

Ravinder Kumar Mathur (Dr.) Vs. Union of India and ors.

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Court : Delhi

Decided On : Feb-12-1999

Reported in : 1999IIIAD(Delhi)833; 1999RLR364

Judge : Devinder Gupta, ACJ and; D.K. Jain, J.

Appeal No. : R.A. 5262/96 & C.M. 5763/96 IN C.W. 1033/94

Appellant : Ravinder Kumar Mathur (Dr.)

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Ms. Getta Mittal, Adv; Ms. Avnish Ahlawat, Adv

Judgement :

ORDER

Devinder Gupta, ACJ.

1. On 24.2.1994, the petitioner approached this Court praying for quashing letter dated 17.2.1994 of respondent No. 4 with further direction against respondent No. 4 to permit him to forthwith join M.D. (Community Health Administration) course of 1993 session and to award cost of petition against the respondents with further direction, as may be deemed fit and proper in the facts and circumstances of the case.

2. Having obtained M.B.B.S. degree from University of Delhi and completed internship, the petitioner joined the Directorate of Health Services, Delhi Administration. During 1992, he was assigned the duties of Medical Officer with the Central Jail, Tihar, New Delhi. Desirous of pursuing further academic qualification, the petitioner intended to appear in the examination for admission to the postgraduate courses, conducted by the Faculty of Medical Sciences. In keeping with the terms of his service, the petitioner submitted an application to respondent No. 3 on 27.12.1992 for the postgraduate course with a request to forward the same to respondent No. 4 with the requisite certificates and simultaneously submitted separately another application in advance to respondent No. 4. On the strength of the latter application, the petitioner was permitted to appear in the written examination conducted by Faculty of Medical Sciences on 23.2.1993. He was declared successful and was called for counselling on 17.6.1993. He was kept in waiting list and was finally selected for admission to M.D. (C.H.A.) on 23.10.1993.

3. As the petitioner had not received any intimation about acceptance of his application, which he submitted on 27.12.1992 and he was required to join the course, therefore, on 26.10.1993 he sent an application to the Director, Health Services with a request to relieve him from the Directorate of Health Services to enable him to join the course at National Institute of Health and Family Welfare. As he was not relieved, he sought extension of time from University of Delhi to join the course. Time was extended till 30.11.1993. Only on 11.1.1994 the petitioner was granted extraordinary leave for 3 years. Accordingly, he approached Delhi University for permission to join the course, which was refused through letter dated 17.2.1994 stating that the admission to postgraduate degree/diploma course for the session 1993-94 was already over and, therefore, he could not be allowed to join M.D. (C.H.A.) at that belated stage. At that stage, the petitioner approached this Court seeking the aforementioned reliefs.

4. The petition was disposed of on 8.4.1994 by Division Bench of this Court. The primary relief, which the petitioner had prayed, was turned down. It was also held that there has been inexcusable and great deal of delay in granting permission to the petitioner and extraordinary leave to join M.D. course for the session 1993-94

due to which his valuable right stood frustrated. Holding officers of Delhi Administration responsible for causing the delay, due to which the petitioner was held to have suffered irreparable loss and damages, the Bench proposed to recompensed the petitioner by imposing heavy cost and damages on Delhi Administration and its officers. Relying upon the decision of Supreme Court in Luknow Development Authority Vs . M.K. Gupta : AIR 1994 SC787 , the same was tentatively fixed at Rs. 1 lakh. For imposing full costs on the officers of Delhi Administration, who dealt with the file, the matter was directed to be kept pending. Secretary, Delhi Administration was directed to produce the relevant file and also to file an affidavit disclosing names of all the officers, who dealt with the file at various stages till permission was finally granted to the petitioner. Two weeks' time was allowed to file the requisite affidavit in terms of the Judgment. The case was directed to be posted for 6.5.1994. copy of the Judgment was ordered to be handed over to learned counsel for the parties.

5. In response to the aforementioned order, affidavit dated 6.7.1994 was filed by R.S. Sethi, Secretary (Medical), Government of National Capital Territory of Delhi on 8.7.1994. Reply to the said affidavit was filed by the petitioner on 25.11.1994. H.N. Yadav, Under Secretary, Ministry of Health and Family Welfare, Government of India also filed an affidavit on 3.6.1998. The question of imposing costs by fixing responsibility on officers of Delhi Administration was still under consideration when on 29.8.1996, Delhi Administration filed an application under Section 114 read with Section 151 C.P.C. (R.A. 5762/96) seeking modification in the Judgment dated 8.4.1994. This application was accompanied with an application (C.M. 5763/94) seeking condensation of delay, which had occurred in moving application to seek review of the order. Both these applications are vehemently opposed by the petitioner.

6. We heard learned counsel for the parties at length and were made available the relevant record of Delhi Administration in which it is stated that the application for postgraduate course in respect of Medical Officers is dealt with by respondent No. 3.

7. R.S. Sethi, Secretary (Medical), Government of National Capital Territory of Delhi in his affidavit has stated that the petitioner through his application form dated 21.12.1992 applied to Delhi University, Faculty of Medical Sciences for postgraduate medical degree M.D. (C.H.A.). He had also sent an application in advance to the University, for consideration. The affidavit further states that the application was submitted by the petitioner on 27.12.1992 being Sunday. His version is that on this application of the petitioner, the department was not required to take any action, as necessary documents, which were required to be filed with the form by the petitioner, i.e., certificate about the fact that he is working in the Administration etc. were already handed over to him on 30.10.1992 by Hans Raj, Deputy Inspector general of Prisons, Central Jail, Tihar, which he had already enclosed with his form. Thus according to the version of Secretary (Health), this application of the petitioner dated 27.12.1992 was not at all dealt with in the department. This fact was also not disputed by Ms. Ahlawat appearing for Delhi Administration. We also find from the record that the application remained unattended in the file without any action taken thereupon.

8. Mr. Sethi's affidavit also states that the petitioner's application, which he had sent in advance to the University was accepted by the University and he was allowed to sit in the examination. The petitioner was also asked to appear for counselling, after he was declared successful and was also asked to join the course by 26.10.1993. The petitioner had not applied for study leave in his application, which he submitted on 27.12.1992. On 27.12.1992 he had only submitted an application form, copy of which he had already forwarded to the University in advance on the strength of which, he was permitted to appear in the examination. For the first time, study leave application was submitted by the petitioner to the department on 26.10.1993, which was received in the Administration Branch through Inspector General of Prisons on 28.10.1993 and after necessary formalities of obtaining vigilance clearance, the same was forwarded to the Cadre Controlling Authority on 19.11.1993. The University had given extension to the petitioner up to 30.11.1993. The Cadre Controlling Authority through its order dated 30.11.1993 received in the Office of Delhi Administration on 2.12.1993, rejected the petitioner's case. The petitioner having come to know about rejection of his case by Cadre Controlling Authority had on 6.12.1993

submitted directly an application to Cadre Controlling Authority on which orders were passed on 11.2.1994. The petitioner did not submit any application to Delhi Administration on 6.12.1993. It is stated in the affidavit that none of the officers of Delhi Administration are at fault. The application for leave was submitted for the first time on 26.11.1993, which was promptly dealt with. Names of the officers of Delhi Administration, who received the application on 27.12.1992 or who were required to take action thereon, but failed to do so are not at all disclosed in the affidavit. Rather the stand of Delhi Administration is that no action at all was required to be taken on the said application, as necessary documents had already been supplied to the petitioner by Hans Raj, Deputy Inspector General of Prisons on 30.10.1992 and when on 26.10.1993 the petitioner applied for being relieved, the said prayer was promptly dealt with by forwarding papers to the Cadre Controlling Authority.

9. Having gone through the contents of affidavit of Mr. Sethi, in the light of the facts of the case, we are of the view that the person deposing has shown utter lack of responsibility in dealing with the question, which was posed in Judgment dated 8.4.1994. Needless to add that the petitioner on 25.11.1994 did file reply to the affidavit clearly pointing out that Secretary (Medical), Delhi Administration was required to file an affidavit, limited to the extent of supplying names of the officers concerned, responsible for not taking action on the application dated 27.12.1992. Despite this no effort was made by Delhi Administration to supply the requisite information. The affidavit does not disclose the names of the officers. To the contrary affidavit has gone on extraneous factors not germane to the question posed. As such, we have no other option except to dispose of the matter on the basis of the material available on record.

10. The petitioner submitted application, in the prescribed proforma, through proper channel before the Inspector General of Prisons, Delhi, as admittedly the petitioner was assigned the duties of Junior Medical Officer in Tihar Jail, with prayer to forward the same to Delhi University, to enable him to appear in the entrance examination. Besides submitting one application through proper channel, by way of abundant precaution, the petitioner also forwarded another application in advance to Delhi University. Respondent No. 3 failed to discharge its legal

obligation in not dealing with the petitioner's application. Admittedly no action was taken thereon. At the time of submission of the application, the petitioner had also duly filled in the requisite checklist, required by respondent authorities. The application submitted through proper channel was required to be scrutinised, processed and forwarded, as per rules by the concerned department so that the petitioner was not disqualified for pursuing the course or the post for which he was applying by virtue of the term of employment. Respondent No. 3 ought to have scrutinised, processed and forwarded the application.

11. The file which has been placed before us suggests that on 19.1.1993, the application forms along with annexures were forwarded by Hans Raj, Deputy Inspector General of Prisons, Delhi to the Joint Director (Administration), Directorate of Health Services, Delhi Administration as per the endorsement along with his forwarding letter with copy of the said letter to the petitioner. The same were received in the Office of Joint Director (Administration) on 20.1.1993. There is only one other endorsement on the said letter, which is dated 21.1.1993. The letter dated 19.1.1993 reads:

'DY.INSPECTOR GENERAL OF PRISONS (DELHI)

CENTRAL JAIL: TIHAR: NEW DELHI110064

Dated : 19193

To

The Joint Director (Admn.)

Dte. of Health Services

Delhi Administration

EBlock, Saraswati Bhavan

Connaught Place, New Delhi.

Sub: Forwarding of application for Post Graduate Entrance Examination of Delhi University for MD/MS Course and MD (Community Health Administration) in respect of Dr. Ravinder Kumar Mathur, Medical Officer.

Sir,

I am to forward herewith two applications Along with its enclosures submitted by Dr. Ravinder Kumar Mathur, J.M.O. (Adhoc) for admission in Post Graduate Entrance Examination of Delhi University for MD/MS Course and MD (Community Health Administration) course for further necessary action at your end.

Yours faithfully,

Sd/

Encls: As above. (HANS RAJ)

DY. INSPECTOR GENERAL OF PRISONS

DELHI.

F.16(333)/Estt./CJ/92/ Dated: Copy forwarded to Dr. Ravinder Kumar Mathur, J.M.O. (Adhoc) for information.

(HANS RAJ)

DY. INSPECTOR GENERAL OF PRISONS

DELHI.'

12. Neither this letter was dealt with nor petitioner's admission form was forwarded to Delhi University. This submission of the petitioner is supported from the file in as much as his application dated 27.12.1992, on the face of it was then dealt with for the first time on 10.11.1993 when Joint Director (Administration) through his letter dated 10.11.1993 addressed to Joint Secretary (Medical), Delhi Administration forwarded petitioner's application in reference to petitioner's representations dated 28.10.1993 and 3.11.1993. The said letters reads:

'GOVERNMENT OF NATIONAL CAPITAL TERRITORY

OF DELHI, DIRECTORATE OF HEALTH SERVICES

EBLOCK: SARASWATI BHAVAN, CONNAUGHT

PLACE: NEW DELHI

No.F./1/14/193DKS/Estt/HQ 3523334

Dated : 101193

To

The Joint Secretary (Medical),

Delhi Administration

5Sham Nath Marg,

Delhi54.

Sub: Application/Representation of Dr. Ravinder Kr. Mathur, M.O. Regarding Post graduate entrance examination of Delhi University for MD/MS Course (CHA) and selection in MD (CHA)

(ii) Reg. entrance examination MD/MS held on 3.11.93 for seeking permission in r/o Dr. Mohd. Aslam, M.O.

Sir,

The application/representation dated 28.10.97, 3.11.97 of the above mentioned Medical Officer working under this Directorate is forwarded to your for onward transmission to the Ministry of Health and Family Welfare, New Delhi for further necessary action.

It is also informed that the substitute will be required in case his/her request is acceded to.

No vigilance case/complaint is pending against him in the Directorate. Similar clearance may please be obtained from Directorate of Vigilance, Delhi Administration at your end.

Yours faithfully.

Sd/

101193

(D.C. UPERTY)

JOINT DIRECTOR (ADMN.)

Dated : 10/11/93

No.F.1/14/93DKS/Estt/HQ 3523334

Copy forwarded to:

1. DIG, Central Jail, Tihar,

2. CMO, EZ

Sd/

10/11/93

(D.C. UPERTY)

JOINT DIRECTOR (ADMN.)'

13. In between these two dates, no action was taken on petitioner's application form dated 27.12.1992, which he had presented through proper channel for being forwarded to the University.

14. On 19.11.1993 the petitioner's letter dated 27.12.1992 was forwarded by Delhi Administration to the Central Government, whereupon the Central Government through its letter dated 30.11.1993 asked Delhi Administration to explain the delay.

Delhi Administration failed even to reply to the quarry of the Central Government. According to the Central Government, Delhi Administration even did not forward any of the petitioner's communications, who repeatedly wrote reminders to Delhi Administration for grant of study leave or any other kind of leave to which the petitioner might have been entitled. Had Delhi Administration taken appropriate action on petitioner's application dated 27.12.1992, which they were bound to do so, there would not have been any delay in grant of earned leave or study leave to the petitioner. As admittedly no action was taken on the petitioner's application dated 27.12.1992, apparently there is negligence due to which the petitioner suffered irreparable loss.

15. At page5 of the admission form, following certificate was required to be appended by the employer with respect to candidates, who are in service:

'EMPLOYER'S CERTIFICATE FORM

FOR

CANDIDATES WHO ARE IN SERVICE

I forward herewith the application for admission to the M.d./M.S./M.Sc./M.Ch./D.M./Diploma in of Dr. who in a full time employee in this organisation w.e.f. and has been working as (Please give designation) and his/her emoluments, including D.A., C.C.A. and H.R.A. etc., are Rs.

If he/she is selected by the University for admission, he/she will be relieved to join the above course as a fulltime/regular student in the institution assigned to him/her w.e.f. the date of commencement of the course.

Note: The relieving certificate will also be sent to the University before the candidate joins the course concerned by the stipulated date.

Date.....

Signature of the Officer with Stamp of the Office and full address and designation'

16. There is a checklist also, which was dally filled in by the petitioner. It was required to be forwarded duly signed by the Head of Department/Officer along with the application form for admission to the course. The checklist reads:

'CHECK LIST TO BE FILLED UP AT THE TIME OF FORWARDING OF APPLICA
corporation FOR ADMISSION TO P.G. COURSE 1. Name of the Officer Dr.
RAVINDER KUMAR MATHUR 2. Designation MEDICAL OFFICER (ADHOC) 3.
Permanent or Temporary _____ 4. Date of initial
appointment in CHS 24th Nov., 1986 4(a) Date of completion of 3 years service
Nov., 1989 (b) Date of completion of 5 years service Nov., 1991 5. Details with
duration Post graduate course of of the course 3 years Entrance exam. in Feb.
1993, Delhi Administration MDCHA 6. Whether the course is Full Time part
time/full time 7. Name of the Institute Delhi University 8. Date of submission of
29th Dec., 1992 application 9. Last of forwarding 31st Dec., 1992 of application to
the Advance copy sent concerned University/ Board/Institution 10. Vigilance
Clearance _____ 11. Whether the Officer Yes has completed
his/her probation period and that the same has not been extended 12. Certificate
that the Yes proposed study will increase the efficiency in the performance of
officer's duties & thus be in public interest 13. Whether application Yes is within
the limits prescribed in para 6 of the Ministry of H & FW. O.M. No
.A.22012/120/89/CHS II dated 21st March, 90 14. Whether in the event Yes of
Selection to study, applicant can be relieved without a substitute. SIGNATURE &
STAMPS OF THE HEAD OF DEPTT./OFFICE'

17. As per the requirement of the University, candidates who were in service were required to send advance copy of the application complete in all respects including registration fee, but the requirement of the petitioner's service admittedly was that he could not have applied for admission without forwarding admission form through proper channel, which the petitioner did in this case on 27.12.1992. The certificate which Hans Raj had handed over to the petitioner in October, 1992 was only to the effect that the petitioner fulfilled the requirement of his having put in 5 years of service on or before 15.4.1993. It admittedly was not a certificate, as was required to be signed by the petitioner's employer, which has been extracted above. The employer was required to forward the application for admission stating

that the petitioner was in full time employment, his status and designation including emoluments including D.A., C.C.A., H.R.A. etc. and further certifying that in case of his selection by the University on admission, he will be relieved to join the course as full time student in the institution assigned to him with effect from the date of commencement of the course. The certificate also required to state that the relieving certificate will be sent to the University before the candidate joins the course concerned by stipulated date.

18. Admittedly no action was taken on the application. Had prompt action been taken by Delhi Administration to forward to Union of India, the petitioner's application, there is no reason as to why the same would not have been dealt with even much prior to the petitioner appearing in examination or in any case much prior to his selection. It was only after 26.10.1993 that the Delhi Administration woke up from slumber when it forwarded the petitioner's application to Union of India by which time damage, which could have been avoided, had already been done. All these aspects were duly considered in the judgment disposing of the petition. Secretary (Medical) despite opportunity did not file appropriate affidavit disclosing the names of the persons, who were required to deal with the application and failed to discharge their obligation. In this view of the matter, we have no hesitation in holding that Delhi Administration is responsible to compensate the petitioner. The petitioner was deprived of the opportunity of undertaking higher study, namely post graduate course for which he had been duly selected, because of acts of omission and gross negligence on the part of Delhi Administration, for which we are of the view that a sum of Rs. Five Lacs would be fair and reasonable amount of compensation in addition to the costs already imposed in the Judgment. The Delhi Administration would be free to fix the responsibility on the officers who failed to discharge their obligation and recover the said amount from them in the manner as considered proper.

19. The Judgment dated 8.4.1994 was announced in presence of counsel for the parties. Copy of the judgment was also handed over to learned counsel for the parties and pursuant to the said order, affidavit was filed on 8.7.1994. Two years thereafter, Delhi Administration woke up in seeking review/modification in the order praying that observation in the Judgment dated 8.4.1994 was made on the

oral submission of learned counsel for respondent No. 1 whereas factual position is totally different. There is hardly any case made out much less a sufficient cause for condensation inordinate delay in seeking review. Otherwise also, we do not find any ground on which Judgment dated 8.4.1994 deserves to be reviewed in as much as it is based upon facts, which are apparent on record of Delhi Administration also.

20. Consequently, while dismissing R.a. 5262/96 and rejecting C.M. 5763/96, respondent No. 3 is directed to pay within a period of three months from today a sum of Rs. Five Lacs to the petitioner towards damages, in addition to the amount ordered in Judgment dated 8.4.1994.

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