

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1433/2013

Reserved on: 22.07.2016
Pronounced on: 31.08.2016

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

Dr. P. Prasanna Raj S/o T. Pukhraj,
R/o 69, Ground Floor, Karunakunj,
Sector-3, Dwarka,
Delhi.

... Applicant

(By Advocate: Mr. S. K. Gupta)

Versus

1. Union of India through its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-18.
2. Medical Council of India through its
Secretary, Pocket-14, Sector-8,
Dwarka, Phase-I,
New Delhi-110077.

... Respondents

(By Advocate : Mr. Amit Sinha for Mr. A. S. Singh)

O R D E R

Justice Permod Kohli, Chairman :

The applicant is aggrieved of the memorandum dated 14.02.2013 whereby disciplinary proceedings have been initiated against him under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He is further seeking a direction to consider him for promotion to the next higher post of Secretary, Medical Council of India.

2. The applicant was initially recruited as Joint Secretary in the Medical Council of India as a direct recruit, and later came to be promoted as Additional Secretary. The applicant has been served with the memorandum dated 14.02.2013 for initiating disciplinary proceedings against him under rule 14 of the CCS (CCA) Rules, 1965.

The memorandum is accompanied with the statement of articles of charge framed against him and the statement of imputation of misconduct etc. The charges against the applicant are as under:

“Dr. P. Prasaanna Raj, while functioning as Joint Secretary/Additional Secretary/Secretary (In-charge) and section head of the Registration Section of MCI during the period from 15.05.2010 to 15.05.2012 committed the following lapse in the matter of grant of Permanent Registration to Dr. Setu Kumar:-

1. Dr. P. Prasanna Raj, Additional Secretary by raising irrelevant query specifically about internship of Dr. Setu Kumar prolonged grant of permanent registration while others similarly positioned were granted permanent registration without any such query.

2. The case was kept pending for nearly 70 days (after receiving all the verification from the concerned authorities) without sufficient reasons and Dr. Setu Kumar was issued permanent registration certificate on the basis of the same documents which were available in the office on 13/07/2011 and no additional information was received from any source. Further, when the query was raised by Dr. P. Prasannaraj, Additional Secretary on 26/12/2011, the Assistant Secretary vide his noting dated 27/12/2011 specifically mentioned that the similarly placed cases have already been granted permanent registration to them on the basis of the same period of internship and the documents as submitted by Dr. Setu Kumar.

3. Moreover, the file of Dr. Rajiv Kumar, the other applicant, clearly shows that on 30/01/2012, with the same credentials was given permanent registration certificate without any objection, whereas Dr. Setu Kumar was made to run from pillar to post despite applying much earlier. The case of the said Dr. Rajiv Kumar was processed on 30/01/2012 and he was issued the permanent registration certificate on the same date.

4. Dr. P. Prasannaraj arbitrarily harassed Dr. Setu Kumar without any basis, cannot be for reasons other than lack of integrity with malafide intentions prolonging grant of permanent registration to Dr. Setu Kumar. Dr. P. Prasannaraj has failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government servant and thus contravened the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964."

3. It is stated that the applicant has acquired eligibility for promotion to the post of Secretary in accordance with the recruitment rules. The post of Secretary was, however, filled up by one Dr. Sangeeta Sharma in the year 2011, and thereafter her services were terminated vide order dated 29.03.2012. It is further alleged that after termination of the services of Dr. Sangeeta Sharma, the respondents started the process for amendment of the recruitment rules for the post of Secretary, Medical Council of India, and vide letter dated 06.03.2013 proposed amendment in the recruitment rules. Under the proposed recruitment rules, the post is required to be filled up by direct recruitment meaning thereby that the promotional prospects of the applicant have been taken away. It is alleged that the Rules have

not been amended and thus the post of Secretary is to be filled up under the old recruitment rules in terms of the law laid down by the Hon'ble Supreme Court in the case of *Y. V. Rangaiah v J. Sreenivasa Rao* [(1983) 3 SCC 284]. However, with a view to appoint some blue-eyed officer, the respondent No.2, for ulterior purposes, issued the impugned memorandum for initiating disciplinary proceedings against the applicant.

4. The impugned memorandum has been issued by the Board of Governors, Medical Council of India. The applicant has challenged the competence and authority of the Board of Governors to issue the memorandum of charges to him. The contention raised by the applicant is that under the provisions of the Indian Medical Council Act, 1956, the Executive Committee constituted under Section 10 of the Act is the competent authority to initiate disciplinary proceedings against the applicant, whereas the Council is the appellate authority under regulation 58 of the Regulations framed under Section 33 of the Act of 1956. According to the applicant, under the Standing Order No.48 issued by the Council, CCS (CCA) Rules, 1965 as amended/modified from time to time have been made applicable to the employees of the Council, with certain exceptions. The sum and substance of the case of the applicant is that the Board of Governors constituted after the amendment of the Indian Medical Council Act, 1956 vide notification dated 04.09.2010,

is not competent to initiate disciplinary proceedings against the applicant.

5. The respondents in their counter affidavit have specifically pleaded that vide the Amendment Act of 2010 published on 04.09.2010 the Medical Council of India was superseded and replaced by a Board of Governors. It is further stated that the expression "Council" under the original Act of 1956 has been substituted by the "Board of Governors". Similarly, the Executive Committee which comprises of the President, Vice-President and 7 to 10 members of the Council, ceased to exist on account of supersession of the Council. The present Board of Governors is headed by the Chairperson. All powers rest with the Board of Governors, and thus the said Board is the competent disciplinary authority to initiate disciplinary proceedings against the applicant.

6. With a view to appreciate the contention of the applicant, it is deemed necessary to notice some of the relevant provisions of the Indian Medical Council Act. Sections 2(c), 3, 9, 10 and 33 are relevant and are reproduced hereunder:

"DEFINITIONS

2. xxx xxx xxx

(c) "Council" means the Medical Council of India constituted under this Act.

xxx xxx xxx

"CONSTITUTION & COMPOSITION OF THE COUNCIL

3. (1) The Central Government shall cause to be constituted a Council consisting of the following members, namely:-

- (a) one member from each State other than a Union territory to be nominated by the Central Government in consultation with the State Government concerned;
- (b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no Senate, by members of the Court;
- (c) one member from each State in which a State Medical Register is maintained, to be elected from amongst themselves by persons enrolled on such Register who possess the medical qualifications included in the First or the Second Schedule or in Part II of the Third Schedule;
- (d) seven members to be elected from amongst themselves by persons enrolled on any of the State Medical Registers who possess the medical qualifications included in Part I of the Third Schedule;
- (e) eight members to be nominated by the Central Government.

(2) The President and Vice-President of the Council shall be elected by the members of the Council from amongst themselves.

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council."

"OFFICERS, COMMITTEES AND SERVANTS OF THE COUNCIL

9. The Council shall-

- (1) constitute from amongst its members an Executive Committee and such other

Committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;

- (2) appoint a Registrar who shall act as Secretary and who may also, if deemed expedient, act as Treasurer;
- (3) employ such other persons as the Council deems necessary to carry out the purposes of this Act;
- (4) require and take from the Registrar, or from any other employee, such security for the due performance of his duties as the Council deems necessary; and
- (5) with the previous sanction of the Central Government, fix the remuneration and allowances to be paid to the President, Vice-President and members of the Council and determine the conditions of service of the employees of the Council.

THE EXECUTIVE COMMITTEE

- 10 (1) The Executive Committee, hereinafter referred to as the Committee, shall consist of the President and Vice-President, who shall be members ex officio, and not less than seven and not more than ten other members who shall be elected by the Council from amongst its members.
- (2) The President and Vice-President shall be the President and Vice-President respectively of the Committee.
- (3) In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties, as the Council may confer or impose upon it by any regulations which may be made in this behalf."

"POWER TO MAKE REGULATIONS

33. The Council may, with the previous sanction of the Central Government, make generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for:-
 - (a) the management of the property of the Council and the maintenance and audit of its accounts;
 - (b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
 - (c) the resignation of members of the Council;
 - (d) the powers and duties of the President and Vice-President;
 - (e) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings and the conduct of business of such Committees;
 - (f) the tenure office, and the powers and duties of the Registrar and other officers and servants of the Council;
 - (fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of section 10A;
 - (fb) any other factors under clause (g) of sub-section (7) of section 10A;
 - (fc) the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of section 10B;
 - (g) the particulars to be stated, and the proof of qualifications to be given in applications for registration under this Act;

- (h) the fees to be paid on applications and appeals under this Act;
- (i) the appointment, powers, duties and procedure of medical inspectors and visitors;
- (j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained in Universities or medical institutions for grant of recognized medical qualifications;
- (k) the standards of staff, equipment, accommodation, training and other facilities for medical education;
- (l) the conduct of professional examination; qualifications of examiners and the conditions of admissions to such examinations;
- (m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and
- (ma) the modalities for conducting screening tests under sub-section (4A), and under the proviso to sub-section (4B), and for issuing eligibility certificate under sub-section (4B), of section 13,
- (n) any matter for which under this Act provision may be made by regulations."

7. From the reading of the aforesaid provisions, it is evident that Section 2(c) defines the "Council" to mean the Medical Council of India. Section 3 prescribes the constitution and composition of the Council. Section 9 deals with the officers, committees and servants of the Council, and sub-section (1) of Section 9 provides for the constitution of the Executive Committee. The committees and

functions of the Executive Committee are enumerated under Section 10. Sub-section (3) of Section 10 further empowers the Executive Committee to discharge such functions as may be conferred or imposed upon it by the Regulations. Section 33 empowers the Council to make regulations with the previous sanction of the Central Government generally to carry out the purposes of the Act.

8. The Medical Council of India in exercise of its powers under Section 33 of the Indian Medical Council Act, 1956, has framed "Medical Council of India Regulations, 2000" with the previous sanction of the Central Government, as notified vide notification dated 25.10.2000. The relevant regulation for purposes of the present controversy is regulation 58, which reads as under:

"58. **Disciplinary authority**:- (1) The disciplinary jurisdiction/authority over the officers shall vest with the Executive Committee. The disciplinary jurisdiction/authority over the employees of the Council shall vest with the Registrar. The appellate jurisdiction/authority for officers and employees of the Council shall vest with the General Body of the Council.

(2) The Registrar, subject to the approval of the President -

- (a) Shall appoint Group 'C' and 'D' staff against duly sanctioned posts;
- (b) may engage such temporary personnel for a period not exceeding 89 days at one time, as may be required from time to time and pay the remuneration to them.

(3) The appointment made under sub-regulation (2) shall be reported to the Council."

The Council has also issued Standing Orders under Section 9(5) of the Act of 1956, laying down the service conditions of the employees of the Council, known as the "Medical Council of India Standing Orders". Clause 1 of Standing Orders provides that the Standing Orders shall apply to all servants of the Council. Clause 48 prescribes the penalties to be imposed in the disciplinary proceedings, whereas clause 50 deals with the provisions for appeals. Clauses 48 and 50 are reproduced hereunder:

"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 Service (Classification, Control and Appeal) Rules, 1957 shall be:-

- 1) in the case of 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."

"50. Appeals:

An appeal against an order imposing a penalty on the Secretary, Deputy and Assistant Secretary shall lie to the Council and an appeal against an order imposing a

penalty on a member of the ministerial staff lie to the Executive Committee and in the case of the members of the inferior staff, to the President."

9. The Parliament amended the Indian Medical Council Act vide the Indian Medical Council (Amendment) Act, 2010 (Act 32 of 2010) on 04.09.2010. After Section 3 of the Act of 1956, the following Sections have been incorporated:

"3A. (1) On and from the date of commencement of the Indian Medical Council (Amendment) Act, 2010, the Council shall stand superseded and the President, Vice-President and other members of the Council shall vacate their offices and shall have no claim for any compensation, whatsoever.

(2) The Council shall be reconstituted in accordance with the provisions of section 3 within a period of one year from the date of supersession of the Council under sub-section (1)

(3) Upon the supersession of the Council under sub-section (1) and until a new Council is constituted in accordance with section 3, the Board of Governors constituted under sub-section (4) shall exercise the powers and perform the functions of the Council under this Act.

(4) The Central Government shall, by notification in the Official Gazette, constitute the Board of Governors which shall consist of not more than seven persons as its members, who shall be persons of eminence and of unimpeachable integrity in the fields of medicine and medical education, and who may be either nominated members or members, *ex officio*, to be appointed by the Central Government, one of whom shall be named by the Central Government as the Chairperson of the Board of Governors.

(5) The Chairperson and the other members, other than the members, *ex officio*, shall be entitled to such

sitting fee and travelling and other allowances as may be determined by the Central Government.

(6) The Board of Governors shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as is applicable to the Council.

(7) Two-third of the members of the Board of Governors shall constitute the quorum for its meetings.

(8) No act or proceedings of the Board of Governors shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of, the Board of Governors; or
- (b) any irregularity in the procedure of the Board of Governors not affecting the merits of the case.

(9) A member having any financial or other interest in any matter coming before the Board of Governors for decision shall disclose his interest in the matter before he may, if allowed by the Board of Governors, participate in such proceedings.

(10) The Chairperson and the other members of the Board of Governors shall hold office during the pleasure of the Central Government.

3B. During the period when the Council stands superseded,-

(a) the provisions of this Act shall be construed as if for the word "Council", the words "Board of Governors" were substituted;

(b) the Board of Governors shall-

(i) exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors;

xxx xxx xxx"

10. From the reading of the provision of Section 2(c) of the Act of 1956, it appears that the 'Council' means the Medical Council of India as constituted under Section 3. Section 3 defines the composition, whereas Section 9 prescribes the committees and officers of the Council. Under sub-section (1) of Section 9, the Council is empowered to constitute an Executive Committee from amongst its members and such other committees for general or special purposes of the Act. The composition of the Executive Committee is prescribed under sub-sections (1) and (2) of Section 10, whereas the powers and duties of the Executive Committee emanate from sub-section (3) of Section 10, and as defined under the regulations framed in this regard. Regulation 58 empowers the Executive Committee to exercise disciplinary jurisdiction over the officers of the Council. The applicant is one of the officers of the Council and thus his disciplinary authority is the Executive Committee in terms of regulation 58. Regulation 58 further provides that the General Body of the Council shall be the appellate authority in respect of officers and employees of the Council. Under Standing Order 48 (1) the Executive Committee is the competent authority to impose penalties against the officers specified therein, Deputy Secretary being one of such officers. Thus, the disciplinary authority of the applicant is the Executive Committee under the Regulations. In terms of Standing Order 50, an appeal against the order imposing

penalty on Deputy Secretary shall lie to the Council, i.e., the General Body of the Council.

11. Vide Section 3A of the Amendment Act No.32 of 2010, the Council stands superseded, and its office bearers, i.e., President, Vice-President and other members of the Council had to vacate their office. Under Section 3A (2) of the amended Act, the Council is required to be re-constituted in accordance with the provisions of Section 3 within a period of one year from the date of supersession of the Council. However, the amended Act has continued to remain in operation till date. Thus, the Council's revival has not taken place. Admittedly, on supersession of the council under Section 3A (1) of the amended Act, a Board of Governors has been constituted under sub-section (4) of Section 3A. The Board of Governor is empowered to exercise all jurisdiction and authority of the Council. It is relevant to note that the Executive Committee is a body constituted out of the members of the Council, including its President and Vice-President, and with the supersession of the Council and vacation of office by its members including the President and Vice-President, the Executive Committee has ceased to exist. As a matter of fact, by operation of law, the Executive Committee has merged with the Board of Governors. Even under the un-amended Act, a set of members of the Council including the President and Vice-President had been authorised by virtue of Section 10 to discharge the functions of the

Executive Committee even being the members of the Council. The Executive Committee was a delegatee of the Council to discharge the functions and duties conferred and imposed upon it, nonetheless the members of the Executive Committee were part and parcel of the Council. After the amendment, the only change that has taken place is that a separate body known as the Executive Committee has not come into existence and its identity stands merged with the Board of Governors. Under the Amended Act, i.e., Section 3A (3), the Board of Governors is empowered to exercise the powers and functions of the Council under the Act. Thus, by implication the Board of Governors also has assumed the duties and functions of the Executive Committee. The two distinct authorities existing under the un-amended Act have merged into one authority, namely, the Board of Governors. Their separate identities have disappeared. The unified authority, i.e., the Board of Governors is thus the only authority required to exercise the powers of disciplinary authority under Regulation 58.

12. Now an important question arises as to whether the disciplinary authority can also exercise the powers of the appellate authority being a substitute for the Council. The simple answer would be 'no'. The same authority cannot act as a disciplinary authority as also the appellate authority. Under such circumstances, the appellate authority shall cease to exist and the aggrieved person

can avail appropriate remedy under common law, instead of statutory remedy available to him/her under the statutory provisions, but that does not deprive the Board of Governors from initiating the disciplinary proceedings.

13. Learned counsel for the applicant has relied upon a judgment of the Hon'ble Supreme Court reported as *Bhavnagar University v Palitana Sugar Mills (P) Ltd. & others* [(2003) 2 SCC 111]. The learned counsel placed reliance upon para 40, which reads as under:

“40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.”

It is contended on behalf of the applicant that since the Indian Medical council Act, 1956 as also the Regulations and Standing Orders clearly provide that the Executive Committee shall be the disciplinary authority, hence the action has to be in the manner prescribed by law and in no other manner. There is no dispute with the proposition of law enunciated in the aforesaid judgment. However, this judgment would have no application in the present case as the disciplinary proceedings have been initiated in accordance with law as existed at the time the disciplinary proceedings were

started. As noticed hereinabove, on account of operation of law, i.e., the amendment in the Indian Medical Council Act, the identity of the two bodies, i.e., the disciplinary authority and the appellate authority having disappeared and the Board of Governors being the higher authority, was not incompetent to initiate disciplinary proceedings, particularly when the composition of the Executive Committee, i.e., the disciplinary authority had emanated from the principal body, namely, the Medical Council of India itself. We do not find any infirmity in this regard.

14. The other judgment relied upon by the learned counsel is reported as *U. P. Power Corporation Ltd. & another v Virendra Lal through Lrs* [2013 (12) SCALE 390], wherein the Apex Court has ruled that where the higher or appellate authority exercises power of the punishing authority, the order cannot be said to be illegal provided there is provision for further appeal or revision or review. The Hon'ble Supreme Court has taken note of various earlier judgments including *Surjit Ghosh v Chairman & Managing Director, United Commercial Bank and others* [(1995) 2 SCC 474] wherein it is observed:

“6. ...The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation

cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

In the judgment cited by the learned counsel for the applicant and those referred therein, the proposition of law that emerges is that an authority higher than the disciplinary authority is also empowered to impose penalty in disciplinary proceedings provided the right of appeal or any other statutory remedy available to the employee against the order of the disciplinary authority is not taken away. The position in those cases was quite different than the present one. In those cases there were different authorities available, i.e., disciplinary authority and the appellate/revisional/reviewing authorities. In the present case, separate identities of the appellate and disciplinary authorities have ceased to exist by operation of law, and thus the appellate forum ceases to exist. Even if the opinion of the Hon'ble Supreme Court is construed to be absolute, the applicant in the present case has still a remedy under Standing Order 51 which confers power of review upon the President. Standing Order 51 reads as under:

"51. President's powers to review:

Notwithstanding anything contained in these Rules the President may on his own or in consultation with the Council after calling for the record of the case review any order which is made or is appealable under the Central Civil Services

(Classification, Control and Appeal) Rules, 1957, confirm, modify or set aside the order."

The President has been replaced by the Chairman under the amended Act, and thus the Chairman can exercise the power of review against the order of imposition of penalty in the event any penalty is imposed upon the applicant. The applicant, however, without facing the disciplinary proceedings has approached this Tribunal challenging the memorandum itself, irrespective of the fact whether any punishment would be imposed upon him or not. To that extent, the OA can be said to be premature, as no punishment has been imposed upon the applicant. In any case, the applicant has remedy available by way of review under Standing Order No.51. Even when the Board of Governors has exercised the jurisdiction and powers of disciplinary authority, the applicant is not rendered remediless. On this ground as well, the present OA is liable to be dismissed.

15. This Application is thus dismissed. The respondents are directed to proceed with the inquiry and complete the same expeditiously as the matter remained pending before this Tribunal for a period of three years or so. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/