

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(reserved on 15.5.2014)

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O.A No. 060/00057/2014 Date of decision: 4.7.2014

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

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Dr. Amitava Chakrabarti S/o Dr. P.K.Chakrabarti, R/o House No. 1035, Sector 24-B, Presently working Prof. and Head, Department of the Pharmacology, Postgraduate Institute of Medical Education and Research, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. G.S.Bal, Advocate.

VERSUS

1. Union of India through the Secretary to Government of India, Department of Health and Family Welfare, Nirman Bhawan, New Delhi.
 2. Prof. Y.K.Chawala, The Director, Postgraduate Institute of Medical Education and Research, Chandigarh and Research, Chandigarh.
 3. Fact Finding Committee, through its Chairman, Prof. J.S. Chopra, Prof. Emeritus, Postgraduate Institute of Medical Education and Research, Chandigarh and Research, Chandigarh.
 4. Dr. Samir Malhotra, Additional Professor, Department of Pharmacology, Postgraduate Institute of Medical Education and Research, Chandigarh and Research, Chandigarh.
 5. Dr. Nusrat Shafiq, Assistant Professor, Department of Pharmacology, Postgraduate Institute of Medical Education and Research, Chandigarh and Research, Chandigarh.
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6. Prof. Arvind Rajwanshi, Head of Department of Cytology and Gynecological Pathology, Postgraduate Institute of Medical Education and Research, Chandigarh and Research, Chandigarh.
7. Prof. J.S. Chopra, Prof. Emeritus-Chairman, Fact Finding Committee, Postgraduate Institute of Medical Education and Research, Chandigarh and Research, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Amit Jhanji, Advocate

ORDER

HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A):-

The present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, seeks the following reliefs:-

"i) Impugned notification-Annexure A-1 and Report of Fact Finding Committee Annexure A-2 may kindly be set aside and consequently applicant be permitted to continue as Head of the Department of Pharmacology, PGI;

ii) If deemed fit a direction be issued to the respondents to hold simultaneous Regular Departmental Enquiry in pursuance of the representations Annexure A-20(colly) made by the applicant and complaints made by Respondents No.4 and 5."

2. The facts briefly are that the applicant herein joined Postgraduate Institute of Medical Education and Research (for short 'PGIMER') as Assistant Professor in Pharmacology Department in year 1988. He was promoted as Associate Professor w.e.f July, 1993. In March 1994, applicant joined Indira Gandhi Medical College and

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Hospital, Shimla (for brevity 'IGMC') as Professor and Head of Department of Pharmacology. Later, the applicant joined PGI as a Professor in Pharmacology in September, 2004 and became Head of Department of Pharmacology w.e.f. 01.09.2011 vide office order dated 30.08.2011. While he was the Head of Department, one junior Resident Dr. Pankaj Maheswari studying in 3rd year of MD submitted his resignation vide letter dated 03.10.2012. On enquiry the applicant was informed by him that his guide and co-guide i.e. respondent nos. 4 & 5 had not been kind to him and were harassing him because he was a physically disabled person as he sought admission in PGI against reserve quota. Thereafter, the applicant submitted the entire case to the Dean, PGI vide letter dated 04.10.2012 (Annexure A-7). To save her skin, respondent no. 5 submitted a confidential letter dated 21.10.2012 (Annexure A-8) to Director, PGI i.e. respondent no. 2 by lodging a false complaint against the applicant and demanding the matter to be investigated by a 'Fact Finding Committee' and that letter was never brought to the notice of the applicant. Again, the father of respondent no.5 made a number of complaints to Respondent no.2 and Union Health Minister(Annexures A-11 & A-12). On the basis of the complaints, Respondent no.2 had constituted a Committee to conduct a fact finding inquiry regarding alleged charges of mental harassment. Applicant came to know of the fact, when he was asked

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to appear before the Committee, which submitted its report and the copy of the same was supplied to the applicant vide letter dated 16.08.2013 (Annexure A-17). The applicant submitted detailed reply vide letter dated 24.08.2013 (Annexure A-18). After receipt of reply, the duties/work of the post of Head of Department of Pharmacology, allegedly has illegally been withdrawn from the applicant vide order dated 14.01.2014 (Annexure A-1) and the charge of the department has been given to respondent no. 6.

3. The respondents have filed separate replies taking identical pleas. Respondent no. 2 & 3 in their reply have resisted the claim of the applicant by stating that firstly it is the sole prerogative of the Director as per rule as to who shall be head of Department and secondly the applicant had failed to perform his duties as the head in providing an amicable congenial work atmosphere by making questionable distribution of academic responsibilities and duties to the faculty members. They have further submitted that the 'fact finding committee' was constituted by the Director regarding the charges of mental harassment as per the complaint of respondent no. 5. Notice was issued to Dr. Pankaj Maheswari to appear before the Committee on 10.04.2013 & 27.04.2013, but he did not appear. The Committee had given ample opportunities to the applicant to put-forth his own

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case and after giving adequate opportunities of hearing and complying with the principles of natural justice, the Fact Finding Committee had given a report. The Committee had also mentioned that an FIR No. 210 dated 29.05.2013 under Section 406 & 408 IPC was also got registered against the applicant by respondent no. 4. The Fact Finding Committee has specifically recorded a finding that there is no evidence of any mental harassment to Dr. Pankaj Maheshwari by his guide (respondent no. 4). Therefore, the details as provided in the report are self speaking and there is no room for allegations, lack of jurisdiction and illegality against the Fact Finding Committee. It is the case of the respondents that as per the Post Graduate Institute of Medical Educational and Research Act, 1966, the Director can exercise such power and discharge such function as may be prescribed by regulation or as may be delegated by the Institute or president of the Institute or the Governing Body or the Chairman of the Governing Body. Further as per Section 11(4), the Director may appoint such number of officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may be determine the designations of grades of such other officers and employees. The Director PGI while issuing office order dated 14.01.2014 whereby he has conferred the duties/work of head of Department of Pharmacology for all purposes in addition to his own

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duties upon respondent no. 6, is as per the mandate given to him under the Act, 1966, Regulation 1967 and Schedule-I of the Act. Therefore, no illegality has been committed by the respondents while issuing the impugned order dated 14.01.2014.

4. Respondent nos. 4 & 5 and respondent no. 7 have filed separate replies denying the allegations levelled by the applicant and reiterating the same pleas as have been taken by the official respondents.

5. The applicant has filed rejoinder to the reply filed by respondent no. 2 & 3 wherein he has stated that the prerogative used by the Director to pass the impugned order Annexure A-1 is totally illegal, without jurisdiction. In support of his plea, he made reference to provisions of Regulation 38 of PGIMER, Chandigarh Regulations 1967. On this basis, it is stated that without complying the above mandatory provisions of Regulations, 1967, the impugned order is liable to be quashed. The Fact Finding Committee was constituted vide notice dated 05.02.2013 (Annexure A-22) followed by an amendment in the constitution of Committee vide notice dated 26.02.2013 (Annexure A-23). By the time alleged Minutes of Meeting held on 16.05.2013 were recorded, the entire hearing before committee had

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already been completed on 27.04.2013. A bare perusal of Annexure R-1 alleged to be the Minutes of the Meeting seems to be a fabricated document on the face of it as it neither contains the signatures of the applicant if he was associated, nor it contains the signatures of respondent nos. 4 & 5, who were also allegedly called in the said meeting. The applicant denied the allegations made against him by them. While taking the same stand as above, the applicant has submitted that there is no evidence of any mental harassment to Dr. Pankaj Maheswari, as no reason has come forward either in written statement or in the Fact Finding Committee Report as to why Dr. Maheswari had resigned from the Course at that stage. The applicant has further stated that there are several illegalities evidenced by bias, arbitrariness, being extra-jurisdictional, non transparent, usage of derogatory and unparliamentarily language and lack of application of mind.

6. We have heard learned counsel for the parties and perused the material on the file.

7. Two important facts emerge from the perusal of the record. The first important fact is that the terms of reference of the Committee which was constituted to look into the complaint of sexual

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harassment made by Dr. Nusrat Shafiq (Respondent No.5) did not include any term which required commenting on the suitability or desirability of Professor Chakrabarti to be continued as the Head of the Department of Pharmacology, PGIMER. Apparently, the Committee headed by Professor J.S.Chopra has given the recommendation of removing Professor Chakrabarti suo-motu. The other fact which emerges from the perusal of the record is that under the administrative instructions of the Institute, the Head of Department of any department is appointed through a process. It can also be inferred that the Head of the department is expected to carry out certain functions which are in addition to his duties and responsibilities of his substantial post, in this case as a Professor . Among other functions, the one function that has found frequent reference in this case is offering comments/opinion on matters pertaining to his department as also forwarding the applications or letters written by Members of his department to higher authorities. Therefore, it will be correct to assume that HoD has certain specific responsibilities-formal as also informal. If this be the case and there are strong reasons that suggest that it is so, the appointment or removal of Head of the Department cannot be done arbitrarily. The basic principles of natural justice will come into play if the competent authority decides that certain individual is not fit to be the Head of the Department.

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Under any circumstance, notwithstanding any provision or absence thereof in the rules/administrative instructions of the Institute, such appointments which entail formal or informal responsibilities cannot be a subject matter of whims and fancies of the competent authority. There has to be a reason, a logic and certain degree of transparency in making and executing such decisions.

8. While we desist from making any comment on the desirability or propriety of Professor Chakrabarti continuing as Head of Pharmacology department, it would have been fair and in order if before being asked to cease functioning as HoD, he were informed clearly and explicitly the reasons for a decision asking someone else to hold the charge of Head of Department.

9. In the light of the above discussion, we set aside the impugned order dated 14.1.2014 (Annexure A-1) issued by the Institute which amounts for all purposes to removal of Professor Chakrabarti as Head of Department of Pharmacology. If he is considered to be unfit or inappropriate to be HoD, there has to be a proper process and speaking documents justifying why suddenly somebody else is being asked to look after the work of his department. Mere mechanical invocation of Director's prerogative regarding such

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appointments mitigates against the basic principles of natural justice and fair play.

10. The OA is allowed in the above terms. No costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: July 4 , 2014.

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