
(2011) 07 DEL CK 0295

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2487 of 2002

Dharam Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 17
Constitution of India, 1950 — Article 226
Contempt of Courts Rules, 1980 — Rule 12

Citation : (2011) 07 DEL CK 0295

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : J.C. Madan, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Dharam Singh, the Petitioner herein was appointed as Nursing Orderly at Dr. Ram Manohar Lohia Hospital with effect from 5th October, 1972. He was promoted on ad hoc basis as Operation Theatre Assistant with effect from 1st September, 1984. He continued to work as Operation Theatre Assistant on ad hoc basis till 2001.

2. As there was threat of reversion, the Petitioner filed O.A. No. 591/2001 before Central Administrative Tribunal, Delhi (tribunal, for short) which was disposed of vide order dated 10th August, 2001. The tribunal noticed that the Petitioner's promotion as Operation Theatre Assistant was on ad hoc basis against the promotion quota post, as at that time no one from the feeder cadre, i.e., Operation Theatre Orderly, was found eligible for promotion as Operation Theatre Assistant. The Petitioner was a Nursing Orderly and not Operation Theatre Orderly and, therefore, not from the feeder cadre and thus was not eligible for promotion. As per the recruitment rules, 50% of the post of Operation Theatre Assistant were to be filled up by direct recruitment and 50% by promotion from the feeder cadre subject to fulfillment of other eligibility requirements.

Accordingly, the tribunal observed that the Petitioner was not eligible for promotion as Operation Theatre Assistant, as per the recruitment rules. However, noticing the fact that the Petitioner had continued to work from 1984 till 2002, the following limited directions were issued:

7. The fact that the applicant is working as TA since 1984 is not denied and perhaps that is the reason which prompted the Respondent Nos. 2 and 3 to take up the matter with Respondent No. 1 for seeking one time relaxation so that the applicant may be given promotion to the post of OTA. So considering the case, we think that this OA can be disposed of with a direction to the Respondents that Respondent No. 1 shall consider the case of the applicant for grant of relaxation as recommended by Respondent Nos. 2 and 3 and shall grant relaxation as one time measure in accordance with the rules, instructions and judicial pronouncements on the subject and consider the case of the applicant sympathetically within a period of 3 months from the date of receipt of a copy of this order. No costs.

(Emphasis supplied)

3. The Petitioner is not aggrieved by the said order. The grievance of the Petitioner is that the Respondents have not implemented the said order and that the tribunal has erred in dismissing the contempt petition by the impugned order dated 8th March, 2002. The Petitioner had laid emphasis on the word "shall" in paragraph 7 of the order dated 10th August, 2001. It was urged before us that the tribunal had issued a mandamus that relaxation must be granted to the Petitioner and there is, therefore, a contradiction between the order dated 10th August, 2001 and the order dated 8th March, 2002. The relevant portion of the impugned order dated 8th March, 2002 reads:

6. Having regard to the relevant facts and circumstances of the case and the follow up action taken by Respondent No. 2 in implementing the Tribunal's order dated 10.8.2001 in O.A. No. 591/2001, we are unable to agree with the contentions of Shri M.K. Bhardwaj, learned Counsel, that Respondent No. 1 has intentionally or contumaciously avoided and failed to implement the Tribunal's directions, justifying further action to be taken against him for punishment under the provisions of Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. It is relevant to note that even in the directions contained in the order dated 10.8.2001, the Tribunal had directed Respondent No. 1 to consider the case of the applicant for grant of relaxation as recommended by Respondents No. 2 and 3 as a one time measure in accordance with rules, instructions and judicial pronouncements on the subject. This has been done by the Respondents and we, therefore, find no ground to continue with the Contempt Petition.

4. We have examined the order dated 10th August, 2001 and do not perceive and accept the contention of the Petitioner that mandamus was granted to the Respondents to grant relaxation. Use of the word "shall" in one of the sentences

in paragraph 7 does give rise to some doubt but the said paragraph has to be read in entirety to understand the purport and the directions issued by the tribunal in the said order. The tribunal has used the word "consider" with the expression "in accordance with the rules, instructions and judicial pronouncements" and thereafter had asked the Respondents to consider the case of the Petitioner sympathetically. Thus, words and expressions if read in entirety elucidate and exposit that the tribunal had not issued a mandatory direction that relaxation must be granted. The direction given was that the case of the Petitioner should be considered for relaxation as per the rules and in accordance with law, in a sympathetic manner. What had weighed with the tribunal was a long period of 17-18 years during which the Petitioner had continued to work at the post of Operation Theatre Assistant on ad hoc basis. In these circumstances, we do not find any error in the order dated 8th March, 2002 passed by the tribunal dismissing the contempt application that there was no mandatory direction issued by the tribunal that relaxation must be granted. Discretion was given in the order dated 10th August, 2001 to the concerned authorities to decide the question of relaxation in accordance with law but the tribunal felt that the Petitioner was entitled to a sympathetic consideration.

5. Accordingly, we do not find any error in order dated 8th March, 2002 passed by the tribunal dismissing the contempt application. The tribunal has rightly interpreted the earlier order dated 10th August, 2001.

6. The Petitioner has submitted that the Respondents had filed a writ petition in this Court impugning order dated 10th August, 2001 but the writ petition was dismissed. We have examined the said contention but do not find any merit in the same. The Respondents had filed Writ Petition (Civil) No. 1487/2002 impugning order dated 10th August, 2001. However, in the meanwhile, the tribunal in the contempt petition and other miscellaneous applications on 6th February 2002 had recorded the following preliminary findings:

2. In pursuance of the directions of the Tribunal, the Respondents have considered the case and have passed an order on 2nd February, 2002 which are contrary to the directions given by the Tribunal in aforesaid Judgment. We are, therefore, prima facie satisfied that the Respondents have committed willful disobedience of the directions of the Tribunal's order.

3. Issue notice to Respondent No. 2 as to why contempt proceedings should not be initiated against him u/s 17 of the Administrative Tribunals Act, 1985 read with Rule 12 of the Contempt of Courts Act, 1971. Respondent No. 2 will appear personally on the next date of hearing. In case the directions of the Tribunal are implemented by that date, he need not be present personally.

4. List on 8.3.2002. In the meanwhile, status quo as of today be maintained.

7. In the Writ Petition (C) No. 1487/2002, though only the order dated 10th August, 2001 was challenged, but the Court noticed the subsequent order dated 6th February, 2002 and disposed of the writ petition on 4th March, 2002, inter

alia, recording as under:

CWP No. 1487/2002

Having regard to the fact that where only a notice has been issued in the contempt matter, we are of the opinion that at this stage this Court cannot exercise its jurisdiction under Article 226 of the Constitution of India. Although it appears that the purported conclusion has been arrived at to the effect that the Petitioners herein have committed a contempt, we are of the opinion that it is tentative in nature and it would be open to the Petitioners herein to contend that direction in the judgment stands complied with and there is no contempt on their part.

Dismissed.

8. The aforesaid order does not show that the High Court had given any opinion or held that the earlier order dated 10th August, 2001 passed by the tribunal amounted to mandatory direction to the Respondents to grant relaxation. The Court had observed that the effect and impact of the order dated 10th August, 2001 was pending consideration before the tribunal in the contempt matter and, therefore, it would not be appropriate to entertain the writ petition and it was open to the Respondents herein to contend that the directions given in the order dated 10th August, 2001 had been complied with.

9. The Petitioner has referred to the order passed by the Respondents on 8th November, 2001 pursuant to the directions given in the order dated 10th August, 2001. The said order was not made subject matter of challenge on merits before the tribunal. The scope of contempt jurisdiction is distinct from challenge to an order on merits. However, the order dated 8th November, 2001 notices the fact that the case of the Petitioner is not similar to cases of Nanak Chand, Gautam Saroop, Ranbir Singh and Shanti Saroop. These persons were working as Theatre Orderlies in the feeder line and, therefore, could be considered for promotion as Operation Theatre Assistants after meeting the eligibility norms. However, the Petitioner herein was not from the feeder line and, therefore, the Respondent authorities have not granted relaxation to the Petitioner for promotion/appointment as an Operation Theatre Assistant. Thus, the Respondents have given an explanation why there is no parity between the case of the Petitioner and the said persons.

10. Reliance placed by the Petitioner on the decision of the Supreme Court in the case of D.R. Nim, I.P.S. Vs. Union of India (UOI), does not help and assist him. Admittedly, as per the recruitment rules the Petitioner is not in the feeder grade/line and could not be promoted. The recruitment rules have statutory character and are binding. Promotion or appointment to a post has to be made as per the recruitment rules and not de hors and contrary to the said rules. Law is now well settled in view of the decision of the Constitution Bench in Secretary, State of Karnataka and Others Vs. Umadevi and Others,

11. However, in the pleadings it has been highlighted that the Petitioner was promoted on ad hoc basis to the post of a Central Sterilization Services Assistant and had worked for the said post for a period of about 60 days from 5th March, 1984 to 3rd May, 1984. Thereafter, as noticed above, the Petitioner had worked as an Operation Theatre Assistant on ad hoc basis with effect from 1st September, 1984 till 2002. The Petitioner had prayed for stay of the order passed by the tribunal but vide order dated 19th April, 2002 the application for stay was dismissed though notice was issued in the writ petition. The Petitioner thereafter should have been reverted to his original post. The Petitioner had worked as an Operation Theatre Assistant as per the office orders passed in August, 1984 and with the approval of the authorities including the Medical Superintendent. This appointment was for a temporary period till promotion was made from the feeder cadre. The Petitioner should not suffer on account of his appointment on ad hoc basis as an Operation Theatre Assistant. If the Petitioner is eligible, he should be considered for promotion as per the recruitment rules and the fact that he had worked on ad hoc basis as an Operation Theatre Assistant should not be regarded as having an adverse impact to deny him promotion in the regular channel.

12. In view of the aforesaid, we do not find any merit in the writ petition and the same is liable to be dismissed but with the observations made in paragraph 11. There will be no order as to costs.