

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.728/13

&

MA No.2514/14

New Delhi, this the 15<sup>th</sup> day of March, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Ms.Kiran,

W/o Ashok Khanna,

R/o 106/112, Rajouri Extn.,

New Delhi 110027

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Applicant

(By Advocate: Mr.N.L.Bareja)

Vs.

1. Union of India,  
through the Secretary,  
Ministry of Health & Family Welfare,  
Department of Ayush,  
Ayush Bhawan,  
INA, New Delhi.

2. Dr.Ved Prakash Tyagi,  
President,  
Central Council of Indian Medicine,  
61-65, Institutional Area,  
Janakpuri, New Delhi 110058

3. Central Council of Indian Medicine,  
through Secretary,  
61-65, Institutional Area,  
Janakpuri, New Delhi 110058

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Respondents

(By Advocate: None)

**ORDER****Per Raj Vir Sharma, Member(J):**

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing of the order dated 22.2.2013 (Annexure A-1) which states as follows:

ō176<sup>th</sup> Executive Committee in its meeting held on 22.02.2013 while considering additional agenda item No.14 in respect of DPC held on 28.06.2011 to fill up the posts of AR (Regn.), Office Supdt., UDC and Daftary on promotion declared the promotion of AR (Registration) and Office Superintendent as null and void with immediate effect. Therefore in view of the decision of EC they are reverted to their previous posts and hereby relieved from their duties of the AR (Registration) and Office Superintendent with immediate effect dated 22.2.2013 afternoon.ö

2. The brief facts of the applicant's case are that the respondent-Central Council of Indian Medicines (hereinafter referred to as 'CCIM') came into existence in 1971. Since then the Recruitment Rules in respect of different posts in the CCIM, including the post of Office Superintendent (hereinafter referred to as 'OS'), were not approved by the respondent-Union of India till 17.8.2011 in spite of draft Recruitment Rules being submitted by the respondent-CCIM to the respondent-Union of India from time to time. Therefore, appointment and promotion to different posts were made by the respondent-CCIM as per the provisions of the draft Recruitment Rules. The proposed/draft Recruitment Rules for the post of OS (Annexure A-3), which were submitted by the respondent-CCIM to the respondent-Union of India for approval, stipulated as follows:

12	In case of recruitment by promotion/deputation/transfer/grades from which promotion/transfer to be made	100% promotion from amongst the UDCs/Junior Stenographers/LDCs in the CCIM with at least 15 years as UDC/Junior Stenographer and 23 years experience as LDC respectively in the PB-1 Rs.5200-20200+2400 Grade Pay/PB-1 Rs.5200-20200 + 1900/- Grade Pay on the post in order of seniority cum fitness basis failing which by Transfer on deputation
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2.1 While the applicant was working as a Junior Stenographer in PB-1 Rs.5200-20200 + 2400 Grade Pay, she was directed by the respondent-CCIM, vide order dated 20.6.2011 (Annexure A-2), to look after the work of OS. On 28.6.2011, the respondent-CCIM convened a meeting of the Departmental Promotion Committee (DPC) to consider the eligible UDC, Stenographer, and LDC for promotion to the post of OS in accordance with the aforesaid draft Recruitment Rules. The DPC, which consisted of six members, namely, President (CCIM), Vice-President (Ayurved), Vice-President (Unani), Vice-President (Siddha), and two members of the Executive Committee, met on 28.6.2011 and considered all the eligible persons including the applicant and one Shri B.K.Basavaraju, UDC. On the basis of the recommendation of the DPC, the respondent-CCIM, by order dated 29.6.2011, promoted the applicant to the post of OS.

Subsequently, the recommendation/minutes of the DPC, which met on 28.6.2011, were approved by the Executive Committee and the Central Council.

2.2 While the matter stood thus, respondent no.3-Dr.Ved Prakash Tyagi, President, CCIM, with a mala fide intention to revert the applicant, decided to convene a Review DPC on 13.2.2013 purportedly on the basis of the representation made by Mr.M.Islam, UDC. However, the meeting of the Review DPC was adjourned. At the behest of respondent no.3, a purported decision was taken by the Executive Committee on 22.2.2013 to declare the minutes of the DPC held on 28.6.2011(ibid) null and void, and to revert the applicant from the post of OS. Thereafter, the impugned order dated 22.2.2013(ibid) was issued by the respondent-CCIM reverting the applicant from the post of OS.

2.3 It has been contended by the applicant that before taking the impugned decision of reversion, the respondent-CCIM did not issue any show-cause notice to her, nor did they grant an opportunity to her to show-cause against her reversion. Thus, the impugned decision, besides being tainted with malice of respondent no.3, was violative of the principles of natural justice. She was promoted on the basis of recommendation of the duly constituted DPC, and in accordance with the Draft Recruitment Rules which were submitted by the respondent-CCIM to the respondent-Union of India in the year

2009. The recommendations of the DPC, which met on 28.6.2011, were duly approved by the Executive Committee and the Central Council, and therefore, the Executive Committee, which met on 22.2.2013, could not have declared the same as null and void, and the applicant could not have been reverted from the post of OS on the basis of the said decision of the Executive Committee which was not ratified by the Central Council. Having made a statement in their counter reply filed in OA No.95 of 2012(B.K.Basavraju Vs. Union of India and others) that there was no infirmity or illegality in the decision promoting the applicant to the post of OS, the respondent-CCIM ought not to have taken the impugned decision reverting her from the post of OS.

3. The Tribunal, by its interim order dated 28.2.2003, stayed the operation of the impugned order dated 22.2.2013 as well as the order dated 25.2.2013 whereby the applicant was directed to hand over the charge of the post of OS. The said interim order of stay was made absolute by the Tribunal, vide its order dated 20.3.2013.

4. Respondent no.1-Union of India have neither appeared nor filed any counter reply.

5. Resisting the O.A., separate counter replies and additional affidavits have been filed by respondent nos. 2 and 3.

5.1 Respondent no.2 has denied the allegation of malice made by the applicant against him.

5.2 Respondent nos. 2 and 3 have stated, inter alia, that Draft Recruitment Rules for different posts in CCIM were submitted to the respondent-Union of India in 1994, 2004, 2009 and 2010 for approval. Despite best efforts by the respondent-CCIM, the Draft Recruitment Rules could not be approved by the respondent-Union of India due to administrative reasons. The promotions were being made on the basis of the Draft Recruitment Rules. The DPC considered the candidates as per the latest Draft Recruitment Rules during the last 40 years. The Secretary, CCIM, vide its letter 13.8.2009 (Annexure R-4), forwarded the draft Recruitment Rules to the respondent-Union of India for approval. As per the provision of this Draft Recruitment Rules, the posts of Junior Stenographer and of Lower Division Clerk were included in the feeder cadre for promotion to the post of OS. In the Draft Recruitment Rules which were duly approved by the Executive Committee in its 118<sup>th</sup> meeting held on 26.9.2003 and ratified by the General Body of the Central Council in its meeting held on 23<sup>rd</sup>-24<sup>th</sup> March 2004, the post of Junior Stenographer was not at all included as a feeder category for promotion to the post of OS. The said Draft Recruitment Rules were applicable for the post of OS till the date of its approval by the respondent-Union of India. The respondent-Union of India approved the said Draft Recruitment Rules on 17.8.2011. As per the Recruitment Rules approved by the respondent-Union of India on 17.8.2011, the post of Junior Stenographer is not included in the

feeder cadre for promotion to the post of OS. The Recruitment Rules relied upon by the DPC which met on 28.6.2011 were merely Draft Recruitment Rules which did not have any sanctity in the eyes of law. As such, the proceedings of the DPC, which met on 28.6.2011, promoting the applicant to the post of OS stood vitiated. Therefore, there was no infirmity or illegality in the decision taken by the Executive Committee in its meeting held on 22.2.2013, withdrawing the office order dated 29.6.2011 (whereby the applicant was promoted to the post of OS) and reverting the applicant to the post of Junior Stenographer. Consequently, the order dated 22.2.2013 (Annexure A-1) remains unassailable.

6. The applicant has filed rejoinder replies refuting the stand taken by the respondent nos. 2 and 3.

7. MA No.2514 of 2014 was filed by one Mr.B.K.Basavraju on 25.8.2014 for being impleaded as a party-respondent in the OA. The said MA was listed before the Bench for the first time on 26.8.2014. Thereafter, the said MA along with the O.A. was listed before the Bench on several dates, but the learned counsel appearing for Mr.B.K.Basavraju did not press the same. That is how, the said MA remained pending till the OA was listed for final hearing. On 16.11.2016 when the OA and MA No.2514 of 2014 were listed for hearing, the learned counsel for the respondent nos. 2 and 3, and for Mr.B.K.Basavraju failed to appear. Therefore, the Tribunal adjourned

the matter to 16.12.2016, with the stipulation that in case the respondents failed to appear on the next date the matter shall be considered and decided ex parte. In spite of the order dated 16.11.2012, neither the official respondents and Mr.B.K.Basavraju, nor the learned counsel representing them appeared before the Bench on 16.12.2012 and 17.1.2017. Therefore, in the absence of the learned counsel for the official respondents and Mr.B.K.Basavraju, the applicant in MA 2514/14, we heard Mr.N.L.Bareja, the learned counsel appearing for the applicant and reserved the order on 17.1.2017

8. In MA No.2514 of 2014 the applicant-Mr.B.K.Basavraju states that O.A.No.95 of 2012 was filed by him challenging the promotion of the applicant of the present O.A. and also praying for a direction to the respondent-CCIM to convene Review DPC for considering eligible incumbents for promotion to the post of OS. The applicant of OA No.728 of 2013 was impleaded as respondent no.3 in OA No.95 of 2012. The said OA No. 95 of 2012 was disposed of by the Tribunal, vide order dated 28.2.2014, with the direction to the respondent-CCIM to make regular promotion to the post of OS as expeditiously as possible preferably within four weeks from the date of order. Thereafter, RA No.67 of 2014 filed by respondent no.3(applicant of OA No.728 of 2013) was allowed by the Tribunal, and OA No.95 of 2012 was restored for fresh hearing. It is the

contention of the applicant of MA No.2514 of 2014 that any order to be passed by the Tribunal in OA No. 728 of 2013 is likely to affect his right and interest and, therefore, he is a necessary party thereto. The applicant of OA No.728 of 2013 having failed to implead him as a party-respondent, the Tribunal should allow MA No.2514 of 2013 filed by him to be impleaded as a party-respondent therein.

8.1 In her counter reply to MA No.2514 of 2013, the applicant of OA No.728 of 2013 has stated that her challenge is to the order passed by the respondent-CCIM reverting her from the post of OS, and that no relief has been sought by her against the applicant of MA No.2514 of 2013. The question of Tribunal's decision in OA No. 728 of 2013 affecting any right and interest of the applicant of MA No.2514 of 2013 does not arise. Therefore, the applicant of MA No.2514 of 2013 cannot be said to be a necessary or proper party in OA No.728 of 2013.

8.2 Considering the scope and ambit of OA No. 728 of 2013 and the issue involved therein, we do not find any substance in MA No.2514 of 2014 filed by applicant-Mr.B.K.Basavraju. Furthermore, since OA No. 95 of 2012 filed by the applicant of MA No.2514 of 2013, challenging the promotion of applicant of OA No.728 of 2013, is still pending, he is at liberty to raise all points in the said case, if so advised. Therefore, MA No. 2514 of 2013 is rejected.

9. It is the admitted position between the parties that since the inception of the respondent-CCIM till 17.8.2011, there were no Recruitment Rules for the post of OS duly approved by the respondent-Union of India. In the absence of Recruitment Rules duly approved by the respondent-Union of India, the appointment and promotion to different posts were being made by the respondent-CCIM in accordance with the provisions of the Draft Recruitment Rules which were submitted by the respondent-CCIM to the respondent-Union of India for approval. As per the proposed/draft Recruitment Rules for the post of OS, which were submitted by the respondent-CCIM to the respondent-Union of India in 2009, the post of Junior Stenographer, along with the post of UDC and LDC, was included in the feeder cadre for promotion to the post of OS. The DPC, which met on 28.6.2011, considered the applicant and other eligible candidates on the basis of the Draft Recruitment Rules of 2009 and found the applicant as suitable for promotion to the post of OS. Accordingly, on the basis of the recommendation of the DPC, the order dated 29.6.2011 was issued promoting the applicant to the post of OS. The Recruitment Rules for the post of OS, which did not include the post of Junior Stenographer in the feeder cadre for promotion to the post of OS, were approved by the respondent-Union of India only on 17.8.2011. In view of the above admitted position, the decision taken by the Executive Committee in its meeting held on

22.2.2013, and the impugned order dated 22.2.2013 reverting the applicant from the post of OS are unsustainable and liable to be quashed.

10. In their counter reply to OA No.95 of 2012 (ibid), which was filed by Mr.B.K.Basavraju challenging the promotion of respondent no.3 (applicant of OA No.728 of 2013) to the post of OS, the respondent-CCIM have stated as follows:

öPara 1. That the contents of para 1 of the application are wrong, hence denied. It is submitted that there is no illegality or perversity in the decision arrived at by the D.P.C. Respondent No.3 was eligible for consideration to the post of Office Superintendent as per Rules in vogue at that time. The Amended R.R. removing the category of Respondent No.3 was approved by the Central Government much after holding of the D.P.C. hence no legal infirmity in the decision of the D.P.C. is made. It is also relevant to submit that as per govt. policy, posts lying vacant for extended periods of time (one year or more) get automatically redundant and deemed abolished, and their subsequent restoration becomes very problematic as it would amount to creation of post afresh. The post of Office Superintendent is a critical post in the answering council and it cannot be permitted to remain vacant even for short period of time. Further, it is also known that approval of R.Rs. take considerable time in the Govt. of India, and if the approval of R.R. gets delayed there is danger of losing the post altogether. In any case there were many other important vacancies which also had to be filled up, therefore, the D.P.C. was constituted. It is also re-iterated that the candidate of Applicant was also duly considered and he lost out on comparative merit.ö

The above statement made by the respondent-CCIM in the counter reply to OA No.95 of 2012 clearly falsifies the plea taken by them to justify the decision which is impugned in the instant OA.

11. In view of the fact that before taking the impugned decision of reversion, the respondent-CCIM did not issue any show-cause notice to the applicant, nor did they grant an opportunity to her to show-cause against her reversion, we have no hesitation in holding that the principles of natural justice have been violated by the respondent-CCIM while taking the impugned decision, and, therefore, the impugned decision is bad, illegal and liable to be quashed on that ground alone. This view of ours is fortified by the decision of the Hon~~o~~ble Supreme Court in **Bhagwan Shukla Vs. Union of India and others**, (1994) 6 SCC 154, where it has been held that fair-play in action warrants that no order which has the effect of an employee suffering from civil consequences should be passed without putting the employee concerned to notice and giving him/her a hearing in the matter.

12. In the light of our above discussions, we quash and set aside the impugned order dated 22.2.2013 qua the applicant and direct the respondent-CCIM to grant all consequential benefits to the applicant.

13. Resultantly, the O.A. is allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)  
JUDICIAL MEMBER

(SHEKHAR AGARWAL)  
ADMINISTRATIVE MEMBER