

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1373/2012

New Delhi, this the 11th day of September, 2015

Hon'ble Mr. Justice B.P. Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Vidhya Bhusan
S/o Late Shri H.K. Kaushik,
R/o C-14, Guru Nanakpura
Patparganj Road, Delhi-92 . Applicant.

(By Advocate : Mr.K.Singhal)

Vs.

1. Union of India
Through
The Secretary
Ministry of Health & Family Welfare
Department of Health
Maulana Azad Road,
New Delhi.
2. Medical Council of India
Through its Secretary
Pocket-14, Sector-8, Dwarka Phase-1
New Delhi-110077. . Respondents

By Advocate: Shri Hilal Haider for R-1
Shri A.K. Behra for R-2

ORDER (ORAL)

By Justice Mr. B.P. Katakey, Member (J);-

The applicant has filed this OA challenging the order dated 24.2.2012 passed /issued by the Secretary, Medical Council of India (MCI), rejecting the departmental appeal preferred by the applicant against the order imposing penalty of dismissal from service dated 19.04.2002 passed by the disciplinary authority, Secretary of MCI. The applicant has also prayed for all service benefits including the salary etc.

2. Mr. Singal, the learned counsel appearing for the applicant, at the outset, has submitted that despite the order passed by this Tribunal on 26.5.2011 in TA No. 1397/2009, since the appeal preferred by the applicant has not been considered and disposed of by the departmental Appellate authority under the provisions of MCI Regulation -2000 (in short 2000 Regulation), as amended vide notification dated 4.9.2010, the order passed on 24.2.2012 needs to be interfered with and the matter needs to be remitted to the Departmental Appellate Authority, which is presently Council of General Body of MCI for fresh consideration and decision.

3. Mr.A.K. Behra, learned senior counsel appearing for the respondent No.2 (MCI), submits that the order passed on 24.2.2012, which is put to challenge in the present OA has only been issued by the Secretary, after the Chairman of the Board of Governors has approved dismissal of appeal preferred by the applicant. It has been submitted that at the relevant point of time MCI being in supersession, the Board of Governors was competent to deal with the appeal preferred by the applicant, in terms of amendment on 4.9.2010.

5. Mr. Hilal Haider, learned counsel appearing for the respondent No.1 submits that since the grievance of the applicant is against the respondent No.2 only, the UOI has not taken any particular stand in the present case.

6. We have perused the order dated 24.2.2012, which is put to challenge in the present OA. We have also perused the records produced by Mr. A.K. Behra, the learned counsel appearing for the respondent No.2, in support of his contention relating to disposal of the appeal preferred by the applicant by the appellate authority in terms of the aforesaid Regulation.

7. Regulation 58 of 2000 Regulation provides that the Appellate Jurisdiction / Authority for the officers and employees of the Council shall vest with the General Body of Council. The Indian Medical Council Act, 1956, came to be amended by Indian Medical Council (Amendment) Act 2010 w.e.f. on 15.5.2010, providing that during supersession of Council, the word "council" shall be substituted by 'Board of Governors'.

8. At the relevant point of time, i.e. when the departmental appeal preferred by the applicant was to be considered, Council was under supersession and, hence, the Appellate Authority was the Board of Governors. The appeal, therefore, at the relevant point of time, was required to be considered by the Board of Governors.

9. The relevant records produced by the learned counsel appearing for the respondent No.2 before us reveal that a note was put up by the Consultant (Admin.) of the MCI to the Chairman of Board of Governors on 20.1.2012, who, on the same date, has recorded as follows:-

" Secretary, pl. see".

10. The record produced before us does not contain any approval even by the Chairman of Board of Governors for issuance of order dated 24.2.2012.

11. The record also does not reveal consideration of the applicant's appeal by the Board of Governors as the matter has not been placed before it at any point of time before 24.2.2012. The Board of Governors, being the Appellate Authority at that relevant point of time, consideration of the appeal by the Chairman of Board of Governors alone in no case would amount to consideration of such an appeal by the Board of Governors.

12. It is, therefore, clear from the aforesaid discussion that the appeal preferred by the applicant has not been considered by the Board of Governors, who was the Appellate Authority at the relevant point of time.

13. Having held so, the matter requires fresh consideration by the Appellate Authority. As noticed above, the Council is not under supersession as on date. Hence, the amendment, introduced by Section 3 (B) by Indian Medical Council (Amendment) Act 2010, in so far as it relates to change of the Appellate Authority, is not applicable as on date. The Appellate Authority, in view of Regulation 58 of 2000, is the General Body of the Council as on date.

14. In view of aforesaid discussion, we remit the matter to the General Body of the Council, which is the Appellate Authority as on date, to consider the appeal preferred by the applicant in terms of the order dated 26.5.2011 passed in TA No. 319/2009, and to pass a speaking order within a period of six months from the date of receipt of a copy of this order. The order that may be passed shall immediately be communicated to the applicant so that the applicant may approach the appropriate forum, if he has any grievance.

15. The OA is accordingly, disposed of. No cost

(K.N.Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

/mK/

