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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 29.08.2022***

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W.P.(C) 7350/2018

DR. SUNIL YADAV

..... Petitioner

Through: Ms.Payal Jain, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Ms.Monika Arora, Adv for R-1.

Ms.Kartika Sharma with Ms.Vanshita Gupta, Adv for R-2.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J(ORAL)**

1. The petitioner has approached this Court seeking the following reliefs:-

“a) Issue a Writ, Order and/or direction in the nature of Mandamus, thereby directing, commanding and requiring the Respondents to call the Petitioner for an interview as per Vacancy Circular F.NO. 5-8/2016/NCTE/ESTT for the post of Deputy Secretary and Regional Director and;

b) Issue a Writ, Order and/or direction in the nature of Mandamus, thereby directing, commanding and requiring the Respondents to remove all bad remarks against the Petitioner arising out of false bribe complaint filed by one Shri Madan Mohan Singh, the Secretary of Sitwanto Devi Mahila Kalyan Sansthan, Surajpath, Baridih Basti, P.O. Baridih, Dist-Bast Singhbhum, Jamshedpur-831017 as the same are causing prejudice to the Petitioner without any fault of his;



c) Issue a Writ of Mandamus, Certiorari, Quo Warranto and/or any other appropriate writ, order or direction, as this Hon'ble Court deems fit and proper in the facts and circumstances of the case as also in the interest of justice."

2. In the year 2009, the petitioner, while working as an Associate Professor at Agra College, University of Agra, applied for the post of Deputy Secretary in respondent no.2/National Council of Technical Education (NCTE), on deputation. Upon being selected, he was appointed as a Deputy Secretary on 29.01.2010, and was thereafter transferred as Regional Director on 12.10.2011. While the petitioner was working as a Regional Director in the Eastern Regional Committee (ERC) of respondent no.2, a complaint of a demand for illegal gratification by the petitioner was made against him, by one Shri Madan Mohan Singh, Secretary of a private society, namely Sitwanto Devi Mahila Kalyan Sansthan trust. The said society had sought grant of recognition for commencement of B.Ed courses in its institute, which application was being considered by the petitioner, who had found certain discrepancies in the same.

3. It is the petitioner's case that Shri Madan Mohan Singh, in order to pressurise the petitioner to grant recognition to his institution, lodged the aforesaid false complaint against the petitioner, which was found to be unmerited by the Eastern Regional Committee, in its 132nd ERC Meeting held on 3rd-4th April, 2012. The Committee unanimously opined that the complaint against the petitioner was false and fictitious, and there was no doubt about his integrity. The petitioner was, however, prematurely repatriated to his parent department, the Agra University, on 13.09.2012 and has been duly discharging his duties there.



4. It is the further case of the petitioner that, the CBI after examining the case of the Sitwanto Devi Mahila Kalyan Sansthan trust, had registered an FIR against Shri Madan Mohan Singh, the Secretary of the said trust, who had made a complaint against the petitioner. After investigation, on 19.07.2014, a chargesheet was filed against Shri Madan Mohan Singh, as also the owner of the institute, namely Netaji Subhash Institute of Education, Pokari, Jamshedpur. As per the chargesheet, while Shri Madan Mohan was alleged to have, in connivance with the officials of the NCTE, submitted forged and fabricated documents for availing recognition for conducting B.Ed courses, the petitioner was cited therein as a witness.

5. Vide letters dated 15.09.2015 and 07.09.2016, the CBI, at the request of the petitioner, informed respondent no.2 that there were no pending charges against the petitioner, and he was merely a witness in the chargesheet filed against Shri Madan Mohan Singh. Based on these communications by the CBI, the petitioner made repeated requests to the respondent no.2 seeking the reasons for his premature repatriation. It is the petitioner's case that, none of his requests were responded to, and in the meanwhile, based on the vacancy notification dated 24.10.2017 issued by the respondent no.2 for filling up the post of Deputy Secretary/Regional Director on deputation, the petitioner applied for the said post. However, as the petitioner was not called for the interview scheduled on 12.07.2018, which he learnt, was on account of the complaint against him made by Shri Madan Mohan Singh, he has approached this Court by way of the present writ petition.

6. The respondents have filed the counter affidavit opposing the petition, primarily on the ground that on 24.12.2017, a communication was addressed



to the Agra University, for initiating disciplinary proceedings against him, on the basis of the recommendations made by the Central Vigilance Committee (CVC), and it has, therefore, been contended that on the date of the issuance of the vacancy notification, issuance of a chargesheet was contemplated against him. Consequently, it has been urged that, since proceedings against him for misconduct were under contemplation, he was rightly not called for the interview for the post of Deputy Secretary/Regional Director at respondent no.2. At this stage, it may be noted that, during the pendency of the present petition, the Agra University, vide its communication dated 19.09.2019, has informed the respondent no.2, that in view of the chargesheet filed by the CBI on 19.07.2014 in respect of the subject matter of the complaint against the petitioner, wherein he was cited as a witness, no case was made out for issuance of any departmental proceedings against him.

7. Learned counsel for the petitioner submits that once, both the CBI and the Agra University, have categorically stated, that there is no case of misconduct made out against the petitioner, the respondent no.2's refusal to permit him to appear in the interview for the post of Deputy Secretary, for which he was fully eligible, was wholly arbitrary and illegal. She submits that, not only was the petitioner meeting all the eligibility criteria, but was also within the age limit of 55 years as prescribed in the rules for appointment to the post of Deputy Secretary, and has furthermore been wrongly excluded by respondent no.2 from participating in the selection process, on an erroneous presumption that some disciplinary proceedings were pending against him.

8. She submits that even though the petitioner was repatriated to Agra



University in 2012, no disciplinary proceedings of any kind were ever initiated against him, and on the other hand, the CBI had categorically informed the respondent no.2 that the petitioner was innocent, and was in fact, only a witness in the chargesheet filed against Shri Madan Mohan. She, therefore, contends that the petitioner, who has now become overage, should not be penalised only on account of the respondent no.2's erroneous presumption that he was involved in some misconduct, which presumption stands clearly negated not only by the CBI's communications issued on 15.09.2015 and 07.11.2016, but also by the Agra University's communication dated 19.09.2019. She, therefore, prays that the respondent no.2 be directed to expeditiously commence the process for filling up the available post of Deputy Secretary and the petitioner be granted leave to apply for the same, by granting the necessary age relaxation for the period during which the present writ petition remained pending.

9. On the other hand, Ms. Kartika Sharma, learned counsel for the respondent no.2, supports the impugned action of the respondent by urging that once the respondent no.2 had informed the Agra University about the misconduct of the petitioner, merely because no action was taken by the said University, cannot be a ground to hold that the respondent no.2 was unjustified in not considering the petitioner for appointment to the said post. She further submits that, even as per the own case of the petitioner, it is only on 19.09.2019 that the Agra University has informed the respondent no.2 that no disciplinary proceedings are being initiated against the petitioner. However, by this time, the petitioner had already become overage, and therefore, prays that the writ petition be dismissed.

10. I have considered the submissions of the learned counsel for the



parties, and with their assistance, perused the record. I find that in 2014 itself, when the CBI filed the chargesheet against Shri Madan Mohan Singh, it became clear that the petitioner was innocent, which is evident from the fact that he was only cited as a witness in the chargesheet dated 19.07.2014. In fact, vide its communication dated 15.09.2015 and 07.11.2016, the CBI had categorically informed the respondent no.2 that the petitioner was innocent, and he was not involved, in any manner, in the connivance of Shri Madan Mohan Singh with the officials of the NCTE. Interestingly, even the ERC in its 132nd meeting, held way back on 3-4th April, 2012, had unanimously opined that the complaint against the petitioner by Shri Madan Mohan Singh was false and fictitious, and there was no doubt about the petitioner's integrity. It is also an admitted position that neither any disciplinary proceedings, nor any criminal proceedings of any kind have been initiated against the petitioner till date. Despite the communication dated 24.10.2017 issued by respondent no.2, the Agra University has decided not to initiate any action against the petitioner, and in my view, rightly so. Once, the CBI itself, after due investigation, had cited the petitioner as a witness, and clarified way back in 2015 that he was innocent, the respondent no.2 was clearly unjustified in painting him as a person facing departmental action.

11. Even though, learned counsel for the respondent no.2 has urged that a chargesheet dated 19.07.2014 was issued to the petitioner, the record shows that neither any action was taken on the basis of this chargesheet, nor is there anything to show that the same was ever served on him. In any event, in the light of the undisputed position that no action of whatsoever kind has been taken against the petitioner for his purported misconduct, even after 11



years, it is evident that he has been wrongly denied the opportunity to participate in the selection process for the post of Deputy Secretary, merely on an assumption by the respondent no.2 that he was involved in some misconduct. I am constrained to observe that this presumption by the respondent no.2 overlooked the stand of the CBI as also of its own ERC, which had unanimously opined that the complaint against the petitioner was false and fictitious. The petitioner is, therefore, justified in urging that he was wrongly deprived of the opportunity to appear in the interview for the post of Deputy Secretary.

12. Now coming to the respondent no.2's plea that the petitioner is now overage and cannot, therefore, be considered for the subject post. Even though, it is correct that the upper age limit for applying to the post of Deputy Secretary is 55 years, and as on date, the petitioner is about 58 years of age, the fact remains that if appointed, he can serve till 60 years of age. The petitioner had approached this Court in the year 2018, when he was only 54 years of age, and therefore, merely because the petition remained pending before the Court for four years, he ought not to be deprived of a fair opportunity to participate in the selection process for the post of Deputy Secretary. Moreover, while issuing notice in the petition, this Court had specifically directed that, appointments, if any, made against the vacancy notification dated 24.10.2017, would be subject to outcome of the present petition.

13. Having found that the action of the respondent no.2 in depriving the petitioner of the opportunity to appear in the interview for the post of Deputy Secretary held on 12.07.2018, the normal corollary thereof would have been to set aside the appointments made pursuant to the said selection



process. However, taking into account the time period of four years that has since elapsed, it would be unjust to disturb the said appointments, and therefore, I am of the considered view that the interest of justice would be met by directing the respondent to expeditiously fill up the available vacancies in the post of Deputy Secretary, with a further direction to the respondents to consider the petitioner for the said post by granting him age relaxation. This direction for age relaxation is being issued by taking into account the fact that the present petition has remained pending before this Court for four years and, therefore, it would be highly unfair to deny the petitioner even this limited opportunity to participate in the selection process, only on account of the delay in adjudication of this writ petition.

14. For the aforesaid reasons, the present petition is allowed by directing the respondent no.2 to expeditiously fill up the available posts of Deputy Secretary/Regional Director, by following the laid down procedure, and considering the petitioner's application by granting him age relaxation for the period during which the present petition remained pending before this Court.

15. It is, however, made clear that this Court has not expressed any opinion on the merits of the petitioner's eligibility for appointment to the post of Deputy Secretary/Regional Director. He would however, not be rejected on the ground of being overage, or on the basis of the purported complaint made against him by Shri Madan Mohan Singh.

REKHA PALLI, J

AUGUST 29, 2022/sr