

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1256/2012

Reserved on: 11.05.2017
Pronounced on: 09.11.2017

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

Dr. (Prof.) Sangeeta Sharma W/o Anil Kumar Sharma,
R/o D-84, Naraina Vihar,
New Delhi-110028.

... Applicant

(By Mr. S. K. Gupta with Mr. Vikram Singh, Advocate)

Versus

1. Board of Governors
in supersession of Medical Council of India
through its Chairman,
Pocket-14, Sector-8, Dwarka,
New Delhi-110077.

2. Union of India through its Secretary,
Ministry of Health & Family Welfare,
Government of India, Nirman Bhawan,
New Delhi-110011.

... Respondents

(By Mr. A. K. Behera, Mr. T. Singhdev, Ms. Manpreet Kaur Bhasin,
Ms. Puja Sarkar and Ms. Avinash Kaur, Advocates)

O R D E R

Justice Permod Kohli, Chairman :

Validity of order dated 30.03.2012 terminating the services of the applicant is in question in the present OA. The applicant has claimed following reliefs:

“a) Quash the order dated 30.3.2012;

- b) To regularize the services of the applicant to the post of Secretary as period of probation got over on 24.3.2012;
- c) To award cost of litigation in favour of applicant and against the respondent;
- d) Pass such further order and orders as it may deem fit and facts and circumstances of the case."

2. Brief facts necessary and relevant to the controversy in the present OA are being noticed hereinafter. The applicant was initially recruited as Junior Resident, Department of Pharmacology in Maulana Azad Medical College, Delhi, where she remained from 02.08.1987 to 31.07.1991. She joined as Senior Resident in the same Department and worked as such from 01.08.1991 to 06.01.1995, and thereafter as Research Associate from 07.01.1995 to 14.11.1995. The applicant was appointed as Manager (Medical Services) in Panacea Biotech Ltd., New Delhi on 15.11.1995 and served there till 23.09.1996. The applicant was thereafter recruited as Assistant Professor Neuropsychopharmacology in the Institute of Human Behaviour and Allied Sciences (IHBAS), Delhi. She served as such from 24.09.1996 to 30.06.2001, and later as Associate Professor Neuropsychopharmacology in the same department/discipline/institution from 01.07.2001 to 31.10.2001. The applicant also worked as Technical Co-ordinator, INDIA-WHO Essential Drugs Programme on deputation at the Delhi Society for Promotion of Rational Use of

Drugs, New Delhi, from 01.11.2001 to 31.10.2002. The applicant was promoted as Associate Professor Neuropsychopharmacology on 01.11.2002 and served up to 2005, and thereafter as Additional Professor in the same discipline from 01.07.2005 to 12.10.2007 and as Medical Superintendent from 27.11.2008 to 27.11.2009 in IHBAS. The applicant thereafter came to be appointed as Professor & Head Neuropsychopharmacology on 12.10.2009 and worked as such till her selection to the post of Secretary, Medical Council of India (MCI) on 25.03.2011.

3. The post of Secretary, MCI was to fall vacant on 01.09.2010 on retirement of Lt. Col. (Dr.) A. R. N. Setalvad. An advertisement was issued in the newspapers on 14.08.2010 inviting applications from eligible candidates for the post of Secretary, MCI. The information regarding eligibility and other terms and conditions for appointment were not incorporated in the advertisement and were to be obtained from the Council's website, as per Annexure -9. The applicant did not apply for the said post. Interviews were conducted on 18.09.2010, but no appointment was made. A fresh advertisement was issued on 13.10.2010 (Annexure-10). The information was again notified to be available on the Council's website. The applicant considering herself to be eligible, applied for the post vide her application dated 27.10.2010 (Annexure-11). It is

stated that on scrutiny, the applicant was found eligible. Twenty-one candidates were called for interview. However, only 17 appeared in the interview held on 09.11.2010. The selection committee headed by Dr. Shiv Kumar Sarin (Chairman, BOG) as its Chairperson, and comprising Dr. Arun Aggarwal, Addl. DG, DGHS; Prof. Ranjit Roy Chaudhury, Member, BOG; Dr. (Prof.) R. N. Salhan, Member, BOG; and Dr. Sita Naik, Member, BOG, as Members, interviewed the candidates.

4. In terms of the Medical Council of India Recruitment (Amendment) Rules, 2003 governing recruitment to Group 'A' posts in the Medical Council of India, a total of 16 years experience in the profession, out of which 10 years teaching experience in a Medical College after a Postgraduate medical degree with at least 3 years experience as Professor in any department in a Medical College/Teaching hospital, is required for appointment to the post of Secretary. Even when the result of the selection was not declared, one Dr. P Prasanna Raj, Additional Secretary, MCI, filed OA No.3727/2010 before this Tribunal at the Principal Bench. This OA was dismissed vide judgment dated 11.02.2011 holding that the said applicant was not eligible for promotion to the post of Secretary. After dismissal of the aforesaid OA, the applicant was issued letter of

appointment dated 08.03.2011 (Annexure-15). Relevant conditions of appointment are as under:

- “1. You will be on probation for a period of one year from the date of joining the post. The probation period may be extended at the discretion of the appointing authority. During the probation period, the appointment will be liable to termination without assigning any reasons on one month's notice period and thereafter on three months' notice or pay with allowance in lieu thereof. Continuance in the service after the probation period is subject to satisfactory performance. For resignation you will be liable to give one month's notice during probation period and three months' notice thereafter or pay with allowance thereof. However, the Council reserves the right to accept the resignation, if the circumstances so warrant.”
- “4. Your service in the Council will be subject to the Service Rules and Regulations, including the Conduct, Control and Appeal Rules, Standing Orders or any other such orders of the Council. You will be bound and governed by such rules as may be framed and enforced from time to time and shall not challenge these rules on any ground. Decision of the Competent Authority shall be final and binding.”

Pursuant to the appointment made, the applicant joined as Secretary, MCI on 25.03.2011. She was relieved from IHBAS vide order dated 24.03.2011, retaining her lien to the post of Professor & Head of Department of Neuropsychopharmacology for one year.

5. It may be noted here that the Medical Council of India had been superseded in the year 2010 by virtue of ordinance dated

15.05.2010, and a Board of Governors was appointed to perform the functions of the Council. It is stated by the applicant that while functioning as Secretary, she was harassed by the Chairman of the Board of Governors and was forced to submit her resignation on 14.06.2011, which was later withdrawn on 27.06.2011. While the applicant was working as Secretary, the impugned order dated 30.03.2012 came to be passed terminating her services in terms of clause 1 of the appointment letter dated 08.03.2011 as extracted hereinabove. She was relieved on the same day. The applicant was paid pay with allowances equivalent to her three months' salary in lieu of three months' notice period. The applicant was directed to hand-over the charge to Dr. P. Prasanna Raj, Additional Secretary, MCI. It is this order which is subject matter of challenge in the present OA.

6. The applicant has challenged the validity of the impugned termination order on the following grounds:

- (i) that the order is in violation of all canons of justice and fair play, having been passed in a most capricious, whimsical and arbitrary manner;

- (ii) that the impugned order is violative of fundamental rights of the applicant guaranteed under Articles 14 and 16 of the Constitution of India;
- (iii) that the applicant having completed the period of one year's probation on 24.03.2012, became permanent employee of the Council and her termination is *per se* illegal;
- (iv) that the termination is actuated by bias and *mala fides* and is in gross violation of principles of natural justice;
- (v) that the termination is against the standing orders, statutory rules of MCI and is opposed to public policy, and is unconstitutional violating Articles 16, 16(1), 19(1)(g) and 21 of the Constitution; and
- (vi) that the termination order has been passed without adopting the procedure laid down under law.

7. Respondents No.1 and 2 have filed separate counter-affidavits. Most of the pleas raised by the respondents are common in nature. It is stated that the services of the applicant have been terminated in terms of the letter dated 08.03.2011. The terms and conditions contained in the letter were accepted by the applicant and

she joined the MCI on 25.03.2011. It was one of the stipulations that the applicant would be on probation for a period of one year from the date of joining on the post. At the time of termination, the applicant continued to be on probation as she was never confirmed. According to the respondents, there is no concept of deemed confirmation as the rules governing the service conditions of the applicant do not provide any maximum period of probation. It is also pleaded that the appointment of the applicant to the post of Secretary was made in disregard to the office memorandum dated 03.07.2006 issued by the DOP&T which requires that appointments of chief executives carrying the scale of pay of Rs.18400-22400 and above in central autonomous institutions are mandatorily be made after seeking ACC approval/clearance. It is stated that no approval was sought from ACC. The post held by the applicant is that of principal executive officer in MCI and such approval was necessary. Reference is also made to standing order of the MCI which was duly approved by the Government of India vide letter dated 25.06.1970. It is provided therein that where there is no provision in the standing order, the Government of India rules shall be applicable. It is, therefore, contended that on a conjoint reading of the standing order of MCI and the memorandum dated 03.07.2006, there is no doubt that appointment to the post of Secretary, MCI requires prior

approval/clearance of the ACC. Reference is also made to letter dated 21.03.2011 whereby the MCI was informed that for the post of Secretary, MCI approval of the ACC was required. Reference to this issue is made by both the respondents. However, during the course of arguments, Mr. A. K. Behera, learned counsel appearing for respondent No.1, submitted that he has instructions not to press the point of ACC approval. As a matter of fact, he concedes that no ACC approval was required. Therefore, we do not want to delve on this issue.

8. The respondents have also disputed the eligibility of the applicant. The respondent No.2 vide its letter dated 27.01.2012 seems to have sought information regarding the vigilance clearance of the applicant from her earlier employer. In response to the said communication, the MCI vide its letter dated 08.02.2012 communicated to the respondent No.1 that information was sought from the Director, IHBAS vide letter dated 26.08.2011, and Dr. Nimesh G. Desai, Director, IHBAS vide letter dated 29.08.2011 informed the MCI that there was no pending or contemplated vigilance case/inquiry in respect of the applicant as per the file record pertaining to her being relieved with technical resignation while retaining lien at IHBS. It was further communicated that recently correspondence from CBI to the Secretary, Ministry of

Health & Family Welfare and from there to the Department of Health & Family Welfare, Government of NCT of Delhi which was received at IHBAS in June, 2011 had reference to a CBI investigation involving Dr. Sangeeta Sharma (applicant). Vide the aforesaid letter, MCI also communicated to the respondent No.2 that papers placed before the Chairman, Board of Governors did not show any minutes of the scrutiny done in the Council's office with respect to the requisite qualifications as per recruitment rules of MCI for direct recruitment to the post of Secretary held on 09.11.2010. The selection committee was chaired by Prof. (Dr.) S. K. Sarin, the then Chairman, Board of Governors, MCI. It is stated that on query from the Ministry relating to the eligibility and in the absence of any scrutiny committee, the matter with respect to the applicant's qualification and teaching experience for the post of Secretary, MCI was referred to Dr. Y. K. Gupta, Chairman, Equivalence Committee of MCI and Prof. & HoD of Pharmacology, AIIMS, New Delhi, for his opinion in the matter. It is mentioned that Dr. Y. K. Gupta opined that the applicant's experience is not in accordance with the requirements of functioning of Secretary, MCI. In response to the aforesaid letter, the respondent No.2 vide its letter dated 23.03.2012 (Annexure R-1/9) communicated to the Chairman, Board of Governors, MCI advice of the Ministry of

Health & Family Welfare regarding termination of services of the applicant. The aforesaid letter is reproduced hereunder:

“Sub: Appointment of Secretary in MCI – regarding.

Sir,

I am directed to refer MCI's letter No.MCI-154(6)/2011-Estt./61163 dated 8th February, 2012 on the subject mentioned above and to convey the following advice of the Ministry of Health and Family Welfare to the Council:

- i. That the appointment of Dr. Sangeeta Sharma is *ab initio void* and that this is considered vide of the Ministry of Health and Family Welfare, based on the advice received from the CVC and the DoPT.
- ii. That MCI may consider terminating the appointment; and
- iii. That the MCI may amend its Recruitment Rules as per instructions issued by DOPT so that they are in conformity with the extant orders of ACC in the matter of appointment to senior position in autonomous organisations.

This issues with the approval of the Union Minister of Health and Family Welfare.”

9. The respondents have also mentioned about some preliminary inquiry into the alleged irregularities in the appointment of the applicant as Secretary, MCI. It is also stated that at the time of her appointment in MCI, her lien was retained with her parent organization, i.e., IHBAS, and after termination of her services, the applicant has re-joined her parent organization, which is in the same

pay scale. For this, reference is made to letter dated 08/09.08.2012 (Annexure-R-1/10) from Director, IBHAS.

10. The applicant has filed a rejoinder stating therein that the DoP&T memorandum dated 03.07.2006, which *inter alia* requires approval from the ACC, is not applicable to the appointments in MCI as it is a statutory body. In any case, this issue having been conceded by Mr. A. K. Behera, learned counsel appearing for respondent No.1, there is no need of further elaboration. The applicant has also referred to e-mail dated 31.03.2012 received from the Board of Governors, whereby she was informed that her services had been terminated on the advice of the Ministry of Health and Family Welfare, Government of India. Copy of the e-mail dated 31.03.2012 is placed on record as Annexure A-23. Same reads as under:

“Sub: Your email dated 30.03.2012 addressed to the
Board of Governors,

Madam,

I am directed to inform you that your appointment has been terminated by the Board of Governors vide office order No.MCI-154(3)/2011-Estt/67618, dated 30.03.2012 (copy attached), on the advice of Ministry of Health & Family Welfare, Govt. of India, New Delhi.

This issues with the approval of Board of Governors.”

11. We have heard the learned counsel for parties at length and perused the record.

12. Vide order dated 30.03.2017, the respondents were directed to produce the relevant documents, namely, advice of CVC and DOP&T as referred to in communication dated 23.03.2012. Said record has also been produced and perused.

13. Vide the impugned order, services of the applicant have been terminated purportedly under the letter of appointment dated 08.03.2011. It is, however, admitted position that services of the applicant have been terminated pursuant to the advice of the Ministry and consequent upon letter dated 23.03.2012, reproduced hereinabove. This fact is acknowledged by the respondent No.1 vide e-mail dated 31.03.2012 (Annexure A-23). Even though the impugned order is silent as to the advice of the Ministry, the undisputed fact is that the termination of the applicant is pursuant to the letter dated 23.03.2012. This letter records the ground for terminating the services of the applicant that her appointment was *ab initio void* based upon the advice of CVC and DOP&T. Mr. Behera, learned counsel appearing for the respondent No.1, refers to the eligibility for the post as prescribed under the recruitment rules. The

qualification/experience required for recruitment to the post of Secretary, MCI reads as under:

“Educational Qualifications

MBBS from a recognized University with a recognised postgraduate medical degree.

Experience

A total of 16 years in the profession out of which 10 years teaching experience in a Medical College after a Postgraduate medical degree with atleast 3 years experience as Professor in any department in a Medical College/Teaching hospital.”

It is submitted by Mr. Behera that the applicant lacked the requisite experience, i.e., ten years’ teaching experience in a medical college after postgraduate medical degree with at least three years experience as Professor in any department in a medical college/teaching hospital. He has referred to the application form of the applicant which is at pages 74-75 of the OA. According to him, the information furnished regarding experience is not correct. In her application form, the applicant has shown her experience as Professor & Head Neuropsychopharmacology for a period of three years and fifteen days, and the nature of job as teaching, research, patient care and administration; and further experience of twelve years and four months as Assistant Professor, Associate Professor, Additional Professor, and Medical Superintendent. In addition to that, the applicant has three years and five months’ experience as

Senior Resident, and three years as Junior Resident. Admittedly, the applicant had more than ten years' teaching experience and total 16 years experience in the profession, and three years and fifteen days as Professor. The contention of Mr. Behera about the deficiency of experience does not seem to be evident from record. Apart from this, we have noticed that on scrutiny, a list of eligible candidates was published. Out of 39 applications received, 21 candidates were found eligible and 17 ineligible. The list of eligible candidates dated 04.11.2010 has been placed on record at page 113 of the OA. The name of the applicant appears at serial number 11 amongst 21 eligible candidates. A separate list of the same date of ineligible candidates has also been placed on record at page 114. The name of the applicant does not figure in the said list. The applicant has also placed on record details of the applications of candidates wherein all details, including experience, have been mentioned. The name of the applicant also figures in this list and in the remarks column against her name, she is shown to be eligible. How and on what basis the applicant is said to ineligible has not been specifically pointed out either in the counter affidavit or any other document produced by the respondents. It is argued on behalf of the respondents that no scrutiny committee was appointed to assess the eligibility of the candidates. The respondents have placed reliance upon a document,

i.e., the opinion of Dr. Y. K. Gupta, which was communicated to CVO, MCI. Relevant observations read as under:

“In summary the case of Dr. Sangeeta Sharma is unique.

She has served as faculty member in a Institution which is recognized teaching institution in University of Delhi but has not been involved in any regular teaching activities either in undergraduate or MCI recognized postgraduate course. The occasional teaching assignments as guest faculty in other institute cannot be considered as regular teaching assignment as per MCI.

The Job of Secretary, Medical Council of India requires in depth and practical knowledge and experience of undergraduate and postgraduate teaching, adequate requirements of infrastructure and human resource for different courses. This also involves critical knowledge of process of contemporary curriculum development. In view of this, although she has worked in teaching institutions but was not actively involved in either undergraduate and postgraduate teaching. Therefore, her experience is not in accordance with the requirements of functioning of the office of Secretary, Medical Council of India.”

It is only based upon this opinion that the respondents have argued that the applicant was not possessed of the requisite experience. The contention is, however, seriously contested by Mr. S. K. Gupta, learned counsel appearing for the applicant. He has referred to the experience indicated by the applicant in her application which has been noticed by us hereinabove. The years of experience indicated by the applicant in her application form is not disputed. However, Dr.

Y. K. Gupta simply mentioned that the experience acquired by the applicant is not in accordance with the MCI's requirements. The respondents have nowhere mentioned in their reply as to the nature of requirement of experience required under the MCI regulations/rules.

14. Mr. S. K. Gupta has also referred to noting dated 19.07.2011 (Annexure A-27), which reads as under:

"It is to be noticed that the Administration Section has provided the information with regard to the scrutiny of applications for the post of Secretary at M.C.I. vide its earlier note sheet provided to the CVO wherein it was brought to the notice that the scrutiny of applications were done by Dr. Reena Nayyar.

The Scrutiny of applications for the post of Secretary for the earlier interview held on 18/09/2010 was done by Dr. Reena Nayyar but the scrutiny for the post of Secretary for the interview held on 09/11/2010 was done by Dr. Anshu Sethi Bajaj duly endorsed by Dr. Prem Kumar the then OSD to BOG. The inadvertent error of the above said issue may be corrected accordingly and the sentence may be read as under:

"Scrutiny of applications for the post of Secretary was done by Dr. Anshu Sethi Bajaj, Deputy Secretary."

This information may be provided to C.V.O. for kind perusal and necessary action.

Submitted for kindly submission, please."

From the above document, it appears that the scrutiny was conducted by Dr. Anshu Sethi Bajaj, Deputy Secretary in the MCI,

which was duly endorsed by Dr. Prem Kumar, the then OSD to the Board of Governors. This document is not in dispute. Therefore, the contention of Mr. Behera that the information furnished by the Ministry to the MCI as also the opinion of Dr. Y. K. Gupta that no scrutiny was conducted, is contrary to the facts on record. It is also pertinent to note that the respondent No.2 vide its letter dated 11.05.2011 sought the minutes of the meeting of the selection committee recommending the appointment of the applicant as Secretary, MCI and also whether the appointment was made solely on the request from the Chairman, Board of Governors. In response to the aforesaid letter, the MCI vide its letter dated 16.05.2011 informed the respondent No.2 as under:

“With reference to the above, it is stated that appointment of Dr. Sangeeta Sharma to the post of Secretary to Medical Council of India was done strictly in accordance with the recruitment rules. The requirement was not at all based on the request of Chairman, BOG contained in letter dated 29th November, 2011 sent to Govt. of NCT of Delhi and the said request has nothing to do with the appointment of Dr. Sangeeta Sharma to the post of Secretary. Due process was followed by Board of Governors in appointing Dr. Sangeeta Sharma to the post of Secretary. The entire process of recruitment to the post of Secretary and appointment of Dr. Sangeeta Sharma to the post are detailed here under:”

“5. As per statutory recruitment rules of the Council, duly approved by the Central Govt. and notified in Gazette of India, the Constitution of Selection Committee has been specifically laid down

wherein the President of the Council is to act as the Chairman, Vice-President as Member, Additional DG, DGHS as member and three members of the Council to be nominated by the Executive Committee of the Council and Secretary to act as Member Secretary. Since the Council has been superseded by the Board of Governors, the composition of Selection Committee for the post of Secretary consisted of following:

- i) Dr. Shiv Kumar Sarin-Chairperson (Chairman BOG)
- ii) Dr. Arun Aggarwal, Addl. DG, DGHS-Member
- iii) Prof. Ranjit Roy Chaudhury-Member (Member BOG)
- iv) Dr. (Prof.) R. N. Salhan-Member (Member BOG)
- v) Dr. Sita Naik-Member (Member BOG)"

"The recruitment rules approved by the Govt. of India and provisions of I.M.C. Act, 1956 were scrupulously adhered to in selection and appointment of Dr. Sangeeta Sharma to the post of Secretary. At the cost of repetition, it is stated that letter addressed by Dr. Shiv Kumar Sarin dated 29.11.2010 was on behalf of the Board of Governors. Further, the said process was abandoned. The said letter has no connection whatsoever to the appointment of Dr. Sangeeta Sharma to the post of Secretary which was completed by following the due process of open selection method, as per the statutory provisions of the Recruitment Rules of the Council."

This communication clearly establishes that the MCI had all along taken a stand that the appointment of the applicant was strictly in accordance with law.

15. Mr. S. K. Gupta has also taken us to various provisions of the Indian Medical Council Act, 1956 and the Regulations framed

thereunder. Section 9 provides for officers, committees and servants of the Council. Under sub-section (2) of Section 9 one of the officers is Registrar who is to act as Secretary and who may also act as its Treasurer. The Council has also framed Regulations known as the Medical Council of India Regulations, 2000 in exercise of powers conferred by Section 33 of the Act. Regulation 2(g) defines “Registrar” to mean the Registrar of the Council who shall be the ex-officio Secretary and who may also, if deemed expedient, act as Treasurer. From a reading of the aforesaid provision it is noticed that under the Act and Regulations no qualifications are prescribed for the post of Registrar/Secretary. Mr. Gupta’s argument is that since neither the Act nor the Regulations prescribe any qualification, no experience is required. It is, however, not disputed that the recruitment rules framed for appointment to the post of Secretary/Registrar, prescribe the qualifications which *inter alia* include the experience as well.

16. Since the termination of the applicant is consequent upon the letter of the respondent No.2, the impugned order terminating her services under the terms and conditions of the appointment seems to be only a ploy and not the real basis for termination of her services. Under the provisions of the Act and the Regulations, Secretary is a permanent officer of the Council and is responsible for

execution of the decisions of the Council. The appointment of the applicant was not temporary but was on regular basis. It is, however, not in dispute that the appointment letter contained a condition that the appointment is terminable without assigning any reason on one month's notice during the period of probation and thereafter on three month's notice or pay and allowances in lieu thereof. The stand of the respondents is that the appointment of the applicant has been terminated during probation as even after expiry of one year of probation period, the applicant was never confirmed. However, under condition (1) of the appointment letter dated 08.03.2011 if the appointment is to be terminated within the period of probation, only one month's notice is required and no reasons are required to be communicated. However, after the period of probation, three months' notice is required for terminating the services. In the present case, admittedly three months' notice was served. Thus, the respondents treated the applicant having completed the probation. It is not the case of the respondents that the performance of the applicant was not satisfactory requiring termination of her services. One of the stipulation in the appointment order was that the continuation of the applicant after probation period is subject to satisfactory performance. Services of the applicant have not been terminated on account of unsatisfactory performance. Thus, the

impugned termination order does not fall within the purview of the appointment letter, particularly condition (1) thereof whereunder such termination has been ordered. Under such circumstances, the plea of the respondents that the appointment has been terminated under the conditions of the appointment letter is not sustainable in law.

17. As is evident from the letter dated 23.03.2012 and the e-mail dated 31.03.2012, services of the applicant have been terminated at the instance of the respondent No.2. This fact is further established from the record produced. The note dated 06.03.2012 of the Additional Secretary reads as under:

“We are yet to take a decision in the contentious matter of the appointment of Dr. Sangeeta Sharma as Secretary, MCI. As the note at page 20-ante makes clear DOPT has held that ACC approval would be necessary for the appointment of Secretary, MCI. The CVC has advised that as approval of the ACC was not obtained the appointment of Dr. Sangeeta Sharma is *ab initio void*. Secretary has asked at page 20-ante whether Dr. Sharma meets with relevant criteria based on which ACC approval could be sought.

The opinion of MCI was sought on this point and the report received, which is detailed at page 26-ante, is that Dr. Sangeeta Sharma's experience is not in accordance with the requirements for the post of Secretary, MCI. It also appears that no papers are now available in MCI relating to the selection process shortlisting, interview, etc. through which Dr. Sangeeta Sharma was appointed.

It is for consideration, therefore, that we advise the MCI:

- (i) That the appointment of Dr. Sangeeta Sharma is *ab initio void* and that this is considered vide of the Ministry of Health and Family Welfare, based on the advice received from the CVC and the DoPT;
- (ii) That MCI may consider terminating the appointment; and
- (iii) That the MCI may amend its Recruitment Rules as per instructions issued by DOPT so that they are in conformity with the extant orders of ACC in the matter of appointment to senior position in autonomous organisations.

It is clearly not open to us to issue directions to MCI. We may advise as above.”

From the letter dated 23.03.2012, we find that the aforesaid note has been simply copied and communicated to the respondent No.1 for terminating the services of the applicant. In the official notings, following note is recorded on 08.09.2011:

“6. It would be pertinent to note here that CVC in its discussion with CVO of this Ministry had held that since DoPT guidelines were not followed and the approval of ACC was not obtained, the appointment of Dr. Sangeeta Sharma is *ab-initio void*. However as MCI had given a detailed response clarifying that appointment of Dr. Sharma did not require ACC approval it was decided, with the approval of Secretary (Health), to at first seek clarifications from MCI on the two of the remaining issues, i.e. requisite qualification and vigilance clearance, as well. MCI has failed to give proper clarification on either of the two issues despite our repeated requests indicating that there is perhaps an attempt to hide certain infirmities

regarding the appointment of Dr. Sharma as Secretary, MCI.

7. In view of the above, it is proposed that without waiting any further for the clarifications we may convey the opinion of CVC, that the appointment of Dr. Sangeeta Sharma is *ab-initio* void, to MCI for further appropriate action. For orders please.”

However, no formal communication from CVC is available on record.

As far as DOP&T guidelines are concerned, the DOP&T vide office memorandum dated 10.01.2012 notified as under:

“Sub: Appointment to the post of Secretary, Medical Council of India (MCI) under the Ministry of Health & Family Welfare.

The undersigned is directed to refer to Ministry of Health & Family Welfare’s OM No. V-11025/10/2011-ME(P-1) (Pt.) dated 9.12.2011 on the subject cited above and this Secretariat’s OM of even number dated 28.11.2011 on the above-cited subject.

2. Since the Central Govt. through Ministry of Health & Family Welfare, makes provisions of grant for MCI and there is a budgeted provision of Rs.100.00 lakh as grant-in-aid under the Plan to MCI to meet the expenditure on Continuing Medical Programme etc. and Rs.50.00 lakh as grant-in-aid under Non-Plan to meet the normal expenditure, approval of the Appointments Committee of the Cabinet (ACC) would be necessary for appointment to the post of Secretary, Medical Council of India (MCI).”

Thus, reference in the record of the respondent No.2 and the communication dated 23.03.2012 referring to CVC and DOP&T advice, is the only record produced before this Tribunal. As a matter of fact, the CVC also referred to DOP&T guidelines which referred to

the approval of ACC. From the above record it is conclusively established that the termination of the service of the applicant is for non-approval of appointment by ACC. As noticed hereinabove, it has been fairly conceded by Mr. Behera, learned counsel appearing on behalf of respondent No.1 that ACC approval was not required. Otherwise also, no other rule or regulation has been brought to our notice which *inter alia* requires ACC approval for appointment in MCI. Thus we are convinced that the grounds on which the service of the applicant has been terminated are non-existent.

18. The service conditions of the officers of MCI are governed by standing orders issued under Section 9(5) of the Indian Medical Council Act, 1956. The standing orders approved by the Government of India vide letter dated 27.06.1970 are called "The Medical Council of India Standing Orders". These standing orders are applicable to all servants of the Council, except with whom there is specific contract or agreement in respect of any matters that are dealt with under the standing orders. The standing orders define "staff" as under:

"'Staff' means Secretary, Deputy Secretary, Assistant Secretary, Ministerial staff and Class IV as defined in the Regulations."

Standing orders 47 and 48 deal with termination of the services and the penalties, and read as under:

“47. The services of a member of the staff can be dispensed without notice in the event of misconduct on his part, or of a breach, or non-observance, of any of the Standing Orders to which he is subject.

Penalties

48. The Central Civil Services (Classification, Control and Appeal) Rules, 1957 as amended/modified from time to time will be applicable to the employees of the Medical Council of India except for the following provisions:-

- a) The authorities competent to impose any of the penalties specified in the Central Civil Services (Classification, Control and Appeal) Rules, 1957 shall be:-
 - 1) in the case of the Secretary, Deputy Secretary, and Assistant Secretary, the Executive Committee.
 - 2) in the case of the Superintendent, President on recommendations of the Secretary and in case of others, the Secretary.”

Standing order 57 makes the Central Civil Services (Conduct) Rules, 1964 applicable to the employees of the Council.

19. From a perusal of standing order 47, it appears that the services of a member of the staff can be dispensed with without notice in the event of misconduct, or for breach or non-observance of any of the standing orders. This provision has no application to the case of the applicant. Under standing order 48 any of the penalties

prescribed under CCS (CCA) Rules can be imposed upon the staff of the Council. Termination is admittedly one of the penalties. For imposing penalties under standing order 48, of course, the required procedure is to be adopted. It is not the case of the respondents that the services of the applicant have been terminated or were required to be terminated on account of any misconduct or by way of penalty. Hence it can be safely concluded that the services of the applicant have been terminated without any lawful and valid reasons and in a most arbitrary and perfunctory manner. In *V. P. Ahuja v State of Punjab & others* [(2000) 3 SCC 239] the Hon'ble Supreme Court held that, even a probationer, like a temporary employee, is also entitled to certain protection and his services cannot be terminated arbitrarily without complying with the principles of natural justice. Relevant observations of the Apex Court are extracted hereunder:

“7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.”

20. Having carefully analyzed the facts and material on record, we are of the considered opinion that the impugned order dated 30.03.2012 terminating the services of the applicant, is totally illegal, unwarranted and in gross violation of principles of natural

justice. The order is violative of the fundamental rights of the applicant enshrined under Articles 14 and 16 of the Constitution of India, and is thus not sustainable in law.

21. Having regard to the analysis and the above observations, this OA is disposed of with the following directions:

- (1) The impugned order dated 30.03.2012 is hereby quashed.
- (2) The applicant shall be re-inducted as Secretary, MCI within a period of one month from the date of receipt of copy of this order.
- (3) The applicant shall also be entitled to costs of Rupees fifty thousand from the MCI.

(K. N. Shrivastava)
Member (A)

(Permod Kohli)
Chairman

/as/