CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.100/3108/2014

New Delhi this the 2nd day of December, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)

1. Dr. Ashok Kumar Sharma Age 35 years
S/o Sh. Chhote Lal Sharma
Working as Lecturer
Deptt. of Sharir Rachana
A&U Tibbia College & Hospital,
Karol Bagh, New Delhi.

2. Dr. Kaushik Das Mahpatra Age 36 years
S/o Sh. Paresh Chandra Das Mahapatra
Working as Lecturer
Deptt. of Maulik Sidhhant & Sanhita
A&U Tibbia College & Hospital,
Karol Bagh, New Delhi.

3. Dr. Sudhal Dev Mohapatra Age 36 years
S/o Sh. Subhash Chandra Mohapatra
Working as Lecturer
Deptt. of Rasa Shastra
A&U Tibbia College & Hospital,
Karol Bagh, New Delhi.

4. Dr.Kishor Kumar Patru Madavi
Age 32 years (since deleted)
S/o Sh.Patru Madavi
Working as Lecturer
Deptt. of Sharir Rachana
A&U Tibbia College & Hospital,
Karol Bagh, New Delhi. ... Applicants

(Argued by: Shri M.K. Bhardwaj, Advocate)

Versus

GNCT of Delhi, through

1. Chief Secretary
S/o Sh. Chhote Lal Sharma
Working as Lecturer
Deptt. of Sharir Rachana
A&U Tibbia College & Hospital,
Karol Bagh, New Delhi.

2. The Principal Secretary
Ministry of Health & Family Welfare,
GNCT of Delhi, New Delhi.

3. The Director
I.S.M & H (AYUSH)
Govt. of NCT of Delhi,
Karol Bagh, New Delhi.

4. UPSC
Through Secretary
Dholpur House,
Shahajahan Road, New Delhi.

5. Central Council for Indian Medicine
Through its President
61-66, Institutional Area, Opp. 'D' Block,
Janak Puri, New Delhi.

6. PMS/HOD
A&U Tibbia College, Karol Bagh,
New Delhi-110005. .. Respondents

(By Advocates: Shri N.K. Singh, for Mrs. Avnish Ahalawat, for Respondents No.1, 2, 3 & 6
Shri J.P. Tewari, for Shri Ravinder Agarwal for Respondent No.4)

ORDER (ORAL)

Justice M. S. Sullar, Member (J):

Applicants, Dr. Ashok Kumar Sharma, Dr. Kaushik Das Mahapatra, Dr. Sudhal Dev Mohapatra and Dr. Kishor kumar Patru Madavi (Lecturers), have preferred the instant Original Application (OA), challenging the validity of impugned advertisement No.14/2014, published in Employment News dated 23-29/08/2014 (Annexure A-1), in respect to the post of Assistant Professor (Ayurveda) and recommendations of the Reservation Roster finalisation Committee (Annexure A-2), allegedly affecting their vested rights of regularisation of their services on their respective posts, on the following grounds:-

"(A) That the above named applicants were selected by a duly constituted Selection Committee after advertisement inviting the applications and the above named applicants were selected against the Sanctioned Vacant Post.

(B) That as per the order/circular of the respondent No.1 dated 30.01.2014, it was a decided and intimated to all the Secretaries of the Deptt. of Govt. of NCT of Delhi that the Govt. of NCT has decided to maintain the status quo regarding the terms and conditions of such engagement of the employees till the process of decision on recommendation of the Committee is complete with respect to temporary, contractual or casual employees.

(C) That the advertisement No.14/2014 is bad in law as the same contravenes the circular/order dt.30.1.2014 approved by the respondent No.1.

(D) That the advertisement is violative of vested rights of applicants who are working on their respective posts for a long period and by the aforesaid advertisement, the respondents have tried to take away the scope of one time regularization policy as directed by the **Hon'ble High Court in Sonia Gandhi's Case** in WP (C) No.698/2002 vide judgment dt. 6.11.2013.

(E) That the action of the respondents is unconstitutional, unjustified and arbitrary and hence violative of Article 14 of the Constitution of India.

(F) That the action of the respondents is contrary to the law laid down by Hon'ble Supreme Court in R.K. Sabharwal & Ors. vs. State of Punjab and Ors. (1995) 2 SCC 745 wherein it was held that they vacancy arising in the cadre, after the initial posts are filled a proper method of reasonable should be taken care of.

(G) That the action of the respondents while advertising for filling of the aforesaid posts is violative of Doctrine of Legitimate Expectation which has been derived by the Hon'ble Supreme Court in the case of Ram Pravesh Singh and Ors. vs. State of Bihar & Ors. reported in (2006) 8 SCC 381.

(H) That the applicants in spite of being meritorious and after giving their meticulous services to the respondent No.6 college, they have been deprived by proper and fair opportunity to get absorbed on their respective posts.

(I) That due to break in service, the applicants are not eligible for higher post.

(J) That the wrongful and arbitrary act of the respondents in running the college obtaining the Affidavit from the applicants that they will not claim for regularization is nothing but a fraud with the applicants as there is no rhyme and reason to overlook the mandatory guidelines of the CCIM which is a regulatory body in Ayurved and Unani Medicines.

(K) That in terms of the order of this Hon'ble Tribunal dated 08.05.2000 passed in OA No.2108/1999, the respondents are providing all the benefits to its employees equal to regular employee but the applicants are being deprived and discriminated hence the respondents of India".

2. On the strength of the aforesaid grounds, the applicants seeks to quash the impugned advertisement (Annexure A-1) and recommendations of the Reservation Roster finalisation Committee (Annexure A-2), in the manner indicated hereinabove.

3. The respondents have refuted the claim of the applicants and filed the reply, wherein it was pleaded, that applicants were

engaged as Lecturer in different departments, purely on contractual basis, on a consolidated salary of Rs.48633/- for a period of 11 months or till the posts are filled on regular basis or on promotion, whichever is earlier, as per the terms and conditions enumerated in their letters of appointment. Since the regular appointments to the said posts were taking time, so due to administrative reason, the contract engagements of the applicants were further extended till 31.12.2014 on the same terms and conditions, as laid down in their original appointment letters, after giving compulsory break before their joining for any fresh tenure.

4. According to the respondents, that in the month of May, 2013, Recruitment Rules (Annexure R-3) of entire hierarchy for Indian System of Medicine (Ayurved and Unani) 2013, were notified. In pursuance thereof, a Committee was constituted to formulate a reservation policy for the posts and the Committee has now revised the reservation roster, keeping in view the hierarchy of posts, in teaching category. The respondents claimed that the applicants are not entitled to stake any claim on the indicated posts. It will not be out of place to mention here, that the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal. That is how we are seized of the matter.

5. At the very outset, it will not be out of place to mention here, that during the course of pendency of the OA, Dr. Kishor Kumar Patru Madavi (applicant No.4), moved a ***Miscellaneous Application*** (MA) bearing ***No.3790/2014***, pleading therein, that

although he was a co-applicant in this OA, but he has more grounds in his favour, which were not available to other three applicants, and sought permission to file separate OA, claiming the same relief on additional grounds, as well. In the wake of order dated 05.12.2014, the MA was allowed and his name was deleted in the instant MA, to enable him to file another fresh OA challenging the same impugned action of the respondents.

6. As a consequences thereof, Dr. Kishor Kumar Patru Madavi (applicant No.4), filed independent ***OA*** bearing ***No.4552/2014***, almost on all the grounds pleaded in the instant OA, claiming almost same reliefs.

7. Sequelly, the respondents (therein) have also filed the reply raising almost all the grounds of defence, as has been taken by them in the present OA.

8. Meaning thereby, the subject matter of litigation in the present OA was directly and substantially in issue in case ***Dr. Kishor Kumar Patru Madavi Vs. Govt. of NCT of Delhi and Others*** in ***OA No.4552/2014*** decided on 18.01.2016 by a Coordinate Bench of this Tribunal. The operative part of the said order, reads as under:-

> 36. Heard. Through the judgment dated 08.12.2015 passed by the Delhi High Court in W.P (C) No. 5408-5412/2004, and three other sets of related Writ Petitions in **Dr. Mohd. Saleem vs. Govt. of NCT of Delhi & Ors.**, (supra), the High Court had decided and laid down the law on certain points.
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> **The first issue settled by the High Court was as follows:-**
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> > "6.....**It was held that since the appointment letter had stipulated that the tenure was for a period of six months or till regular appointments were made, and as the Petitioners were aware and always conscious of that fact, they could not claim any right to regular appointment.** In view of these findings, the claim for regularization was declined. However, the Court decided that in view of the fact that many of the Petitioners had worked upto 7 years or so their cases for age relaxation, were required to be considered. It was also directed that **in case the Petitioners**

competed in regular selection, the fact that they had worked for 7 years with the Respondents and rendered their valuable services would also have to be taken notice of at the time of considering their cases, along with all other eligible candidates.

7 to 12 xxxxxxxxxxxx(Not reproduced here).

The second issue settled by the High Court was as follows:-

13. The first issue here in these proceedings is whether the Petitioners can claim regularization. The decision of this Court in WP (C) NO.8218/2002 and WP (C) No.6738/2002 both dated 17.08.2005 stares them at the face. The Court there was concerned with a claim for regularization of doctors who had been appointed on contract basis, similar to the Petitioners in identical circumstances of the Petitioners on a consolidated salary of Rs.6,000/- (per month). The contracts of appointment also stipulated that the tenure would be for a fixed period or till the regular appointments were made. Later, the regular recruitment process was initiated. The Court in *Doctor Pankaj Kumar and Others vs. Govt. of NCT of Delhi in WP (C) No.8218/2002* had stated as follows:-

> "We, however, cannot accept the aforesaid contentions for in the appointment letter itself it is stated that the petitioners were appointed on contract basis for a period of six months or till regular appointment are made, whichever is earlier. **The petitioners were aware and always conscious of the fact that their appointments were for temporary period and only till regular selections are made. The petitioner cannot claim any right to regular appointment, once they have joined with open eyes and on clear understanding that their appointments are for a temporary period only.** Now, after framing of the recruitment rules, regular appointments have been made as per the recruitment rules by the Union Public Service Commission. **The petitioner cannot be allowed to continue in preference to the rights of persons selected in accordance with the recruitment rules after proper competitive exam and selection process.** Some of the petitioners have participated in the selection tests conducted by Union Public Service Commission as per the Recruitment Rules but they have not been successful. Other petitioners did not even bother to appear in the tests.
>
> In that view of the matter and **in terms of the settled position of law, we cannot direct regularization of the services of the petitioners in a manner which is not recognized by the provisions of the recruitment rules.** We, therefore, do not find any infirmity in the order passed by the learned Tribunal".

14. In view of the above findings, we are of the opinion that the **Petitioners cannot claim the relief of regularization. However, like in that case the Petitioners' period of service ought to be taken into account while considering their eligibility along with the other eligible candidates in the regular recruitment process.**

The third issue settled by the High Court was follows:-

"15. **The second contention raised is that the rules framed in the year 2000 were inapplicable. Prior to the year 2000 admittedly there were no rules in existence in accordance with proviso to Article 309 of the Constitution of India. It is no doubt true that for making appointments, to vacancies, there is no pre-condition that rules have to exist. That can be on the basis of executive instructions.** Nevertheless the executive authority or agency concerned has to conform with fair procedure and adopt

process, which is in accordance with Article 14 and 16 of the Constitution of India. **Further, every civil post under the Government or connected with the affairs of the State or a Union Territory has to be filled in consultation with the UPSC unless the rules otherwise exempt such posts or category of posts. This is by virtue of Article 320 of the Constitution of India. Hence, the Respondents are under an obligation to fill regular vacancies by involvement of the UPSC, they have done so in the subsequent process by notifying vacancies and consulting that body, which has been set up specifically for the purpose. We are, therefore of the opinion that there is no merit in the contention of the Petitioner that in the absence of rules under proviso to Article 309 of the Constitution of India there was no requirement of the UPSC to fill up posts.** We see no infirmity in the finding of the Tribunal in this regard.

The fourth issue settled by the High Court was as follows:-

"16. **As far as the last contention with regard to the validity of the rules is concerned,** the finding of the Tribunal was that there is no substance in the allegation that the rules had diluted the standards of the education. It was held that the plea could not be raised by the Petitioners as experts such as Medical Council of India and the Central Council of Indian Medicines, charged with the responsibility of prescribing necessary qualifications, existed for the purpose. It was also found that the Respondents notified the rules under the rule making power which could not be interfered with in judicial review proceedings. **The Tribunal had relied upon the decision in *V.K. Sood vs. Secretary Civil Aviation, 1993, Supp. (3) SCC 9* to say that the Court cannot enter the realm of decision making and say that whether a particular qualification for a post would be appropriate or not.**

17. The grievance articulated by Mr. Mittal that the Tribunal did not act, even after taking note of a Cabinet decision to our mind cannot be a legitimate reason to interfere with the findings. **The decision to regularize or otherwise, the services of the Petitioners, and the manner to be adopted is not within the scope of judicial review. Hence, if there exists any cabinet decision, in the absence of any policy or rule embodying that position it would be appropriate to comment on it.** We therefore refrain from recording another finding in that regard, we are in any case of the opinion that the Tribunal did not fall into an error in that regard.

18. In view of the above findings, these petitions have been dismissed. **However, following the orders made earlier in W.P. (C) No.8218/2002 and W.P. (C) No.6738/2002, we direct the Respondents to consider the relaxation the age of the Petitioners any of them had applied and participated in the selection process and pass appropriate orders. The Petitioners shall likewise be entitled to reckon the period of their services put in by them as contract employees at the time of consideration of their cases along with all other eligible candidates.** It is further directed that preference would be given to the Petitioners who had worked with the Respondents on contract basis in case the Respondents again wish to make appointment on contractual basis. The petitions are accordingly dismissed subject to the above directions. No costs".

(Emphasis supplied)

37. In CWP No. 5368-73/2004, judgment dated 15.12.2005 **Dr. Praveen Kumar & Ors. vs. Govt. of NCT of Delhi & Ors** (supra), **the High Court reiterated its Findings on these issues as follows:-**

"10. The first issue here in these proceedings is whether the Petitioners can claim regularization. The decision of this Court in WP (C) NO.8218/2002 and WP (C) No.6738/2002 both dated

17.08.2005 stares them at the face. The Court there was concerned with a claim for regularization of doctors who had been appointed on contract basis, similar to the Petitioners in identical circumstances of the Petitioners on a consolidated salary of Rs.6,000/- (per month). The contracts of appointment also stipulated that the tenure would be for a fixed period or till the regular appointments were made. Later, the regular recruitment process was initiated. The Court in *Doctor Pankaj Kumar and Others vs. Govt. of NCT of Delhi in WP (C) No.8218/2002* had stated as follows:-

> "We, however, cannot accept the aforesaid contentions or in the appointment letter itself it is stated that the petitioners were appointed on contract basis for a period of six months or till regular appointment are made, whichever is earlier. The petitioners were aware and always conscious of the fact that their appointments were for temporary period and only till regular selections are made. The petitioner cannot claim any right to regular appointment, once they have joined with open eyes and on clear understanding that their appointments are for a temporary period only. Now, after framing of the recruitment rules, regular appointments have been made as per the recruitment rules by the Union Public Service Commission. **The petitioner cannot be allowed to continue in preference to the rights of persons selected in accordance with the recruitment rules after proper competitive exam and selection process.** Some of the petitioners have participated in the selection tests conducted by Union Public Service Commission as per the Recruitment Rules but they have not been successful. Other petitioners did not even bother to appear in the tests.
>
> **In that view of the matter and in terms of the settled position of law, we cannot direct regularization of the services of the petitioners in a manner which is not recognized by the provisions of the recruitment rules.** We, therefore, do not find any infirmity in the order passed by the learned Tribunal".

11. In view of the above findings, we are of the opinion that the Petitioners cannot claim the relief of regularization. However, like in that case the Petitioners' period of service ought to be taken into account while considering their eligibility along with the other eligible candidates in the regular recruitment process.

12. The second contention raised is that the rules framed in the year 2000 were inapplicable. Prior to the year 2000 admittedly there were no rules in existence in accordance with proviso to Article 309 of the Constitution of India. **It is no doubt true that for making appointments, to vacancies, there is no pre-condition that rules have to exist. That can be on the basis of executive instructions.** Nevertheless the executive authority or agency concerned has to conform with fair procedure and adopt process, which is in accordance with Article 14 and 16 of the Constitution of India. Further, every civil post under the Government or connected with the affairs of the State or a Union Territory has to be filled in consultation with the UPSC unless the rules otherwise exempt such posts or category of posts. This is by virtue of Article 320 of the Constitution of India. Hence, the Respondents are under an obligation to fill regular vacancies by involvement of the UPSC, they have done so in the subsequent process by notifying vacancies and consulting that body, which has been set up specifically for the purpose. **We are, therefore of the opinion that there is no merit in the contention of the Petitioner that in the absence of rules under proviso to Article 309 of the Constitution of India there was no requirement of the UPSC**

to fill up posts. We see no infirmity in the finding of the Tribunal in this regard.

13. The grievance articulated by Mr. Bhardwaj that the Tribunal did not act, even after taking note of a Cabinet decision to our mind cannot be a legitimate reason to interfere with the findings. **The decision to regularize or otherwise, the services of the Petitioners, and the manner to be adopted is not within the scope of judicial review. Hence, if there exists any cabinet decision, in the absence of any policy or rule embodying that position it would be in-appropriate to comment on it.** We therefore refrain from recording another finding in that regard, we are in any case of the opinion that the Tribunal did not fall into an error in that regard.

14. In view of the above findings, these petitions have been dismissed. However, following the orders made earlier in W.P. (C) No.8218/2002 and W.P. (C) No.6738/2002, **we direct the Respondents to consider the relaxation the age of the Petitioners any of them had applied and participated in the selection process and pass appropriate orders.** The Petitioners shall likewise be entitled to reckon the period of their services put in by them as contract employees at the time of consideration of their cases along with all other eligible candidates. It is further directed that preference would be given to the Petitioners who had worked with the Respondents on contract basis in case the Respondents again wish to make appointment on contractual basis. The petitions are accordingly dismissed subject to the above directions. No costs".

(Emphasis supplied)

38. Therefore, now the issues which still remain to be settled by us in the present OA are quite limited. Since it has been already held by the High Court that the respondents were fully within their rights to prescribe new RRs, and thereby change the roster in respect of each category of posts, it is not possible for us to accept the contentions of the applicant that the roster could not have been revised by the respondents, and that the previous roster, which was applicable in respect of a combined cadre of all levels of posts, ought to be, and must be continued, even after separate RRs have been prescribed for different level of posts, and separate roster has been prepared for different posts. The applicant has not been able to make out a case that the respondents have in any way violated any of his Fundamental Rights in prescribing the rosters in this manner.

39. The posts concerned related to different Medical specializations, and while prescribing the roster, the posts in a particular specialization came to be classified for a particular category. We find that this is fully permissible under the law, and it cannot be a case of the applicant that a separate roster should be prescribed for all the posts in each of the Medical disciplines. A roster can be prescribed only for a level of posts, and a sequencing of posts can be followed, and an appropriate reserved category person can be selected and appointed, if the post for his or her discipline has been earmarked to be the reserved post.

40. In the instant case, the law on all the points has already been laid in the above cited judgments of the High Court. We do not have to add any more to that. It has just so happened that the earmarking of the reserved category posts has worked to the disadvantage of the applicant before us. But, the posts of Assistant Professors/Lecturers (Ayurveda) being all equal, we cannot direct that a separate reservation roster should be followed for the post of Assistant Professor/Lecturer (Ayurveda) in 'Sharir Rachna' discipline only. The applicant cannot be allowed to claim discipline-wise reservation, and reservations have only to be Post-based and cadre-wise, and all the posts of Assistant Professors/Lecturers (Ayurveda) in various disciplines would constitute a single cadre for the

purpose of prescription of reservation, which may be prescribed to be followed in a particular manner.

41. However, we may conclude from this discussion that there ought to be more clarity in the respondents' policy of prescribing reservations against the posts in various disciplines within the same cadre of say Assistant Professors/Lecturers/Associate Professors and Professors, which cadres now stand separated, so that in future the earmarking of posts can be done properly accordingly. We may also note here that the Hon'ble Supreme Court has in a recent judgment reiterated its directions that the policy of prescribing reservations in appointments should not be followed for super-speciality Medical discipline posts. Since the organizations in Ayurveda & Unani, and various other Medical disciplines coming under the AYUSH, are in a very small number, to our mind, all the Medical disciplines in that are super-specialities in themselves.

42. Therefore, it is directed that the respondents should examine their policy in the context of the observations made and the law as laid down by the Supreme Court, which would then allow only those SC/ST and OBC category candidates to be selected, who make the cut off on merit basis under the law as laid down by the Supreme Court. However, since that exercise would involve a detailed administrative examination of the RRs and procedures of the respondents, in accordance with the observations and the law as laid down by the Supreme Court, we cannot issue any directions on that aspect of the matter, which does not fall within the limited powers of this Tribunal for judicial review".

9. Therefore, having heard the learned counsel for the parties and having gone through the record with their valuable help, we are of the firm view, that the controversy involved in the present OA is squarely covered and deserves to be decided, in the same terms and conditions, as stipulated in the indicated decision of the Coordinate Bench of this Tribunal, in order to avoid the possibility of conflicting decision in the similar matter.

10. In the light of the aforesaid reasons, the instant OA is also disposed of in the same terms and conditions of indicated decision, which is otherwise relevant, on the principle of *stare decisis* and parity. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
02.12.2016

Rakesh