

CASE NO.:

Appeal (civil) 1692 of 2001

Appeal (civil) 1693 of 2001

Appeal (civil) 1694 of 2001

PETITIONER:

DR. A. K. DOSHI

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT: 02/03/2001

BENCH:

D.P. Mohapatra & S.N. Variava

JUDGMENT:

S. N. VARIAVA. J.

Leave granted.

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These three Appeals are directed against the Judgment dated 20th December, 1999 of the Delhi High Court. They are being disposed of by this common Judgment. In this Judgment parties will be referred to in their capacity in Civil Appeal arising from SLP No. 19580 of 1999. Briefly stated the facts are as follows:

In 1997 some posts of Member, Company Law Board had fallen vacant. A Selection Committee headed by Mr. Justice S. C. Agarwal, a nominee of the Chief Justice of India, was constituted to make the selection. The minutes of the Selection Committee, dt. 2nd June 1997, read as follows:

4. On the basis of the performance of the candidates in the interview and taking into consideration all the relevant factors, the Selection Committee found the following candidates suitable, in order of merit, and accordingly recommended them for appointment as Members of the Company Law Board :-

1. Shri S. B. Mathur - Member (Technical)
2. Shri C. D. Paik - Member (Judicial)  
(ST)

5.1 The reserve panel, to be used for this post of Member, Technical in the event of Shri SB Mathur not joining, shall be as follows in the order of priority indicated below :-

1. Dr. A. K. Doshi
2. Shri R. Vasudevan

5.2 These candidates, if appointed, will rank junior to Shri C. D. Paik.

6. The Selection Committee did not find any candidate suitable for the post of Member (Judicial) (SC).

Thus the Selection Committee had selected the 2nd Respondent. The reserve panel consisted of the names of the Appellant and Shri R. Vasudevan. As per this selection only the name of the 2nd Respondent and Shri C. D. Paik could be sent to the Appointments Committee. It was not denied that in normal course the Appointments Committee would act on the recommendations of the Selection Committee and these two persons would have been appointed. Shri C. D. Paik has been appointed as Member (Judicial). In these Appeals the dispute relates only in respect of appointment to the post of Member (Technical).

On 10th October 1997 the Secretary to the Appointments Committee, whilst forwarding the name of the 2nd Respondent to the Appointments Committee, gave the following note on the relevant file:

"In view of the chequered background of Shri S. B. Mathur, he does not seem to be a fit person of character and unblemished record, for occupying the position of Member, Company Law Board."

We were informed that the Appointments Committee was also informed by the Secretary that a penalty of reduction of pay by one step in the pay-scale for a period of one year with restoration to original stage on the expiry of that period had been imposed on the 2nd Respondent and that he had got published a brief analysis on the report of the Working Group on Companies Act through one Bharat Law House Private Limited, New Delhi and thereafter requested permission to accept Rs.10,000/- as honorarium from the Publisher. For this act he had been issued a warning for not obtaining the prior approval and had been directed to credit to the Government that entire amount. The 2nd Respondent had complied with those directions. The Appointments Committee was also informed that against the 2nd Respondent there was a complaint pertaining to publication of an advertisement for shifting of the Office of Regional Director, Kanpur to Ghaziabad or NOIDA on which Rs. 1000/- was spent. On a query from Court we were informed that the first allegation had been brought to the notice of the Selection Committee but the other two allegations had not been brought to the notice of the Selection Committee even though they related to a period prior to the date when the Selection Committee met to select suitable candidates for the post. We were informed that the other two allegations were not brought to the notice of the Selection Committee as in those cases only a warning had been issued and no entry had been made in the confidential records. One wonders how such material could have been placed before the Appointments Committee when admittedly it was not considered serious enough to be placed before the Selection Committee.

By placing on file the above mentioned comments and materials, which had not been placed before the Selection Committee, the Secretary of the Appointments Committee effectively ensures that the 2nd respondent was not appointed. On the facts on record it is clear to us that

the name of 2nd respondent was rejected by the Appointments Committee, on 4th December, 1997 because of the unwarranted interference by the Secretary. By its Order dated 4th December, 1997 the Appointments Committee also directed that a fresh proposal for appointment of Member (Technical) Company Law Board be submitted.

The reserve panel was to be used in even of 2nd respondent not joining. As the Appointments Committee rejected the name of the 2nd Respondent steps should have been taken to place the names of the candidates included in the reserved panel before the Appointments Committee. However, on 4th December, 1997, a charge sheet had been issued against the Appellant for a major penalty under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. This was an event which took place subsequent to the selection by the Selection Committee. This event necessarily had to be brought to the notice of the Appointments Committee. Had this been brought to the notice of the Appointments Committee, there could be no doubt that the Appointments Committee would have rejected the name of the Appellant. No further names were forwarded to the Appointments Committee and no step to initiate fresh proposal for appointment to the posts was initiated. In the meantime the 2nd Respondent had also made a representation against rejection of his name. That representation should have been placed before the Appointments Committee. The representation was not placed before the Appointments Committee. Nothing was done till May 1998 when the Appellant got exonerated by the Disciplinary Authority. Thereafter almost immediately the representation of the 2nd Respondent along with the name of the Appellant was sent to the Appointments Committee. Even at this stage the following noting dated 14th May, 1988 was made by the Secretary of the Appointments Committee:

"23 Regarding Shri Mathur, it may be stated that the ACC had considered him not fit for appointment as Member (Technical) in view of the chequered background and other considerations in December, 1997. The note that led to the said decision is on pp. 7-13/N (L.F. No. 18 (35) EO/97 (ACC). In addition, it has come to light that he had been warned twice for some improprieties committed by him, as discussed in paras 17.2. and 17.3. above. It is, therefore, felt that even on reconsideration Shri Mathur's claim for the post does not merit acceptance. As regards Dr. Doshi, after his having been exonerated of all the charges against him, it appears that his appointment can be approved. ACC may like to approve the appointment of Dr. A. K. Doshi as Member (Technical), Company Law Board till the date of his superannuation on attaining the age of 60 years."

Thus even at that stage it was made sure that the Appointments Committee did not consider and/or accept the name of the 2nd Respondent but considers the name of the Appellant. It is under these circumstances that the Appellant came to be appointed as Member (Technical), Company Law Board.

The appointment of the Appellant was challenged by the 2nd Respondent before the Central Administrative Tribunal. The Central Administrative Tribunal by an Order dated 3rd February, 1999 quashed the appointment of the Appellant. The Appellant challenged the Order dated 3rd February, 1999 in a Writ Petition before the High Court at Delhi. This

Writ Petition came to be dismissed by the impugned Judgment dated 20th December, 1999.

Civil Appeal arising out of SLP No. 19580 of 1999 is filed by the Appellant. The Appellant is aggrieved by his appointment being set aside by the Central Administrative Tribunal and the confirmation of that Order by the High Court. Civil Appeal arising out of SLP(C) No CC 4869 of 2000 is filed by the 2nd Respondent. 2nd Respondent seeks to challenge that portion of the High Court Judgment where it is held that he had not challenged his rejection by the Appointments Committee. Civil Appeal arising out of SLP No. 6435 of 2000 is by the 1st Respondent. The 1st Respondent is aggrieved by the strictures passed against them for their conduct in showing favouritism and the fact that they have been directed to initiate process of selection of fresh candidates by the Selection Committee.

On behalf of the Appellant Mr. Goburdhan submitted that the 2nd Respondent had no locus standi to file the Petition before the Central Administrative Tribunal. It was submitted that the Appointments Committee had already rejected the name of the 2nd Respondent and that rejection had not been challenged by him. It was submitted that once the 2nd Respondent had not challenged his rejection, he had no locus standi to challenge the appointment of the Appellant. On behalf of the 2nd Respondent it was submitted that he had challenged both the selection of the Appellant as well the rejection of his name.

In our view, on the facts of this case the contention raised on behalf of the Appellant that the 2nd respondent could not challenge the Appellant's appointment since he (2nd respondent) had not challenged the rejection of his name by the Appointment Committee, cannot be accepted. Even assuming that the 2nd Respondent could have challenged the rejection of his name by the Appointment Committee he would have a cause of action to challenge the appointment of the Appellant who was undisputedly placed below him in the panel drawn up by the Selection Committee.

The next submission was that once the name of the 2nd Respondent was rejected then the Appellant automatically became entitled to be appointed as his name was second in the Select List. In support of this submission reliance was placed on the case of A. P. Aggarwal vs Govt. of NCT of Delhi and Another, reported in 2000 (1) S.C.C. Pg. 600. In this case the Appellant (therein) and another candidate were the only two included in the panel prepared for the post of Member, Sales Tax Appellate Tribunal. The other candidate joined but left soon thereafter. Instead of appointing the Appellant the Government initiated process for fresh selection. This was challenged by the Appellant and his challenge was upheld by this Court. It must however be noted that, in that case the selected candidate had left. The Appellant's contention was also upheld on basis of a OM dt. 14th May 1975, issued by the Central Government which provided that vacancy could be filled in from the reserve panel. Further this Court directed the Government to appoint that Appellant as there was nothing against him. Based on this case it was submitted that the 1st Respondent was bound to appoint the Appellant (herein) once the name of the 2nd Respondent had been rejected.

We are unable to accept this argument. The Government

of India has framed Company Law Board (Qualifications, Experience and Other Conditions of Service of Members) Rules, 1993 (hereinafter called the said Rules). These Rules were notified on 28th April, 1993. Rule 4 provides for the method of recruitment of Members. It provides that the selection of Members shall be made by the Government of India in consultation with the Chief Justice of India or his nominee. Thus the appointment can only be in consultation with the Chief Justice of India or his nominee. It is for that reason that a Selection Committee headed by a nominee of the Chief Justice of India is constituted for the purposes of selecting a Member. All materials, which are relevant, are to be placed before the Selection Committee. It is the Selection Committee which makes the selection on the basis of relevant materials. After the Selection Committee completes the exercise and recommends one or more names for appointment the recommendation along with the materials considered by the Selection Committee should be placed before the Appointments Committee without any further addition or alteration. If in an exceptional case the Appointments Committee feels that certain material which was not available to be considered by the Selection Committee has come into existence in the meantime, and the material is relevant for the purpose of appointment, then, the matter should be placed before the Appointments Committee with the additional material for its consideration. Such a course, in our view, will be in accordance with the scheme of the Rules and the purpose of making appointment to the important public office. We are constrained to observe that the notings made by the Secretary of the Appointments Committee in the file, as noted earlier, was an attempt to interfere with the process of selection, which was neither permissible under the Rules nor desirable otherwise. By indulging in such unhealthy process the sanctity of the selection by the Selection Committee was attempted to be set at naught. Such conduct on the part of a senior and experienced Government officer does not commend us. It must be ensured that in future such a practice is not repeated. In this case the facts indicate that, even though the Selection Committee made a recommendation, the appointment of that candidate was got rejected/stalled. Thereafter even though directed to do so by the Appointments Committee, process of fresh selection was not initiated. The file was kept pending till name of the Appellant could be sent to the Appointments Committee. The facts lead to the only conclusion that there was rank favouritism and a blatant attempt to get the Appellant appointed as Member (Technical), Company Law Board. On these facts the ratio in Aggarwal's case has no application. Also in the present case there is no office memorandum requiring selection from the reserve panel.

In view of the facts set out herein above, we are of the opinion that the Central Administrative Tribunal as well as the High Court were right in setting aside the appointment of the Appellant. The Appellant had been unduly favoured and the candidate selected by the Selection Committee and placed on the merit list had been deprived of appointment.

It was also submitted that the Central Administrative Tribunal had no jurisdiction to entertain the Petition of the 2nd Respondent. It was submitted that the Appellant had already become a Member of the Company Law Board. It was submitted that by virtue of Section 14 of the Central Administrative Tribunal Act, 1985, the Central Administrative Tribunal could only exercise jurisdiction,

powers and authority in respect of an All India Service or to any Civil service of the Union or a Civil post under the Union or to a post connected with defence or in the defence services, being a post filled by a civilian. It was submitted that the post of a Member (Technical) Company Law Board was neither an All India Service nor a Civil Service of the Union nor a Civil post under the Union. Reliance was placed upon the authority in the case of Canara Bank v/s Nuclear Power Corporation of India Ltd. and Ors. reported in 1995 Supp. (3) S.C.C. Pg. 81. In this case it was held that the Company Law Board was a Court. Based on this authority it was submitted that since the Company Law Board is a Court, its Members could not be holding civil posts under the Union. It was submitted that both the Central Administrative Tribunal and the High Court erred in holding that the post of a Member, Company Law Board was a civil post.

Both the Central Administrative Tribunal and the High Court have relied upon various Rules, notably Rules 6, 7, 10 and 13 of the said Rules and concluded that these Rules indicated control by the Government. It was held that as the Government had control, thus the post was a civil post. It must be mentioned that we have reservation in accepting this view. However for all these years the post has lain vacant. Even if we were to hold in favour of the Appellant no useful purpose would be served. The 2nd Respondent would have to be given time to challenge in a proper forum. On facts set out hereinabove the end result would be the same. The selection of the Appellant would be set aside. The post would then lie vacant for the period it takes to dispose of that matter. The only sufferer would be the litigating public. As in this case the facts are very gross, we see no reason to interfere. We leave this question open to be decided in an appropriate matter.

We have held that the appointment of the Appellant was correctly set aside his civil Appeal should be dismissed. However, as the post of the Member (Technical), Company Law Board has remained vacant for a long time, it is absolutely necessary that this post be filled up as expeditiously as possible. In our view it is not at all necessary to send the matter to another Selection Committee for selecting afresh. In our view interest of justice would be served if the three names selected by the Selection Committee along with the materials placed before it are placed before the Appointments Committee without any nothings or comments by anybody. Only the Report of the Selection Committee and the materials placed before it must be placed before the Appointments Committee for its consideration. The Appointments Committee must now select from amongst these names.

With these directions all the Civil Appeals are disposed of. There will be no Order as to costs.