

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA/100/836/2018
MA/100/2961/2018

New Delhi, this the 21st day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Sujoy Banerjee (Age 48 yrs),
11-B, Officers' Colony,
Sector 14A, Noida-201301, U.P.Applicant

(Through Shri Kripa Shankar Prasad, Advocate)

Versus

1. Secretary & Chairman
Board of Governors, IIFM
Ministry of Environment,
Forest & Climate Change
Paryavaran Bhawan, Jorbagh,
New Delhi-110003
2. Director
Indian Institute of Forest Management,
Nehru Nagar,
Bhopal-462003 (M.P.)
3. Shri Tejinder Singh
C/o Min. of Environment, Forests & CC,
Regional Office,
Link Road No.3
E-5, Ravishankar Nagar,
Bhopal-462003 (M.P.)

& Also at
C/o Indian Institute of Forest Management

Nehru Nagar,
Bhopal-462003 (M.P.)

....Respondents

(Through Shri Rajinder Nischal, for respondents 1 & 2
Shri Gaurav Chaudhary, for respondent 3)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant is a member of the Indian Forest Service (IFS) of State of Uttar Pradesh. The Indian Institute of Forest Management (IIFM) Bhopal – 2nd respondent herein issued advertisement in December 2016 inviting applications for appointment to the posts of Assistant Professor, Associate Professor and Professor in certain disciplines such as Technical Forestry and Information Technology & Quantitative Techniques, on deputation basis, duly stipulating the qualifications and scales of pay. The applicant submitted his application in response to the advertisement. However, the selection in pursuance of that advertisement did not reach finality. Another advertisement on the same lines was issued on 21.02.2017. There again, the selection process went upto certain level but did not become final. Therefore, third advertisement dated 14.07.2017 was issued and the selection process has not yet been completed.

2. The applicant has also opted to be sent on deputation under the Central Staffing Scheme. On consideration of the same, the Ministry of Environment Forest and Climate Change

(MoEF&CC) issued order dated 20.12.2017 recommending the appointment of the applicant herein to the post of Deputy Inspector General of Forests, Department of Land Resources, New Delhi. However, the applicant did not join that post within the stipulated time. Taking that into account, the MoEF&CC passed an order dated 28.06.2018 debarring the applicant from consideration for central deputation for a period of five years with effect from 20.12.2017.

3. This OA is filed seeking relief in the form of direction to consider the candidature of the applicant for the faculty post and to initiate disciplinary proceedings against the third respondent under Rule 14 of the CCS (CCA) Rules. By filing MA No.2961/2018, the applicant sought to challenge the order dated 28.06.2018, to be part of the prayer.

4. The applicant contends that though he was qualified to be appointed as a Professor in pursuance of the advertisement, he was not selected on account of extraneous considerations and advertisements were issued one after the other, just to deny him appointment. He contends that even while the process of selection to the post of Professor was in progress, an order of deputation was passed, and when he could not join the post within the stipulated time, an order was passed debarring him for deputation for five years. The applicant alleges that the entire exercise in this regard, is illegal and arbitrary.

5. Respondents no.1 and 2 filed a detailed counter affidavit. It is stated that though the advertisement was issued, adequate number of suitable candidates did not come forward and, as a result of that, advertisement was issued once again. As regards the applicant, it is stated that the qualifications held by him did not meet the required criteria and accordingly he was not selected. It is also stated that one candidate who was selected, has expressed his unwillingness to join and, therefore, the process is continued. Serious exception is taken to the prayer in the OA i.e. the one to initiate disciplinary proceedings against the third respondent.

6. The third respondent filed a separate counter and he stated that though the entire exercise is one for appointment through selection of faculty, the applicant has made certain baseless allegations against him and that the prayer made in the OA against him is totally objectionable.

7. Heard Shri Kripa Shankar Prasad, for the applicant, Shri Rajinder Nischal, for respondents 1 and 2 and Shri Gaurav Chaudhary, for respondent 3.

8. On an overall consideration of the OA as well as MA 2961/2018, three issues arise for consideration. The first is about the right of the applicant to be selected and appointed as faculty member; the second is about the validity of the order

dated 28.06.2018 debarring the applicant for central deputation for a period of five years with effect from 20.12.2017; and the third relates to the plea of the applicant to initiate disciplinary proceedings against respondent no.3.

9. The second respondent is an organization involved in management of forests and imparting training in various fields. For the purpose of imparting training, faculty members are recruited in the respective fields. The initial advertisement that was issued in December 2016 reads as under:

"Qualifications, Experience and other requirements:

1. Faculty positions (03 Posts) on deputation basis at the level of Assistant Professor/Associate Professor/Professor in the faculty areas of (i) Technical Forestry and Information Technology & Quantitative Techniques from outstanding Indian Forest Service (IFS) Officers with strong academic background and expertise in the respective areas.
 - (a) Desirable qualification: Outstanding officers who have earned reputation for field innovations, extensive field experience and Ph.D degree. The person who has made significant contributions to knowledge demonstrated by academic publications but not having Ph.D degree may also be considered."

From this, it becomes clear that selection is confined to the process of deputation and not by way of direct recruitment. Obviously, for this reason, the consideration is confined to IFS officers.

10. In response to the advertisement, the applicant submitted his application. Against the column in the form "Post Applied",

the applicant entered "Professor (Ecosystem & Environment MGMT)". In the other column, he stated his qualifications also. For one reason or the other, the selection in pursuance of this advertisement, did not materialize. Therefore, a second advertisement, on the same lines, was issued duly incorporating a clause to the effect that those who have applied earlier need not apply. That again did not reach finality. The reason stated is that one Shri R.K. Srivastava, Secretary, Forest Department, Government of M.P., who applied for the post and was shortlisted, expressed his unwillingness to undertake the assignment at a later point of time. Therefore, another advertisement was issued on 14.07.2017.

11. For variety of reasons, the selection did not reach finality. But it is always the prerogative of an employer either to take the selection process to its logical end, or to abandon the same half way through. An applicant only has a right to be considered but not a right to be appointed. In **Shankarsan Dash Vs. Union of India**, (1991) 3 SCC 47, the Hon'ble Supreme Court held as under:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules

so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899."

Therefore, mere fact that the applicant submitted his application in response to the advertisement, does not give him a right to be appointed nor can he insist that the selection process must be concluded in a particular manner. It is a different matter that if the appointment made is illegal or is otherwise tainted, he can certainly challenge that.

12. Though an attempt was made by the respondents to impress us that the post applied for by the applicant did not exist at all, we do not intend to deal with that for the reason that neither selection is completed nor can we sit as an appellate authority over the selection. It is only when appointment is made, that an occasion would arise to scrutinize all these aspects.

13. As regards the second aspect, it is not in dispute that on a request made by the applicant, he was appointed on deputation

under the Central Staffing Scheme, to the post of Deputy Inspector General of Forests, Department of Land Resources, New Delhi vide order dated 20.12.2017. For reasons best known to him, the applicant did not join that post. The letter dated 17.12.2015 addressed by the Establishment Officer, Department of Personnel and Training to all the Cadre Controlling Authorities of Group 'A' Services in the context of deputation, makes it clear that if an officer who is appointed on deputation basis to any position fails or refuses to join, he would be debarred from central deputation for a period of five years. The relevant para reads as under:

"4. The Government of India has been following a policy of debarring an officer for five years, if, he/she fails to join the post under the CSS either on personal grounds or the refusal of the Cadre to relieve him. It may be noted that withdrawal of the name of an officer after a panel has been recommended by the Civil Services Board results in debarment for five years. As per instructions contained in letter No.14/1/98-FA(UN) dated 26.2.1998 and No.1/1/2003-FAS, dated 8.5.2003 of DoP&T, an officer who is debarred from being taken on deputation to a post under the CSS is also to be debarred from being given Cadre Clearance for foreign assignments/consultancies abroad during the period of debarment. Therefore the nomination of officers debarred from central deputation may not be forwarded for appointment to posts under the CSS till the period of debarment is over."

14. In case the applicant did not want deputation of any other kind, except the one as Professor, he could have so informed the concerned authority. He did not do that and permitted the

deputation order to come into existence. He cannot be conceded the luxury to apply for deputation and then to abandon it, after an order is passed. The inescapable conclusion is that para quoted above would be attracted and the order debarring him from deputation for certain period, accords with that. Therefore, no exception can be taken to the order dated 28.06.2018. Further, this would virtually block his chances, even if bleak, of his being appointed as Professor, since that is also by way of deputation.

15. Now comes the third aspect. The applicant has, *inter alia*, prayed as under:

"8.(b) Direct Ministry of Environment, Forests and Climate Change, New Delhi to initiate disciplinary proceedings under Rule 14 of the CCS CCA Rules against Respondent no.3, Shri Tejinder Singh, Incharge Director, IIFM, Bhopal for gross misuse and abuse of his official authority with malafide, malicious and criminal intent to unlawfully defer and block the candidature of the applicant for the said posts."

16. Perusal of this discloses that not only the applicant has made certain allegations against the third respondent but also has gone on to the extent of seeking the relief in the form of initiating disciplinary proceedings against him.

17. We are indeed shocked to read this type of prayer made by a member of an All India Service, against an officer who is far

superior to him. Thinking that he might have made such a prayer out of emotion, we asked the applicant whether he would give a rethinking to it or stick to the same. He stated that he wants a decision on that.

18. It is not uncommon that an applicant may allege malafides or misuse of official authority on the part of an authority who passes an order detrimental to his intents. In such cases the burden lies upon the applicant to prove the alleged acts of malafide. Even where such malafides are proved, at least partially to the satisfaction of the Court or Tribunal, at the most it would end up in nullification of the order passed by the authority against whom malafides are pleaded and proved. This is a strange case in which a relief, which is uncommon, has been prayed in the form of institution of disciplinary proceedings against the third respondent.

19. Being the authority, having the control and management of the second respondent, the third respondent has every right to see that selection takes place in accordance with relevant provisions of law. If there is any doubt as to the further steps to be taken, he has a right to defer the selections. As of now, no selection has taken place. Though the applicant made an attempt to plead malafide, he failed to prove them even to the level of small fraction.

20. The applicant is not an ordinary citizen, not conversant with the provisions of law. The very prayer for initiation of disciplinary proceedings against a senior officer of IFS is highly objectionable. In a way, it tells upon the lack of control on himself, on the part of the applicant. On the one hand, he defied the order of deputation passed in his favour and on the other, he is taking his being appointed as Professor by second respondent as granted and threatening the third respondent. Thereby he is disturbing the functioning of the department. The applicant has exposed himself to disciplinary action by his employer on account of the acts and omissions that are evident from this OA itself, apart from exposing himself to the action for defamation, which the third respondent may choose.

21. We dismiss the OA accordingly. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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