R-4 only as an additional charge, and his headquarters would remain at Hyderabad, and his stay at Delhi will be treated as on tour.

9. The applicant has submitted that though private respondent R-4 had been granted financial and administrative powers, but those were for the essential day-to-day functioning and running of the institution, and no statutory powers of the Director General had been delegated to him, to be exercised by him. In this connection, the applicant had relied upon the Government of India M.H.A. OM dated 24.01.1963, which had prescribed that officers performing current duties of the post cannot exercise statutory powers under the rules. He had submitted that this prescription was applicable to his organization also, as the NCCBM Officials (Conduct, Discipline and Appeal) Rules, 1975, also contain a similar prescription in clause 36.2.

10. A meeting of Board of Governors of NCCBM was held on 12.07.2007, and it ratified the appointment of private respondent R-4 as Acting Director General w.e.f. 16.05.2007, through Annexure P-6. Aggrieved by this, the applicant wrote on 18.05.2007 to respondent no. 3, the Chairman, NCCBM, stating that since as per seniority and meritorious record of service, he was senior to the private respondent R-4, yet he was ignored for being given the charge of acting Director General, NCCBM. He again wrote on 11.7.2007 that his case of seniority be put up before the meeting of the Board of Governors scheduled to be held on 12.07.2007.

11. The applicant has alleged that this set of events had made the private respondent R-4 inimical towards him, because of

which he started taking illegal and arbitrary actions against him, for which he was not competent as only an acting Director General, and within 6 months, on 05.03.2008, he issued an order of suspension of the applicant pending disciplinary proceedings (Annexure P-9), though the applicant has contended that private respondent R-4 was not competent to issue that order of suspension also, as he was not the appointing authority of the applicant. On 17.3.2008, the applicant requested that his suspension should be revoked, as he had completed all the formalities mentioned in the order dated 5.03.2008, and also pointed out that he had not been served with any charge sheet till that date.

12. However, the applicant received a letter dated 28.03.2008 alleging that one letter dated 17.03.2008 had been sent to him, which was refused to be accepted by him, and that letter had been sent once again, seeking clarifications from the applicant. This letter was received by the applicant on 31.3.2008, and he replied to it the same day, stating that at least 7 days' time should have been granted for submission of a detailed reply, and further submitted that the Rochville University, details of which had been asked for from him, were available on the website, as the said University is only on-line (only on Website). The applicant had also stated that the details of the papers published by him had been given by him in his application for the post of Director General, and it had been further stated that if his additional qualification of Ph.D. had not been found to be recognized by the Indian Universities, the same may be treated as withdrawn.

13. The applicant once again represented on 1.4.2008, stating that he and the private respondent R-4 (working as a acting Director General) were both in the same pay scale, and that the suspension letter had been issued to him only in order to debar him from his case being considered for the post of Director General, for which he had already applied, and praying that the suspension should be revoked. However, a charge sheet was issued by the respondents to him on 30.04.2008, through Annexure P-15, containing 7 Articles of Charges.

14. The applicant then, on the one hand, reminded about the revocation of his suspension through letters dated 7.05.2008, 9.05.2008, 11.05.2008 and 15.05.2008, and on the other hand submitted his detailed reply to the charge sheet on 16.05.2008. The applicant has alleged that in spite of his having given satisfactory replies, as the respondents were not responding to any of his letters, he asked through letter dated 28.05.2008 that a copy of the rules be provided to him, and also demanded certain documents through his letter dated 31.05.2008, but the same were supplied to him only through letter dated 18.07.2008, and received by him on 21.07.2008.

15. The applicant has alleged that not considering the submissions made by him properly, an enquiry was ordered against him, and private respondent R-5 was appointed as the Inquiry Officer on 4.06.2008 through Annexure P-17. The disciplinary enquiry was commenced on 20.06.2008. The applicant participated in that, and handed over a letter dated

20.06.2008 to the Inquiry Officer (Annexure P-20). The Inquiry Officer then directed the Presenting Officer to supply to him all the documents on which they were relying, and granted time to both the applicant as well as the Presenting Officer of the disciplinary enquiry to submit the list of witnesses to be relied upon by them. The applicant has submitted that the Inquiry Officer also suggested that the initiation of disciplinary enquiry will be a futile exercise, and that the representation of the applicant should be decided as early as possible, and on his own fixed the next date for submission of documents to be on 31.07.2008.

16. The applicant filed a detailed representation on 12.07.2008, and also wrote to the acting Director General on 16.07.2008, in response to which he received a letter dated 18.07.2008 (Annexure P-25), in which it was stated that the charges levelled against him are not connected with his conduct towards the acting Director General in person, but regarding unauthorizedly retaining some official records pertaining to his having applied for the post of Director General, and then stating that his grievances, if any, will be looked into and examined by the Inquiry Officer during the course of enquiry, and that the revocation of suspension can be considered at that stage. It was submitted that thereafter, though the respondents decided to send the documents on the basis of which the charge sheet was framed against him, but deliberately the documents were sent through letter dated 18.07.2008, which was received by him after the date of hearing of enquiry on 20.07.2008.

17. The Inquiry Officer, however, granted him more time, till 7.08.2008, availing which the applicant replied on 29.07.2008, praying that enquiry should be kept pending, and on 31.07.2008 he again prayed for revocation of the suspension. The respondents replied through their letter dated 6.08.2008 stating that once the meeting of Board of Governors of NCCBM held on 12.07.2008 had ratified that the private respondent R-4 would be holding charge as acting Director General, he can exercise all administrative and financial powers of the Director General. The applicant was still aggrieved, and he represented to the Government in the year 2008 through Annexure P-30, and, thereafter, the Inquiry Officer asked the applicant to appear on 25.08.2008 and 28.08.2008 through Annexure P-32.

18. The applicant has alleged that since the private respondent-R4 was victimizing him with ulterior motives, even his subsistence allowance was reduced from 50% to 25%, instead of being increased from 50% to 75% after three months, stating that the applicant was at fault, and that he had delayed the enquiry proceedings. The applicant has stated that he did not delay the enquiry proceedings in any manner, and had even appeared before the Inquiry Officer on 25.08.2008. On the next date of hearing of the enquiry proceeding on 28.8.2008, the examination in Chief for two witnesses was conducted, and it was promised that the copies of said proceedings would be sent to the applicant.

19. The applicant has submitted that the Annexure P-9, P-15, P-17 and P-33 are illegal, without the authority of law, void, and not in accordance with law, and deserve to be set aside, on the following grounds:-

- “(i). That the applicant is and was senior to the private respondent R-4, having joined the post of Joint Director three months earlier;
- (ii). That when the post of Director General was advertised, private respondent R-4 could not have even applied for the same, because of his being overage, but he was favoured and handed over charge as acting Director General, which was approved by the Chairman, and even ratified by the Board of Governors of NCCBM;
- (iii). That private respondent R-4 was given only an additional charge, with only Rs.2500/- as an additional emolument along with his existing pay of Joint Director, and was bestowed with only limited administrative and financial powers, as an acting Director General;
- (iv). That as only the acting Director General, and being in the same pay scale as the applicant, Private Respondent R-4 had initiated disciplinary action against the applicant, which he was not competent to do;

- (v). That the acting Director General was not competent either to suspend the applicant, or to issue a charge sheet, or to appoint an Inquiry Officer, and all the actions taken in this regard were not in accordance with law;
- (vi). That because the applicant and the acting Director General were in the same pay scale, the acting Director General could not have exercised the disciplinary powers against the applicant, as he was neither the applicant's appointing authority, nor higher in rank;
- (vii). That only the exercise of administrative and financial powers had been delegated upon the private respondent R-4, and not exercise of statutory powers;
- (viii). That the actions taken by private respondent R-4 were not as per principles of natural justice, and malice was writ large;
- (ix). That since private respondent R-4 was in the same grade as the applicant and was also a candidate for the post of Director General, his actions were against the principles of natural justice, and deserve to be set aside;
- (x). That since the acting Director General could not have exercised the statutory powers, therefore, the suspension of the applicant deserves to be set aside;

(xi). That since even the charge sheet issued to the applicant had not been issued by an authority competent under the law, the same also deserves to be set aside;

(xii). That the representations made by the applicant had also not been decided in accordance with law, and the decisions on them deserve to be set aside;

(xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix) and (xx).

The applicant had explained in regard to Articles of Charges no 1 to 7. We shall come to these later.

(xxi). Even from the Articles of Charges it is clear that the actions of the respondents were prejudicial, and the acting Director General was not competent to initiate any disciplinary action against the applicant, so even the appointment of the Inquiry Officer also deserves to be set aside;

(xxii). That the enquiry proceedings had also not been conducted as per the procedure and principles of natural justice;

(xxiii). That the enquiry proceedings had been vitiated because the Inquiry Officer had not yet put to the petitioner as to whether he was keen to or interested to engage any Defence Assistant, and that the further proceedings could have only started after engagement of the Defence Assistant;

(xxiv). That the applicant had intimated to the Inquiry Inquiry Officer through letter dated 20.06.2008 that the disciplinary enquiry cannot be continued, as he had challenged the issue of charge sheet and appointment of Inquiry Officer itself, and yet the proceedings were continued;

(xxv). That the applicant will put up his case only after the closure of the evidence of the prosecution and not prior to that;

(xxvi and xxvii). That even the order reducing his subsistence applicant subsistence allowance is against the facts and the law, and the same could not have been reduced in a *malafide* manner, which order of reduction of subsistence allowance deserves to be set aside, as there had been no delay on his part, and, instead, the subsistence allowance should have been increased to 75%;

(xxviii). That the applicant has obeyed all the instructions issued to him by the acting Director General and that the observations made that he is not cooperating with the disciplinary enquiry are totally incorrect;

(xxix). That the respondents have not taken into consideration his reply that Roch Ville University is only an online University, and if that University is not recognized by the Association of Indian Universities

for recognition of its Ph.D. Degree, then that qualification be treated as withdrawn, and in that there has been no *malafide* on the part of the applicant, but that rather the applicant himself has been cheated, and in view of this, the respondents could not have issued to him a charge sheet on the basis of this allegation;

(xxx). That the reply given by acting Director General General (Annexure P-25) that all points have to be agitated before the Inquiry Officer is colourable exercise by private respondent R-4, only to get rid of the applicant as one of the candidates for the post of Director General;

(xxxi). That the Inquiry Officer is wrongly pressing the applicant that he should submit his list of defence witnesses as well as all the documents even before the conclusion of the evidence to be tendered by prosecution witnesses and documents. It was submitted that under the principles of natural justice, the applicant is not bound to disclose his defence unless and until the prosecution case is closed;

(xxxii). That the respondents are bent upon harming the interests of the applicant just because, though the Director General is appointing authority, the acting Director General is lowering his image in the eyes of staff and general public;

(xxxiii). That the reply given by the Inquiry Officer dated 12.08.2008 is also against the principles of natural justice, since the applicant will not now be allowed to produce any defence witnesses, or any other documents, and, therefore, the enquiry itself deserves to be ordered to be dismissed;

(xxxiv). That the delegation of powers to the acting Director General is not in accordance with law.

20. The applicant had himself, thereafter raised in para 27 of his Writ Petition, the following four points of substantial questions of law involved:-

- “(i) Whether an officer in the same rank and pay scale can initiate the disciplinary proceedings against the order?
- (ii). Whether the Private Respondent no.R-4 was competent under the law to issue suspension letter, charge sheet and appoint Inquiry Officer as well as reduce the subsistence allowance of the petitioner?
- (iii). Whether a person having acting charge and given only financial and administrative powers, can exercise statutory powers under NCB officials’ (Conduct, Discipline and Appeal) Rules 1975?
- (iv). Whether the action of the Private Respondent no R-4 is malafide as the petitioner has challenged the seniority of the Respondent no.4 and because the petitioner has also applied for the post of Director General?”

21. In the result, he had prayed for the following reliefs in the Writ Petition (now Transfer Application):-

- “(i). issue a writ in the nature of Certiorari for quashing the suspension order dated 5.3.2008 (Annexure P-9) and Charge Sheet dated 30.4.2008 (Annexure P-15); and the order dated 4.6.2008 (Annexure P-17)

whereby the Inquiry Officer has been appointed; and also order dated 25.8.2008 (Annexure P-33) whereby the subsistence allowance of the petitioner has been reduced; as the same are illegal, with malafide intention and are not speaking order, against the principle of natural justice and hence deserves to be set aside and quashed;

- (ii). That the suspension of the petitioner may kindly be ordered to be revoked in the interest of justice.
- (iii). Issue any other order, writ or direction as may be deemed fit in the facts and circumstances of the case;
- (iv) service of advance notice upon the respondents may be dispensed with;
- (v) filing of certified copies of the annexures may also be dispensed with."

22. A counter reply purporting to have been filed on behalf of respondents no 2 to 4 was filed before the Hon'ble Punjab & Haryana High Court itself on 14.01.2009. This counter affidavit had been sworn by the General Manager (Human Resources) Department of NCCBM, Ballabhgarh (Haryana). He had taken the preliminary objection that the applicant has not come before the Court with cleans hands, and has concealed and suppressed material facts, which when disclosed would disentitle him from obtaining any relief. It was admitted that the applicant had joined as Group Manager on contract basis in 1995 and thereafter appointed General Manager (Grade E-7) by way of horizontal entry vide appointment letter dated 06.11.1996. He required PG degree in Engg/Tech. or Ph.D. in Science or Engg/Tech for his next promotion by way of vertical entry in the next grade D1, which he admittedly did not possess, because of which he would have remained static at Grade E-7, on the post of General Manager, and could not have been promoted to the post of Grade-D-1.

23. It was further submitted that though the rules provide for relaxation in academic qualification on the basis of merit, experience, competence and contributions to the Institution's objectives upto Grade E-3, but the rules did not provide for any such relaxation in Academic Qualifications whatsoever for moving from grade E-7 to vertical entry Grade D-1. In these circumstances, a proposal was put up by the then Director General for relaxation of qualification in various grades above Grade E-3, for the purposes of promotions, upon the proposal having been approved by the then Chairman of Administrative and Finance Committee of the Institution. The applicant of this TA was accordingly given relaxation of the requisite qualifications, as per Rule 6.2 of the NCB Cadre Rules, 1974, and was promoted to the post of Joint Director in Grade D-1, through letter of appointment dated 31.03.2001, with retrospective effect from 01.12.2000, for which promotion he would not have been eligible, but for the relaxation. However, it was pointed out that private respondent R-4 was also appointed to the same post of Joint Director on the same date, also with retrospective effect from the same date, but without any relaxation in Academic qualifications, as he had already held the requisite Academic qualification for Grade D-1.

24. The applicant then tried to acquire one of the qualifications, namely, PG degree in Engg/Tech/Ph.D in Science or Engg/Tech for the sake of earning his promotion from Grade D-1 to the next higher grade. Annexure R-5 was produced as the copy of applicant's application for acquiring such qualification, by

pursuing his Ph. D. course. This permission was granted, but with a condition that the applicant would execute a bond with the respondent institution NCCBM that he would serve the institute for a minimum period of three years after obtaining his Ph.D. degree, and in case he took study leave for completion of Ph. D., the period of that bond would be increased by double the amount of the study leave. The applicant specifically agreed to the conditions prescribed, and signed the permission on 27.02.2002, but the Human Resources Department of the Institution did not receive any intimation/information from him ever regarding his undergoing any course in Ph.D., nor did he submit any bond in this regard. Therefore, it was all along assumed that he had not pursued any such course, for which he had taken approval.

25. Thereafter, after more than two years, he sought permission for change of University for pursuing his Ph.D. course, from Agra University to GG University, Bilaspur. Thereafter, he again made a request to the then Director General dated 11.05.2005, seeking permission for further change of University, and that instead of pursuing Ph.D course in Physics from Agra University, to a Ph.D. course in Chemistry from KITT/Rochville University. However, it was submitted that both these original notes dated 01.04.2004 and 11.05.2005, on which he had obtained the signatures and the approval of the then Director General, were illegally retained by him in his own custody, rather than forwarding them to the Human Resource Department of the respondent organization and the said department was, therefore, not aware of any such change

having been permitted, and did not issue any memorandum to the applicant confirming such change, or changing the terms and conditions, subject to which the permission was initially granted. It was further submitted that the applicant, however, did not undertake any research work for his Ph.D., nor obtained any degree in Ph.D. from any recognized University, because of which he was not eligible for promotion by way of vertical entry from Grade D-1 to the higher grade.

26. Thereafter, the Board of Governors of the Institution modified on 22.10.2007 the Institutional Promotion and Recruitment Policy, by way of amendment of the relevant Recruitment Rules (RRs) to the effect that henceforth no relaxation would be allowed in Academic qualifications under vertical entry, except with the approval of the Board of Governors.

27. When the acting Director General of the Institution, Dr.K.Mohan, who was in Grade D-2, resigned from the post, he forwarded the names of the applicant, the private respondent R-4 and one Shri N.L.Murthy, all three belonging to Grade D-1, to the Chairman of the Institution, for the purposes of appointment of one of them as the acting Director General of NCCBM, to whom he could hand over the charge. Shri N.L.Murthy was the senior most of the three eligible officials in Grade D-1, but he was due for retirement within six months, in October, 2007. The applicant and private respondent R-4 were both appointed as Joint Director Grade D-1 vide letters of appointment dated 31.03.2001, both with retrospective effect

from 01.12.2000, and held exactly the same level of seniority in the organization. However, since the Academic qualifications required for the post of Director General of NCCBM was also laid down and prescribed, and only the private respondent R-4, Shri M.Vasudeva, fulfilled the said Academic qualification requirement, as he was M.Tech (Chemical Engineering), while the applicant did not possess the same, the respondent No. 2 sought approval of the Board of Governors of NCCBM by circulation for the appointment of one of the three Joint Directors as acting Director General. The Board of Governors, by circulation, authorized Shri Manoj Gaur, the then Chairman of the Institution, to appoint one of the above three Joint Directors to officiate as acting Director General of NCCBM in place of Dr. K.Mohan. Accordingly, the Chairman accepted the resignation of Dr.K.Mohan, and appointed private respondent R-4 as acting Director General, vide his endorsement dated 14.05.2007. Accordingly Dr.K.Mohan handed over charge as acting Director General to private respondent R-4 on 16.05.2007, and by a separate memorandum dated 16.05.2007 all concerned were informed by the Chairman regarding the appointment of private respondent R-4 as acting Director General, until further orders.

28. Since the Office Memorandum dated 16.05.2007 did not specify the terms and conditions of appointment of private respondent R-4 as acting Director General, on 25.05.2007 the Chairman directed that in his capacity as the acting Director General, private respondent R-4 shall be responsible for and shall exercise all administrative and financial powers attached to

the post of Director General (NCCBM), as were being exercised by his predecessors as such Acting Directors General. This decision was ratified unanimously by the Board of Governors of the Institution on 12.07.2007, and it was decided that during the period private respondent R-4 held the charge of the post of acting Director General, he would exercise the authority and all the powers of the DG of NCCBM, and perform all the functions, responsibilities and duties of the post, and would be entitled to the facilities attached to that post.

29. In the meanwhile, on 09.06.2007, an advertisement was put out for substantively filling up the post of Director General. Though he was not eligible to apply for the said post, as he did not hold the requisite Academic qualification, claiming in his letter dated 30.06.2007 that he fulfilled the eligibility requirements, the present applicant also applied. It was submitted by the respondents that the assertion of the applicant that he was eligible to apply for the post of Director General was clearly false, inasmuch as in his application for the post he had disclosed his Academic qualifications, which in fact did not meet the eligibility criteria. He had, however, stated that he was pursuing a Ph.D. course in the field of Development of Materials, for which he was registered with a University (name not disclosed) since 2004, and had alleged that the related Research papers had already been published in International Journals and Seminars. It was submitted by the respondents that though the applicant was well aware that he did not possess the requisite Academic qualifications for the post of Director General, and nor

the rule provided for any relaxation of the requisite Academic qualifications, vide his letter dated 24.10.2007, he had enclosed a so-called Degree of Doctor of Science in Chemistry, allegedly issued by one Rochville University, as also a certificate in that regard, issued by that University (Annexure R-18, R-19 and R-20).

30. It was submitted by the respondents that approval of the University and the Course is mandatory under the relevant rules of their Organisation for undertaking further education during the course of employment, which rule also prescribes that on being granted such approval for undergoing a course leading to Ph.D., the concerned official is required to execute a bond to serve the organization for a minimum period of 3 years after obtaining the degree, and that in case of study leave, the said bond period has to be increased by double of the period of the study leave, as already mentioned above. It was, therefore, submitted that the applicant was also, therefore, required to give information to the Human Resource Department of the organization in case he had got admitted to the said University for the stated course, which he had never done, and he had never sought approval of the competent authority for undergoing any such Ph.D. course from Rochville University, and, therefore, he was asked to produce the approval for undergoing the said course, and it was at that stage that he had enclosed with his note dated 17.12.2007 photo copies of his request letter dated 01.04.2004, seeking permission for change of University for pursuing Ph.D. course from Agra University to GG University,

Bilaspur, and the 2nd letter dated 11.05.2005 seeking permission for change of University for pursuing Ph.D. course in Physics from that Bilaspur University to a Ph.D. course in Chemistry from KITT/Rochville University.

31. The Human Resource Department of the Institution thereafter sought information initially from the University Grant Commission, as to the validity of the certificate of Ph.D. obtained from Rochville University, when it was informed by the UGC that the relevant information would be available from the Association of Indian Universities. A letter dated 14.01.2008 was, therefore, addressed to the Association of Indian Universities, who in turn confirmed in writing, vide their reply dated 15.01.2008 (Annexure R-23), that Rochville University was not at all listed among the Accredited Institutions of Post Secondary Education in USA, and its programmes were, therefore, not recognized by the Association of Indian Universities. The Association of Indian Universities had further asked the NCCBM to also make enquiries from the United States Educational Foundation in India, as to the recognition of the so called Rochville University, and, accordingly the NCCBM made a similar enquiry with USEFI, vide letter dated 14.01.2008 (Annexure R-24), to which they sent a reply dated 23.01.2008 (Annexure R-25), confirming that Rochville University was not listed among the Accredited Institutions of Post Secondary Education in USA.

32. At the same time, when the Human Resource Department of NCCBM asked the applicant as to why such approvals, as at

Annexure R-7 and R-8, were not available in its record, the applicant made false and baseless allegations against the DG Secretariat and the Human Resource Department, accusing them of misplacing the original approvals with *malafide* intentions, stating that he had submitted all documents to Human Resource Department through the then Director General. He then also annexed to his reply dated 05.02.2008 a notary attested copy of his request letter dated 11.05.2005 (Annexure R-29). The applicant also annexed with letter dated 05.02.2008 a copy of his note dated 11.05.2005 for change of University, with the endorsement of the then Director General of NCCBM, duly attested by a notary public, with the endorsement that the same was compared with the original and found to be correct, thereby implying that the original note dated 11.05.2005 was very much with him in his possession, notwithstanding his protestations to the contrary, and the false and *malafide* allegations made by him against the Director General Secretariat, and Human Resource Department, regarding their having misplaced the original notes.

33. The applicant had also still claimed that the Rochville University was accredited by the competent authority. He was requested by NCCBM to furnish the name and address of the competent authority which had accredited the said University. Thereafter he sent his reply dated 14.02.2008 (Annexure R-31) that if NCB was not satisfied with the information already furnished by him, they could directly contact the University, but without giving the address, telephone number or contact particulars of that University.

34. The applicant thus having *prima facie* committed acts amounting to serious misconduct, the respondents placed him under suspension w.e.f. 05.03.2008, after which the applicant handed over the keys of the almirahs, and also of the cabin, but in an arbitrary and highhanded manner, sealed the two almirahs in his cabin under his signature, even though they were containing important files and records of NCCBM, which affected the working of the organization. He was, therefore, instructed to immediately visit the office, and hand over the contents of the almirahs, after preparing the inventory of the contents thereof. He, however, refused to accept that letter, on its presentation by the postal authorities, as per the endorsement recorded by the postal authorities on the registered envelope. Another letter dated 17.03.2008 was then sent to him, seeking various clarifications through speed post, but that letter was also refused to be received.

35. Since the applicant had not complied with the direction to open the seal of the two almirahs, and hand over the original files and records, on 24.03.2008 and 25.03.2008 those almirahs were got opened in the presence of a notary public, and inventories of the articles found therein were made. The report of the notary public was produced (Annexure R-39, R-40, R-41) along with the inventory (Annexure R-42). Further letters were also sent to him, in reply to which the applicant admitted that the original request letter dated 11.05.2005, with the signatures of the then acting Director General, was in fact lying with him only, and he enclosed the same, while the earlier original approval letter dated 1.04.2004 was still not handed over.

36. It was further submitted by the respondents that on accessing the website of Rochville University through internet, it was revealed that it was a fake and non-existent University, and that its degree were sham, and bogus, and it did not even have any address or telephone number, and no accreditation either (Annexure R-48 colly). It was submitted that this fraudulent, sham and bogus University was involved in doling out instant certificates of Under Graduate, Graduate, Post Graduate and Doctorate Degrees for a price, without the candidates having to undergo any such course.

37. It was submitted that the applicant had resorted to such mean and degrading tactics, and had clearly committed gross misconduct, in order to somehow try to attain the eligibility to apply for the post of Director General. In these circumstances, the charge sheet dated 30.04.2008 was issued to him, setting out the Articles of Charges. However, the applicant did not give any explanation to the Charges levelled against him, and, instead, questioned and challenged the authority of the Acting Director General to suspend him, or to issue such charge sheet, and demanded that his suspension be revoked. Even the replies to the charges submitted by the applicant were vague and evasive, and did not at all touch upon the various allegations of misconduct levelled against him. Therefore, the Acting Director General, acting as his disciplinary authority, decided to hold an enquiry into the charges levelled against him, and appointed a retired Additional Director General of CPWD as the Inquiry Officer.

38. Thereafter the respondents explained the actions taken by the Inquiry Officer, and the Presenting Officer, which need not be reproduced here. However, it was submitted that the applicant levelled false and baseless allegations against the Inquiry Officer, to the effect that he was biased, and in the course of hearing, he alleged that he had no faith in the Inquiry Officer. On the next date of enquiry proceeding on 28.08.2008, the applicant handed over to Inquiry Officer a letter dated 28.08.2008, making certain further allegations against the Inquiry Officer himself, and abruptly left the enquiry proceeding. It was admitted as true that the Inquiry Officer did not proceed to conclude the enquiry ex-parte, and fixed the enquiry proceeding to be held further on 19.09.2008. That day the applicant disclosed about his having filed the present writ petition in the meanwhile on 15.09.2008, and about his having obtained interim restraint orders dated 16.09.2008, because of which the Inquiry Officer, in compliance of the orders of Hon'ble Punjab and Haryana High Court, did not proceed further with the enquiry on 19.09.2008 (Annexure R-54).

39. It was thereafter submitted that the applicant had made incorrect submissions before the Hon'ble High Court of Punjab and Haryana in order to obtain the interim restraint orders dated 16.09.2008 by falsely stating that private respondent R-4 had also applied for the post of Director General, which was false, and he had also not disclosed as to from which date the private respondent R-4 was appointed as Joint Director effectively. It was thereafter alleged that in the domestic enquiry pending

against him, the charges relate to allegations of fraud, fabrication of false Ph.D. certificate, retaining official documents in an illegal and *malafide* manner, and, while doing so, making false allegations against the Director General Secretariat and Human Resource Department of NCCBM for misplacing such documents, of refusing to accept written communications from the NCCBM, and financial irregularities in the matter of sanction of purchase order worth Rs.4,00,000/-, which are of serious nature, but regarding which material information had been withheld from him, and he had tried to pass off the entire case as one of enmity between the private respondent R-4 and himself, which was false, baseless and non-existent.

40. It was, therefore, prayed that since the applicant had concealed material facts from the Hon'ble High Court of Punjab and Haryana, he is not entitled to any relief by way of the present petition, and when the enquiry proceedings had been instituted to enquire into the correctness or otherwise of the charges levelled against the applicant, he cannot be allowed to pre-empt the whole issue by filing the present writ petition/now T.A., seeking quashing of both his suspension, as well as the enquiry proceedings against him. It was submitted that as a matter of fact the writ petition as it had been filed, does not disclose any violation of any fundamental right of his, consequent to which he could have resorted to the remedy of such writ petition under Article 226 of the Constitution.

41. Thereafter, in para wise reply on merits, the same facts had been repeated by the respondents in even greater detail,

which need not be reproduced here once again. It was further denied that the writ petition/nov T.A., raises any substantial questions of law, for a decision by the Hon'ble High Court of Punjab and Haryana, and in reply to the four questions of law framed by the applicant, as reproduced above, the following replies were submitted:-

“(i). In reply to sub-para (i) it is denied that Respondent No. 4 vested with powers of Director General (Acting) of NCB could not have initiated disciplinary proceedings against the Petitioner. The law rather is clear that disciplinary proceedings can be initiated even by an authority junior to the disciplinary authority, provided that the final order after the completion of the enquiry and the disciplinary proceedings is passed by the Appointing Authority/Disciplinary Authority. Without prejudice to the same, it is submitted that Respondent No. 4 has already been promoted by NCB to Grade D-3 wef 01.12.2007, and hence the Grade of Respondent No.4 is also at present higher than that of the Petitioner.

(ii). Contents of sub-para (ii) are incorrect and baseless. It is reiterated that Respondent No.4 was fully competent under law to issue the suspension letter, chargesheet, appoint an Enquiry Officer, as well as reduce the subsistence allowance of the Petitioner.

(iii). In reply to sub-para (iii) it is denied that the person appointed as the Director General(Acting) of NCB could not exercise disciplinary powers against the Petitioner under the NCB Officials Conduct, Discipline and Appeal Rules, 1975. It is denied that these rules are statutory in nature.

(iv). Contents of sub-para (iv) are denied as incorrect and baseless.”

42. In the result, it was submitted that the prayer clause of the writ petition is frivolous, baseless and devoid of any merit, and that the petitioner/applicant is not entitled to any relief whatsoever, as he has not made out any case whatsoever, for issuance of any writ in the nature of certiorari for quashing the suspension order dated 5.03.2008, charge sheet dated 30.04.2008, or the order dated 4.06.2008, whereby the Inquiry

officer was appointed, or the order dated 25.08.2008 consequent to which the subsistence allowance of the applicant was reduced, and it was denied that any of the above orders were illegal, *malafide*, or not in the nature of a speaking order, or against the principles of natural justice, because of which any of them may deserve to be set aside and quashed. It was denied that the petitioner/applicant had made out any case whatsoever either for revocation of his suspension, or for grant of any other relief whatsoever. It was, therefore, prayed that the Writ Petition being frivolous, baseless and devoid of any merit or substance, it is liable to be dismissed.

43. The Rules and Regulations of the National Council for Cement and Building Materials (NCCBM) were filed as Annexure R-60, separately.

44. The petitioner/applicant had thereafter filed a Civil Miscellaneous Application no. 13383/2009 before the Hon'ble High Court of Punjab and Haryana. Notice had been issued in the C.M. Application no 13383/2009 on 17.8.2009, seeking correction of a typographical error in the Hon'ble High Court's order dated 24.07.2009, which C.M. Application was disposed of on 15.12.2009, before the case was transferred to this Tribunal, and, therefore, the pleadings in regard to that are not being discussed now.

45. After the case was registered before this Tribunal as transfer application TA no. 37/20013, the respondents filed MA 2210/2012. It was prayed in that since respondent no. 2 NCCBM

is an autonomous organization, and respondent no.1 has no role to play whatsoever, inasmuch as even the disciplinary authority in this case is a Committee of 3 members of the Board of Governors of NCCBM, appointed by the Board, and even the Appellate Authority is entire Board of Governors of NCCBM, the respondent no.1 may be deleted from the array of parties. However, it does not appear from the record that this MA was ever allowed.

46. In between the applicant has retired, and he filed a Misc. Application no. 2919/2013 praying for his terminal benefits to be released, after taking into consideration the fact regarding the difficulty being faced by his family post retirement and he had prayed for gratuity, leave encashment etc., as well as the provident fund maintained by the Employees Provident Fund Organization (EPFO in short), to be released to him. It was submitted that in spite of pendency of the charge sheet against him, he was allowed to retire on 31.12.2010, and after the retirement, even a no dues certificate had been issued to him. It was submitted that once the employer-employee relationship has been terminated, official respondents have no power, authority or jurisdiction to subject him to disciplinary proceedings after his retirement. It was submitted that respondent no. 2 NCCBM cannot also invoke the analogy of Rules 9 and 69 of the CCS (Pension) Rules, 1972, because there is no specific rule or order extending those provisions to NCCBM employees. It was further submitted that in fact it is impracticable to extend Rule 9 to NCCBM employees, particularly

because the services in that autonomous organisation are not pensionable, and, therefore, the Pension Rules cannot be made applicable. It was also submitted that the applicant is also not a dismissed employee, nor is it permissible under law now to dismiss him retrospectively, by taking shelter of a disciplinary enquiry which has become defunct, by virtue of applicant's retirement on superannuation, since this superannuation taken place after the Division Bench of the High Court had stayed the disciplinary enquiry on 16.09.2008, and through the interim order dated 24.07.2009, the High Court had suspended the disciplinary proceedings.

47. It was, therefore, submitted that withholding of terminal benefits by taking a plea that disciplinary enquiry is still pending against him was illegal, and is of no consequence. Therefore, a prayer had been made for treating that the charge sheet initiated against him had abated as a result of his retirement, thus his having become entitled to all terminal benefits, including gratuity, leave encashment, and other benefits, treating the period up to the date of his retirement i.e. 31.12.2010, as on duty along with interest thereupon, and that his suspension may be treated as on duty for all purposes, including suspension period salary, and payment of revised pay scales as per 6th Pay Commission w.e.f. 1.1.2006, and payment of salary arrears @ 18% p.a., after adjusting subsistence allowance already drawn and paid.

48. Notice had been issued in that MA on 31.10.2013, but this MA was never decided and disposed of thereafter. Respondents

had filed their counter reply to MA on 10.12.2013, in quite detail, which need not be reproduced here in full. In this reply on behalf of respondents 2-4, it was pointed out that when the notice regarding his superannuation was issued to him on 08.07.2010, through an OM, he had sent a reply dated 1.12.2010, asking the NCCBM to make payment of all his dues/service benefits as per Annexure- B.

49. It was further submitted that the applicant had been placed under suspension w.e.f. 5.03.2008, which position had continued till his retirement on superannuation on 31.12.2010, and there was no Court order revoking his suspension, nor could any proceeding be conducted by the Inquiry Officer, in view of the order of High Court dated 16.09.2008. It was submitted that as per Rule 23 of NCCBM Officials (Conduct, Discipline & Appeal) Rules, 1975, the pay and allowances for the period of suspension could become payable only depending upon the outcome of the disciplinary proceedings if he is ordered to be reinstated in service, after having been exonerated on the basis of the enquiry report. As per Rule 23, if the official is exonerated and not awarded any penalties under rule 24, and the delay in termination of proceeding is not directly attributable to him, he would have been eligible for full pay and allowances, as if he had not been suspended at all, after deducting the subsistence allowance already paid. However, as per Rule 23.2, the treatment of period of absence from duty during suspension will have to depend upon the outcome of the disciplinary proceedings.

50. It was submitted that as on the date of his retirement on superannuation, the applicant had not been reinstated from suspension, and there was no occasion to consider his eligibility for payment of salary and allowances for the suspension period, nor was he eligible for any revision of pay on account of implementation of the recommendations of the 6th Pay Commission, in view of the specific note 4 of clause 7 in the Notification dated 29.08.2008 Revised Pay Rules notified by the Ministry of Finance, Government of India, which states that ‘a Government under suspension should continue to draw subsistence allowance based on existing scale of pay and his pay in the revised pay structure will be subject to the final outcome of the pending disciplinary proceedings’. It was submitted that as a result subsistence allowance payable to the applicant was allowed to be drawn and paid to him upto 31.12.2010, under Rule 22 of the NCB Officials (Conduct, Discipline and Appeal) Rules, 1975. It was, therefore, submitted that any consequential payment of salary, allowances associated with salary, and annual increments etc., as well as arrears of 6th Pay Commission, and incentive, were also not payable to him.

51. It was further submitted that in regard to gratuity, the Government rule 69(1)(c) of the CCS (Pension) Rules, 1972 prescribed that no gratuity shall be paid to the Government servant until the conclusion of the disciplinary proceedings, the rationale behind which has been explained by the Hon’ble Delhi High Court in its judgment **R.P.S Panwar Vs. Union of India and Another** (2008) (104) DRJ 675, as well as by this Tribunal’s

Ernakulam Bench in judgement in the case of **K.B.Muraleeddharan Vs. Union of India** (Manu/ CA/ 760/ 2009). Thus the applicant's prayer for payment of gratuity at the time of superannuation was also denied to be admissible to him. As regards leave encashment also, it was mentioned that the rule provides that in case of pendency of disciplinary proceedings or criminal prosecution against the employees who are due for superannuation, the whole or part of the cash equivalent of the leave salary may be withheld, to meet recoveries that may possibly have to be made, arising out of the conclusion of the disciplinary proceedings, after which only the payment may be released, after adjustment of the Government dues, if any. In this manner, the applicant's demand for leave encashment after his superannuation was also denied as not sustainable in law.

52. However, in respect of payment for family pension scheme under EPF with interest, it was admitted that since there is no provision for withholding of Provident Fund and Family pension from the dues of employees facing disciplinary proceeding at the time of their superannuation, the applicant was eligible to withdraw his provident fund and family pension, after getting the formalities completed in this regard.

53. It was further submitted that as per clause 14.3 of the NCCBM Service Rules, 1966, the gratuity shall not be payable to an official who is dismissed for gross misconduct or disobedience, or for causing damage to NCCBM's property or business or for theft, fraud or dishonesty in connection with NCB's business or work, and since the departmental enquiry against the applicant was still pending, his eligibility or otherwise

for gratuity could be decided only after the findings of the disciplinary enquiry were published.

54. It was pointed out that the applicant had never filed any rejoinder to the counter reply filed before the Hon'ble High Court. It was submitted that there was no ground in the eyes of law for grant of terminal benefits to the applicant, pending a final decision on the disciplinary proceedings pending against him, against which he had obtained ex-parte stay order against the enquiry proceedings from the Hon'ble High Court. It was submitted that the retirement of the applicant, and the relieving orders issued to him, do not in any way absolve him from the charges levelled against him in the charge sheet.

55. The contention of the applicant that respondents have no power authority or jurisdiction any longer to subject him to disciplinary proceedings was denied to be wholly frivolous, baseless and misconceived, in view of para 36.2 of the NCCBM Officials'(Conduct Discipline & Appeal) Rules 1975. It was denied that the departmental proceedings cannot continue after retirement, as the relationship of employer and employees ceases, and it was submitted that if such contention is allowed, it would be tantamount to giving licence to a person in service to commit any misdemeanour or misconduct on the verge of his retirement, and to then go scot-free so far as departmental action against that is concerned. It was further submitted that there are no provisions in the NCCBM Service Rules, 1966, which entitle the applicant to the release of the terminal benefits, notwithstanding the pendency of disciplinary proceeding against

him, in which there was no final adjudication, and even the High Court had merely suspended the disciplinary proceedings, and not revoked them. It was, therefore, submitted that the applicant is not entitled to any of the reliefs as prayed for by him in the MA.

56. Applicant filed a rejoinder to the same on 28.03.2014. In this, he had recounted the brief facts of the case from the very beginning, from his perspective once again. In this he had tried to find fault with the approval granted by the Board of Governors under Rule 13 of the NCCBM Rules, submitting that his performance appraisal had not been placed before the Members of the Board, because of which they could not have given their views properly on the nomination of the acting Director General. It was again reiterated that private respondent R-4 was not eligible even for applying for the post of Director General, but still he was placed in officiating arrangement of acting Director General. Thereafter, it was submitted that an officer who is performing the current duties of the post, cannot exercise the statutory powers under the rules, and the power to initiate disciplinary action falls under statutory powers, and not under administrative powers.

57. The learned counsel for respondents 2 to 5 filed his written arguments on 25.09.2014 giving in detail in chronological order the sequence of events of the instant case both in narrative form, as well as in a tabular form.

58. Learned counsel for the applicant had during the course of his arguments, produced NCCBM Service Rules, 1966, and had placed reliance on the judgment of Hon'ble Supreme Court in the case of **Dev Prakash Tewari Vs. U.P. Cooperative Institutional Service Board, Lucknow & Ors** (Civil Appeal No (s) 5848-49/2014) pronounced on 30.06.2014, to submit that it has been held that there is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceedings after retirement, nor is there any provision stating that in case misconduct is established, a deduction could be made from the retiral benefits.

59. Further reliance had been placed by him upon Hon'ble Supreme Court's judgment in the case of **Union of India Vs. R.K.Chopra**(Civil Appeal no.1096/2010) decided on 01.02.2010, in which it was held in para 17 that if there is revision in the scale of pay in respect of the post held by a Government Servant prior to the suspension period, he is permitted to exercise an option under FR 23, even if the period during which he had to exercise the option falls within the period of his suspension, and, then, he will be entitled to the benefit of increase in pay, and also in subsistence allowance, for the period of his suspension, as a result of exercise of such option. However, it was further held that if the revised scale of pay takes effect from a date falling within the period of suspension, then the benefit of option for the purpose of revised scale of pay will accrue to an official in respect of the period of suspension only after his reinstatement, depending on the fact whether the period of suspension is treated as duty or not.

60. Reliance had further been placed upon the judgment of Hon'ble Supreme Court in the case of **Bhagirathi Jena Vs. Board of Directors, Orissa State Financial Corporation and Ors** (AIR 1999 SC 1841). However, that case having been decided in the context of Orissa State Financial Corporation Staff Regulations, 1975, and in that case an earlier judgment of the Hon'ble Supreme Court in **T.S.Mankad Vs. State of Gujarat** (1989) Suppl.2 SCC 110) having been noticed, which had been decided in the context of Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, 1932, in the context of Orissa State Financial Corporation Service Rules it was held that the departmental enquiry had lapsed on the date of superannuation, because the Rules of Orissa SFC did not have a provision similar to Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, which enabled the continuance of departmental enquiry even after superannuation, for the purpose of finding out whether any misconduct was established so that the same could be taken into account.

61. Reliance had further been placed upon the Hon'ble Punjab and Haryana High Court judgment in the case of **Kanwaljit Singh, General Manager (Retd.) Vs. State of Punjab and Others** (CWP No.9315/1996) decided on 06.01.2010, in which case also the Punjab State Cooperative Housing Federation Service Rules of 1976 did not provide for continuation of disciplinary enquiry beyond the date of superannuation. Reliance had also been placed upon the judgment dated 22.09.2011 in W.P. (MD) No. 9597/2008 **Dr. R. Baskaran Vs. The State of**

Tamil Nadu and others decided by the Madurai Bench of Hon'ble Madras High Court, which case had arisen out of an earlier W.P.No.4841/2006 disposed of by the same Court, without expressing any opinion on the merits of the case. Therefore, no law emerges to enure any benefit to the present applicant from this cited judgment.

62. Reliance had also been placed upon Hon'ble Apex Court judgment in **D.V.Kapoor Vs. Union of India and Ors** (JT 1990(3) 403, which case had emanated from the CCS (Pension) Rules, 1972, and therefore, the facts of that case are not directly applicable to the instant case. Reliance had further been placed upon the judgment of Hon'ble Supreme Court in the case of **State Bank of India Vs. A.N.Gupta etc** (Civil Appeal No. 9943/1983) decided on 30.09.1997. That case had emanated out of the Imperial Bank of India Service Rules, as applicable to the State Bank of India employees, and is not on all fours with the facts of the present case before us. Reliance had also been placed upon in the case of **UCO Bank & Anr. Vs. Rajinder Lal Capoor** in Review Petition (Civil) 748/2008, judgment dated 31.03.2008. That case having been decided in the context of UCO Bank (Officers) Service Regulations, 1979, which are not *pari materia* with the regulation of the respondent no 2 NCCBM, the applicant cannot derive any benefit out of that judgment also. Reliance had also been placed upon the judgment of Hon'ble Supreme Court in the case of **State of Jharkhand and Ors Vs. Jitender Kumar Srivastava and Anr** (Civil Appeal No.6770/2013 with C.A.No. 6771/2013) decided on 14.08.2013.

That case was directly related to the Pension Rules of the Government of Bihar, as adopted by the Government of Jharkhand. Since, it has been noticed that in the present case, the rules of NCCBM are much different, the applicant cannot be allowed to derive any benefit out of that judgment also. Reliance had further been placed upon the judgment in the case of **Jaswant Singh Gill Vs. M/s Bharat Coking Coal Ltd. and Ors.**, arising out of SLP (C) No. 16827/2004 dated 10.11.2006, which had emanated from the Coking Coal Mines (Nationalisation) Act, 1972 and Coal Mines (Nationalisation) Act, 1973. The rules applicable there were entirely different, and, therefore, that judgment also does not confer any advantage to the applicant, under the facts of this case. Learned counsel for the applicant had submitted his written submissions also based on documents, which also have been considered by us.

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63. The same applicant had filed the Civil Writ Petition No.1603/2009 on 30.01.2009 before the Hon'ble High Court of Punjab & Haryana at Chandigarh praying for issuance of a writ in the nature of certiorari for quashing the promotion order of private respondent-R3 from Grade D-1 (Joint Director) to Grade D-3 (Director), which, according to him, had been passed illegally, was null and void, and deserved to be quashed, and also seeking a writ in the nature of quo warranto for quashing the appointment of private respondent R-3, as the same was not in accordance with the law, as he was not entitled to be later

appointed as Acting Director General by the respondents, and for his case to be considered for the same post in accordance with law.

64. The facts of the instant case have already been discussed in great detail while discussing the facts of TA no. 37/2013 above. After discussing the facts of the case, in this case the applicant had mentioned that the private respondent R-3 was given only administrative and financial powers of the post of Acting Director General, till the same was got ratified by the Board of Governors as an additional charge, through the letter issued on 28.05.2007 (Annexure P-5), further mentioning that his headquarters will remain at Hyderabad, and his stay at Delhi will be treated as tour, for which powers there is no dispute, but that such powers were in conformity with and essential only for the day-to-day functioning and running of the institution. It was submitted, however, that the private respondent R-3 had started using statutory powers of the Director General also, which appointment of his as Director General he does not hold, and which had yet to be processed by the Ministry, which is still pending, and thus it amounts to misuse of power of under and authority. To assert his contention in so far as disciplinary proceedings are concerned these are statutory rules, and no powers had been delegated to private respondent-R3 to exercise statutory powers. It was submitted that the meeting of Board of Governors held on 12.07.2007 had also ratified the appointment of private respondent R-3 w.e.f. 16.05.2007 only as an Acting Director General. He had then repeated his contention as raised

in the other case TA no. 37/2013, also that since both he and private respondent R-3 had got the same pay scale, and he had represented against the appointment of private respondent R-3 as Acting Director General, therefore, the latter became inimical to him, and had issued the order of his suspension on 5.03.2008.

65. The applicant had contended that the promotion of private respondent-R3 from Grade D-1 to Grade D-3 had been made without following the statutory provisions, and was not in accordance with law. The applicant had thereafter found fault with the constitution of the Standing Selection Committee itself, which had recommended the name of private respondent R-3 for such promotion as Acting Director General. Reiterating the further facts of the case as already discussed above, the applicant had submitted that he had made a representation dated 29.11.2008, and had then sent a reminder on 16.12.2008, but the same had not been decided, and at the same time the post of Director General was advertised on 09.06.2007, for which he was also one of the applicants, as it had not been filled up on substantive basis. He had submitted that private respondent R-3 was not even eligible under the terms and conditions of that advertisement, and had not even applied for the post of Director General. It was also submitted that as the Acting Director General, private respondent R-3 was not competent to suspend him, and thereafter issue a charge sheet to him, in respect of which he had filed the other case TA No. 37/2013. He had, therefore, submitted that the following substantial questions of law were involved in this case, and had prayed for the writ to be issued accordingly:

- “(i) Whether the promotion of the Respondent No.3 is in accordance with law?
- (ii) Whether the statutory rules have been followed in giving promotion to the Respondent no.3?
- (iii) Whether the petition is senior than the Respondent No.3?

66. Respondent No.2 did not file any reply. Private respondent R-3 filed his reply on 17.04.2009. He had taken a preliminary objection that the applicant/petitioner had earlier filed writ petition no.16430/2008 (TA 37/2013 before us), making almost similar allegations as in the present writ petition. But yet he did not seek any relief therein with regard to the said alleged cause of action. He had also submitted that the applicant/petitioner has not come before the Court with clean hands, and has concealed and suppressed material facts, which, if disclosed, would disentitle him from seeking or obtaining any relief. Thereafter, he has discussed the role and structure of NCCBM, and had discussed the facts regarding his entry into the organisation. He had further taken the preliminary objection that as per Rule 6.2 of NCCBM Cadre Rules, 1974, in case an official did not possess the requisite Academic qualifications for the next higher grade, he would be eligible for vertical entry in the next grade or category only if the Director General relaxed the Academic qualifications, keeping in view the individual merit, experience, competence and contributions to the objectives of the organisation, which relaxations were permissible only for Grades upto and including Grade E-3, but the rules did not provide for any relaxation whatsoever of qualification of officials like the applicant/petitioner belonging to E-7 grade for vertical entry to Grade D-1.

67. It was pointed out by him that applicant/petitioner was promoted to the post of Joint Director in Grade D-1 only on the basis of relaxation of the requisite Academic qualifications, for which promotion he would not have been eligible but for such relaxation. It was submitted that under the Rules of the organisation for undertaking further education during the course of employment, it was mandatory for him to get an approval, and on being given such approval for undergoing course leading to Ph.D., the concerned official was required to execute a bond to serve the organization for a minimum period of three years after obtaining the Ph.D. Degree. In case, he takes study leave, this Bond period gets increased by double the period of study leave granted.

68. It was submitted that the applicant was required to give information to the Human Resource Department of the organization in case he had got admitted for any such Ph.D. Recounting the events as already discussed in the context of the previous T.A. no.37/2013, it was submitted that the applicant/petitioner had specifically agreed to these conditions when he had initially applied for doing Ph.D. from Dr.BR Ambedkar University, Agra, and he was fully aware of this legal requirement. It was submitted thereafter that the respondent organisation NCCBM did not receive any information from him for his undergoing any course in Ph.D., nor did he file any bond in this regard, and it was all along assumed that he had not pursued any such course for which the approval was taken by him initially.

69. The applicant/petitioner's contention of his having changed first to GG University, Bilaspur, and then to Rochville University, were discussed but it was submitted that the applicant did not undergo any course towards his Ph.D., nor did he obtain any degree from any University. He was, therefore, not eligible for promotion by way of vertical entry from Grade D-1 to a higher grade. It was further submitted that when the previous Acting Director General Dr.K.Mohan was getting relieved, private respondent R-3 was the only one who possessed the Academic qualifications required for the post of DG, NCB, as he was M.Tech in Chemical Engineering, and, therefore, the Board of Governors had, vide circulation, authorized the then Chairman of the organisation to decide regarding one of the three Joint Directors, including the applicant/petitioner, to officiate as Acting Director General when the resignation of the previous incumbent Dr. K.Mohan was accepted, and that is how he, the private respondent R-3, came to be appointed as Acting Director General, till further orders.

70. It was made clear to him that as Acting DG, he will be responsible for and would exercise all administrative and financial powers attached to the post of Director General, as were being exercised by his predecessors, and his immediate predecessor also was only an Acting DG. It was further submitted that only when the applicant/petitioner of this TA applied against the advertisement dated 09.06.2007 for the post of Director General, claiming that he fulfilled the necessary requirement, and possessed the educational qualifications, at

that stage, for the first time, the applicant/petitioner had claimed to have got himself registered for Ph.D. course with the claimed University, and having published papers in International Journals and Seminars. It was submitted that thereafter through letter dated 24.10.2007 the applicant/petitioner had submitted a so-called degree of Doctor of Science. Rest of the facts of the case, as explained by private respondent R-3, have already been discussed above, and need not be repeated here.

71. It was submitted that when it was discovered that prima facie the applicant/petitioner had committed acts amounting to serious misconduct, with regard to his having obtained a false and fabricated certificate of Doctor of Science, the applicant/petitioner had resorted to making it to be a case of enmity between him and the answering private respondent R-3, which was otherwise non-existing, and whimsical. The facts of the case thereafter were discussed, as already recorded above. It was submitted that when it had been established that the applicant/petitioner had resorted to committing gross misconduct, and had adopted demeaning and degrading tactics, just to be able to apply for the post of Director General, a clarification was sought from him through letter dated 17.03.2008, to which he did not care to reply.

72. Thereafter, as the acting Director General, the replying private respondent R-3 had issued the charge sheet, as already discussed above, which he had justified to be within his powers as Acting Director General and disciplinary authority of the applicant/petitioner, and not receiving any reply to the show

cause notice and the charge sheet, it was decided to hold a disciplinary enquiry into the charges. Thereafter the events of the disciplinary enquiry, as already recorded above, were explained, wherein it was shown that during the course of holding disciplinary enquiry by the appointed Inquiry Officer on 28.08.2008, the applicant/petitioner had gone out of the disciplinary proceedings, and did not remain present to cross examine the witnesses of the management produced that day. It was submitted that though the Inquiry Officer would have been fully justified in conducting and concluding the enquiry ex-parte after that, however, with a view to give further opportunity to the applicant/petitioner to take part in the enquiry, and to defend himself, a new date was indicated by the Inquiry Officer, on receipt of which notice the applicant/petitioner had filed the earlier writ petition no. 16403/2008, registered as TA no. 37/2008, after which the applicant/petitioner was granted stay of the enquiry proceeding on 16.09.2008 without notice to the NCCBM. It was submitted that in the connected Writ Petition, the applicant had tried to confuse the dates, while maintaining silence as to the date from which the appointment was effective. It was, therefore, submitted that the second writ petition/TA 38/2013 had been filed by the applicant/petitioner with the ulterior motives, and is frivolous, baseless and devoid of any merit or substance.

73. Private respondent-R3 had thereafter explained the dates and circumstances in regard to various appointments in the respondent organization. He had thereafter explained the

procedure followed in holding the meeting of the Internal Assessment Committee by the respondents organization, through which he had been promoted as Grade D-3 w.e.f. 1.12.2007, on probation for one year, and that his promotion from Grade- D1 to Grade D-3 was legal and valid, and in accordance with the NCCBM Cadre Rules, 1974. It was submitted that the applicant/petitioner had been suspended from service, and disciplinary proceeding are pending against him, on the allegations of fraud and fabrication of false Ph.D. certificate. It was, therefore, submitted that since the applicant/petitioner had been suspended from service, and a charge sheet has been issued to him in respect of acts of gross mis-conduct committed by him, and thereafter enquiry proceedings have been initiated against him to enquire into the correctness or otherwise of the charges levelled, the applicant/petitioner cannot be allowed to file this petition to challenge the promotion of the replying private respondent-R3, as also his promotion from Grade D-1 to Grade D-3.

74. It was submitted that the applicant/petitioner has no *locus standi* to file the present writ petition, challenging his appointment as Acting Director General, much less a fundamental right in this regard, consequent to which he can resort to the remedy of writ petition under Article 226 of the Constitution. It was, therefore, prayed that since the pendency of another writ petition has not been disclosed properly, wherein also he had questioned the respondents, and had challenged his appointment as Acting Director General, the present writ petition is also liable to be dismissed on that ground alone.

75. Thereafter offering para-wise remarks, the same information had been broken up and presented, and, therefore, need not be repeated here once again. He had also thereafter narrated the facts of the notes dated 1.04.2004 and 11.05.2005, on which the applicant/petitioner had obtained approval of the then Acting DG, for pursuing his Ph.D. course, which had been retained by the applicant/petitioner, while he had no right to retain those with him. It was submitted that this matter only goes to show the applicant/petitioner had ulterior motives, so as to avoid compliance of the conditions, which were pre-requisite for his obtaining approval for pursuing a Ph.D. course, and fulfilling the prerequisite conditions.

76. It was admitted that the answering private respondent was not eligible for even applying for the post of Director General, as he was more than 57 years of age, but it was submitted that he could still be always placed as Acting Director General incharge. It was also submitted that acting as the disciplinary authority of the applicant/petitioner was one of the administrative functions conferred on him as Acting Director General of the organization under the rules.

77. It was submitted by private respondent-R3 that he had not exercised any statutory powers, but had only exercised powers vested as per rules of the respondents society. The contention of the applicant/petitioner that even as a successor of the previous Acting DG, he could not have acted as the applicant/petitioner's disciplinary authority, was frivolous, baseless and without any merit, and, which, if accepted, would

amount to giving a licence to the applicant/petitioner to commit gross acts of indiscipline or misconduct, and thereafter to contend that no one can take disciplinary action against him. It was submitted by the private respondent R-3 that he not only possessed the requisite Academic qualifications for promotion to Grade D1, but that he had also been promoted to Grade E-7, more than 7 years ahead of the applicant/petitioner.

78. It had been further submitted that after he was handed over the suspension order dated 5.03.2008, the applicant/petitioner had also committed further acts of indiscipline and gross misconduct, as he had sealed two almirahs and escaped, which were containing important office files and records, thus seriously affecting the smooth functioning of the respondent organization, and it was explained that when he had refused to hand over the contents of the almirahs, they had to be reopened and inventory made in the presence of a notary public, incurring unnecessary expenses in this regard.

79. Thereafter, private respondent R-3 had explained the circumstances in which the composition and jurisdiction of the Standing Selection Committee was decided by the Board of Governors of the NCCBM, which Committee had selected one of the Joint Directors -D1 Grade, being the senior most officer at that time, the answering private respondent R-3, as Acting Director General, for the period till such time a regular incumbent was appointed to the post. It was therefore submitted that applicant/petitioner is only trying to confuse and mislead, by making a false submission that he did not have the powers of

the Acting DG delegated to him by the Board of Governors. It was denied that the decision of the Chairman of the NCCBM to promote answering private respondent R-3 from Grade D1 to Grade 3 was not proper, or that it was not approved by the Board of Governors. It was submitted that it is not a question of applicant/petitioner being senior to him, as he did not even possess the requisite Academic qualifications, and both had been appointed in Grade D1 on the same date.

80. In his rejoinder, the applicant/petitioner more or less reiterated his contentions, as made in the main writ petition. He had tried to distinguish between Internal Assessment Committee and Standing Selection Committee, and had desperately tried to make out a case that the cases of the applicant/petitioner and the private respondent R-3 were never put up before Internal Assessment Committee, and were also not forwarded to the Standing Selection Committee, after which only their recommendations could have been considered by the Board of Governors, and he had, therefore, tried to state that the promotion of private respondent R-3 could not only be termed to be illegal, but void as well. He had tried to give a comparative picture of the eligibility of all the three persons whose names had been mentioned by the previous incumbent Acting DG for consideration for being placed in charge as DG, and he had tried to make out a case that even in that, there was a mistake, and the true picture of performance of all the candidates had not been placed by the previous Acting DG. The applicant not having made the previous Acting DG as a party to the present proceedings, no comments or reply could have been filed by him.

The applicant had, thereafter repeated his contention for constitution of NCCBM as an organization, and its rules and promotion recruitment policy etc., and had repeated his contention that the private respondent R-3 was not the senior most person in the organization, and should not have been given the charge of the post of Acting DG. He had, therefore, prayed that W.P. to be allowed.

81. Written arguments had been filed on behalf of respondent no. 2 and 3 on 25.09.2014, which we have perused. Most of the arguments included therein have already been noted and discussed above, and, therefore, need not be repeated.

82. We have given our anxious consideration to the facts and the law applicable to these two cases. Firstly, it is clear that rule 36.2 of the respondent no.2 organization NCCBM, namely, NCB Officials' (Conduct Discipline and Appeal) Rules, 1975, provide for completion of disciplinary enquiry to be the sole basis for all decisions regarding payment of various salary and retiral benefits, and the rules of the NCCBM do not provide for any automatic cessation of any pending disciplinary proceeding on the date of superannuation, as in the case of Central Government employees. Therefore, the benefit of that proposition of law cannot be granted to the applicant, in spite of the numerous case law cited by the learned counsel for the applicant.

83. Like in the first case TA No.37/2013, in the second TA No. 38/2013 also, the applicant/petitioner has nowhere denied that the previous incumbent Dr.K.Mohan had as Acting DG had not been enjoying the powers of being the disciplinary authority for him. He had actually relied upon the two permissions which he had obtained from the previous Acting DG, and then had kept in his personal custody, without handing them over to the Human Resource Department of the organization, or to the DG office Secretariat, the facts regarding which have already been discussed. Therefore, it is clear that if in the respondent organization NCCBM, Acting DG is fully empowered to perform the functions of the disciplinary authority, and if the previous incumbent Acting DG. Dr.K.Mohan could exercise those functions, the later incumbent Acting DG, who is private respondent R-3 & R-4 respectively in both these TAs, cannot be prevented from exercising those functions in full right.

84. Therefore, the contention of the applicant that merely routine administrative and financial powers had been delegated to the private respondent R-3, and that he did not have powers of being the competent Disciplinary Authority, cannot at all be accepted. Since the previous incumbent was also Acting DG, and the present private respondent R-3, was also an Acting DG, both of them ought to have had the same powers and functions.

85. In spite of all the attempts made by the applicant in trying to show that the Internal Assessment Committee and Standing Selection Committee etc. of the organization had not been properly constituted, and had not advised the Governing Board properly, we are not at all convinced of the arguments put forth by the applicant/petitioner in this regard. The applicant has nowhere been able to deny that he had indeed obtained through fraudulent means a bogus degree of Ph.D./Doctor of Science, a copy of which had been produced by him in both these TAs. It would be a very great coincidence of typographical error that even the name of the University on the Ph.D.Degree certificate, as produced by the applicant/petitioner through Annexure R-19 (page166), has been mentioned as 'ROCHBILLE UNIBERSITY' on top, and below that, within the circle, as 'ROCHVILLE UNIVERSITY', in the place of the purported seal of the University. Similarly, at the bottom of the page a 'true copy' certified by the advocate is said to have been signed by "President of the Unibersity", 'Probost', 'Executive Vice President' and 'Dean' and that degree had been checked and conferred upon the applicant on twenty first day of September, two thousand and seven. The applicant has no where even claimed to have visited the USA, where purportedly this University was situated, for having received the Doctor of Science degree, on the said date of twenty first day of September, two thousand and seven. We are, therefore, fully convinced that the document claimed by the applicant to be his Ph.D. Degree is nothing but a forgery.

86. Secondly the applicant had never filed any rejoinder to the counter reply filed by the respondents when the case was pending before the Hon'ble Punjab and Haryana High Court. Therefore, the following submissions of the respondents have remained un-rebutted, and were not answered even in the MA, and in the rejoinder to the reply to the MA, filed after the transfer of the cases to this Tribunal:

- (i). That the applicant and private respondent R-4 had been promoted as Joint Directors from the same date of 22.08.2001 through the order dated 31.03.2001, which was a common order in respect of both;
- (ii) That the applicant was eager to try to become equal to private respondent R-4 in terms of Academic qualifications and had wanted to do Ph.D. course, so that he could be in reckoning for the post of Director General later on;
- (iii) That the applicant had first sought enrolment for a Ph.D. in particular subject in Agra University in Physics Department, but had later sought permission to register with GG University, Bilaspur, and having failed to get a proper guide and get himself registered for a Ph.D. subject thereof, he had submitted to the then Acting Director General a note that he may be permitted to work for a Ph.D. thesis for a Degree from the Rockville University, USA;
- (iv) That the orders passed, and the permission granted by the then acting Director General to the applicant, were kept by the applicant in his own possession,

and were never handed over to the Human Resources Department of the NCCBM for issuance of a proper Office Memorandum in this regard;

- (v). That when he claimed certain privileges of having obtained proper permission from the previous Acting Director General of respondent no. 2 organisation, and the respondents could not trace the papers relating to such permission, the applicant had made a false averment against the Director General Sectt. Office, and against the Human Resource Department of respondents organization NCCBM, which was later on found to be untrue.
- (vi). That the applicant had claimed to have obtained a Ph.D. Degree from the said Rockville University, USA, but it was later established by the respondent no. 2 organisation, in consultation with the Association of Indian Universities, and with the United States Educational Foundation in India (USEFI), that no such University by the name of Rockville University actually exists anywhere in USA, and which is a bogus Institution, available only on line, which issues certificates for any degree whatsoever in return for payment and deposit of certain fees;
- (vii). That since the information obtained by the respondent no.2 organization from Association of Indian Universities and USEFI, and mentioned in the counter reply filed by them before the Hon'ble High

Court, was never rebutted by the applicant through any rejoinder, the information furnished by USEFI that no such University exists in USA has to be taken as true.

- (viii). That, therefore, it is proved beyond doubt that the applicant had never undertaken any course of study, and had never submitted any Ph.D. thesis in regard to the subject mentioned by him to the said Rockville University, and had never obtained any proper Ph.D. Degree from a real University, after doing Research work and publishing at least a few Scientific papers on the basis of the Research work done by him
- (ix). That the applicant has also not produced a copy of the Ph.D. thesis, on the basis of which he claimed to have obtained the Ph.D. Degree, even without a written permission having been issued by the concerned Human Resource Department of the respondent no.2 organization NCCBM;
- (x). That, therefore, even though the disciplinary enquiry in this case has yet to be conducted, because of the ex-parte stay order granted by the Punjab and Haryana High Court, which was never vacated, but lapsed when the cases were transferred to this Tribunal, one thing is true that the applicant had played a fraud upon the respondent no. 2 organisation NCCBM in claiming that he had obtained a Ph.D. Degree from the Chemistry Department of a USA University, in a particular given subject, and

even that subject actually relates to the Department of Material Science, and not of Chemistry;

(xi). That, thereafter, the applicant had even made a submission before the respondent no. 2 organization NCCBM that if they were not accepting his having obtained a proper Ph.D.Degree, from a proper University in USA, he was prepared to retract his submissions in this regard, which only goes to show and to prove that he had never obtained any such proper degree in Ph.D. from any proper University in USA, and had only made a fraudulent and bogus claim in this regard;

(xii). That the basic tenet of law is that fraud vitiates everything, and unravels every right, and a person who has played a fraud is not even entitled to claim the benefit which he would have otherwise been entitled to claim under the law, as has been held in numerous judgments of British and Indian Courts;

(xiii). That it is further clear that the delay by the respondents in having concluded the disciplinary enquiry against the applicant was occasioned only due to applicant having obtained an ex-parte stay against the conduct of the disciplinary proceedings from the Hon'ble Punjab and Haryana High Court, which stay was never vacated by the High Court, and though it lapsed when the cases were transferred to this Tribunal, this aspect was never clarified by this

Tribunal after the transfer of these cases to this Tribunal. Therefore, a person who had prevented fact finding through a departmental enquiry being conducted properly, leading to submission of an enquiry report, on which he could have given his comments, and consideration of the same by the Disciplinary Authority, and consideration of his representation on the conclusion of the Disciplinary Authority by the Appellate Authority, leading to a culmination of the disciplinary proceedings, cannot now be allowed to state that he has escaped from the clutches of the law, and submit that the department enquiry had lapsed, only because he was allowed to superannuate on the date of his regular superannuation, while he was still under suspension, more so because the rules of the respondent no.2 organisation NCCBM, particularly rule 36.2, do not prohibit such continuance and completion of disciplinary enquiry against any employee of the organisation after his retirement on superannuation.

87. Since as has been observed above, fraud vitiates everything, and unravels every right, and the fraud played by the applicant has even been admitted by him while making the submission that if the respondent organisation does not believe in his having obtained Ph.D. Degree from a USA University in a proper manner, his submission in that regard may be discarded,

it is clear that the applicant is not entitled to any relief whatsoever from this Tribunal, under the law as laid down in numerous cases.

88. Therefore, both the TA Nos.37/2013 and 38/2013 are dismissed. We would have been inclined to impose heavy cost upon the applicant, but since he has already superannuated/retired, and pending completion of the disciplinary proceedings against him retiral benefits have also not been disbursed to him, we refrain from imposing any cost upon the applicant.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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