

Lokpal of India
Plot No.6, Vasant Kunj Institutional Area – Phase-II
New Delhi – 110070

Complaint No(s). : 3028/2022
Date : 22.05.2024.
Coram : **Shri Justice A.M. Khanwilkar**
Chairperson

Shri Justice L. Narayana Swamy
Judicial Member

Shri Justice Sanjay Yadav
Judicial Member

Shri Sushil Chandra
Member

Shri Pankaj Kumar
Member

Shri Ajay Tirkey
Member

Present:

1. Complainant : None

2. Respondent Public Servant (RPS):

- i. RPS-1 (in person), XXXXXXXX.
- ii. RPS-2 (in person), XXXXXXXX.
- iii. RPS-2 is represented by Shri Tungesh, learned advocate.
- iv. RPS-3 (in person), XXXXXXXX.
(names redacted for confidentiality)



3. Central Vigilance Commission (CVC):

- i. Shri Roop Kishor, CVO, CSIR, representing CVC, assisted by
- ii. Sh. Jyotimoy Bhuyan, Under Secretary, CSIR.

4. Council of Scientific and Industrial Research (CSIR):

- i. Shri Chhering Tobden, Senior Deputy Secretary.
- ii. Shri M. Arun Manikanda Bharathi, Under Secretary.

ORDER

1. This complaint dated 09.03.2022 has been filed concerning the recruitment process followed by CSIR-National Botanical Research Institute (CSIR-NBRI), in respect of around 70 posts. The Full Bench vide order dated 06.05.2022, after considering the complaint decided to refer the matter to the Central Vigilance Commission (CVC) for conducting a Preliminary Inquiry and to submit report in that regard.

2. The CVC in response had already submitted a part of the report dated 01.11.2023 and then submitted the further report (remaining part) alongwith OM dated 13.12.2023, enclosing therewith the Vigilance Report and CVO's views dated 30.11.2023. After perusing the reports, the Division Bench vide order dated 11.01.2024 culled out the points required to be dealt with including to advert to the further directions given by the Division Bench. This has been delineated in Para 4 and Para 5 of the order dated 11.01.2024, passed by the Division Bench which reads thus:

"4. Vide our Order dated 13.03.2023 there were specific 6 issues that we had raised in Para-5 of our Order. The directions of the Division Bench in the said Order, the reply of CSIR and further directions of the Bench are given in the table below:



| Sl. No. | Directions of Division Bench vide Order dated 13.03.2023 | Decisions taken/Reply by CSIR | Further directions of the Division Bench |
|----------------|--|--|--|
| 1. | Pending finalization of new Recruitment Rules (RRs) and revised recruitment process, recruitments in all Labs should be put on hold. | In the interest of CSIR, it would not be desirable to put a blanket ban on the recruitments as it is likely to jeopardize the scientific research having national and strategic objectives...The revised Recruitment Rules and procedures will be made operational from Jan. 2024. | Progress in this regard may be communicated to the Registry of the Lokpal of India |
| 2. | Staffing of the Vigilance Branch | One Store & Purchase Officer and one S.O.(G) has been posted in Vigilance Division recently against the request for providing manpower to the Vigilance Division. CSIR administration will look into the feasibility for posting more manpower in Vigilance Division in future. | Noted. |
| 3. | Recruitment made vide Advertisement No.01/2017 and 02/2017 be examined | As regards Advertisement No.01/2017 an issue of conflict of | The Bench decided to issue a Notice under Section 20(3) of the Lokpal and Lokayuktas |

 4

| | | | |
|----|--|--|--|
| | <i>by the Competent Authority and appropriate decisions be taken thereupon.</i> | <i>interest has been observed. As regards Advertisement No.02/2017, some irregularities in respect of one of the scientists has been pointed out, for which papers were sent to Central Forensic Science Laboratory (CFSL).</i> | <i>Act, 2013 to the RPS-1 for 01/2017 and RPS-2 for 02/2017</i> |
| 4. | <i>In respect of Advertisement No.01/2019, the Bench directed that a thorough enquiry is done.</i> | <i>During investigation, many irregularities have been noticed in the recruitment process under Advt. No.01/2019, therefore, competent authority has decided to cancel the whole recruitment and fresh recruitment will be initiated for 12 posts advertised in the above said advertisement. Necessary action against officers responsible for the irregularities is being initiated.</i> | <i>The Bench directed that a notice be issued under Section 20(3) of the Lokpal and Lokayuktas Act, 2013 to RPS-1 and RPS-3.</i> |
| 5. | <i>Recruitment against Advertisement</i> | <i>Competent Authority has decided to scrap</i> | <i>The Bench noted that in 31.07.2023, CSIR has informed that the</i> |

| | | | |
|----|--|--|--|
| | No.03/2021 may be examined. | the whole process of recruitment against Advt. No.03/2021 and initiate it afresh under revised Recruitment Rules and procedure which are likely to be in operation from Jan. 2024. | competent Authority has decided to scrap the whole process. Therefore, action taken is noted. Progress with regard to the fresh recruitment may be submitted to the Registry of Lokpal of India. |
| 6. | There are several other suggestions made in the report of the CVO such as written test before an interview etc. These may be considered at the time of framing revised rules, etc. | CSIR-Administration in revised Recruitment Rules and Procedures have taken into consideration the suggestion of CVO for conducting of written test before an interview. | Noted. The Registry of Lokpal may be informed of the progress in this regard. |

5. To sum up, the Bench decided to: -

1. Call for progress reports in respect of points listed at Serial Numbers (1), (5) and (6) above. The progress reports in respect of all these three matters be submitted to the Registry of the Lokpal of India within four (04) weeks of the receipt of this Order, viz. **on or before 20th February, 2024.**

2. Issue individual notices under Section 20(3) of the Lokpal and Lokayuktas Act 2013 to the concerned RPSs and give them an opportunity of being heard, to decide whether there exists a prima facie case to proceed with one or more of the actions listed under the provision of Section 20(3) of the Lokpal and Lokayuktas Act, 2013.



*3. The Bench, therefore, directs the Registry, Lokpal of India to issue individual notices to the RPSs informing them that they are being provided with an opportunity of being heard in accordance with the provisions u/s 20(3) of the Act and if they have anything to say in this matter, they may make written submission in the matter to the Bench **on or before 08th February, 2024**. If any of the RPSs wishes to be heard either in person or through his/her authorized representative, they may appear on **08th February, 2024 at 1.30 pm.** “*

3. Pursuant to the directions issued by the Division Bench, the CVC forwarded the request of CSIR to allow CSIR-NBRI and CSIR-CIMFR to fill up certain posts and to allow processing of appointments on compassionate ground, vide OM dated 18.01.2024. The Division Bench, in Para 5 of its order dated 07.02.2024, noted that CSIR-NBRI and SCIR-CIMFR were facing difficulties regarding filling up of posts of Technical Assistant, Junior Secretariat Assistant and other posts where there is a component of written tests as a mode of selection in the recruitment rules. In Para 6 and Para 7 of the same order, the Division Bench issued the following directions:

- 6. With regard to the request regarding allowing CSIR-NBRI to process appointments on compassionate ground, as mentioned in Para 3 (b) above, the Bench points out that :*

7

a) *The decision to put on hold all the recruitment process was an internal decision taken by CSIR which was conveyed to CVC vide CSIR ID Note dated 09.06.2022.*

b) *However, in order to prevent hardships to the distressed families of deceased employees, CSIR-NBRI is allowed to carry out appointments on compassionate ground in accordance with the extant rules and regulations.*

7. The Division Bench has further noted that vide CSIR ID Number 15-14(129)/ 2022- Vig note dated 30th November 2023, the Bench was informed that the revised recruitment rules and procedures will be made operational from January 2024. The Bench desires to know the current status in this regard. The progress report may be submitted to the Registry, Lokpal of India, through CVC, within four (04) weeks of receipt of this order viz. on or before 8th March, 2024”

4. Pursuant to the directions issued by the Division Bench vide order dated 07.02.2024, CVC vide OM dated 05.03.2024 forwarded a copy of the progress report (dated 19.02.2024), submitted by the Vigilance Department of CSIR dealing with the issues highlighted by the Bench in its earlier order.

5. Ordinarily, pursuant to the order dated 27.02.2024 passed by the Division Bench, the matter ought to have proceeded further on 02.04.2024. However, the matter was required to be deferred for



the reasons noted in the order dated 02.04.2024. As a result of which, it was directed to be listed on 24.04.2024.

6. On 24.04.2021, another complaint, bearing No. 24/2021, was listed for analogous hearing in terms of order dated 02.04.2021, as reference was made thereto in the records placed before the Bench. That complaint has been disposed of today by a separate order.
7. Reverting to the present complaint, the Complainant and all other parties were put to notice vide order dated 24.04.2024 that the hearing would be scheduled for 14.05.2024 at 11.30 am and to remain present to assist in the court, if they so desired. However, due to administrative reasons the hearing of the cases came to be rescheduled with the consensus of all parties; and finally listed today for hearing.
8. After receipt of the notice for hearing, the complainant informed the Registry of Lokpal through email (dated 20.05.2024) that he was not in India and was not in a position to personally remain present for hearing, but would not mind participating through

 9

Video Conferencing. Additionally, he authorized another retired public servant being former Senior Principal Scientist, who also interacted with the Registry officials yesterday and finally informed that as the officials of CVC would be present during the hearing, he would not wish to disclose his identity before them and opted not to appear personally. He was made aware that video conferencing during hearing was not feasible. He had submitted a hard copy of the response of the complainant in relation to the written submissions filed by the three RPSs, as per the liberty given in the previous order. The same was duly circulated to the Members.

9. Today, during the hearing, all three RPSs were personally present along with the learned Advocate, Shri Tungesh, representing RPS-2. The officials of CSIR, representing CVC were also present.

10. The RPSs were given liberty to explain their position in reference to the observations made in the Preliminary Inquiry Report under consideration. They took us through the relevant portions of the Report and their written submissions including the

relevant documents and offered explanation concerning their role on the basis of the acts of omission and commission referred to in the stated report.

11. We have carefully examined the complaint, Preliminary Inquiry Reports of the CVO of CSIR submitted through the CVC, the documents collated by the Inquiry Officer during the Preliminary Inquiry, including the written submissions of the RPSs and the Complainant, and also the counter submissions filed by the Complainant in response to the written submissions of the RPSs.
12. The thrust of the issue raised by the RPSs before us is that the Reports nowhere mention about any material or tangible evidence indicative of RPSs indulging in corruption, but at best it proceeds on the premise that it was a case of irregularities and administrative or procedural lapses. There is no vigilance angle whatsoever. In such a situation, it would be inappropriate for the Lokpal to direct investigation into the allegations. For, the allegations noticed in the preliminary inquiry report and found favour with the CVO and CVC, would be at the best give rise to an action for the procedural lapses and administrative

irregularities. Certainly there is no material to substantiate allegation of corruption within the meaning of the Prevention of Corruption Act, 1988 (PC Act). They would urge that, in fact, the adverse assumption drawn by the IO is also misplaced and unsubstantiated. They wanted us to strike out the adverse observations against them, as made in the PI report.

13. Going by the Preliminary Inquiry Report under consideration, it has been clearly noted by the Inquiry Officer that no vigilance angle has been observed against the named RPSs. Further, it was at best a case of procedural lapses or irregularities warranting administrative action against the concerned officials in that regard.

14. After having perused the entire records and carefully considering the written submissions filed by the Complainant, the RPSs and the counter submission by the complainant, we are unable to persuade ourselves to deviate from the subjective satisfaction or the conclusion recorded by the Inquiry Officer - that it would be at best a case of administrative procedural



lapses, if the allegations are substantiated qua the concerned RPSs.

15. Having said this, we do not wish to precipitate the matter by directing investigation. For, it is not possible to record a *prima facie* opinion that the materials/evidences collated by the IO would be sufficient to substantiate the allegations of commission of offence of corruption within the meaning of PC Act. This, however, does not mean that we have expressed any opinion, one way or the other, on the other aspects (regarding likelihood of commission of irregularities or administrative and procedural lapses), referred to in the Preliminary Inquiry Report (submitted through CVC); and also noticed in the comments of the Competent Authority. The Competent Authority is free to examine all aspects in that regard on its own merits, as may be advised, in accordance with law, unfluenced by the disposal of this complaint.

16. We once again make it clear that it is open to the Competent Authority to take appropriate action including to resort to departmental proceedings against the erring officials,

 13

and take it to its logical end expeditiously. We do not wish to express any opinion in that regard lest it may prejudice the parties.

17. With the above observations, the complaint under consideration is closed and stands disposed of.


(Court Master)