
(2001) 08 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition No's. 4617/97 and 2496/99

Dr. V.P. Bansal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Citation : (2002) 63 DRJ 88

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Kirit N. Rawal, ASG, Mr. P.P. Khurana Mr. Neeraj Chaudhary and Mr. VSR Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—Two writ petitions have been filed by the petitioner aggrieved by the decisions of the Central Administrative Tribunal. Civil Writ No. 4617/97 was filed against the common judgment dated 22nd March, 1997 dismissing 3 OAs and a review application filed by the petitioner and Civil Writ No. 2496/99 was filed by the petitioner aggrieved by the order dated 29th January, 1999. Since the factual matrix and the grievance of the petitioner are interwoven and inter-connected both petitions are being disposed of by a common judgment.

2. Before proceeding to consider these petitions on merit it is relevant to set out some facts explaining the absence of the petitioner during the course of hearing.

3. On 15th May, 2000 when the petition was listed before the court a request was made for adjournment by learned counsel for the petitioner on the ground that he is indisposed. On the next date on 3rd July, 2000 the petitioner appeared in person and stated that his counsel is not available and that he is not in a position to argue the case. Subsequently, the petitioner started appearing in person and on 10th October, 2000 a request was made for adjournment on his behalf on the ground that he was held up in Bombay in connection with official

duties. The matter was called for hearing on 13th December, 2000 when the petitioner appeared in person and stated that he was not feeling well and would require 4 to 6 weeks to address arguments and that he would not seek any further adjournment. Despite opposition from learned counsel for the respondent the Division Bench, in the interest of justice, granted one last opportunity to the petitioner to address arguments. On the next date on 15th February, 2001 the matter was adjourned at joint request and when the matter was taken up on 14th March, 2001 the petitioner appeared in person and stated that he was not in a position to argue the matter and requested for a short adjournment. The matter was again taken up on 9th July, 2001 as the matter was shown at Serial no. 6 on the top of the list but neither the petitioner was present nor was any one present on behalf of the petitioner. The matter was directed to be renotified, in the interest of justice for 10th July, 2001. On 10th July, 2001 Mr. B P Singh appeared for the petitioner and stated that the petitioner had taken away the brief from him and requested for discharge. Mr. Singh was informed by the court that such a request can be considered only in case a new counsel is appointed by the petitioner or in the petitioner's presence. Mr. Singh stated that he would ensure presence of the petitioner on 24th July, 2001. After recording these facts the matter was renotified on 24th July, 2001 on top of the list of Regular Matters. On 24 July, 2001 again the petitioner was not present though Mr. B P Singh was present and we heard arguments on behalf of respondent no. 1 and 4. On the request of Mr. Singh matter was again renotified for 31st July, 2001. On 31st July, 2001 Mr. B P Singh, learned counsel for the petitioner produced a fax message dated 30th July, 2001 received by him. A copy of which was placed on record. This fax message was addressed by the petitioner to Mr. B P Singh wherein the petitioner made a reference to an earlier letter dated 20th July, 2001 addressed to Mr. B P Singh requesting him to make a mention to the court for adjournment of the case by about two months because he was busy with examinations and admissions. In the fax message it was further stated that he had been appearing in person and that he had discharged Mr. Singh and asked Mr. Singh not to argue the case. All these facts were noted by us in the order dated 31st July, 2001 and in view of these facts and circumstances, the request for adjournment was declined and the judgment was reserved.

4. We have duly considered the submissions made by learned ASG appearing for Respondent No. 1 and Mr. Khurana for Respondent No. 4 who took us through the entire record.

5. The petitioner joined the Central Health Services at the supertime grade on the recommendation of the UPSC and was offered the post of director, Central Institute of Orthopedics (CIO), Safdarjang Hospital in the supertime scale of teaching specialist sub-cadre in terms of office memorandum dated 17th May, 1988 of respondent no. 1. The petitioner was required to join the post by 19th October, 1988 and he joined the post on that date. Subsequently, two additional posts of Additional Director General of Health Services were created by an order dated 27th December, 1991 of respondent no. 1, in lieu of two senior

administrative grade posts. Since these posts had to be filled in by promotion, failing which by direct recruitment, the process of filling up of these posts was started on consideration from amongst the eligible candidates. The eligibility requirement was 3 years service in the grade. The petitioner made a representation for being considered for the posts as he claimed to be eligible for the same. However, as per respondent no. 1 the petitioner was not at all eligible as the period of 3 years of service was counted by respondent no. 1 from the date of joining of the petitioner. This was the beginning of litigation and various OAs being filed before the Tribunal, as a consequence of the grievance of the petitioner, in not being considered for the same. The petitioner is also aggrieved by the fact that respondent no. 4 was appointed as Additional Director General though as per the petitioner the said respondent no. 4 Dr. S P Agarwal was not fit to be appointed.

6. The petitioner raised various contentions to substantiate his plea of being eligible before the Tribunal. It was the contention of the petitioner before the Tribunal that he was entitled to count his service rendered at PGI, Chandigarh for the minimum qualifying service. It was the further submission of the petitioner that relevant date should have been 22nd February, 1988 when the UPSC recommended for appointment and not 19th October, 1988 when he actually joined the grade.

7. Thus the petitioners contention was that he ought to have been considered for the two vacancies, which arose in 1991-92. Since this dispute had carried on, further grievance of the petitioner arose as he claimed that he had to be placed much higher in the promotion order, which the petitioner ultimately got on 19th April, 1995, for the post of Additional Director General. This claim was the consequence of his plea mentioned above. Petitioner also made a grievance that respondent no. 4 Dr. S P Agarwal had been wrongly appointed at specialised grade II as well as specialised grade I as far back as in 1981-83 and thus eligibility of Dr. Agarwal was challenged. Not only this the petitioner also challenged the ACRs of respondent no. 4 as it was his allegation that the same were recorded by the officers not competent to do so. The petitioner also claimed that his ACRs for the period 1988-92 being four ACRs were not reported by the competent officers.

8. All these aspects have been duly considered in the impugned order of the Tribunal. The Tribunal considered the Central Health Services Rules and came to the conclusion that the grade was to be a grade in the service and in the Central Health Service. Services rendered in a different autonomous organisation such as PGI, Chandigarh could not be counted for the said purpose. This is so even from an apparent reading of the rule as we find no infirmity in this conclusion of the Tribunal.

9. Insofar as the grievance of the petitioner that since the recommendation by the UPSC was made on 22nd February, 1988 his services should be counted from that date, we find no force in the submission. The rights in favor of the petitioner

would accrue only on his having joined the post. The option was with the petitioner to join earlier but he chose to join only on 19th October, 1988 which was the last date of joining. The period when the petitioner was working in PGI, Chandigarh cannot be counted towards qualifying period. If the petitioner was working at PGI, Chandigarh then it cannot be said that he was working simultaneously at an Institute covered by the Central Health Services. If the said period would provide any benefit he would be entitled to at PGI, Chandigarh and the same period cannot be counted for the purposes of determining his service period within the meaning of Central Health Services Rules.

10. If that be the position, as mentioned aforesaid, undoubtedly the petitioner had not completed the qualifying service of 3 years on the cut-off date of 1st October, 1991 and thus was not in the eligibility zone to be considered in 1991-92 for the post.

11. The petitioner was considered as one of the eligible officers for 1993-94 but was not appointed, in view of the superior ACRs of two other Doctors, who were appointed. The same was the position for 1994-95. Thus if the petitioner was not eligible for earlier years and persons with superior CRs were appointed for the subsequent years the seniority placement of the petitioner cannot be stated to be improper.

12. The grievance of the petitioner insofar as respondent no. 4 is concerned is highly belated and does not even deserve to be looked into, after a lapse of such a long period of time, considering that respondent no. 4 was appointed to relevant grades in 1981 and 1983, while respondent No. 4 was appointed to the relevant post in 1995 of which the petitioner is aggrieved.

13. In Civil Writ Petition No. 2496/99 the petitioner sought quashing of DPC held on 14th October, 1996 on the basis of which respondent no. 4 had been appointed vide order dated 10th April, 1997. This petition has also been rejected by the Tribunal.

14. We have gone through the judgment of the Tribunal. It is a well reasoned judgment where all the contentions of the petitioner have been considered as mentioned aforesaid.

15. It may be stated that the Tribunal is not functioning as an Appellate authority but is to take into consideration the decision of the administrative authority to find out whether the same is vitiated by malafide or is so arbitrary or capricious as could not have been said to be arrived at by any reasonable authority. This position in law is well set out in the case of Mrs. Anil Katiyar Vs. Union of India and others, .

16. The eligibility of the petitioner was considered within the parameters of rules and he was found not to be eligible. There is no reason to make a grievance against the rule and the Tribunal does not function as a rule making authority as laid down in RBI vs. N C Paliwal & Ors 9176 4 SCC 838.

17. The process of scrutiny of the court and the Tribunal is different in nature. It must ensure that the rule of law and natural justice has been followed and the procedure is fair. It is not for the Tribunal or the court to substitute its own opinion with that of an administrative authority in respect of the subject matter which falls within the ambit of the jurisdiction and discretion of that authority. The learned ASG, Mr. Kirit Rawal, referred to the pronouncement of the Supreme Court in Apparel Export Promotion Council Vs. A.K. Chopra, to forcefully contend that the parameters of judicial review in the case of the petitioner did not require interference by the court. The learned ASG also sought to contradict the plea of the petitioner raising the issue about the eligibility of respondent no. 4 by contending that it would amount to un-settling a settled position and referred to the judgment in the case of Dr. Ku. Nilofar Insaf Vs. State of Madhya Pradesh and others, . The learned ASG also referred to the case of D.K. Sahni Vs. Managing Director, Manganese Ore India Ltd. and others, to further contend that a challenge to the promotion on the ground that previous promotions accorded to the petitioner is improper is not sustainable. We are in agreement with the aforesaid submissions advanced on behalf of the Union of India. The Tribunal has considered all issue and found the grievances of the petitioner without any basis.

18. We are in agreement with findings of the Tribunal for the reasons set out hereinbefore. A non-eligible person like the petitioner could not have been considered for the relevant post. The eligibility has to be in accordance with the rules and in the grade and service. The petitioner's previous record of service could not have been counted for determining his eligibility for the post, which has to be governed according to the rules. The belated attempt of the petitioner to challenge the appointment of respondent no. 4 to the earlier posts clearly is an afterthought and an attempt to un-settle the service position, which has remained unchallenged for a long period of time.

19. It may be stated that the petitioner has since retired from the service and is employed elsewhere. The petitioner does not want to take steps to prosecute the petitions as set out earlier part of the judgment. The attempt seems to be to keep the petitions pending for no reason. This cannot be permitted to be done.

20. The result of the aforesaid discussion is that we find no merit in the two petitions, which are dismissed with costs quantified at Rs. 10,000/- in each of the petitions.