

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/00264/2014

Date of order : 27.11.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

DR. SIBNATH MAITY

VS.

UNION OF INDIA & ORS. (CSIR)

For the Applicant : Mr. S. Samanta, Counsel

For the Respondents : Mr. P. Bajpayee, Counsel

ORDER (Oral)**Per Mr. Justice G. Rajasuria, Judicial Member:**

Heard both sides.

2. This O.A. has been filed seeking the following reliefs:-

- "a. To cancel/rescind the Order dated 27/8/2013 giving appointment to Respondent No. 5 as Acting Director of CMERI;
- b. To appoint the applicant as Acting Director of CMERI with immediate effect, till the date of retirement.
- c. To grant all consequential benefits.
- d. To produce all relevant records.
- e. Any other or further order/orders as may seem fit and proper to this Hon'ble Tribunal."

3. The indebutable and indisputable facts as set out in the O.A. would run thus:

The applicant is the Chief Scientist and Head of Technology Innovation Centre, Durgapur. It so happened that the post of Director in that organisation fell vacant whereupon acting Director was appointed.

4. The grievance of the applicant is that instead of appointing the seniormost Scientist namely, the applicant to perform his duties as Acting Director in the absence of Director, one other person namely private respondent No. 5, Dr. P. Pal



Ray, Sr. Scientist of CSIR has been made Acting-Director of CMERI in place of Director of CSIR, CMERI, Durgapur. Whereupon representation dated 28.8.2013 (A-4) was made by the applicant to the Director General, CSIR, New Delhi but there was no response. According to Ld. Counsel for the applicant there was no reply to that Annexure A-4. However, one another representation also was made by the applicant on 25.9.2013 (Annexure A-6) to the Hon'ble Vice-President of CSIR, for that also there was no response immediately.

5. The Ld. Counsel for the applicant would explain and expound that due to pressure he was constrained to withdraw the said Annexure A-6 dated 25.9.2013, but that was not out of his own volition. However, the representation to the Director General vide Annexure A-4 dated 28.8.2013 still subsists, for which there was no reply from the Director General.

6. Ld. Counsel for the applicant would pin his faith in Annexure A-5 the circular dated 7.3.2013 and the gist of it is extracted hereunder for ready reference:-

"1. In the absence of Director on account of tour/leave/LTC the senior most Scientist (H&G) irrespective of whether such a Scientist has been granted extension in service beyond the normal age of superannuation will look after the duties of Director and will exercise all the administrative and financial power except disciplinary powers without any additional remuneration subject to vigilance clearance.

2. IN case a regular Director demits his office in the lab/instit. And the appointment of regular Director is in process the senior most Scientist (H&G) irrespective of whether such a Scientist has been granted extension in service beyond the normal age of superannuation can be appointed as the Acting Director. Accordingly, whenever it become necessary to make any officiating arrangements in the absence of regular Director. The name of the senior most Scientist of the Lab/Instit. Should be forwarded to CSIR Hqs. Irrespective of whether such a Scientist may or may not have been granted extension in service beyond the normal age of superannuation.

3. The position of Head of Division/Head of Group should be rotated amongst Chief Scientist, Sr. Principal Scientist and Principal Scientist in PB-4 at least once in two/three years. If such Scientists are not available in any particular Division or Group then the position of Head of Division/Head of Group should be given to a Sr., Scientist of that Division or Group.

4. Apart from those Scientist holding the position of Director/Acting Director the Scientist who are granted extension in service beyond the normal date of superannuation generally should not be involved in the routine administrative work like Store/Purchase Committee etc. so as not to hamper the R&D work. However, they can assist the Director in all matters

including in the Committees having/demanding scientific inputs or involving scientific work mission/mandate of the Lab/Esstt. like Management Council/Research Council etc. The director of the lab/instit. May include such Scientist in the Committees.

It is requested that the above guidelines, may kindly be brought to the notice of all concerned in your Lab/Instt for information, compliance and necessary action."

(emphasis supplied)

7. Placing reliance on the same, the Ld. Counsel for the applicant would argue that the applicant being the Senior-most Scientist in the CSIR Durgapur ought to have been appointed as Acting Director as it was ~~not~~ done in the year 2009. Even though two long years got elapsed, no Director has been appointed yet and the illegality, according to him, should not be allowed to be perpetuated and a positive direction might be issued by the Central Administrative Tribunal.
8. Per contra the Ld. Counsel for the respondents in a bid to torpedo and pulverize the aforesaid arguments would submit thus:
9. The Annexure A-5 is not a rule by itself. Those stipulations are merely guidelines which the Deputy Secretary conveyed to all the Director/Head of All National Labs/Instt. Of CSIR. It is for the Vice-President to appoint the Directors. It is not automatic that a senior most Scientist in the Unit would get himself appointed as Acting Director whenever there is any vacancy in the post of Director. It is solely the discretion of the Vice-President to appoint an Acting Director and the authority concerned found fit to appoint Dr. P. Pal as Acting Director. Over and above that, it is also a practice that whenever the post of Director is vacant, a Director of one other nearby similar institution, is ordered to hold additional charge but in this case such an appointment could not be made in view of the absence of a Director in the nearby similar Institution. The applicant after he having voluntarily withdrew his representation, now could not veer around and take any plea and insist upon his previous representation dated 28.8.2013 being considered. There is estoppel against the applicant for pressing his grievance because his cause of



action got died down, and he could not revive his grievance by placing reliance on his earlier representation dated 28.8.2013. There is no post as Acting Director in the recruitment rules. As such, the Annexure A-5 is having no statutory force.

10. The points for consideration are as to (i) whether Annexure A-5 circular dated 7.3.2013 binds the authorities concerned while making appointment of an Acting Director in the absence of a Director of an Unit.


And

(ii) Whether, after withdrawal of the representation dated 25.9.2013 by the applicant, any cause of action survived for him to file this O.A.

11. These points are taken up together for discussion as they are interlinked and interwoven with each other.

12. At the outset, we would like to concentrate on Annexure A-5. It was issued by the Deputy Secretary so to say the Deputy Secretary of the Institute concerned and not by the Central Ministry. The Ld. Counsel for the applicant would hasten to add that it was issued with the prior approval of higher ups and thus having binding force on all units. But one point is clear that this cannot be taken as a rule and it was not framed under Article 309 of the Constitution or under any rules, or bye-laws. Therefore, it is only a circular. The gist and kernel of the circular, is that the Acting Director can be appointed on temporary basis for the purpose of meeting the exigencies of service for a short time, when the post of Director is vacant due to any reasons, and it connotes and denotes that it should be for a limited period only. Here, no doubt, two long years elapsed without any Director having been appointed. The applicant, earlier during the year 2009, was appointed to act as Acting Director in the absence of the Director, but this time he was not appointed so.

13. The Ld. Counsel for the applicant would vehemently argue that practice is having the force of law and such a practice should not be deviated. Be that as it



may, we are of the considered view that the said circular by itself cannot be taken as the one capable of vesting any right on any Senior Scientist like the applicant to get himself automatically elevated to the level of Acting Director. However the Executive Act should be supported by reason. At this juncture, our mind is reminiscent and redolent of the following precedent of the Hon'ble Apex Court. The Hon'ble Apex Court in the case **Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & ors.** reported in (2010) 3 SCC 732.

has held as under:

" 40. It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. *"The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind."* (Vide *State of Orissa v. Dhaniram Luhar*⁸ and *State of Rajasthan v. Sohan Lal*⁹)

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. (Vide *Raj Kishore Jha v. State of Bihar*¹⁰, SCC p. 527, para 19; *Vishnu Dev Sharma v. State of U.P.*¹¹, *SAIL v. STO*¹², *State of Uttaranchal v. Sunil Kumar Singh Negi*¹³, *U.P. SRTC v. Jagdish Prasad Gupta*¹⁴, *Ram Phal v. State of Haryana*¹⁵, *Mohd. Yusuf v. Faij Mohammad*¹⁶ and *State of H.P. v. Sada Ram*¹⁷.)

42. Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.

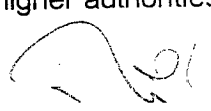
A mere running of an eye over it would show that any judicial or administrative order should be supported by reason. Here the applicant before withdrawal of his representation dated 25.9.2013 made a representation to the Director General on

28.8.2013 but that was not replied or considered. Even in the reply filed in the O.A. there is no whisper about the fact as to why the senior-most Scientist as per Annexure A-5 was not considered for being appointed as Acting Director, even though on earlier occasion, in the year 2009 he was appointed as such.

14. On balance, we are of the view that Director General concerned in response to the representation dated 28.8.2013 should give a speaking order. Regarding the plea of doctrine of estoppel we would like to point out that the principle of estoppel may not be applicable in the facts and circumstances of this case. It is quite obvious and axiomatic that estoppel is a doctrine which would connote and denote that if one makes a representation and thereby if another changes his position, then the former should not be allowed to change his stand. In this case no such circumstances stood exemplified. There is no estoppel against law, and simply because the applicant withdrew his representation dated 25.9.2013, he should not be deprived of his right to file O.A. on the alleged ground that the cause of action died down because of his withdrawal of his representation, and we are of the of the view that no more elaboration in this regard is required.

15. We are of the considered view that the matter would have been entirely different, had Pal was asked to hold the post of Acting Director for a limited period, say for a few months, and thereafter he was replaced by a regular Director, but he has been continuing in that post for two years without any obvious and apparent reasons. Wherefore, we are constrained to observe that necessarily the Director General of CSIR should state the reasons for not appointing the applicant to the post of Acting Director. Even though Annexure A-5 is not having statutory force yet we would like to observe that the authority, who passed the order, cannot belittle the circular and it is having persuasive value.

16. The Ld. Counsel for the respondents would correctly point out that as per the circular the name of the applicant was forwarded to the higher authorities but



the higher authorities did not pass the order. No doubt, the circular contemplates only forwarding of the name of the applicant, but after such forwarding, his candidature was not accepted and one another person was appointed and in such an eventuality the duty is cast upon the Director General to give a suitable reply to his representation dated 28.8.2013. In case if it is felt by him that for valid reasons the applicant was not considered, then he should be communicated with the reasons.

17. As such, we are of the considered view that this matter could be disposed of by giving the following direction to the Director General, CSIR:

Within a period of six weeks from the date of receipt of a copy of this order and not later than eight weeks, the Director General shall convey the applicant the reasons for not considering him for being appointed as Acting Director, and if he finds that there was no sufficient reason for rejecting him for being appointed then he shall consider him for being appointed as Acting Director as expeditiously as possible.

18. The O.A. is, accordingly, disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

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