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

+ **W.P.(C) 260/2014**

DR. NAGENDRA SINGH

..... Petitioner

Through: Mr. Kedar Nath Tripathy, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Manish Mohan, CGSC alongwith
Ms. Sidhi Arora, Mr. Shivam Chanana
and Ms. Pooja Mishra for R-1 and R-2
with Mr. Vijay Kr. Pandey, Dy JAG.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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28.10.2015

The petitioner seeks directions from this Court for quashing of a memorandum dated 20.05.2011 and a further consequential direction to constitute a Departmental Promotion Committee (DPC) to consider his claim for promotion with due seniority-from the date his juniors were promoted in terms of the office memorandum dated 05.01.2002 and the Standing Order No. 4/2002 dated 29.05.2002.

The brief facts are that the petitioner was working at the relevant time as a Senior Medical Officer. On the basis of alleged lapses, he was severely reprimanded on 29.08.2001. He represented against this Order but without avail since his pleas were rejected on 02.09.2004. He approached this Court by filing W.P. (C) No. 944/2008. The directions sought *inter alia* included a challenge to the order of reprimand and his categorisation as lower SHAPE 1-which disentitled him to promotion to the grade of Chief Medical Officer (CMO). On

24.10.2008, this Court directed the respondents to consider and examine the case and decide within three months. The petitioner's representation was however rejected on 11.02.2010; he again approached this Court by filing the W.P.(C) No. 2187/2011. The second writ petition was disposed of on 01.04.2011, quashing the memorandum of 11.02.2010 rejecting the representation, and directed the respondent to convey their decision within 6 weeks from the date of decision. The petitioner's representation was rejected once again.

In the present proceeding, the petitioner's grievance is confined to his loss of seniority consequent upon his low medical categorisation. In the subsequent medical examination on 26.05.2003, the petitioner was apparently assessed as SHAPE-1. He therefore contends that in the light of existing instructions dated 05.01.2002 and the Standing Order 4/2002, he is entitled to antedated seniority in the grade of CMO and suitable consequential monetary benefits.

The respondents do not dispute the essential facts i.e. the petitioner was categorised at SHAPE-1 in 2003 as is contended. In fact, the memorandum of 20.05.2011 specifically states that the petitioner was upgraded to SHAPE-1 on 26.05.2003.

The precise issue which the petitioner canvasses today was the subject matter of a previous decision of this Court in Anand Singh Yessong Vs. UOI & Ors in W.P.(C) No. 8618/2007 decided on 05.02.2010. The Court took note of Standing Order 4/2002 dated 29.05.2002. The said instruction provides that *"In case of those personnel, whose illness is of temporary nature, after considering their cases for promotion alongwith others, if they are otherwise fit, the*

DCP will grade them as 'fit' for promotion subject to attaining SHAPE-1 medical category, they will be promoted as per recommendations of DPC. However, they will not be entitled to back wages but retain their seniority."

This Court had given effect to the said memorandum of 05.01.2002 which has relied on this case and Standing Order 4/2002.

In the light of the above discussion, it is evident that the petitioner was entitled to the consequential seniority, the moment he was declared as SHAPE-1, on the basis of his appraisal and consideration by the previous DPC, for promotion to the grade higher to the one held by him at that stage (SMO).

Consequently as a result, a direction is issued to the respondents to give full effect to the Standing Order –but without financial benefits for the said period. It goes without saying that any further service benefits which the petitioner would have been entitled to, on the basis of seniority, shall also be worked out and released to him. If this entails re-fixation of pension, that exercise too shall be carried out. The respondents are directed to issue a consequential comprehensive order in this regard within three months from today.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 28, 2015/sapna