

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

% *Judgment Reserved on : April 30, 2013*
Judgment Pronounced on : May 10, 2013

+ **WP(C) 1648/2012**

UNION PUBLIC SERVICE COMMISSION Petitioner
Represented by: Mr.Naresh Kaushik, Advocate
with Ms.Aditi Gupta, Advocate

versus

AMARJEET SINGH & ANR. Respondents
Represented by: Mr.Brijesh Kr.Gupta, Advocate
for R-1.
Mr.Abha Malhotra and
Mr.N.Q.Ahmed, Advocates for
R-2.

WP(C) 1651/2012

UNION PUBLIC SERVICE COMMISSION Petitioner
Represented by: Mr.Naresh Kaushik, Advocate
with Ms.Aditi Gupta, Advocate.

versus

TARSEM LAL Respondent
Represented by: Mr.Dharam Dev, Advocate for
R-1.

WP(C) 6559/2012

AMARJEET SINGH Petitioner
Represented by: Mr.Brijesh Kr.Gupta, Advocate.

versus

UNION OF INDIA & ANR.

.....Respondents

Represented by: Mr.Ravinder Agarwal and
Mr.Amit Yadav, Adv. for R-1.
Mr.Naresh Kaushik, Advocate
with Ms.Aditi Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The melting glacier, flowing waters whereof have channelized into the three streams i.e. the three captioned writ petitions, could be said to be : W.P.(C) No.8218/2002, W.P.(C) No.8784/2003, W.P.(C) No.619/2003 and W.P.(C) No.620/2003 filed by Ayurvedic/Unani doctors on a common issue: Whether the previous service rendered by them on contract basis on being appointed after process of regular selection including consultation with Union Public Service Commission (hereinafter referred to as UPSC) was followed, could be regularized in service in view of the amended Recruitment Rules. The writ petitions were filed when, at the asking of the User Department, UPSC issued an advertisement inviting applications for eligible candidates to be appointed as Ayurvedic/Unani doctors and notified that the last date by which the applications could be filed was August 11, 2005. A Division Bench of this Court disposed of the four writ petitions by a common order dated August 11, 2005, holding that no direction could be issued to give regular appointment to the writ petitioners who were working as doctors on a contract basis but since some of them had rendered 7 years service, they would be entitled to

age relaxation since the Recruitment Rules permitted age to be relaxed for those who were in Government service. It was observed that the petitioners would be entitled to the benefit of contract service rendered, in that, in the selection process weightage would be given to said fact. Lastly, if contract appointment was made in the future, petitioners would be given preference. Since the last date by which applications could be submitted by eligible candidates was August 11, 2005, the date of the decision, it was directed that the writ petitioners may be allowed to submit their applications by August 18, 2005.

2. All writ petitioners litigating at that stage, except one named Dr. Permista Sharma, submitted their applications by August 11, 2005. Dr. Permista Sharma submitted her application on August 18, 2005.

3. At the departmental level, in consultation with the User Department, the matter was processed to take a decision whether to abide by the decision of the Division Bench dated August 11, 2005 or challenged the same before the Supreme Court. On September 20, 2005, the Joint Secretary in the UPSC, Sh. Ved Prakash, penned a note that the decision dated August 11, 2005 needs to be challenged before the Supreme Court, and for which he penned the reason for the challenge. Since the decision had to be by UPSC, routing through the Secretary of the Commission i.e. UPSC, the file was placed before the Commission comprising the Hon'ble Chairman and two Members, who took a decision on September 29, 2005 that the decision dated August 11, 2005 be challenged and for which UPSC also made a reference to a precedent case of one Dr. Jamuna Karupp, where similar directions issued were challenged before the Supreme Court and matter awaited decision before the Supreme Court.

4. At that time, Shri Amarjeet Singh, the writ petitioner of W.P.(C) No.6559/2012 and the first respondent in W.P.(C) No.1648/2012, was working as an Under Secretary (Special Cell) in the Recruitment Branch of the UPSC and during the period from January 2005 to January 2006, was entrusted with the duties of recruitment tests conducted by UPSC as also defending court cases pertaining to their recruitment tests conducted by the UPSC. Tarsem Lal, the respondent in W.P.(C) No.1651/2012, was working during the same period as the Deputy Secretary in the UPSC and was the immediate superior officer of Amarjeet Singh; he too, as a part of his duties was associated with the recruitment tests conducted by UPSC as also defending court cases pertaining thereto.

5. The file containing the note dated September 20, 2005 penned by the Joint Secretary of UPSC, together with the decision dated September 29, 2005 taken by UPSC, meandering through the maze in UPSC reached the table of Amarjeet Singh on or around October 25, 2005; for doing the needful. He penned a lengthy note making a reference to the decision dated August 11, 2005 in W.P.(C) Nos.8218/2002, 8784/2003, 619/2003 and 620/2003. He noted that there were 9 writ petitioners in the 4 captioned writ petitions out of which 1 named Meeta Verma had not applied even within the extended time granted by the Division Bench of the High Court and that 7 had applied within the original cut off date as per the advertisement and 1, Ms.Permista Sharma, had applied within the time extended by the High Court. As per the note, only Permista Sharma would be beneficiary of the decision of the High Court and on the

subject of age relaxation benefit to be accorded to all the writ petitioners he opined in paragraph 3 of his note as under:-

“3. The relief accorded for submitting applications for extended period of seven days can be gracefully accepted because the date of judgement and the closing date are the same, i.e. 11.8.2005. Further, the services rendered by the petitioners are always the part and parcel of their bio-data and is considered at the time of interviews. In case petitioners get qualified in the RT, they will automatically get this benefit. Each relaxation to the petitioners in future RTs concerns more to Govt. of NCT of Delhi than UPSC. Hence, in the future RT they will take care of this direction by submitting proposal to the Commission. In other words, this issue is not ripe enough to be contested.”

6. It is apparent that Amarjeet Singh submitted a proposal recording facts therein, to dispense with the decision to file a Petition seeking Special Leave to Appeal before the Supreme Court and to allow extension of time to Dr.Permista Sharma to submit her application i.e. grant ex-post facto approval to receive the application which had already been submitted by Dr.Permista Sharma. As the next superior officer, Tarsem Lal accorded approval to the proposal dated October 25, 2005 authored by Amarjeet Singh by signing in approval the note on October 25, 2005 itself.

7. The file was forwarded to the Additional Secretary (RER), UPSC who, in his note dated October 31, 2005 (at page 17-18 of File No.1/346(80)/2004-RI/SPC.I) recorded a contra view and re-emphasized the decision taken by UPSC on September 29, 2005 to challenge the decision dated August 11, 2005 before the Supreme Court. Processing the file further, Sh.Ved Prakash the Joint Secretary

in UPSC directed the concerned officers as per note dated November 08, 2005 to expedite filing of the Petition seeking Special Leave to Appeal before the Supreme Court.

8. Sh.Amarjeet Singh penned a note dated November 10, 2005 (at page No.21-23 in File No.25/41/2005-R(C&P)/SPC.I) recording therein that as directed by the Joint Secretary (R), he met Ms.Binu Tamta, Counsel for UPSC in the Supreme Court, and had appraised her with the brief and as per the discussions which he had with her three options were emerging : firstly Dr.Permista Sharma be granted 7 days relaxation to submit the application and simultaneously the SLP be filed; second option was to seek a review from the Delhi High Court and thirdly the SLP may be filed straightway. He penned that the lawyer Ms.Binu Tamta was of the view that the first option should be followed, to which note Sh.Tarsem Lal accorded an approval on the same day i.e. November 10, 2005.

9. The file was placed before the Additional Secretary (RER) who in his note dated November 10, 2005 (at page 23 in File No. 25/41/2005-R(C&P)/SPC.I) expressed displeasure in the delay that had already taken place in filing the SLP, since the Commission had already taken a decision regarding the same on September 29, 2005.

10. Sh.Tarsem Lal mooted another proposal on November 16, 2005 for issuing admission certificate to Dr.Permista Sharma. Two days later i.e. on November 18, 2005, the Joint Secretary (R) in his note of even date advised Sh.Tarsem Lal to submit a draft SLP.

11. On November 28, 2005 the file (which specifically pertains to the issuance of Admission Certificate to Dr.Permista Sharma), was again placed before Sh.Amarjeet Singh who reiterated his earlier

proposal for issuance of admission certificate to Dr.Permista Sharma and forwarded the same to Sh.Tarsem Lal for his approval. However, Sh.Tarsem Lal, forwarded the same to the Joint Secretary on November 29, 2005.

12. The Additional Secretary, in his note dated November 30, 2005 (at page No.64 of file No.1-346/2004-SPC-I), approved the note of the Secretary, UPSC penned earlier on and directed to file SLP along with an application seeking delay to be condoned. The Addl. Secretary also penned his displeasure on the fact that even after a lapse of two months after the Commission's decision dated September 29, 2005, the SLP had not been filed. The draft of SLP was approved by the Commission on December 6, 2005 and the SLP was filed on December 7, 2005.

13. In this regard, relevant would it be to note that the limitation for filing the SLP, which had commenced on August 11, 2005 expired on November 11, 2005 and the SLP was filed with a delay of 25 days.

14. On December 09, 2005, the admission certificate for the Recruitment Test dated December 11, 2005 was issued to Dr.Permista Sharma as per the instructions of the Commission and the same was ex-post facto approved by the Commission vide office note dated December 21, 2005.

15. Pertaining to the delay in filing the SLP, a memorandum was issued to Tarsem Lal requiring him to explain the lapse on his part in delaying the matter and showing unnecessary favour to a particular candidate. In his reply Tarsem Lal explained that he was not helping any candidate and as regards the admit card issued to Dr.Permista Sharma on basis of a note initiated by him he gave justification that

not only was the same with the consent of the Commission but was to avoid contempt proceedings initiated against the Commission.

16. Not being satisfied with the explanation the disciplinary authority issued a charge memorandum for a minor penalty proceedings not only against Tarsem Lal but also against Amarjeet Singh on June 13, 2007; the same was issued under Rule 16 of the CCS (CCA) Rules, 1965 and the misconduct alleged was intentionally delaying filing of the SLP to favour Dr. Permista Sharma and showing insubordination to the Commission by writing opinions in spite of the fact that on September 29, 2005 the Commission had taken a decision to file the Special Leave Petition before the Supreme Court.

17. In separate replies filed, Amarjeet Singh and Tarsem Lal took same stand. They highlighted that there being no clear decision by the Commission regarding admission certificate being issued to Dr. Permista Sharma, there was a fear of contempt against them, and the Commission, for not complying with the mandamus issued by the Division Bench of this Court. They highlighted the legal advice rendered by Ms. Binu Tamta and the fact that the admission certificate was issued with the approval of the Commission. They highlighted that the notes penned by them pertained to, without prejudice, issuing the admission certificate to Dr. Permista Sharma pending Supreme Court considering the matter after the SLP was filed.

18. For reasons unknown, the disciplinary authority inflicted a penalty of withholding one increment of pay on both officers on September 06, 2010 with further direction that the withholding of the increment would be upto November 30, 2013; with a clarification that the withholding of the increment would not affect their pension. The

disciplinary authority observed that the issues raised in defence namely; fear of contempt proceedings and issuance of the admission certificate to Dr.Permista Sharma with the approval of the Commission were irrelevant.

19. Amarjeet Singh and Tarsem Lal challenged the penalty imposed vide order dated September 06, 2010, before the Central Administrative Tribunal and the two Original Applications filed by them were numbered 448/2011 and 1099/2011. Both of which have been allowed by the Tribunal by a common decision dated January 18, 2012, which are the subject matter of challenge in the writ petitions filed by UPSC registered as WP(C) 1648/2012 and WP(C) 1651/2012.

20. The tribunal has taken the view that the imputations in the present case did not constitute '*misconduct*' in the strict sense, in view of the fact that the impugned orders absolved the charged officers of most of the components of the charges. As regards what constitutes '*misconduct*', the Tribunal relied upon the decision reported as 1992 (4) SCC 54 State Bank of Punjab & Ors. v Ram Singh Ex. Constable. The tribunal held that the alleged acts of commission/omission on the part of the officers did not fall within the scope of what would constitute '*misconduct*' i.e. showing a lack of devotion to duty or conduct unbecoming of a Government Servant. The tribunal noted that what emerged was that both officers had processed the files with due diligence considering the facts and circumstances of the case and the lapse, if any, was on the part of the higher authorities who had failed to give any clear directions in the matter, despite repeated proposals being submitted to them. The tribunal also noted that while

the Under Secretary and Deputy Secretary had been subjected to disciplinary action, the Joint Secretary was let off without any action and the same was evidently discriminatory.

21. Since in the meanwhile candidature of Tarsem Lal for being promoted as recommended by a DPC was kept in a sealed cover the Tribunal directed that the sealed cover would be opened and if found eligible to be promoted, Tarsem Lal would be promoted.

22. UPSC has challenged the decision of the Tribunal insofar the penalty imposed on both officers has been quashed. Amarjeet Singh is aggrieved by the fact that the Tribunal overlooked the fact that the penalty imposed was actually to last for three years and thus would be a major penalty and not a minor penalty and that the procedure for imposing a major penalty was not followed.

23. As regards the writ petition filed by Amarjeet Singh, suffice would it be to note that by the time the penalty was imposed in the year 2010 he had already earned the increment and the increment which was withheld was to be given in July 2011. Since the withholding was to last up till November 30, 2013, the withholding would be obviously for less than three years, and thus there is no merit in the writ petition filed by Amarjeet Singh.

24. Before dealing with the challenge by UPSC to the decision taken by the Tribunal, we would be failing not to note a very disturbing feature in the instant case as also in a few others which have come to our notice in the recent past pertaining to levy of penalties.

25. Whereas a Government servant is accountable for misdeeds committed by him in the discharge of his duties and for which a

Government servant can be subject to a disciplinary action, but the disciplinary action is to test the legality of what is alleged against him and should not become and cannot become the test of his patience. We are coming across matters where even minor penalty proceedings, where no inquiry has to be held, last for years together. What happens is that the consequence of the minor penalty levied becomes disproportionate to the penalty itself for the reason, it being settled law that pending disciplinary proceedings recommendations pertaining to the promotion of a Government servant have to be kept in a sealed cover which need not be opened if a penalty is imposed. Even if the penalty imposed is that of censure. Now, as in the instant case where the penalty imposed is withholding one increment of pay till November 30, 2013, without any consequential effect, the effect of the penalty is that Tarsem Lal would not be entitled to the benefit if the DPC found him eligible to be promoted in the meanwhile. As noted by us above, the charge memo for a minor penalty proceeding was issued to him and Amarjeet Singh on June 13, 2007, and we are surprised that the penalty was levied upon them after more than three years on September 06, 2010. We just do not understand as what was the disciplinary authority doing. Being a minor penalty proceeding the only requirement was to serve a charge-sheet and consider the reply filed. Inquiry had not to be conducted by appointing an Inquiry Officer; and indeed none was appointed. If the penalty stands, the effect would be that Tarsem Lal would stand superannuated without earning a promotion, and we note that he would be superannuating on November 30, 2013; and this explains the period for which the one

increment being withheld, as per the penalty order lasting upto said date.

26. In an appropriate case, Courts should consider whether delayed minor penalty orders could be ante dated so that the twin object of the Government servant being penalized for the wrong but no more could be achieved and at the same time the disproportionate effect of the belated penalty with respect to the promotion could be mitigated.

27. We would have considered doing the same in the instant case if we would have allowed the writ petitions filed by the UPSC.

28. Pertaining to the writ petitions filed by the UPSC, we see no reason to differ with the view taken by the Tribunal for the reason the notes authored by Amarjeet Singh post September 29, 2005 would reveal his concern for complying, without prejudice, with the mandamus issued by the Division Bench of this Court as per the decision dated August 11, 2005 pertaining to accepting the application to be submitted by Dr. Permista Sharma so that a contempt action against the staff of the Commission and the Commission could be prevented and at the same time an SLP could be filed on the subject of whether contractual employees of the Government could be granted age relaxation in matters pertaining to public employment. The Tribunal has rightly opined that the decisions by the Commission was not indicative of what administrative steps could be taken till the SLP filed came up for consideration before the Supreme Court. The Tribunal has rightly opined that it was not that Amarjeet Singh and Tarsem Lal acted as per their opinion on the law for the reason Ms. Binu Tamta, Advocate who was to file the SLP had been consulted and even she had advised that admission certificate be issued to

Dr.Permista Sharma and simultaneously the SLP could be filed. We agree with the view taken by the Tribunal that in the absence of clear cut directions from the Commission, the two officers bona fide authored the notes seeking clear cut directions as regards the future action and that there was no express or even implied intention on their part to confer any benefit to Dr.Permista Sharma or to show insubordination to the Commission. We may simply highlight that the delay in filing the SLP was of only 25 days, which was condoned by the Supreme Court.

29. In any case, the view taken by the Tribunal is a reasonable and a probable view and it is settled law that a Writ Court would not differ with a view, taken with respect to facts, by a Tribunal.

30. The three captioned writ petitions are dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 10, 2013

mamta/skb