



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 11, 2023

+ W.P.(C) 9827/2003, CM APPL. 13940/2005

VIRENDRA JAIN

..... Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur
and Mr. R. L. Dhawan, Advs.

versus

UOI & ORS.

..... Respondent

Through: Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Saksham Sethi, G.P. and
Mr. Sarvan Kumar and Ms. Sunita
Shukla, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order dated September 3, 2003 of the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in Original Application being OA 59/2003 whereby the Tribunal has dismissed the OA filed by petitioner herein by stating that the same is without any merit.
2. The facts as noted from the record are, the petitioner was appointed as Medical Officer Grade-I (Junior Scale) in the Central



Health Services under the Ministry of Health and Family Welfare, Government of India, in the month of October, 1987. In July, 1988, he was selected for appointment to a post in Special Protection Group of the Cabinet Secretariat. The petitioner in October, 1988 was placed under suspension because he was arrested in a matter in FIR No. 299/1988 with respect to offences punishable under Sections 304-B and 498-A of the Indian Penal Code, 1860 ('IPC', for short). On October 11, 1991, he was acquitted by the learned Additional Sessions Judge, New Delhi.

3. According to him, he had intimated the department of his acquittal. But his suspension was revoked only on April 28, 1995, which order was received by the petitioner in June, 1995. The petitioner joined the services thereafter. He contended that he has not been paid full pay and allowances from the date of his acquittal till June, 1995, when he came to know about his reinstatement and joined the post.

4. His case was also that he has not been considered for promotion. According to the petitioner the subsequent confidential reports of the petitioner could not have been taken into account for denying him promotion. In other words, the confidential reports if any of the earlier years should have been taken into consideration, which admittedly were not recorded for the fault of the respondents.

5. The case of the respondents before the Tribunal was by conceding to the facts highlighted, that during suspension, the petitioner was drawing subsistence allowance. But despite order of reinstatement, he did not join his duties. He was paid the salary for the period he has



worked. He was also given an opportunity to explain as to why the period of February 1, 1992 to June 5, 1995 may not be treated as *dies non*. After considering the relevant facts including the explanation submitted by the petitioner and the fact that the order regarding revocation of suspension has not been received back undelivered, it was decided that the period of suspension from February 1, 1992 to June 5, 1995 be treated as *dies non*. It was the case of the respondents that by taking into account his subsequent conduct / performance, he was not found fit to be promoted.

6. The petitioner had earlier preferred an OA No. 648/2000, which came up for consideration before the Tribunal on July 24, 2001. The Tribunal had disposed of the OA directing the respondent (s) to pass order in accordance with the provisions of FR 54(B)(1) and (B)(3) and also consider the claim of the petitioner by taking note of the decision of the Supreme Court in ***K.V.Janakiraman v. U.O.I, 1991 (2) SCALE 4 23***. The respondent had accordingly passed an order dated May 23, 2002 by stating in paragraph 7 as under:

“7. It is in pursuance of the said directions that the impugned order dated 23-5-2002 has been passed. That order reads -

5. As per the provisions of CHS Rules, 1982 (as then applicable, the eligibility for promotion of Medical Officer to Senior Medical Officer in General Duty Sub-Cadre of CHS was 4 years of regular service in the grade on seniority-cum-fitness basis without linkage to vacancies. Senior Medical Officer in the General Duty sub-cadre with 6 years regular service in the grade or on completion of ten years as Medical Officer and Senior Medical officer of which two years shall be as Senior Medical officer are to be Considered for promotion to the rank of CMO on the basis of seniority-



cum-fitness subject to the availability of vacancies.

6. A meeting of DPC to consider the promotion of Dr. Jain, Medical Officer in the scale of pay of Rs. 2200-4000 (pre-revised) Rs. 8000-13500 (revised) to the grade of Senior Medical officer Rs.3000-4500 (pre-revised) Rs. 10,000-15200 (revised) was held on 15.03.02, under the chairmanship of Additional Secretary (P), Ministry of Health & Family Welfare,

7. The DPC noted the order of CAT, Principal Bench, New Delhi and considered the case of Dr. Jain Medical officer for promotion to the grade of Senior Medical Officer with reference to the date of his immediate junior. Dr. Harjit Kaur Grewal who was promoted with effect from 04.08.91.

8. The DPC observed that this was a peculiar case where no ACRs were available for the relevant period and there were no guidelines for assessing such cases as even other relevant records such as Assessment Report for promotion etc. also were not available to assess the suitability. The DPC therefore assessed the case of promotion of Dr. Virendra Jain to the rank of Senior Medical Officer on the basis of his performance during the subsequent years

9 The DPC took note of the fact that even after his suspension was revoked on 31.01.92, Dr. Jain failed to join his duties and remained on unauthorised absence upto 05-06-95. This period has been treated as dies-non. Dr. Jain further absented from duty from 19-06-95 to 07-08-96, which period has also been treated as dies-non. The DPC also noted that Dr. Jain is again continuing on unauthorised absence from 20-11-99 till date. The DPC after assessing the his available ACRs for the periods from 1996-97, 97-98, 98-99 and 11.4.99 to 16.12.199 and his conduct in remaining on unauthorized absence for long durations, assessed him as "Unfit for promotion as SMO on date and recommended accordingly.

10. The above recommendations of the DPC have been



accepted by the competent Authority. Dr. Virendra Jain on his promotion as Senior Medical Officer will be furthered for promotion as Chief Medical Officer."

Aggrieved by the said order, the present application has been filed."

7. The Tribunal's conclusion is in paragraph 8 onwards, which we reproduce as under:

"8. Regarding the claim of the applicant that his previous records should have been considered while considering the claim of the applicant for promotion, we do not dispute the broad principle in law that when a person is to be promoted, his record of the past year has to be considered. The same is the effect of the instructions of Departmental of Personnel & Training OM dated 16th June, 2000, the relevant portion of which reads:-

"2. In regard to operation of the Modal Calendar for DPCs, a doubt has been raised by certain quarters as to the question of the relevant year upto which ACRs are required to be considered by the DPCs, In this connection it is once again clarified that only such ACRs should be considered which became available during the year immediately preceding the vacancy/panel years even if DPCs are held later than the schedule prescribed in the Model Calendar, In other words, for the vacancy/panel year 2000-2001/ ACRs upto the year 1998-99 are required to be considered irrespective of the date of convening DPC."

Based on the strength of these instructions the aforesaid argument has been made.

9, However, the peculiar situation that has arisen in the present matter is that the applicant had joined service in the year 1987. In the subsequent year he was arrested in a criminal case referred to above with respect to offences punishable under section 304-B and 398-A of Indian Penal Code. For the one year that the applicant had served the department, admittedly confidential report of the applicant



had not been recorded. At this stage, after a lapse of 16 years, such an order even cannot be passed and directing recording of the confidential report later on. In this process the claim of the applicant was considered for promotion and there was no confidential report of the past year pertaining to the applicant.

10. Respondents' learned counsel has drawn our attention to the instructions of the Government of India Department of Personnel & Training dated 20-6-89 as reproduced in Swamy's Manual on Establishment & Administration and the same read -

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this also not possible, all the available CRs should be taken into account.

(d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade,

(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes"

In-deed it deals with such a situation that may arise because it is specifically provided that when the confidential reports are not recorded, the confidential reports of the preceding years have to be considered. When it is also not possible, all the available confidential reports have to be taken note of. If for the preceding years no confidential reports were



available, necessarily then confidential report for the subsequent year can be considered and the view to be formulated. Therefore, this particular plea of the applicant must fail.

11, Another limb of the argument was that sealed over procedure should have been adopted. It is true that in terms of the decision in the case of K.V.Janakiraman (supra) when the applicant was under suspension such a procedure should have been adopted. Unfortunately it was not adopted but in the peculiar situation in which we are presently placed, reference to which has already been made, it might not have been so done because there was no report about the performance and conduct of the applicant.

12. Confronted with this situation, when the second pleat of the applicant pertaining to the salary for the period from 1.2.92 to 5.6.95 was pressed, learned counsel for the applicant contended that the applicant only came to know of revocation of suspension after he received the order and thereafter he joined service. According to the learned counsel, the applicant had visited the office of the respondents and he was never informed that any such order has been passed. This plea is being controverted vehemently,

13. Our attention was drawn towards the letter written from the office of respondents dated 28.4.95 addressed to the applicant, which reads -

*Virendra Jain
S-A3 Ansari Road
Darya Ganj,
Delhi.*

*Sub: Revocation of suspension order in r/o Dr.
Virendra Jain, MO*

Sir,

I am directed to send herewith another copy of revocation order in r/o Dr.virendra Jain, with the request to join your duty immediately.

*Yours faithfully,
sd/- : D.Toppo*



Admn. officer, C2

On the strength of the same the above said argument of the applicant's counsel has been deprecated.

14. If the matter had ended here, the contention could be accepted, but it is not so. The applicant was acquitted by the learned Additional Sessions Judge, New Delhi on 17.10.1991. The order reinstating the applicant and revocation of suspension was passed on 31.1.1992, which reads -

ORDER

WHEREAS an order placing Dr. Virendra Jain, Medical officer, CGHS wing, Safdarjang Hospital New Delhi, under suspension was made by the President on 20th January 1989.

NOW, therefore, the President, in exercise of the powers conferred by clause (c) of sub-rule (5) of Rule 10 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

By order and in the name of the president,

*sd/- S, Hariharan
Deputy secretary to the Govt, of India*

Perusal of the revocation of suspension order reveals that it was addressed to the applicant at the address 5-A Ansari Road, Darya ganj. New Delhi, Even later on the applicant had stated that he had received the letter addressed to him in the above address.

15. The position in law is well settled that correctly addressed letter would ordinarily be delivered to the addressee. Unless there is extraordinary happening shown, ordinary course of events would follow. In terms of section 114 of the Indian Evidence Act read with section 27 of the General Clauses Act, a presumption would be drawn that



the letter had been delivered to the addressee, particularly when the letter is said to have not been received back undelivered. Thus we have no hesitation in drawing the present presumption.

16 . The contention of the applicant that he has not received the revocation order is otherwise also totally unconvincing. If the applicant has not received the same, for all these years, he would not have waited. He would have taken the matter on the judicial side or urged seriously in this regard. Thus for purpose of the present application, we hold that the applicant was aware of the revocation order and if he did not join duty till June 1995, he is not entitled to pay and allowances.

16. No other plea has been raised, Resultantly, the O.A. being without merit must fail and is dismissed.”

8. Mr. Shankar Raju, learned counsel appearing for the petitioner has reiterated the submissions as made before the Tribunal with regard to both the claims; of promotion and back wages w.e.f April 1, 1992 to June 5, 1995. He has relied upon the judgments of the Supreme Court in the case of ***P. Sivanandi v. Rajeev Kumar and Ors.*** and ***P. Sivanandi v. State of Tamil Nadu & Ors., Civil Appeal Nos. 4822-4826/2007*** more specifically paragraph 19, which we reproduce as under:

“19. That apart, the fact that the ACR of Sivanandi was written and reviewed by his superior authorities after a considerable delay obviously cannot put him to any disadvantage. The writing and review of his ACR was beyond his control and we do not see any rational basis on which Sivanandi could be disadvantaged merely because his superior officers were lax in the discharge of their responsibilities.”

9. In so far as the claim for promotion is concerned, it is a



conceded position that the petitioner was appointed on October 7, 1987 as a Medical Officer-Class I (Junior Scale). On July 7, 1988, he was selected for a post in the Cabinet Secretariat and on October 22, 1988, he was placed under suspension. In that manner, the tenure of the petitioner was a very brief one.

10. It is the case of the respondent that the ACRs for the above period have not been recorded. In that sense, the very basis of his consideration for promotion was not available.

11. No doubt, a reference has been made to DoP&T circular dated June 20, 1989, wherein it is stated that '*where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs*', but as noted above, in the case of the petitioner, since no ACR was available, the DPC could not have assessed the petitioner for promotion as Senior Medical Officer. In fact, it is the case of the respondents that they, while considering the case of the petitioner, had looked into his conduct for the period between February 1, 1992 to June 5, 1995 which was treated as *dies non* and also the period between June 19, 1995 to August 7, 1996, when he remained absent and which period was also treated as *dies non*. In fact, the petitioner continued to be unauthorisedly absent from November 20, 1999 till May 23, 2022. The fact that the available ACRs are of the period 1996-97, 1997-98, 1998-99 and April 1, 1999 to December 16, 1999 and he remained unauthorisedly absent on two occasions, which were treated as *dies*



non, we are of the view that his non-promotion has some justification. In fact, we have been told that the petitioner has resigned from service in the year 2005. If that be so, surely, given the conduct which has been highlighted by the respondents, petitioner could not have been promoted as SMO, which entails higher responsibilities.

12. In so far as the plea of the petitioner for salary for the period February 1, 1992 to June 5, 1995 is concerned, it is a conceded position that the petitioner was acquitted by the criminal court on October 17, 1991. The order of revocation of suspension was passed on January 31, 1992. The issue before the Tribunal was as to whether the order dated January 31, 1992 has been received by the petitioner as it is noted that the petitioner joined back the service only on June 6, 1995. The plea of the petitioner is that, he did not receive the order dated January 31, 1992. It is only after the revocation order was sent once again on April 28, 1995, that the petitioner had joined the service back, on June 6, 1995.

13. The Tribunal did not accept the stand of the petitioner that, he did not receive the order dated January 31, 1992 by relying upon the provisions of Section 114 of the Evidence Act, 1872 read with Section 27 of the General Clauses Act, 1897 drawing presumption that the letter has been delivered to the addressee, particularly when the letter has not been received back undelivered. This reasoning of the Tribunal has some justification. Additionally, we are of the view, the petitioner having informed the respondents about his acquittal in the criminal case immediately thereafter, there was no reason for the petitioner not to approach the respondents to seek his reinstatement. No justifiable



reason nor any document has been placed on record by the petitioner to show that he has been pursuing with the respondents on his reinstatement. In fact we find that the petition does not have any factual narration on the steps / action taken by the petitioner seeking his joining, between the period October 12, 1991 to April 28, 1995.

14. In the facts of this case, including the fact that the petitioner has resigned in the year 2005, we are of the view that the impugned order of the Tribunal needs no interference.

15. In so far as the judgment relied upon by Mr. Raju in the case of *P. Sivanandi (supra)* is concerned, the law as laid down in the judgment cannot be disputed, but in the peculiar facts of this case, which we have noted above, we are of the view that the said judgment has no applicability. The petition is dismissed. No cost.

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As we have heard and finally decided the writ petition, this application seeking early hearing has become infructuous and is dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 11, 2023/aky