

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00776/2018

Jabalpur, this Tuesday, the 11th day of December, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Suresh Babu, S/o Shri Nathuram, aged about 55 years, presently working as Deputy Director (Biology) & Scientist D-Cum-Coordinator (Head of Office), Central Forensic Science Laboratory, Bhopal (M.P.), R/o H.No.30, Dwarka Puri Colony, Kotra Road, Bhopal – 462003 (M.P.) -Applicant

(By Advocate – Shri Manoj Sharma)

V e r s u s

1. Union of India through its Secretary, Ministry of Home Affairs, Central Secretariat, North Block, New Delhi – 110001.
2. The Chief Forensic Scientist, Directorate of Forensic Science, MHA Government of India, Block-9, 8th Floor, C.G.O. Complex, Lodhi Road, New Delhi – 110003.
3. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi – 110069. - Respondents

(By Advocate – Shri S.P. Singh for respondents Nos.1 & 2 and Shri Mohan Sausarkar for respondent No.3)

(Date of reserving order : 19.11.2018)

O R D E R

By Navin Tandon, AM.

The applicant is aggrieved by the fact that the Board of Assessment (BOA) for his promotion to Director-cum-Scientist 'E', were not constituted as per rules.

2. The applicant has made the following submissions:

2.1 He was initially appointed as Senior Scientific Officer through UPSC in the year 1993.

2.2 He got his subsequent promotion as Assistant Director and Deputy Director only through the intervention of this Tribunal and Hon'ble High Court.

2.3 The organisation in which the applicant was appointed was earlier named as Bureau of Police Research and Development. Vide notification dated 30.12.2013, Ministry of Home Affairs has formed a separate services for the respondent organisation, which is directly controlled by the Ministry of Home Affairs. The new service rules has been framed namely Ministry of Home Affairs, Directorate of Forensic Science Services, Group 'A' Posts Recruitment Rules, 2013 (hereinafter referred to as '**2013 Rules**') (Annexure A-10) and the nomenclature of the post of Directors has been changed and re-designated as Director & Scientist 'E', Deputy Director & Scientist 'D', Assistant Director & Scientist 'C' & Scientist 'B' in the Ministry of Home Affairs.

2.4 A Board of Assessment was set up by UPSC for promotion to the post of Director and Scientist 'E' under

Flexible Complementing Scheme in May, 2016. The applicant was also considered and was called for personal talk. However, he was not promoted but Dr. S.K. Jain (just above the applicant in the seniority list of Deputy Director and Scientist 'D') and four others, who were junior to the applicant in the said seniority list, were promoted.

2.5 The applicant was again called for a personal talk on 02.08.2018 for promotion as Director and Scientist 'E'.

2.6 In the BOA meeting, the applicant found that his batchmate Dr. S.K. Jain, who was promoted to the rank of Director and Scientist 'E' only in 2017, was part of the BOA. After attending the interview on 02.08.2018, the applicant submitted a representation dated 13.08.2018 (Annexure A-14) to the Hon'ble Union Home Minister, wherein he has listed the good work done by him as in-charge of Central Forensic Science Laboratory (CFSL), Bhopal and has questioned the constitution of the BOA.

2.7 In view of the above, Dr. S.K. Jain is not competent to be part of the BOA.

3. The applicant has sought for the following reliefs:

8. RELIEF SOUGHT:

It is, therefore, prayed that this Hon'ble Court may kindly be pleased to:-

- 8(i) To summon the entire relevant record from the possession of the respondents for its kind perusal;
- 8(ii) To quash and set aside the Assessment Board held at 3:30 PM on dated 02.08.2018 for in-situ promotion to the grade of Director & Scientist-E;
- 8(iii) To command and direct the Respondent Authorities to reconstitute the Assessment Board for in-situ promotion to the grade of Director & Scientist-E in accordance to the Rules, 2013;
- 8(iv) To command and direct the Respondent Authorities to recommend and promote applicant to the post of Director & Scientist-E alongwith all consequential benefits;
- 8(v) To command and direct the respondent authorities to fix the seniority of applicant over and above to his juniors in the Grade of Director & Scientist-E alongwith all consequential benefits like pay, perks, status, arrears thereon and interest therein;
- 8(vi) Any other order/orders, which this Hon'ble Court deems, fit proper.
- 8(vii) Cost of the petition may also kindly be awarded."

4. The short reply and additional reply from respondents Nos.1 & 2 makes the following submissions:

4.1 Dr. S.K. Jain is the senior most Director in CFSL and he has been entrusted with the additional charge for the post of Director-cum-Chief Forensic Scientist vide orders dated 28.02.2018 (Annexure R-1) and is competent to perform all functions of the post of Director-cum-Chief Forensic Scientist.

4.2 Once an officer is given additional charge of a post, he is competent to exercise the powers of that post unless and until it has been specifically restricted by any statute/Rule/Law. The Statute/Rules in the present case are 2013 Rules, which were notified vide GSR No.806 E dated 30.12.2013.

5. In the reply filed by respondent No.3 (UPSC), it has been mentioned that as per the extant Recruitment Rules, governing the method of recruitment of Director & Scientist 'E' in the Directorate of Forensic Science Services, the composition of the BOA is as under:

- “1. Chairman/Member, UPSC – as Chairman
- 2. Joint Secretary, M/o Home Affairs – as Member
- 3. Director-cum-Chief Forensic Scientist,
Directorate of Forensic Science Services – as Member
- 4. Three experts in the relevant field of
Forensic Science (to be nominated by the UPSC) – as
Member”

5.1 The department, i.e. Directorate of Forensic Science Services, vide their letter dated 25.07.2018 (Annexure AIII), have communicated the name of Dr. S.K. Jain, Director-cum-Chief Forensic Scientist and accordingly, he took part in the BOA on 02.08.2018.

5.2 Based on the personal talk, the BOA recommended the name of other three officers and did not recommend any change in the grade in respect of the applicant.

6. The applicant has filed his rejoinder and has refuted the averments made by the respondents in their reply.

7. Heard both sides and perused the pleadings and documents available on record.

8. Learned counsel for the applicant took us through the following judicial pronouncements/executive instructions to emphasise that statutory duties cannot be performed by an officer who has been asked to look after the current duties on the post.

8.1 Office order dated 28.02.2018 (Annexure R-1) was issued directing Dr. S.K. Jain, Director, CFSL, Chandigarh to hold the additional charge of the post of Director-cum-Chief Forensic Scientist, Directorate of Forensic Science Services, in addition to his responsibilities. It is clear that Dr. S.K. Jain has not been promoted to the post of Director-cum-Chief Forensic Scientist and was only asked to look after the current charge.

8.2 In the case of **B.N. Dhotrad vs. The Board of Karnataka Land Army Corporation Limited**, (ILR 2006

KAR 3163), the Hon'ble High Court of Karnataka has held that, “it is clear that a Government servant appointed to be in-charge of current duties of an office cannot exercise any substantive powers of the office. He cannot discharge the statutory functions assigned to the post. He can merely perform the day today office duties because the powers other than substantive powers do not adversely affect the interest or rights of others.”

8.3 In the consolidated instructions for Departmental Promotion Committees, issued by DoP&T dated 10.04.1989, as amended on 27.03.1997 (Annexure RJ-6), it has been stated that composition of Search/Selection Committees or similar Committees set up for making recommendations for appointments to posts at all levels excluding Secretary level in autonomous/statutory bodies, etc., should comprise officers/Members at least one level above the post for which selection is to be made. In the instant case, Dr. S.K. Jain is himself Scientist ‘E’ and is sitting in the BOA for promotion to Scientist ‘E’, which is inappropriate.

8.4 The Recruitment Rules for the post of Director-cum-Chief Forensic Scientist (Annexure RJ-4), specifically mentions that officers with five years regular service in the

grade of Directors are entitled for promotion. In the instant case, Dr. S.K. Jain has hardly completed one year of service in Director and Scientist 'E' and, therefore, he is not even eligible to be considered for promotion as Director-cum-Chief Forensic Scientist.

8.5 Learned counsel for the applicant has cited the judgment of Hon'ble Supreme Court in the case of **Union of India and Anr. vs. Raghwar Pal Singh**, Civil Appeal No.1636 of 2012 dated 13.03.2018, wherein the Hon'ble Supreme Court has set aside the appointment made by an officer, who was Incharge of Director of Central Cattle Breeding Farms, Suratgarh.

8.6 In the Delegation of Financial Powers Rules, 1978, it has been brought out in Government of India decision dated 24.01.1963 (Annexure RJ-7) that officer performing current duties can exercise administrative and financial powers of the post but not the statutory powers.

8.7 In the case of **Ashutosh Kumar Pandey vs. State of M.P. & others**, 2017 SCC Online MP 134, the Hon'ble High Court of Madhya Pradesh has held that the officer working on officiating basis cannot discharge statutory functions.

9. Based on the above mentioned judicial pronouncements/executive instructions, learned counsel for the applicant makes a strong case that presence of Dr. S.K. Jain in the BOA as Director-cum-Chief Forensic Scientist, vitiates the position of the BOA as he was neither one level above than the post for which the promotions were made, nor have the eligibility criteria to be even considered for the post of Director-cum-Chief Forensic Scientist. Since he was only asked to look after the current duty, he cannot have discharged the statutory functions to the post.

10. Learned counsel for respondents Nos.1 & 2 put forth the following arguments:

10.1 He has questioned the motive of the present Original Application. He brought our attention to Para 2 of applicant's representation to Hon'ble Union Home Minister dated 13.08.2018 (Annexure A-14), wherein it has been stated that, "it came to my notice from reliable source that all two juniors and one senior except me were recommended by the Board on dated 02.08.18 through personal talk for in-situ promotion, which is injustice to me as I have answered all the questions correctly raised by UPSC Board." Since he has

appeared in the personal talk, he cannot raise these objections at a later stage.

10.2 Further, the office order dated 28.02.2018 (Annexure R-1) clearly indicates that Dr. S.K. Jain, Director, CFSL, Chandigarh is to hold the additional charge of the post of Director-cum-Chief Forensic Scientist until further orders.

10.3 The applicant has challenged the constitution of the BOA only after 11 days when he came to know that he has not been recommended for promotion.

10.4 The judicial pronouncements cited by learned counsel for the applicant namely; **B.N. Dhotrad** (supra) and **Raghwar Pal Singh** (supra) are the cases where the authority of Government was not there. In the present case, the Ministry has authorised Dr. S.K. Jain to perform the duties of Director-cum-Chief Forensic Scientist.

10.5 The Union Public Service Commission (UPSC) is an expert body. The BOA was headed by the Member of UPSC and Dr. S.K. Jain was only one of the members of the Board. UPSC has not recommended name of the applicant.

10.6 In the case of **A. Savariar vs. Secretary, Tamil Nadu Public Service Commission**, Writ Petition No.650 of 2000

decided on 28.02.2008, the Full Bench of three judges of Hon'ble High Court of Madras has held as under:

“9. Consequently, as far as the point of reference is concerned, we hold that the Office who is holding the post in-charge has got power to discharge the powers and statutory functions of the said post. Registry is directed to place the papers of the writ appeal before the appropriate Bench for disposal.”

11. Learned counsel for respondent No.3 (UPSC) submitted that the applicant did not have the requisite accomplished capabilities as prescribed and, therefore, his name was not recommended for in-situ promotion to Scientist ‘E’.

12. Learned counsel for the applicant submitted that the case of **A. Savariar** (supra), cited by learned counsel for respondents Nos.1 & 2, has been reversed by the Hon'ble Supreme Court in Civil Appeal Nos.1078-1079 of 2013, decided on 15.02.2013. He made a very strong case for declaring the constitution of BOA as illegal and pleaded that recommendations made by the BOA should not be implemented. Instead, a new BOA should be reconstituted.

13. We find that in the case of **A. Savariar** (supra), the Full Bench of Hon'ble Madras High Court has held as under:

“9. Consequently, as far as the point of reference is concerned, we hold that the Office who is holding the post

in-charge has got power to discharge the powers and statutory functions of the said post. Registry is directed to place the papers of the writ appeal before the appropriate Bench for disposal.”

14. The Hon’ble Apex Court, while disposing of Civil Appeal Nos.1078-1079 of 2013 in the case of A. Savariar (supra), has observed in Para 24, as under:

“24. While disposing of these appeals, we make it clear that this Court has not expressed any opinion on the correctness or otherwise of order dated 28.2.2008 passed by the Full Bench of the High Court and the question whether a person, who holds higher post as in-charge in addition to his substantive post is entitled to exercise the powers of that post is left open to be decided in an appropriate case.”

15. We respectfully bow to the Full Bench judgment of the Hon’ble High Court of Madras, which has not been interfered by Hon’ble Apex Court, and hold that the officer holding the current duties can also discharge statutory functions.

16. In view of the above, we are not inclined to provide any relief to the applicant. Accordingly, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member