

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

Reserved On : 16.12.2009

% Date of Decision : 23.12.2009

+ RP No. 7484/2002 IN WP (C) No. 3127/2002 & CM No. 403/2007

DR. SUDHIR KUMAR RANGAAPPELLANT
Through : None for the Petitioner.

- V E R S U S -

UNION OF INDIA & ORS. RESPONDENTS
Through : Mr. Gopal Subramaniam,
Solicitor General with
Mr. B.V. Niren, CGSC for
UOI / R – 1.
Mr. Maninder Singh,
Sr. Adv. (Amicus Curiae)
with Mr. T. Singhdev and
Mr. Abrar Mohd. Abdullah,
Advocates.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

1. The petitioner was appointed as a Registrar of the Debt Recovery Tribunal (for short, 'DRT'). He moved the present writ petition under Article 226 of the Constitution of India seeking dual relief – (a) permanent absorption of

the petitioner as Registrar; and (b) quashing of the letter dated 18.04.2002 whereby the Presiding Officer, DRT – II withdrew the powers of the petitioner. The writ petition was disposed of on the first day itself, i.e., 17.05.2002. The application was filed by the Presiding Officer, DRT seeking review / recall of the Order dated 17.05.2002 on account of misrepresentations by the petitioners. Notice was issued in the said application. It is at that stage it came to light that the very eligibility of the petitioner to be appointed to the post was in question as the appointment was made on fraudulent misrepresentations. The case was referred to Central Bureau of Investigation (for short, 'CBI').

2. The CBI was asked to file progress report of the investigation since the matter involved the appointment to a quasi-judicial post. It was found that some part of the records were destroyed, which included the application filed by the petitioner and other candidates. Even this destruction was found to be contrary to the Manual of Destruction of Documents. The matter was referred to be inquired into by the Officer of sufficient seniority.
3. The CBI on investigation filed a charge-sheet. The charge-sheet itself stated that the appointment letter issued to the petitioner had been fraudulently obtained. The charge-sheet was initially silent on the issue of collusion of any Officer from the Department or the

manner as to how appointment letter was issued wrongly to the petitioner.

4. The enquiry report was produced before this Court in respect of destruction of records. The conclusion of the enquiry was that the destruction of records had taken place contrary to the administrative instructions. No finding was reached about the culpability of the concerned Officers though it was observed that apparently it was a case of negligence. The enquiry report was directed to be implemented in terms of the Order dated 28.05.2004 except on the issue of culpability which matter was referred to the CBI to hold an enquiry. This was more so on account of the past history of the petitioner. The petitioner applied in the first process of selection for appointment as a Registrar to the DRT and the petitioner was selected for a posting at Nagpur, but did not join. In the second process of selection, the petitioner had been found not eligible to be appointed whereafter the first process apparently was revitalised on the letter of the petitioner seeking appointment in Delhi instead of Nagpur and the petitioner was posted to Delhi.
5. In so far as the complicity of any Officer was concerned, the CBI did not find a criminal culpability, but recommended departmental action. The initial stand of the respondents in affidavit was that the selection was a consequence of inadvertence and oversight on the part

of the Selection Committee in *"not having recorded reasons for selecting a candidate against whom ineligible was written"*. No mala fide or extraneous factor was found. The Officers were cautioned to be more careful in future. This endeavour was, however, found by the Court as only a cover up operation to save the delinquent Officers. The advertisement itself provided for no relaxation and yet no reasons had been recorded why an ineligible person was selected. This Court directed the matter to be placed before the Secretary (Finance) of the Union of India. The Secretary, Revenue dealt with the matter and requested the Secretary, Department of Personnel to nominate a senior Additional Secretary level Officer to enquire into the matter. It also came to light as recorded in the Order dated 06.10.2006 that one of the delinquent Officers, in the meantime, was posted as Minister (Economics), Embassy of India in Washington. Thus, the delinquent Officer was rewarded! This Court found it appropriate to direct that this matter should be brought to the notice of the Cabinet Secretary.

6. An Inter-Ministerial Committee looked into the matter and submitted a report dated 30.10.2006. A conclusion was reached that formal disciplinary proceedings against the concerned Officers under the relevant rules need to be conducted and punishment as deem fit be awarded as oral warning given to the delinquent Officers cannot be deemed to be any punishment for the glaring lapses

committed by them. This was in consonance with the report of the CBI taken note of, which in turn had recorded that serious administrative lapses on the part of the Committee and that such glaring lapses be brought to the notice of the Government as turning a blind-eye to such incident shall further allow nefarious characters like the petitioner herein to hold the authority of the Government to ransom. This Court wanted to know the action proposed to be taken by the Government on the recommendations and the Cabinet Secretary was to look into the matter. It is only after about 10 months that an affidavit was filed by the respondents in terms whereof it was proposed only to take corrective action in future with no action against the concerned Officers. Thus, the original records were called in the matter and Mr. Maninder Singh, Amicus Curiae assisting the Court, was asked to look into the records.

7. It is during the course of hearing thereafter that the learned Solicitor General came into the picture and sought some time for the whole matter to be placed at the highest echelons of the Government for appropriate decision to be taken.
8. Amicus Curiae on the basis of the records has given valuable assistance to this Court. It has been rightly pointed out that the charge-sheet filed by the CBI itself states that the appointment letter issued to the

petitioner had been fraudulently obtained and not that the appointment letter is fabricated. The CBI in its report had also stated serious administrative lapse and negligence and recommended departmental action against the three Members of the Selection Committee. It may be noticed that out of the three Members of the Selection Committee, only Mr. Anoop Mishra and Mr. D.K. Tyagi remained in service as Mr. Suman had retired. It was on continued directions of the Court that initially Inter-Ministerial Committee had been appointed, which reached a conclusion that formal disciplinary proceedings against the concerned Officers under the relevant rules need to be conducted and punishment as deemed fit be awarded. This Committee took note of the fact that the words '*Not eligible*' had been written against the name of the petitioner and despite this fact, the Selection Committee had not recorded the reasons for recommending appointment of a non-eligible person. Thus, it constituted a serious administrative lapse on the part of the Selection Committee.

9. The records show that on the report of the Inter-Ministerial Committee, the matter was referred to Central Vigilance Commission (for short, 'CVC') for consultation to decide on whether major or minor penalty proceedings were required to be initiated against the two Officers in service and seek recommendation of the CVC on what action could be taken for omissions /

commissions on part of the Officer who had since retired. The CVC gave an advice note dated 22.02.2007 for a regular departmental enquiry for major penalty against Mr. Dinesh Tyagi and Mr. Anoop Mishra. Accordingly, the then Finance Minister examined the matter exhaustively and took a decision for action on 09.04.2007. Surprisingly, a note thereafter appeared of the Joint Secretary in the Ministry to the effect that adequate opportunity was not given to the concerned Officers and the CVC was asked to reconsider the matter. The CVC changed its advice and the matter without being put to the Finance Minister, was straightaway sent for acceptance to the Hon'ble Prime Minister. An interesting aspect, which emerges, is that the defence of Mr. Anoop Mishra was that the petitioner was ineligible because the application from him was received late and this is what has weighed in the second opinion of the CVC. However, the broad-sheet relating to the list of candidates show that there were other Officers whose applications were received late and yet the words '*Not eligible*' were never written against their name. On the contrary, the words '*Not eligible*' were written in the broad-sheet against another candidate because he was ineligible as he was neither an Advocate nor a Government employee.

10. In my considered view, it is obvious from the way the notings have been made that such an endorsement of '*Not eligible*' has been made where the requisite

qualifications are not possessed and not for delayed applications in all other cases, yet the stand taken by the officers is that it is only in the case of the petitioner that the words '*Not eligible*' connoted application received beyond time.

11. The decision of the then Finance Minister also finds that the Selection Committee was negligent in its job and, thus, had passed an order for stern warning against the two concerned Officers and that the written stern warnings should be placed in their service records. The petitioner had neither mentioned his basic-scale nor his basic-pay nor experience in his application and obviously it was on that account that his application was categorised as '*Not eligible*' and yet he was the person selected by the Selection Committee for the post.
12. The action decided by the then Finance Minister and the CVC in terms whereof the Members of the Selection Committee have been found to be negligent resulting in serious lapse was, however, sought to be given a go-bye by asking for a second set of reply by these Officers. As to what was the occasion for the same, one fails to understand! It is then that the whole thing has proceeded on the premise of '*Not eligible*' being a noting on account of late application and the second opinion of the CVC endorsed it.
13. The records do show that the learned Solicitor General did put forth the complete case at the highest level, but

all that has happened is that the final opinion, which emerges, is on the premise that while taking the earlier decision, the decision of the then Finance Minister was taken note of.

14. It is trite to say that this Court is not the disciplinary authority. The matter has gone so far only because a fraudulent appointment to a quasi-judicial post was sought to be made and it was considered appropriate that necessary action should not only be taken against the petitioner, but responsibility fixed for the same. The prodding did result in the Inter-Ministerial Committee report, the recommendation of the then Finance Minister and of the CVC indicting the concerned Officers and for departmental proceedings on account of serious lapses. However, all this has been washed away on account of another explanation called for and accepted, which is not palatable. I do feel that it is for the Administration to remedy and put its house in order so that such lapses do not occur and it would have been appropriate to take the matter to the logical conclusion administratively. But that is not to be.

15. There are no further directions, which can really be passed on the judicial side.

16. The application stands disposed of.

CM No. 403/2007

17. The application has been filed seeking exemption from payment of costs imposed vide Order dated 06.10.2006.

The costs were imposed as though an affidavit was expected to be filed within a period of two months, it had taken the Government more than two and a half months even to appoint the concerned Officer. I am of the view that no directions are called for on this application.

18. Dismissed.

DECEMBER 23, 2009
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SANJAY KISHAN KAUL, J.