

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: April 12, 2019

(i) + **CRL.M.C. 1339/2018 & CRL.M.A. 4884/2018 &
Crl.M.A. 6640-41/2019 & Crl.M.A. 6979/2019**

PRF. P.B. SHARMA Petitioner
Through: Mr. Amit Sharma, Mr. Aditya
Bhardwaj, Mr. Shubam Karanwal
& Mr. Kunal Sharma, Advocates

(ii) + **CRL.M.C. 1490/2018 & CRL.M.A. 5407/2018 &
Crl.M.A. 6635-36/2019 & Crl.M.A. 6983/2019**

CHANDRA PRAKASH SINGH Petitioner
Through: In person.

(iii) + **CRL.REV.P. 250/2018, CRL.M.A. 5283/2018**

DEEPA SINHA Petitioner
Through: Mr. Urfee Haider, Advocate

Versus

CENTRAL BUREAU OF INVESTIGATION (CBI)

..... Respondent
Through: Ms. Rajdipa Behura, Special
Public Prosecutor with Mr.
Philoman Kani, Advocate with
Inspector Mohan Kumar

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

ORDER

1. Trial court vide impugned order of 22nd February, 2018 has declined to accept the Closure Report (*Annexure P-2*) filed in FIR No.RC 08(A)/2016/AC-111/New Delhi, titled as *CBI Vs. Prof. P.B.Sharma* and has taken cognizance for the offences under Section 13 of the Prevention of Corruption Act, 1988 (*henceforth referred to as the 'PC Act'*) and summoned the petitioners as accused.

2. These three petitions arise out of common impugned order of 22nd February, 2018 wherein the factual background of this case stands noticed. Suffice to note that Delhi Technological College (DTU) had invited applications for the post of Professors and Associate Professors in various departments by way of advertisement of 3rd December, 2011. On the basis of information received regarding Professor P.B.Sharma, the then Vice Chancellor of DTU, having committed irregularities in selecting candidates who were not eligible for the post of Professors and Associate Professors, FIR in question was registered. The source information received by the respondent, was that by misusing his official position, petitioner- *Professor P.B.Sharma* had caused undue benefit to the ineligible candidates i.e. *Dr. Deepa Sinha, Dr. C.P.Singh, Dr. Parvir Kumar and Dr. Jai Gopal Sharma*. The aforesaid source information was investigated upon and it was found that selection of the aforesaid candidates for different disciplines was approved by the Board of Management. While dealing with the Closure Report (*Annexure P-2*), trial court in the impugned order has referred to Section 13(4) of the

Delhi Technology University Act, 2009 (henceforth referred to as the 'DTU Act') to observe that this provision does not give unbridled powers to the Vice Chancellor and that the Vice Chancellor cannot misuse the powers, which are bestowed upon him by the Board of Management. It is observed in the impugned order that even if it is assumed that immediate action was necessary and Vice Chancellor exercised his powers under Section 13(4) of DTU Act, still there was no material to show that the Vice Chancellor had reported to '*Board of Management*' about the action taken by him i.e. calling candidates for interview who were ineligible.

3. Trial court in the impugned order concludes that petitioner- *Professor P.B.Sharma* had entered into criminal conspiracy with Dr. C.P.Singh, who was then serving as Assistant Professor, to select Dr. C.P. Singh on the post of Associate Professor. According to trial court, a *prima facie* case of criminal misconduct, as defined in Section 13 of PC Act is made out against petitioners- *Prof. P.B.Sharma, Dr. Deepa Sinha, Dr. C.P.Singh, Dr. Parvir Kumar* and *Dr. Jai Gopal Sharma*.

4. With the consent of learned counsel for the parties, the above captioned three petitions were heard together, as they spring out of common impugned order and therefore vide this common order, these petitions are being disposed of.

5. Learned counsel for petitioners assailed the impugned order on the ground that the power exercised by petitioner- *Prof. P.B.Sharma* was justified and the selection of petitioners - *Dr. C.P.Singh, Dr. Deepa Sinha, Dr. Parvir Kumar* and *Dr. Jai Gopal Sharma* was duly approved by the Board of Management. To submit so, attention of this Court was

drawn to the Closure Report (*Annexure P-2*) to point out that *Dr. C.P.Singh and Dr. Deepa Sinha* had applied for the post of Associate Professor in Applied Mathematics and it was found that as per calculation, the percentage possessed by *Dr. Deepa Sinha* came to be 64%, whereas as per general instructions of the advertisement of 3rd December, 2011, 60% was equivalent to first division. The Closure Report (*Annexure P-2*) concludes that *Dr. C.P.Singh* was selected after a note of 25th January, 2012 was put up before petitioner- *Prof. P.B.Sharma*, the then Vice Chancellor stating as under:-

“Thereafter a note was put up by the VC on dated 25.01.2012 stating “Shortlisting committee may decide to relax in view of rich experience and research publication in journal of high repute in case of highly meritorious candidates in service with DTU and other Govt. R & D and Govt. organization.”

6. It was pointed out by learned counsel for petitioners that H.C. Taneja, the then Head of Department (HOD), Math was a part of Screening Committee and the Selection Committee as well and the note of 30th December, 2011 put up by him reads as under:-

“It is recommended that the condition of first class at UG level be relaxed for the applicants already in service in the institution.”

7. Attention of this Court was also drawn to Closure Report (*Annexure P-2*) to submit that the investigation revealed that nothing has come on record to establish any misconduct on the part of petitioner- *Prof. P.B.Sharma*.

8. Learned counsel for petitioners submitted that seventh meeting of Board of Management of DTU, Delhi held on 24th May, 2012, reveals that the recommendation to appoint *Dr. C.P.Singh and Dr. Deepa Sinha* as Associate Professors in Applied Mathematics was duly approved by the Board of Management. So, it was submitted that no case for rejecting Closure Report and to take cognizance for the offence under Section 13 of PC Act is made out. In support of above submission, counsel for petitioners relied upon decisions in '*C.K. Jaffer Sharief Vs. State (Through CBI)* (2013) 1 SCC 205 and in '*M.S. Badhan Sibnath; Rajesh Sarda Vs. Central Bureau of Investigation* 241 (2017) Delhi Law Times 328.

9. Learned Special Public Prosecutor for respondent-CBI supports the closure report filed in this case.

10. Upon hearing and on perusal of impugned order, closure report and the decisions cited, I find that the exercise of the powers by petitioner-*Prof. P.B.Sharma* was in terms of the Provisions of *Delhi Technology University Act, 2009* and the recommendations made by him were duly put up before the Board of Management in its seventh meeting held on 24th May, 2012, which had duly approved the recommendations made by the Selection Committee for appointment on the posts in question. A bare perusal of the closure report reveals that the allegations levelled against petitioners have been minutely scrutinized and thereafter, it is concluded that the view of *Prof. P.B.Sharma* was right about the appointments being made on the posts in question.

11. Trial court in the impugned order has disagreed with the closure report, while over ruling with the Selection Committee and the disagreement, according to this Court, is without any justification. Relaxation of qualification has been granted in terms of the applicable Rules and Regulations and on the recommendation made by the Screening Committee as well as Selection Committee. The Supreme Court in *C.K. Jaffer Sharief (Supra)* has clarified that even if the action of the authorities concerned is contrary to departmental norms, still it would not justify criminal prosecution, unless it is actuated by dishonest intention to obtain an undue pecuniary advantage as dishonest intention “*is the gist of the offence under Section 13(1) (d) of Prevention Corruption Act*”.

12. In the instant case, I find that no dishonest intention can be attributed to any of the petitioners nor the trial court has done so. Applying the above-referred dictum of Supreme Court in *C.K. Jaffer Sharief (Supra)* to the facts of the instant case, I find that the impugned order cannot be sustained and is accordingly set aside. The closure report filed by respondent-CBI is hereby accepted.

13. These three petitions and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

APRIL 12, 2019

r/p'ma