

Dr. Gurcharan Singh Thind Vs Central Bureau of Investigation and Others

Court: Delhi High Court

Date of Decision: Nov. 16, 2012

Acts Referred: Constitution of India, 1950 " Article 226, 32
Criminal Procedure Code, 1973 (CrPC) " Section 154(3), 156(3), 200, 36, 482
Indian Medical Council Act, 1956 " Section 11(2)

Citation: (2013) 198 DLT 1

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Panchajanya B. Singh with Mr. Mahavir Singh, for the Appellant; P.K. Sharma for R-1/CBI, Mr. Saleem Ahmed, ASC with SI Vikas Kundu, PS Connaught Place for R-2/State, Mr. Jayant Tripathi, Advocate for R-3 and Mr. Mansoor Ali, Advocate for Respondent No. 4-NDMC, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.

Present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr. P.C. by a

retired NDMC doctor, who claims to be a "whistle blower". Petitioner states that he has filed the present petition to expose rampant corruption

and criminal misconduct prevailing in NDMC. It is stated that in 2008, petitioner read newspaper reports regarding raids conducted by the Central

Bureau of Investigation (CBI) wherein six to seven Health Inspectors were caught red handed holding illegal appointment as Medical Officer

Health. It is further stated that upon making certain enquiries, petitioner found that the M.D. degree of respondent No. 3 was not recognized by

Medical Council of India (MCI).

2. Ms. Panchajanya B. Singh, learned counsel for petitioner submits that in April, 1990, i.e., on the date of his appointment, respondent No. 3 was

not qualified to be appointed as Epidemiologist as he did not possess MD (Community Medicine) degree.

3. In this connection, she has drawn this Court's attention to the Recruitment Rules as then prevailing as well as to certain observations made by

the Supreme Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, . In the said judgment, the Supreme

Court has quoted with approval its previous judgment in Mohd. Sartaj and Another Vs. State of U.P. and Others, wherein it has been held as

under:-

21... It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage

unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of

degree of Moallim-e-Urdu, Jamia Urdu Aligarh with that of B.T.C. in the year 1994 would not entail the benefit to the appellants on the date they

were appointed. The appellants could not have been appointed to the post of assistant teachers without having training required under Rule 8. That

being the case, the appointments of the appellants were de hors the Rules and could not be treated to be continued. For the aforesaid reasons, we

do not find any substance in the appeals and are, accordingly, dismissed.

(emphasis supplied)

4. Ms. Singh points out that certain other officers of NDMC like Mr. D.P. Chopra had also complained in the past to the DCP (EOW), Delhi

Police with regard to a chit fund allegedly operated by respondent No. 3 in violation of service rules.

5. Respondent No. 4-NDMC has filed a counter-affidavit. The relevant portion of NDMC's counter affidavit is reproduced hereinbelow:-

2. That the petitioner herein is habitual in making complaints against Respondent No. 3. The Petitioner has filed numerous complaints against the

Respondent No. 3 to various forums viz. CBI, Ministry of Home Affairs, Office of the Lt. Governor and Central Vigilance Commission. The

answering Respondent has conducted thorough investigations against the Respondent No. 3 with reference to the allegations made against him by

the Petitioner and nothing adverse has been found against the Respondent No. 3. The answering Respondents, Central Vigilance Commission,

CBI, Ministry of Home Affairs have not found any truth in the allegations made by the Petitioner against the Respondent No. 3 and therefore none

of the departments acted on the allegations made against the Respondent No. 3 by the Petitioner as the same are per se false.

3. That it may further be submitted that the Respondent No. 3 Dr. P.K. Sharma was selected and promoted as Epidemiologist in NDMC in the

year 1990 for which MD (Community Medicine) from a recognized University was an essential qualification. The Respondent No. 3 obtained the

degree of MD in Community Medicine from Jawahar Lal Nehru Medical College, Aligarh Muslim University, Aligarh. As per the Gazette

Notification dated 30.4.1992 of the Medical Council of India, the MD (Community Medicine) qualification granted by Aligarh Muslim University,

Aligarh in respect of the students being trained at J.L.N. Medical College, Aligarh is recognised from 31.3.1987 by the Council for purpose of

IMA Act, 1956; Annexure A-1.

4. That the Respondent No. 3 was conferred a degree in community medicine in July, 1987 and a copy of the same is annexed herewith and

marked as Annexure A-2.

5. That Aligarh Muslim University, Aligarh vide letter dated 31.12.2008, a copy of which is annexed herewith and marked as Annexure A-3,

informed that the degree in M.D. Community Medicine, AMU, Aligarh is recognised from 31st March, 1987 onwards. The degree submitted by

the Respondent No. 3 has been verified by the Aligarh Muslim University.

6. That the Respondent No. 3 Dr. P.K. Sharma was selected to the post of Epidemiologist by the duly constituted Selection Committee, of which

even the Petitioner was one of the members, only when he fulfilled the essential qualification/criterion was found eligible for the same as per

Recruitment Rules by the Selection Committee. The minutes of the Selection Committee, a copy of which is annexed herewith and marked as

Annexure A-4 clearly authenticates the proper selection of Dr. P.K. Sharma to the post of Epidemiologist. It is reiterated that the Petitioner was

one of the members of the Selection Committee.

(emphasis supplied)

6. Respondent No. 3-Dr. Prem Kumar Sharma has also filed an affidavit in which it is stated that he was fully qualified to be appointed as

Epidemiologist in NDMC. The relevant averments in respondent No. 3's affidavit are reproduced hereinbelow:-

6. That the facts relevant to the present Petition are as under:-

A. The Deponent obtained his MBBS degree in the year 1978 from Lala Lajpat Rai Memorial Medical College, Meerut (LLRM Medical

College).

B. He then joined the New Delhi Municipal Council in the year 1981 in the capacity of Medical Officer, General Duty.

C. In the year 1985, the Deponent was working as Medical Officer in the New Delhi Municipal Committee (NDMC).

D. In 1985, he applied for admission to the MD Course in Social and Preventive Medicine/Community Medicine in Jawahar Lal Nehru Medical

College of the Aligarh Muslim University, and was granted admission to the said course.

E. He was thereafter granted permission from the NDMC to join the said course. He was also sanctioned Study leave as Extraordinary Leave to

pursue the said course.

F. In July, 1987, the Deponent was granted the Degree of MD in Community Medicine by the Jawahar Lal Nehru Medical College of the Aligarh

Muslim University.

G. The Deponent, having finished his aforesaid degree course, rejoined his duties in the NDMC.

H. In 1988, there was a spurt of cholera in Delhi, leading to the death of about 700 persons. The Delhi Government directed the creation of post

of Epidemiologist in public health controlling bodies, and thus the post of Epidemiologist was sought to be created in the NDMC.

I. The PETITIONER mooted a file for the setting up of an Epidemiology Unit in NDMC under the control of an Epidemiologist. A copy of the

note prepared by the PETITIONER dated 07 April 1989 is annexed hereto as ANNEXURE R-1.

J. A perusal of this note reveal the following:-

i. The PETITIONER has noted that ""Other important aspect is for selection of Epidemiologist for which this department has Dr. P.K. Sharma who

has done MD in Community Medicine [emphasis added] and recently been trained by NDMC from NICD in the speciality of Epidemiology"".

ii. The note further records the PETITIONER as stating that ""Till such time the RR"s are approved and final selection is made, it is recommended

that Dr. P.K. Sharma only available departmental candidate may kindly be given ad-hoc appointment as Epidemiologist so that Epidemiological

Unit starts functioning under his control. Dr. Sharma has sufficient experience of public health and epidemiology and has been working as Registrar,

Births and Death and has undergone Epidemiological training at NICD.

K. Thus it is amply clear that the Petitioner was aware of the fact that the Deponent had an MD Degree as far back as the year 1988. For the

Petitioner to now assert, 24 years later, that the MD degree was not recognised, is not only absurd, but also ex-facie mala-fide and motivated.

L. Vide Resolution No. 27 dated 25 July 1989 the Epidemiological Cell was created in the NDMC, with a post of Epidemiologist. The Union

Public Service Commission (UPSC) had been requested by the PETITIONER, acting as the Deputy Medical Officer of Health, NDMC to send

the Recruitment Rules for the post of Epidemiologist. Accordingly, the UPSC had conveyed the RR"s.

M. A perusal of the said RR"s show the following:-

ESSENTIAL QUALIFICATION

1) M.B.B.S. from a recognised university.

2) M.D. (Preventive and social medicines)/M.D. (Community Medicines) with three years experience. (However, for departmental candidates,

experience can be relaxed)

3) Training course of Epidemiology from NICD is essentially required.

N. The above RR"s are extracted from the note that had been prepared by the PETITIONER himself.

O. As aforesaid, the NDMC had approved the said RR"s at its meeting on 25 July, 1989. A copy of the Resolution No. 27 is annexed hereto and

marked as Annexure R-2.

P. In the year 1990 the post of Epidemiologist was advertised and the DEPONENT applied for the said post.

Q. Vide letter No. CC-4/803/HE-I dated 05 March 1990, the Deponent was called for an interview before the selection board. A copy of the

said letter is annexed hereto and marked as Annexure R-3.

R. On 28 March, 1990 the Deponent appeared before the Selection Board, of which the PETITIONER was a member. A copy of the Minutes of

the Meeting of the Selection Committee are annexed hereto and marked as Annexure R-4.

xxxxx

16. That in so far as the said allegation is concerned, it is submitted as under:-

xxxx

E. It is submitted that the Medical Council of India recognised the degree of MD in Preventive and Social Medicine, granted by the AMU, since

1973.

F. It was the Medical Council of India that desired that the name of the MD Degree be changed from Preventive and Social Medicine to

Community Medicine".

G. Annexed hereto and marked as Annexure R-7 is a letter dated 14 May 1988, written by the Registrar, AMU to the Secretary, Ministry of

Health and Family Welfare, Government of India. A perusal of the said letter shows that:-

(i) The change of the nomenclature of the Department of "Social and Preventive Medicine" to that of "Community Medicine" was done on the

recommendation of the Medical Council of India.

(ii) The said change in name/re-designation required an amendment to the Statute of the AMU.

(iii) The required amendment were submitted to the President of India in his capacity as Visitor of the AMU.

(iv) Vide letter No. F-3-19/86-Desk(U) dated 11.03.1987, the Ministry of Human Resource Development, Government of India, conveyed the

approval of the President of India to the proposed amendment in the Statute for change in nomenclature of the Department of Preventive and

Social Medicine to that of Department of Community Medicine.

(v) The MD Degree of Preventive and Social Medicine which was now re-designated as MD in Community Medicine was recognised by the

Medical Council of India.

H. It is therefore evident that the Medical Council of India required the AMU to change the name of the Department of Preventive and Social

Medicine to that of Department of Community Medicine. It follows therefore that the degree being granted would also undergo a change of name.

I. No new Degree was introduced in the AMU, which attracted the provisions of Section 11(2) of the Indian Medical Council Act. This is a case

where the name of a recognised course was changed, and that too on the recommendation of the Medical Council of India.

(emphasis supplied)

7. The SHO, Police Station Connaught Place has also filed a status report in which it is stated that the chit fund was owned and operated by the

brother of the respondent No. 3 and the same did not directly relate to the respondent No. 3. The relevant portion of the said status report is

reproduced hereinbelow:-

On the complaint of Sh. D.P. Chopra, enquiry was conducted. During the course of enquiry, statement of alleged person Dr. P.K. Sharma was

recorded, as per his statement, it revealed that the amount deposited by Mr. D.P. Chopra was invested in Chit Funds which is under the

ownership of Vijay Bhardwaj, who is the real brother of the alleged person and that matter is not directly related to Dr. P.K. Sharma. It has also

come to notice that the matter has been sorted out by both parties amicably. Since the matter was found related to financial transaction, which was

totally civil in nature. The said complaint was filed by ASI Rajesh Kumar on 25.11.2009 and further filed by SHO Connaught Place on

07.12.2009.

It is further submitted that the complainant Mr. Gurcharan Singh Thind filed a complaint u/s. 156(3) Cr. P.C. in the Hon"ble Court of Sh. Ajay

Pandey, ACMM, Patiala House Court, New Delhi. Hon"ble ACMM disposed of the complaint being found civil in nature. Further, Mr.

Gurcharan Singh Thind also filed a Revision Petition in the Hon"ble Court of Sh. J.R. Aryan, ASJ, Patiala House Court, New Delhi. Hon"ble court

of ASJ also disposed of the Revision Petition filed by Dr. Gurcharan Singh Thind.

(emphasis supplied)

8. Respondent No. 1-CBI has also filed a reply-affidavit to the present petition. In the said affidavit, it has been stated that petitioner is not a

whistle blower as he himself is an accused in a CBI case in which a charge-sheet has already been filed. The relevant portion of the CBI's affidavit

is reproduced hereinbelow:-

b)... The petitioner's claim of being a whistle blower against deep rooted corruption is not correct as he himself is an accused in a CBI case RC.

AC II 2003 A 0003 in AC II branch. Same has already been charge-sheeted and in the said case Dr. P.K. Sharma against whom the petitioner

wants to get registered a case is a witness.

c) The contents of para-3 (a) to (t) and para-4 to 6 are matter of record and hence need no response. However, it is learnt that vigilance enquiry

had been conducted with regards to the allegation in question i.e. validity of degree (Community Medicine) by the NDMC obtained by Dr. P.K.

Sharma from Jawaharlal Nehru Medical College (Aligarh Muslim University). Same was found to be in order. It is further reiterated that a

complaint dated 10.12.2008 had been filed by the petitioner before the Ld. ACMM, New Delhi on the same allegation, which was dismissed by

the court vide its order dated 25.02.2009 and revision petition dated 07.03.2009 was also filed before the Ld. ASJ, New Delhi which was also

dismissed vide its order dated 26.05.2009 as mentioned by the petitioner in para-3(g) and 3(i).

(emphasis supplied)

9. In rejoinder, learned counsel for petitioner refers to certain new allegations of corruption against the respondent No. 3 as mentioned in

petitioner's additional affidavit filed a few days ago. The new allegations as mentioned in the additional affidavit is reproduced hereinbelow:-

9. xxx

C. A letter, annexed herewith as Annexure P-3 (colly), referring to corruption in the matter of collection and lifting of Garbage of entire NDMC

area by M/s. Ramky. Central Vigilance Commission has endorsed a copy of reply of CVO/Secretary NDMC to CVC regarding complaint of

corruption against Dr. P.K. Sharma by petitioner herein vide letter No. CVC/RTI/10/667-106244 dated 27.10.2010, where in a copy of letter of

CVO, NDMC Sh. Ganshyam Bharti, IAS, wherein vide para No. 16 CVO, NDMC has admitted that work of collection as removal of garbage

of retire NDMC order was given on contract to M/s. Ramky and has further stated that 15 NDMC Trucks have been deployed to meet emergent

requirement for removing garbage from the inner circle. Each truck has a driver, 5-6 Lorry builders and Diesel fuel provided by NDMC placing

huge unwarranted burden on the public exchequer. No deductions whatsoever were made in the final bill paid to M/s. Ramky that ought to have

been examined by NDMC/Dr. P.K. Sharma. The excess expenditure was overlooked by respondents in connivance with the M/s. Ramky for

wrongful gain.

(emphasis supplied)

10. Having heard learned counsel for the parties and having perused the paper book, this Court finds that present writ petition has been filed for

registration of an FIR against respondent No. 3 and for investigation by CBI. The prayer clause in the writ petition is reproduced hereinbelow:-

a) Issue a writ of mandamus or any other appropriate writ/order directing the respondent No. 1 and 2 to investigate into the allegations leveled by

the petitioner in his complaints after registration of an FIR and also file a status report;

b) Any other appropriate writ or order or other interim relief as deemed fit and appropriate in the circumstances of the case may kindly be passed

by this Hon"ble Court in the interest of justice.

(emphasis supplied)

11. The Supreme Court in *Sakiri Vasu Vs. State of U.P. and Others*, has categorically held that a writ petition should not be entertained when the

petitioner has an alternative remedy available under the Code of Criminal Procedure to get an FIR registered. The relevant portion of *Sakiri Vasu*

vs. State of U.P. & Ors. (supra) is reproduced hereinbelow:-

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the

police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition u/s 482

Cr. P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and

relegate the petitioner to his alternating remedy, firstly u/s 154(3) and Section 36 Cr. P.C. before the concerned police officers, and if that is of no

avail, by approaching the concerned Magistrate u/s 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of

Police u/s 154(3) Cr. P.C. or other police officer referred to in Section 36, Cr. P.C. If despite approaching the Superintendent of Police or the

officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate u/s 156(3) Cr. P.C. instead of rushing to the High

Court by way of a writ petition or a petition u/s 482 Cr. P.C. Moreover he has a further remedy of filing a criminal complaint u/s 200 Cr. P.C.

Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation

and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The

High Court should discourage the practice of filing a writ petition or petition u/s 482 Cr. P.C. simply because a person has a grievance that his FIR

has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the

remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, u/s 156(3) Cr. P.C. before the Magistrate

or by filing a criminal complaint u/s 200 Cr. P.C. and not by filing a writ petition or a petition u/s 482 Cr. P.C.

(emphasis supplied)

12. Moreover, as held by Constitution Bench of the Supreme Court in *State of West Bengal and Others Vs. The Committee for Protection of*

Democratic Rights, West Bengal and Others, a direction to CBI to conduct investigation is not to be passed as a matter of routine. The relevant

portion of *State of West Bengal and Ors. (supra)* is as under:-

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the

Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers.

The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the

CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should

be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has

levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations

where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international

ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would

be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the

process lose its credibility and purpose with unsatisfactory investigations.

(emphasis supplied)

13. In the present case, the petitioner had filed a complaint u/s 156(3) Cr. P.C. seeking registration of FIR against respondent No. 3 on the very

same facts. The said petition was dismissed by ACMM, Patiala House Courts, New Delhi vide a detailed order dated 25th February, 2009. The

relevant portion of the said order is reproduced hereinbelow:-

Arguments considered, I am not satisfied that the facts stated in the complaint and as submitted orally before me, justify the registration of FIR or

for proceeding with the complaint as criminal case.

As per allegations itself accused was appointed for the post of epidemiologist in the year 1990. It is alleged that the degree on the basis of which

the accused took the appointment was not recognized and approved by the Medical Council of India, at the relevant time and later on the Medical

Council of India has changed its website particulars and granted recognition to the degree held by the accused. Accused continued to work not

just at the post of Epidemiologist but had also got further promotion time to time.

The case in hand involved the disputed question of facts which can only be tried in civil litigation. The dispute raised in the application on complaint

is purely of a civil nature or is a service dispute. The criminal court can not embark into the jurisdiction to entertain such type of complaints. There

is nothing to suggest that accused committed any fraud by applying to a particular post. It is for the competent authority or selection committee to

verify whether the requirements to the spot were fulfilled or not.

Even if it is presumed that the appointment was done without strictly following the procedure the criminality cannot be presumed in the said

appointment. More so when the appointment of the accused took place more than 18 years back and complainant was sleeping over for 18 long

years. The case law referred by the Ld. Counsel is not helpful to the applicant.

In the facts and circumstances, neither I find any ground for directing the registration of FIR nor I find any material to take cognizance in the case

hence the application filed u/s. 156(3) Cr. P.C. as well as the complaint u/s. 200 Cr. P.C. by the complainant is dismissed.

(emphasis supplied)

14. Upon a revision being filed by the petitioner, ASJ, Patiala House Courts, New Delhi vide order dated 26th May, 2009 upheld the ACMM's

order. The relevant portion of the said order is reproduced hereinbelow:-

I fully agree with the view taken by Ld. ACMM if Dr. P.K. Sharma applied for a post advertised by NDMC and submitted

documents/qualification certificates in support of his eligibility for the post, there is no question of Dr. P.K. Sharma to have deceive NDMC and

fraudulently induced NDMC to give him appointment on the post. It is not of the complainant case that degree of MD (community medicine) filed

by Dr. P.K. Sharma in support of his eligibility for the post was not genuine. His only contention is that it had not been recognized by MCI, it was

for employer NDMC to look into it. Dr. P.K. Sharma cannot be said to have deceived NDMC even on this point of making any representation

contrary to the facts placed by him before NDMC for that post. Moreover, Ld. respondent counsel today place on record a Gazette Notification

of Government of India No. V. 11015/8/92-ME-(UG) dated 20.04.1992 whereby degree of MD (community medicine) given by Aligarh

University was recognized as a valid degree where degrees were granted after 31.03.1987. Complainant counsel submits that this Gazette

Notification had been issued in the year 1992 whereas the post on the basis of that degree was obtained and occupied by Dr. P.K. Sharma in the

year 1990. Simply Dr. P.K. Sharma applied for the post and it was given by NDMC without Dr. P.K. Sharma making any deceptive or

fraudulently representation of any fact, no offence of cheating can be said to have made out.

Ld. respondent counsel during argument today pointed out that Dr. Gurcharan Singh Thind was a accused in a CBI case No. 04/2008 titled as

CBI Vs. P.M. Singh & Ors., and Dr. P.K. Sharma was a prosecution witness in this case and present complaint by Dr. Gurcharan Singh Thind

could be a pressure tactics. This arguments was not to be taken into consideration in this revision though Ld. counsel referred today but still in nut

shell that no offence of cheating can be said to have been made out from the complainant averments and allegations. There is no illegality in the

impugned order whereby complaint has been dismissed. Revision is dismissed.

(emphasis supplied)

15. The aforesaid orders passed by Additional Chief Metropolitan Magistrate and Additional Sessions Judge have admittedly attained finality.

Consequently, this Court is of the view that once the courts below at the instance of the petitioner have refused to register an FIR and the said

orders have attained finality, it is not open to this Court in a writ jurisdiction at the instance of the petitioner to give direction for registration of an

FIR. If petitioner was aggrieved by the aforesaid orders passed by Additional Chief Metropolitan Magistrate as well as Additional Sessions Judge,

the petitioner should have challenged the said orders in accordance with law-which he has not done.

16. Also keeping in view the vehement denial to the allegations levelled by the petitioner by all the respondents in their counter-affidavits/reply-

affidavits, this Court is of the opinion that the present case does not fall within the "pigeon hole of exceptional cases" which needs to be referred by

this Court to CBI for investigation.

17. A perusal of the pleadings reveals that disputed questions of fact arise for consideration in the present case. It is pertinent that a suit for

defamation being CS(OS) No. 1752/2009 has already been filed by respondent No. 3 against the petitioner and the same is pending adjudication

in this Court. In fact, in view of the limited nature of writ proceedings, this Court is of the opinion that no final conclusion with regard to the

allegations pertaining to garbage collection or chit fund levelled against respondent No. 3 can be arrived at in the present proceedings.

18. In any event, if respondent No. 3 was unqualified to be appointed as an Epidemiologist, then the legal remedy available to the petitioner would

be to challenge his appointment in accordance with law. It is not open to the petitioner to seek registration of an FIR much less an investigation by

CBI on this ground especially when there is no allegation that the respondent No. 3 has practised fraud or mis-representation with regard to his

appointment.

19. The judgments cited by the petitioner are totally inapplicable to the facts of the present case as they do not pertain to registration of an FIR or

investigation to be carried out by the CBI.

20. A perusal of the documents as well as affidavit filed by various parties proves beyond doubt that petitioner was fully aware of the Recruitment

Rules as well as the qualification of respondent No. 3 as far back as 1988-89. Also, as the petitioner was part of the Selection Committee which

had selected the respondent No. 3 for the post of Epidemiologist, this Court is of the view that petitioner cannot challenge respondent No. 3's

appointment at this belated stage. The Minutes of Meeting of Selection Committee held on 28th March, 1990 in which respondent No. 3 was

selected for the post of Epidemiologist is reproduced hereinbelow:-

MINUTES OF THE MEETING OF SELECTION COMMITTEE HELD ON 28.3.90 IN THE CHAMBER OF THE ADMINISTRATOR

FOR SELECTION OF CANDIDATES FOR THE POST OF EPIDEMIOLOGIST IN THE SCALE OF Rs. 3000-5000 PLUS NPA, C.A.,

& USUAL ALLOWANCES:

PRESENT :

1. Sh. S.C. Sharma, Administrator (In chair)
2. Sh. G.S. Patnaik, Secretary
3. Sh. T.R. Sharma, F.A.
4. Dr. G.S. Thind, MOH
5. Dr. S.C. Chawla, Prof. of P&SM, LHMC & Hospital (Specialist)

SELECTION OF EPIDEMIOLOGIST (SCALE Rs. 3000-5000 PLUS N.P.A., C.A. & USUAL ALLOWANCES)

Out of four candidates called for interview, only one candidate Dr. P.K. Sharma appeared and was interviewed. Keeping in view his performance

and service career, the Selection Committee recommends that relaxation in experience be granted to Dr. P.K. Sharma and he be selected and

placed on the panel for the post of Epidemiologist in the scale of Rs. 3000-5000 plus NPA, CA & usual allowances.

The panel will remain valid for one year.

Sd/-

(Dr. G.S. Thind)

MOH

28.3.90

Sd/-

(T.R. Sharma)

F.A.

28.3.90

Sd/-

(G.S. Patnaik)

Secretary

28.3.90

Sd/-

(S.C. Sharma)

Administrator

28.3.90

(emphasis supplied)

21. Consequently, this Court is of the view that petitioner having acquiesced in the appointment of the respondent No. 3 cannot now challenge the

same.

22. This Court is also in agreement with the opinion of CBI that petitioner is not a whistle blower against corruption as he himself is an accused in

CBI case.

23. In fact, after hearing all the parties this Court is of the view that present litigation is a motivated one, filed with an intent to influence the CBI

case pending against the petitioner, in which respondent No. 3 is a prosecution witness. It is pertinent to mention that this Court vide order dated

25th July, 2012 had forewarned the petitioner that if it found that the present petition was motivated, it would dismiss the same with exemplary

costs. Accordingly, as the present petition has been filed with oblique motive, it is dismissed with costs of Rs. 75,000/- to be equally paid to CBI,

Delhi Police and NDMC within a period of eight weeks.