

**Central Administrative Tribunal
Principal Bench
New Delhi**

TA No.22/2013

This the 23rd day of July, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

D. S. Meena S/o Kishan Lal,
Resident of RZ-132, Gali No.3,
Dabri Village, New Delhi-45.

... Applicant

(By Advocate: Shri Rajesh Srivastava)

Versus

1. Union of India through
Secretary (ISMH),
Ministry of Ayush,
Government of India,
New Delhi.

2. Central Council for Research in
Ayurveda & Siddha through its Director,
Jawahar Lal Nehru Bhartiya Chikitsa Aivam
Homeopathic Anusandhar Bhawan,
61-65, Institutional Area, D-Block,
Janak Puri, New Delhi.

... Respondents

(By Advocates : Shri B. L. Wanchoo for Respondent No.1; Shri Rajeev Sharma & Shri Tara Chand Sharma for Respondent No.2)

O R D E R

Justice Permod Kohli, Chairman :

The applicant in the present case was appointed to the post of Administrative Officer vide office order No.1914/94 dated 16.06.1994. The next promotion in the hierarchy of the service in the department is that of Assistant Director (Coordination). The post fell

vacant on account of deputation of Shri E. I. Malekar who was holding the said post, to the National Human Rights Commission (NHRC) w.e.f. 21.03.1997. Shri Malekar while on deputation with the NHRC submitted his resignation on 24.09.1999. His resignation remained pending with the competent authority and ultimately came to be accepted w.e.f. 30.01.2003.

2. In the meantime, Shri H. R. Kataria, Administrative Officer was appointed as Assistant Director (Coordination) on *ad hoc* basis on the recommendations of the DPC held on 25.06.1997, vide order dated 31.07.1997. His appointment, however, became effective from 12.08.1997 on being approved by the competent authority. The applicant was recommended by the DPC for promotion to the post of Assistant Director (Coordination) on *ad hoc* basis in its meeting held on 18.10.2000 w.e.f. 31.10.2000, on the post being vacated by Shri Kataria on his retirement. The Director, Central Council for Research in Ayurveda and Siddha sought approval of the minutes of the DPC from the President of the Governing Body. Recommendations of the DPC were accepted and the applicant was appointed as Assistant Director (Coordination) in the pay scale of Rs.10000-15200 vide order dated 05.11.2001. His appointment was, however, on *ad hoc* basis in the lien vacancy for a period of one year, or till the post was filled up on regular basis, whichever be earlier, or till Shri E. I. Malekar who

was on deputation was repatriated to his original post, as is evident from the appointment order dated 05.11.2001. With the acceptance of resignation of Shri E. I. Malekar w.e.f. 30.01.2003, the post fell vacant on 30.01.2003. Approval of the Minister for Health and Family Welfare in his capacity as President of the Governing Body of the Council for extension of *ad hoc* promotion of the applicant for a period of one year beyond 04.11.2002, or till joining back of the officer holding lien on the post, was conveyed vide order dated 08.01.2003. It is relevant to note that Shri Malekar was holding lien on the post against which the applicant was promoted on *ad hoc* basis. When this *ad hoc* promotion of the applicant was extended vide office order No.1521/2003 dated 13.01.2003 on the basis of the approval accorded by the Ministry of health and Family Welfare vide communication dated 08.01.2003, the resignation of Shri Malekar was still pending with the competent authority, and the post became vacant only on 30.01.2003

3. It appears that Shri E. I. Malekar, on his resignation, was absorbed in the NHRC. Name of the applicant came to be recommended by the Director, Central Council for Research in Ayurveda & Siddha for regular appointment against the vacancy that fell vacant (lien free) on 30.01.2003 on acceptance of the resignation of Shri Malekar, vide communication dated 21.03.2003. Ministry of

Health and Family Welfare, however, vide letter dated 09.10.2003 asked the Director of the Central Council for Research in Ayurveda & Siddha to issue order for abolition of the post of Assistant Director (Coordination) in view of Department of Expenditure's office memorandum No.7(7)-E.(Coord.)/93 dated 03.05.1993, as the post remained vacant from 01.11.2000 to 04.11.2001. This letter was followed by another letter dated 14.10.2003 whereby the Ministry of Health and Family Welfare refused to accept the recommendation of the DPC for regular appointment of the applicant on the post of Assistant Director (Coordination). Both these communications dated 09.10.2003 and 14.10.2003 are under challenge in the present OA.

4. In the separate counter affidavits filed by the respondents, same stand is taken, and relying upon the aforesaid office memorandum dated 03.05.1993 of the Department of Expenditure, it is stated that the post of Assistant Director (Coordination) having remained vacant is deemed to be abolished, and thus the applicant cannot be regularized against non-existent vacancy.

5. We have heard the learned counsel for parties at length.

6. Office memorandum dated 03.05.2003 contains the following stipulation:

POINT	CLARIFICATION
(b) If a post is vacant or held in abeyance for some time, whether the post can be filled up or revived, as the case may be, by the administrative Deptt/ Ministry	If a post is held in abeyance or remains unfilled for a period of one year or more, it would be deemed to be abolished. Integrated Finance of each Ministry/Department may monitor abolition of such posts and ensure that abolition orders are issued within one month of the post remaining unfilled/held in abeyance for the period of one year. If the post is required subsequently, the prescribed procedure for creation of new posts will have to be followed...

7. The learned counsel for the applicant has, however, argued that the contention of the respondents that the post remained vacant for a period of more than one year is factually incorrect. From the appointment order of the applicant, it is clearly evident that the applicant was promoted on *ad hoc* basis as Assistant Director (Coordination) on the recommendations of the DPC against the lien vacancy of Shri E. I. Malekar who was on deputation to NHRC. Even though Shri Malekar resigned on 24.09.1999, however, his resignation came to be accepted only on 30.01.2003. The applicant had already been promoted on *ad hoc* basis vide order dated 05.11.2001 against this lien vacancy of Shri Malekar. Thus, on acceptance of resignation of Shri Malekar the post became vacant (lien free) on 30.01.2003. The applicant's recommendation for his regular appointment was made

in the year 2001 and he was holding the lien vacancy. Between 30.01.2003 till the recommendation of the applicant for regular appointment vide letter dated 21.03.2003, the post never remained vacant for a period of one year. Thus, the impugned communications dated 09.10.2003 and 14.10.2003 are based upon factually incorrect position. Department of Expenditure office memorandum dated 03.05.1993 is not attracted in the present case and there is no deemed abolition of the post, the post having never remained vacant for a period of one year or more.

8. For the above reasons, both the impugned communications dated 09.10.2003 and 14.10.2003 are liable to be quashed. The Application is accordingly allowed. The impugned communications are hereby quashed. The respondents are directed to act on the recommendation of the DPC and communication dated 21.03.2003, and appoint the applicant on regular basis as Assistant Director (Coordination) within a period of one month from the date of receipt of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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