



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

% **Reserved on: July 30, 2024**

Pronounced on: August 09, 2024

+ **W.P.(C) No. 7718/2022 & CM No. 23620/202 & 23621/2022**

DR. DILIP RAMBHAU SHENDE Petitioner

Through: **Ms. Ruchira & Ms.Pooja Tripathi,**
Advocates

Versus

AIIMS AND ORS. Respondents

Through: **Mr.Atul Kumar & Ms.Sweety Singh,**
Advocates for respondent No.1

Mr.Santosh Krishnan, Ms.Sonam
Anand and Ms.S.L.Soujanya,
Advocates for respondent No.3

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner seeking quashing and setting aside of order dated 09.03.2022 passed by the learned Central Administrative Tribunal ('CAT') in OA No. 391/2022 and OM dated 03.02.2022 whereby respondent no.3 has been appointed as the Head of Department of Anaesthesiology and Critical Care, AIMS, New Delhi w.e.f 01.03.2022. A direction is sought to the respondents to appoint petitioner as the HoD, Department of



Anaesthesiology, Pain medicine and Critical Care, being the senior most person in the said department.

2. Vide the Office Memorandum No. 391/2022 dated 03.02.2022 issued by the Senior Administrative Officer of Indian Institute of Medical Sciences (AIIMS), respondent No. 3 Dr. Lokesh Kashyap, has been designated as the Head of Department of Anesthesia, Pain Medicine and Critical Care, AIIMS, New Delhi w.e.f. 01.03.2022.

3. The grievance of the petitioner is that he was promoted to the post of Professor in the Department w.e.f. 01.07.2007 whereas, Dr. Lokesh Kashyap was promoted in the grade of Professor w.e.f. 01.07.2008 and thereby his name has featured above Dr. Lokesh Kashyap hence the O.M. dated 03.02.2022 deserves to be set aside.

4. The backfirth of the case is that vide communication dated 31.03.1983 written by Under Secretary, Government of India, Ministry of Health and Family Welfare to the Director of AIIMS it was mentioned that there will be no separate cadre for the staff of the centres for the purposes of seniority and promotion.

5. The governing body of AIIMS based upon the aforesaid communication dated 31.03.1983, issued order dated 02.05.1983 formulated regulations reiterating and finalizing the guidelines issued by the Ministry of Health and Family Welfare.

6. The petitioner claims that since anesthesia is not a core specialty at Dr. R.P. Center, he was appointed as Assistant Professor of Anesthesiology (RPC), AIIMS, New Delhi vide Memorandum No. F 11-6/89-Estt. I dated



25.01.1991 issued by the Director, AIIMS and since then, he has been part of main Department of Anesthesia, Pain Medicine & Critical Care AIIMS. According to the petitioner, like other faculty members of the Department, he has been on call duties, theatre/ICU duties with other responsibilities as assigned by the HoD from time to time. Besides he has also been taking active part in academic activities like teaching, training, etc.

7. According to the petitioner, the HoD of Department of Anesthesiology, Pain Medicine and Critical Care, AIIMS has been the reporting Officer for the purposes of petitioner's Annual Confidential Report (ACR), leave applications and promotion etc.

8. Vide Memorandum dated 24.01.2009 issued by the Director (Officiating) AIIMS, on the recommendations of the Standing Selection Committee and with the approval of the Governing Body, the petitioner along with other officers, was promoted to the Grade of Professor in their respective Disciplines/ Departments w.e.f. 01.07.2007.

9. Vide Memorandum dated 28.08.2014, Senior Administrative Officer, AIIMS notified that in light of decision of Academic Committee Meeting held on 03.10.1991 and approved by Governing Body in its meeting held on 14.12.1991, the faculty approves that the faculty members working in various specialties/disciplines in various centres of the Institute, where no separate department exists, will work under the direct control/supervision of the concerned Head of Department of the Main Institute. These faculty members are part and form the core Faculty of the respective Departments of AIIMS. They must participate in all activities of the Department of the Main Institute. This will not be applicable to those disciplines which have



been granted the status of “Department”.

10. Vide Memorandum dated 27.12.2016 issued by Director & Member Secretary, AIIMS it was notified as under:

“These faculty members will be part and form core faculty of the respective departments of main AIIMS. The Head of department will be responsible for writing of Annual Confidential Reports of all such faculty members where separate department does not exist within the Centre in concerned specialty/specialties. At any point of time when it come to entrusting the responsibility to act as Head of Department it will be on the basis of seniority of the faculty members irrespective of his/her appointment for the main department or for the centres. This will not be applicable if a separate Department of that specialty has been notified in that center.”

“It was also informed that this issue has already been approved in the Academic Committee meeting dated 03.10.1991 vide agenda item no. AC/11 and approved by Governing Body in its meeting held on 14.12.1991. Further this is also in accordance with the recommendations by DR. Karan Singh Yadav Committee.

.....

The above proposal was approved with the modification that HOD of respective departments should ensure that faculty of various disciplines working in various centers should participate in all activities (teaching, research, patient care) of the main department.”

11. According to petitioner in the Annual Report for the year 2017-2018; 2018-2019 and 2019-2020, his name was shown being Senior to respondent



No. 3 in the Department. He acted as HOD of the Department from 16.05.2018 till 23.05.2018.

12. Vide Memorandum dated 11.01.2019, the respondent forwarded guidelines for functioning of Centres, formation of Divisions and Units, whereunder Dr.R.P. Centre was also recognized.

13. On 04.12.2019, the petitioner made a representation to the Chairman, Governing Body of AIIMS for consideration of his candidature for administrative responsibilities, based upon his seniority and the guidelines for working arrangement for centre faculty at AIIMS.

14. However, vide Memorandum dated 28.01.2020, the Registrar of AIIMS notified the guidelines for functioning of Centres, formation of Divisions and Units at AIIMS stating as under:

“....

1.1.4. Intra Specialty seniority will be considered only among faculty selected in a centre. They will not be eligible for equivalence or seniority with faculty of the same specialty in other centres or the main department. This will apply even if the faculty rotate with faculty in other centres or the main hospital.”

15. The petitioner made another representation dated 20.02.2020 challenging the aforesaid guidelines dated 28.01.2020, as the same were in opposition of guidelines issued in the year 1983, which were issued pursuant to approval by various Committees' guidelines as well as Ministry of Health and Family Welfare.



16. Vide Letter dated 13.03.2020 written by Administrative Officer, under reference of Ministry of Health and Family Welfare on this issue, the petitioner was informed that his representation has to be referred to Academic Section for examination and comments.

17. The Academic Schedule for the year 2020 of Department of Anesthesiology, Pain, Medicine and Critical Care allocated duties to the petitioner being a part of the Department. On 25.11.2020, the petitioner received an e-mail from the associate Dean (Exam) appointing him as the integral examiner to conduct DM Critical Care Examination, as he has been appointed since 2004-2005.

18. The petitioner again made a representation dated 15.12.2020 to the Administrative Officer, AIIMS, to assign him administrative responsibilities.

19. A seniority list dated 24.12.2020 of faculty was uploaded by AIIMS on its website where petitioner's name featured at Serial No. 4 in the list of Professors of Department. The name of A Rajeshwari featured at serial No. 1 who superannuated on 28.02.2022; Dr. Anjan Trikha at serial No. 2, who took VRS on 31.01.2022; Dr. Maya Dehran at serial No. 3, who superannuated in 2021 and and Dr. Lokesh Kashyap, respondent No. 3 herein, at serial No. 5.

20. The petitioner along with other faculty members of AIIMS posted at various centres of AIIMS, vide the Legal Notice dated 15.04.2021 requested the Director, AIIMS to withdraw the guidelines dated 28.01.2020. (Annexure P-24)

21. The Director of AIIMS vide its reply dated 21.05.2021 stated that
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guidelines dated 28.01.2020 were valid and drafted by the deriving power conferring under AIIMS Act, 1956.

22. The petitioner vide his reminder dated 31.05.2021, pursuant to his representation dated 20.02.2020 to the President and Chairman of Governing Body of AIIMS submitted that the Rules circulated in the year 2020 were not approved in the Governing Body Meeting and were wrongly mentioned as approved by Staff Council Meeting. (Annexure P-26)

23. In the tentative seniority list of Professors of AIIMS dated 01.07.2021, petitioner's name appeared at serial No. 88 and name of respondent No. 3- Dr. Lokesh Kashyap featured at serial No. 92 in the Department of Anesthesiology. (Annexure P-27)

24. Vide his representation dated 07.09.2021 prayed for opportunity of hearing with request to look into his matter. Thereafter another representation dated 18.10.2021 was made by the petitioner praying for disposal of his representation.

25. The Senior Administrative Officer, Faculty Cell, AIIMS issued Memorandum dated 22.12.2021 wherein, name of petitioner featured above respondent No. 3 and below Dr. Anjan Trikha in the 65th Annual Report of the year 2021 of AIIMS, the petitioner was featured Senior to respondent No. 3.

26. Dr. Anjana Trikha after taking the Voluntary Retirement from Service (VRS) was relieved from service on 31.01.2022 and thereby, petitioner became the next eligible person in seniority list. The petitioner made a representation dated 01.02.2022 to the then Hon'ble Health Minister for giving him administrative responsibility as Head of the Department,



Anesthesiology, Pain, Medicine and Critical Care, AIIMS.

27. However, the Senior Administrative Officer, AIIMS vide Memorandum dated 03.02.2022 notified that Dr. Lokesh Kashyap will be the Head of the Department of Anesthesiology w.e.f. 01.03.2022.

28. The petitioner submitted another representation dated 05.02.2022 to the Hon'ble Minister of Health and Family Welfare and President of Governing Body of AIIMS for withdrawal of OM dated 03.02.2022 which was followed by a reminder dated 11.02.2022, however, to no response.

29. Being aggrieved, the petitioner filed Original Application bearing O.A. No. 391/2022 before the learned Tribunal seeking setting aside of OM dated 03.02.2022.

30. The respondent-AIIMS in its counter affidavit filed before the learned Tribunal averred that petitioner was selected for the post of Assistant Professor of Anesthesia at the Dr. Rajendra Prasad Centre for Ophthalmic Sciences and not for the Department of Anesthesia (renamed now as Department of Anesthesia, Pain Medicine and Critical Care) in the AIIMS hospital. Thus, he is not the 'senior-most' faculty member in the Department of Anesthesia, Pain Medicine and Critical Care and is not entitled to be appointed as Head of the Department of Anesthesia, Pain Medicine and Critical Care when the incumbent Head of that department superannuates.

31. The respondent-AIIMS pleaded that data in respect of seniority list available on the website of AIIMS, is only a subject matter of record but not on official seniority list of AIIMS Faculty. The respondents have pleaded that absence of Department of Anesthesiology in RPC does not imply that



the petitioner would become a part of Department of Anesthesiology, Pain, Medicine and Critical Care at AIIMS. It was pleaded that no meeting of Academic Committee after the Governing Body Meeting of 18.06.2021 has taken place. He was appointed as Assistant Professor of Anesthesiology (RPC) and is not next in seniority in the Department of Anesthesiology, Pain, Medicine and Critical Care.

32. Dr. Anjan Trikha was Faculty of Department of Anesthesiology, Pain, Medicine and Critical Care, however, the petitioner is not a member of the same Department. Also stated that seniority list referred to by the petitioner relates to seniority within the overall cadre and no seniority within the same Department.

33. The respondent-AIIMS also pleaded before the learned Tribunal that impugned order was issued by Director, AIIMS which is based upon the guidelines for functioning of centres, formation of divisions and units at AIIMS. (PDF Page 462 para B third line) New Delhi neither illegal nor arbitrary.

34. The learned Tribunal in light of the pleadings of the parties observed as under:-

“Having heard learned counsel for the parties and perused the material on record, we come to the conclusion that though presently the authority competent to write applicant's APAR is the Head of Department, but henceforth it will admittedly be the Chief of Centre. However, as per the combined seniority list, the applicant is senior to the respondent no.3 being promoted to the grade of Professor w.e.f. 01.07.2007 i.e. one year prior to the respondent no.3, who was promoted to the grade of



Professor w.e.f . 01.07.2008, but not as per the seniority list as on 01.12.2021, which has been prepared Faculty- Department-wise. We are also convinced that the Head of Department is not a post but is only additional duty to be discharged by the senior most Member in the main department. However, it is also true that the applicant is working in the Centre and not in the Department itself, and has not even been transferred to the Anaesthesia Department.

In view of these circumstances, we are of the considered view that the respondent no.3, who is deployed Department of Anaesthesia, Pain Medicine and Critical Care, AIIMS, New Delhi, has rightly been designated as HoD. Therefore, we are not inclined to interfere with the impugned order dated 03.02.2022 appointing respondent no.3 as Head of Department of Anaesthesia, Pain Medicine and Critical Care, AIIMS, New Delhi. However, we dispose of this OA with the following directions:-

- 1. The respondent no.3 will not be the administrative authority of the applicant, the applicant being senior to respondent no.3 in the combined seniority of all faculties of AIIMS.*
- 2. The respondent no.3 will not be the controlling/ reporting authority for writing ACRs/APARs of the applicant.*
- 3. The respondent no.3 will also not be the sanctioning authority of applicant's leave and any other administrative permissions etc.*
- 4. Chief of Centre will be the competent authority of the applicant in respect of contingencies mentioned at 1,2 and 3 above."*

35. To assail the decision of the learned Tribunal, learned counsel



appearing on behalf of the petitioner submitted before this Court that Academic Schedule January-June 2021 was circulated with regard to the Department of Anesthesiology, Pain Medicine & Critical Care, wherein the Petitioner was allotted the duties of delivering lectures of the session, being the part of the aforementioned Department. The Academic Schedule of DM Critical Care, Department of Anesthesiology, Pain Medicine and Critical Care, July-December, 2021 was circulated allotting duties to the Petitioner being a part of the Department wherein the Petitioner was allotted the duties of delivering lectures of the session. Also allotted Thesis Guide & Co-Guide to more than 50 Postgraduates students completing MD, Anaesthesia & to around 10-12 Post graduate students completing DM Critical Care both in the Department of Anaesthesia, Pain Medicine and Critical Care.

36. To the contrary, to stand the of the respondent-AIIMS is that petitioner has placed reliance upon O.M. F-20-11/89 Estt.1 dated 27.03.1992 in continuation with O.M. dated 31.03.1983 issued by AIIMS in respect of relationship between AIIMS and RP Centre, the intend of which was for independent functioning of these centres. Attention of this Court was drawn to clause- 3 of O.M. dated 31.03.1983 to show that promotion links between the faculty employed at centres and at AIIMS are not one of the same and so all the supportive services shall be under control of centres whereas in some areas it shall be with the approval of the Director.

37. Learned counsel for the respondents submitted that the guidelines are approved by the Governing Body of AIIMS in its 15th Meeting and there is no suppression of the seniority of the petitioner. The power of appointment of an Administrative Head is vested with Director, AIIMS in terms of



Section 11 of the Regulations of AIIMS, 2019 and the Head of the Department can also be appointed from the outside the Department in some circumstances and at no point of time, the petitioner was designated as the Member of Department to Anesthesiology, Pain, Medicine and Critical Care.

38. Learned counsel further submitted that designation of Head of Academic Department to the senior-most faculty member with the Department and not to a more senior faculty member from another centre, and thus, there is no infirmity in the order and judgment passed by the learned Tribunal and this petition deserves to be dismissed.

39. The submissions advanced by learned counsel for the parties were heard at length and the material placed on record has been carefully perused.

40. It is not in dispute that by virtue of Memorandum No. F 11-6/89-Estt. I dated 25.01.1991 issued by the Director, AIIMS, petitioner has been working in the main Department of Anesthesia, Pain Medicine & Critical Care, AIIMS and performing his duties under the HoD. Also that for the purposes of filing his ACRs, promotion, leaves etc, the petitioner has to report to the HoD of Department of Anesthesia, Pain Medicine & Critical Care, AIIMS. Vide Memorandum dated 24.01.2009, petitioner was promoted to the post of Professor by the Director, AIIMS. In respect of faculty members working in various specialties/disciplines in various centres of the Institute, where no separate department existed, such in the case of petitioner, vide Memorandum dated 28.08.2014 issued by the Senior Administrative Officer, AIIMS and it was informed that their services shall be governed by the concerned Head of Department of the Main Institute i.e.



AIIMS. The relevant extract of Memorandum dated 28.08.2014 reads as under:-

“All India Institute of Medical Sciences Ansari Nagar,
New Delhi 110029
No.F.20.03/2014-Estt I Dated the 28.8.2014

Memorandum

Subject: Screaming the working management of faculty posted in various specialties in Centres and Main Departments at the AIIMS, New Delhi - reg.

In supersession of this office memorandum of even number dated the 1st August, 2014 on the subject cited above, it is notified for information of all concerned that, after having detailed discussion with various Chiefs of Centre/Heads of the Departments on the issue of succumbing the working arrangement of faculty posted in similar disciplines/specialties in various Centres and main Departments at the AIIMS, New Delhi in the light of the decision of the Academic Committee meeting held on 3.10.1991 vide agenda item No.AC/11 and approved by the Governing Body in its meeting held on 14.12.1991 and also keeping in view the recommendations made by Dr. Karan Singh Yadav Committee, the Director is pleased to order as under:

1. The faculty members working in various specialties/disciplines in various Centres of the Institute, where no separate department exists, will work under the direct control/supervision of the concerned Head of the Department of the Main Institute. These faculty members are part and form the core Faculty of the respective Departments at the AIIMS. They must participate in all activities of the Department of the Main Institute. This will not be applicable to those disciplines which have been



granted the status of “Department”.

2. The Head of the Department of the Main Institute will rotate the faculty members, including the faculty members of the Main Department, to various Centres as per the functional requirement of the Centres in the interest of uninterrupted patient care service and also taking care of career progression and professional satisfaction of the faculties.

3. The head of the department of the Main Institute will be responsible for writing of Annual Confidential Reports of all such faculty members whose deployment is on rotation basis.

4. While working under the direct control/supervision of the Head of the Department of Main Institute, the faculty members appointed against the sanctioned strength of various Centres will route all their applications through the Head of the Department of the Main Institute and subsequently the Chief of the concerned Centres where they are appointed.

5. At any point of time when it comes to entrusting the responsibility to act as Head of the Department, it will be on the basis of seniority of the faculty members irrespective of his/her appointment for main Department or for the Centres (as was done in the past in the case of Department of Pathology (Dr. Kusum Verma) and Department of Radio Diagnosis (Dr. S, Vashisth).

All concerned Chiefs of Centres/heads of the Departments are requested to ensure strict compliance of the aforesaid orders.”

41. However, vide Memorandum dated 28.01.2020, the Registrar of AIIMS notified that *Intra Specialty seniority will be considered only among faculty selected in a centre and that they shall not be eligible for equivalence or seniority with faculty of the same specialty in other centres*



or the main department.

42. It is not in dispute that in the Annual Reports pertaining to the years 2017-2018; 2018-2019 and 2019-2020, petitioner has been shown being Senior to respondent No. 3 in the Department and he also acted as HOD of the Department from 16.05.2018 till 23.05.2018. In the seniority list dated 24.12.2020 of faculty uploaded by AIIMS on its website, petitioner's name featured at Serial No. 4 in the list of Professors of Department. In the tentative seniority list of Professors of AIIMS dated 01.07.2021, petitioner's name appeared at serial No. 88 and name of respondent No. 3- Dr. Lokesh Kashyap featured at serial No. 92 in the Department of Anesthesiology. Meaning thereby, not only the petitioner was senior to respondent No.-3 Dr. Lokesh Kashyap amongst the Professors of the Department but also as per seniority list of Professors of AIIMS.

43. Thus, the observations of the learned Tribunal that respondent No.3 was senior to petitioner, as per seniority list *seniority list as on 01.12.2021 which has been prepared Faculty- Department-wise*, cannot be accepted. Also, keeping in consideration the fact that petitioner, since the year 1991, has been working in the department of Anaesthesia, Pain Medicine & Critical Care, AIIMS and performing all the duties assigned to him and even his service conditions such as grant of leaves etc. are governed by AIIMS, therefore, cannot after rendering such a long service, be now said to be not working in the said department.

44. It is not the case of respondents that petitioner is not holding the requisite qualifications or that his service record is not good. What is shocking is, the further directions passed by the learned Tribunal, while



appointing respondent no.3 as the Head of the Department of Anaesthesiology and Critical Care, AIMS, New Delhi w.e.f 01.03.2022, has passed directions that *respondent no.3 will not be the administrative authority of the petitioner; respondent no.3 will not be the controlling/reporting authority for writing ACRs/APARs of the applicant and that respondent no.3 will also not be the sanctioning authority of applicant's leave and any other administrative permissions etc.*

45. It is not in dispute that earlier, the afore-noted service conditions in respect of petitioner were governed by respondent-AIIMS by virtue of communication dated 31.03.1983 written by Under Secretary, Government of India, Ministry of Health and Family Welfare to the Director of AIIMS, which also stipulated that there will be no separate cadre for the staff of the centres for the purposes of seniority and promotion.

46. In fact, the learned Tribunal by passing of such directions, has tried to shield the fact that petitioner's services are governed by respondent-AIIMS, which cannot be permitted.

47. In light of above, the order dated 09.03.2022 passed by the learned Tribunal in OA No. 391/2022 and OM dated 03.02.2022 whereby respondent no.3 (now retired as informed by the learned counsel for petitioner) has been appointed as the Head of Department of Anaesthesiology and Critical Care, AIIMS, New Delhi w.e.f 01.03.2022, are hereby set aside, with direction to respondent-AIIMS to take petitioner's position as per seniority list dated 24.12.2020 of faculty, which was uploaded by AIIMS on its website wherein his name featured at Serial No. 4 in the list of Professors of Department and Dr. Lokesh Kashyap, respondent



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No.3 herein, at serial No.5 and pass necessary orders in respect of designation, fixation of pay and arrears etc. within four weeks.

48. With directions, as aforesaid, the present petition and pending application(s) are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 09, 2024

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