

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 7446-7447/2011

MD. ABDUL QADIR SIDDIQUE

APPELLANT(S)

VERSUS

STATE OF ARUNACHAL PRADESH & ORS.

RESPONDENT(S)

O R D E R

1. The judgment dated 07.10.2005 passed by the High Court of Judicature of Assam, Nagaland, Meghalaya, manipur, Tripura, Mizoram and Arunachal Pradesh at Gauhati in Writ Appeal Nos.533/2005 & 584/2005 is assailed in these appeal. By the impugned judgment, the Division Bench has dismissed the appeal confirming the order passed in the writ petition refusing to allow the appellant herein to be absorbed to the deputed post.

2. It is not in dispute that the appellant's parent department was Department of Industry. He came to Arunachal Pradesh Energy Development Agency (for short 'APEDA') on deputation only for a brief period. It is made clear in the order of deputation itself that the appointment is on deputation basis only and it will not confer any right on the officer/official to claim for regular absorption in APEDA. The deputation will be for an initial period of two years from the date of joining the APEDA. However, it was open for the agency to curtail/extend the period of deputation as per the requirement of the agency and

subject to performance during the period of deputation. According to the appellant, he has completed more than five years on deputation and, therefore, he should have been absorbed in APEDA.

3. It is further case of the appellant that the Screening Committee constituted by the APEDA to find out the suitable persons for absorption was not headed by the Commissioner of APEDA but it was headed by the Secretary of the Department and since the constitution of the committee itself was improper, the report of the Screening Committee could not have been relied upon for rejecting the claim of the appellant. These very contentions were raised by the appellant before the Single Judge as well as the Division Bench of the High Court. By the well considered judgments the contention of the appellant was turned down.

4. Notice was issued by this Court to the respondents while admitting this appeal only to verify whether the Screening Committee was headed by the Commissioner or not.

5. On appearance, the APEDA has filed its counter affidavit clarifying the position, which reads thus:-

"(e) The Arunachal Pradesh Energy Development Agency (APEDA) is a State Government Agency and is registered as a Society under the Societies Registration Act, 1860. A Governing Body (GB) comprising of a Chairman, a Vice Chairman along with 8 (eight) other members manage the affairs of the answering deponent. The Commissioner or the Secretary who looks after the Department of Power and Non-Conventional Energy Resources is designated as the Vice Chairman

of the Governing Body on ex-officio basis. By virtue of being the Commissioner (Power & NCER) or the Secretary (Power & NCER), the concerned officer becomes the Vice Chairman of APEDA. During the time when the 13th meeting of the Governing Body was held the Department of Power and NCER was headed by a Commissioner. It was therefore indicated in the minutes of the meeting that the absorption of the willing deputationist's will be considered by a Screening Committee headed by the Commissioner (NCER). However, it is submitted with respect that the real intention of the minutes of the 13th GB meeting was that the Vice Chairman (APEDA) was to head the Screening Committee, whether he may a Commissioner or a Secretary. But after the conduct of the 13th Governing Body Meeting, the Secretary headed the Department of Power & NCER since the office of the Commissioner at that relevant time did not exist. By virtue of his office the Secretary became the Vice Chairman of APEDA. Therefore, the Screening Committee was rightly headed by the Secretary (Power & NCER). Therefore, in view of the facts as narrated herein above, it is apparent that heading of the Screening Committee by the Secretary (Power & NCER) has been just and fair. There is no ambiguity or illegality in this regard as alleged by the petitioner."

6. The aforementioned averments made in the counter affidavit are self explanatory. It is clear that the

Secretary was heading the Department of Power and NCER because the Office of the Commissioner at that relevant point of time did not exist. During the time when the 13th General Body Meeting was held, the Department of Power and NCER was headed by the Commissioner; since the Office of Commissioner did not exist, the Secretary was heading the Screening Committee, as per Rules.

7. Moreover, the appellant has failed to demonstrate that any prejudice is caused to him on account of the Secretary heading the Screening Committee instead of the Commissioner. Moreover, there are no statutory rules or regulations mandating that the Screening Committee had to be necessarily presided over by its Vice-Chairman, who is the Commissioner and not the Secretary. The Screening Committee is not in the nature of Departmental Promotion Committee. The High Court is justified in observing that if the non-existing Commissioner was replaced by the Secretary, who at times also function as Commissioner, the constitution of the Screening Committee cannot be said to be illegal.

8. It is by now well settled that the borrowing department is to examine and absorb the deputationist if and only if they found that the deputationist is suitable for the job. In the matter on hand the Screening Committee did enquire into the matter and the decision of the Screening Committee does not suffer from any mala fides.

9. We also find that neither the decision nor the decision making process is faulty. Therefore, no interference is called for. The appeals fail and are dismissed.

10. Pending applications, if any, shall stand disposed of.

11. There shall be no orders as to costs.

.....J.
[MOHAN M. SHANTANAGODAR]

.....J.
[NAVIN SINHA]

NEW DELHI;
APRIL 04, 2018.

ITEM NO.112

COURT NO.5

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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(IA No.88020/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 04-04-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Bhagabati Prasad Padhy, AOR

For Respondent(s) Mr. Manish Goswami, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Mr. Anil Shrivastav, AOR
Mr. Rituraj Biswas, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)