

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

Judgment Reserved on May 02, 2013
Judgment Delivered on May 06, 2013

+ **W.P.(C) 9006/2011**

DR. V.S LUV

..... Petitioner

Represented by: Mr.Hameed S. Shaikh, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Represented by: Mr.Gautam Gupta, Adv. for
Mr.Aditya Madan, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this Writ Petition is to the order dated July 13, 2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) dismissing M.A No.3002/2010 in O.A No.2462/1989 for execution of the directions given in the judgment dated April 22, 1992 in OA No.2462/1989, titled Ram Dev Sharma vs. Delhi Administration & Ors. along with the application seeking delay to be condoned in filing the execution application.

2. The relevant facts are that the petitioner was appointed as Lecturer in the year 1977 in Sanathan Dharma Ayurvedic College, Delhi, which was established by Private Society and recognized by the Central Council of Indian System of Medicine, Medical of Health & Family Welfare. He was promoted as a Reader in 1983. On April 27, 1986, the college was taken over by the erstwhile Delhi Administration. The petitioner along with other officials filed O.A No.2462/1989 before the Tribunal, which was titled Ram

Dev Sharma vs. Delhi Administration & Ors. seeking a restraint order from being removed from the service and also for extension of benefit of earlier judgment in Smt.Nirmal Rai's case in O.A No.1340/1988, decided on October 25, 1991. The O.A No.2462/1989 was allowed and direction was given to the respondents to treat the petitioner and others, who were rendered surplus consequent upon closure of the college with effect from April, 1991, as the employees of Delhi Administration and with a direction to give them alternative placement commensurate with their qualification and experience in accordance with an appropriate scheme to be prepared by the respondent. The SLP filed against the judgment of the Tribunal in Smt.Nirmal Rai's case was dismissed by the Supreme Court. Even the SLP filed in Ram Dev Sharma case (*supra*) in which petitioner was also a party was dismissed by the Supreme Court. The petitioner, who was rendered surplus, was appointed as Medical Officer in the pay scale of ₹2200-4000 with effect from March 01, 1994, under the scheme formulated by Delhi Administration. He was further promoted as Sr.Medical Officer in the year 2002. The petitioner continued to work on the said post and did not raise any objection against his appointment as Medical Officer in the pay scale of ₹2200-4000. It is noted that in the year 2005, the petitioner filed O.A No.386/2005 before the Tribunal seeking a direction to the respondents to grant pay scale of Chief Medical Officer i.e. ₹3700-4500, revised to ₹14300-18300, with effect from April, 1986 with arrears and consequential benefits and to absorb him as CMO with effect from March 01, 1994 and consequently grant all promotions, seniority, pay and allowances. On May 23, 2008, the O.A No.386/2005 was dismissed by the Tribunal holding that the execution of the order dated April 22, 1992, of the Tribunal in O.A No.2462/1989, titled Ram Dev Sharma & Ors. vs. Delhi Administration, as

the proper remedy. The petitioner filed a Writ Petition before this Court, which was not pursued by the petitioner. It is the stand of the petitioner that he was ill-advised to file the writ petition against the order of the Tribunal in O.A No.386/2005 and the right course for him was to seek execution of order dated April 22, 1992.

3. Accordingly, the petitioner filed a Miscellaneous Application No.3002/2010 in O.A No.2462/1989 in the month of June, 2010 along with application for condonation of delay. The relief in the application, *inter-alia*, was for direction to the respondents to implement the judgment dated April 22, 1992, passed by the Tribunal in O.A No.2462/1989. Pursuant to the notice, reply was filed by the respondents, wherein a stand was taken by the respondents that the petitioner cannot be allowed to agitate and re-agitate the matter in miscellaneous application when he has already lost his case in O.A No.386/2005. They also refer to the fact that the Full Bench of the Tribunal in the matter of DR. J.P Sharma has overruled the view taken by it in Nirmal Rai, Prakash Chand and Ram Dev Sharma's case, wherein the Tribunal hold categorically that the Delhi Administration has not executed any positive act of take over. The Tribunal in the impugned order has held that the application is hopelessly barred by limitation and the reasons given in the application for condonation of delay are not sufficient. While dismissing the application, the Tribunal was of the following view :-

“The Hon’ble Supreme Court in a recent decision in SLP(C) No.7956/2011 (CC No.3709/2011) in the matter of D. C. S. Negi v Union of India & others, decided on 7.3.2011, has held that A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period.

Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3). It has been further held that the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant.”

4. We are now faced with the question, whether the Tribunal was right in dismissing the application filed by the petitioner. From the perusal of the facts narrated above, it is noted that pursuant to the order of the Tribunal dated April 22, 1992, the petitioner was offered the post of Medical Officer in the grade of ₹2200-4000. The Tribunal had given the benefit of its earlier judgment in Smt. Nirmal Rai's case in O.A No.1340/1988. The direction of the Tribunal was to give the petitioner and other applicants in the O.A alternative placement commensurate with their qualifications and experience in accordance with an appropriate scheme to be prepared by the respondent. Accordingly, the respondent had given the appointment to the petitioner as Medical Officer in the grade of ₹2200-4000. No issue was raised by the petitioner in this regard nor he had approached any judicial forum challenging such appointment. He had earned a further promotion in the year 2002. He, for the first time, approached the Tribunal only in the year 2005. By that time, 11 years had gone by since his appointment as Medical Officer and three years as Sr. Medical Officer. The prayer in the M.A is for implementing the judgment rendered by the Tribunal in O.A No.2462/1989, titled Ram Dev Sharma & Ors. vs. Delhi Administration, wherein he was one of the applicant, passed on April 22, 1992. Surely in the year 2010, the

prayer made is highly belated and rightly rejected by the Tribunal. It is also noted that in this petition, the petitioner has sought a larger relief by seeking a direction that he may be granted pay scale of CMO in ₹3700-5400 revised to ₹14300-18300 with effect from April, 1986, with all consequential benefits. Such a relief was not prayed for in the M.A. The Tribunal in its order dated April 22, 1986 had not given any such directions. The Tribunal's direction was only to give alternative placement to the petitioners and other officials commensurating with their qualifications and experience in accordance with the appropriate scheme; which the respondents have done. Be that as it may, it is too late in the day for the petitioner to make a claim to the grade of CMO with effect from 1986. During the course of the arguments, we were informed that the petitioner had retired in the year 2004. Under these circumstances, we do not find any infirmity in the order of the Tribunal. The Tribunal has rightly dismissed the application. Hence, the petition is dismissed.

5. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 06, 2013
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