

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 641 OF 2017

Date of order: 11th January 2018

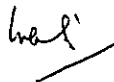
Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Ramkrishna Ghosh,
Son of Shambhu Nath Ghosh,
Aged about 42 years,
Working as Lecturer & In-Charge,
Department of Surgery,
National Institute of Homoeopathy,
An autonomous Institute under the
Ministry of AYUSH, Government of India,
A permanent resident of Village - Baramaliha,
Post Office - Bilweswar, Police Station - Ketugram,
District - Burdwan, Pin - 713150, West Bengal.

.. Applicants

Vs.

1. Union of India,
Service through the Secretary,
Ministry of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy,
(AYUSH), Ayush Bhawan,
Block "B", GPO Complex, INA,
New Delhi - 110 023.
2. The President,
The Governing Body of National
Institute of Homeopathy,
Ayush Bhawan, Block "B", GPO Complex,
INA, New Delhi - 110 023.
3. The Secretary,
The Governing Body of National
Institute of Homeopathy,
Ayush Bhawan, Block "B", GPO Complex,
INA, New Delhi - 110 023.
4. The Director,
National Institute of Homeopathy,
Block "GE", Sector - III, Salt Lake,
Kolkata - 700 106.
5. National Institute of Homeopathy,
Block "GE", Sector - III, Salt Lake,
Kolkata - 700 106.



.. Respondents

For the Applicant : Mr. B. Chatterjee , Counsel
For the Respondents : Mr. S.K. Dutta, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

This Original Application has been filed under Section 19 of the Administrative Tribunal, 1985 seeking the following reliefs:-

- "a. An order directing the respondent authorities to quash the Memo. No. PF-19/NIH/R.K. Ghosh/2010/1107 dated 13th December, 2016 passed by Professor (Dr.) S.K. Nanda, Director, National Institute of Homoeopathy and consequently quash the Memo No. PF-19/NIH/R.K. Ghosh/2010/1108 dated 13th December, 2016 passed by Professor (Dr.) S.K. Nanda, Director, National Institute of Homoeopathy.
- b. To hold that the suspension of the applicant had lapsed on expiry of 90 days from the date of suspension as there was no order of extension of suspension of the applicant and further an order holding that the order of suspension with a stipulation "until further order" is bad in law and accordingly the order of suspension is not sustainable.
- c. An order directing the respondent authority to reinstate the applicant from the date of suspension with all consequential benefits.
- d. An order directing the respondent authority to consider the representation dated 14th December, 2016, 20th December, 2016, 10th January, 2017 and 7th February, 2017 in the light of the judgment of the Hon'ble Apex Court in case of Ajay Kumar Choudhury vs. Union of India and another as well as the statutory provision under Central Civil Services (Classification, Control and Appeal) Rules, 1965.
- e. An order directing the respondent authority to disburse the entire salary from 28th October, 2016 i.e. the date of imposition of the order of deemed suspension and the consequential benefits thereto.
- f. An order directing the respondent authority to produce/cause production of all relevant records pertaining to the instant matter.
- g. And to pass any other order or orders, direction or directions as Your Lordships may deem fit and proper."

2. The respondents No. 4 and 5 have filed an affidavit in reply assailing the maintainability of the application before the Tribunal. While arguing against the maintainability, Ld. Counsel for the respondents have stated as follows:-

- (i) That, the Hon'ble Tribunal has no jurisdiction to adjudicate the matter in view of ratio laid down in 2011 (3) Calcutta Law Times 134 (HC) whereby

(ii) That, against the said judgment, the applicants before the Tribunal, had moved the Hon'ble Supreme Court by way of Special Leave Petition (Civil) No. 977 of 2012 upon which no stay has been granted and only a direction has been given for issuance of notice.

3. Hence, as the Hon'ble Apex Court has not stayed the order of the Hon'ble High Court, the decision of the Hon'ble High Court and its declaration of ultra vires operates in the field and that as long as the Parliament by way of necessary Constitutional amendment does not enact the said amendment, the judgment delivered by the Hon'ble High Court will be binding on the Tribunal.

4. That, although the applicants have relied on a notification wherein the National Institute of Homoeopathy is unlisted, the said circular by virtue of the judgment of the Hon'ble High Court should be treated as "non est" within the purview of the Administrative Tribunal Act, 1985.

5. That, the members of the National Institute of Homoeopathy do not hold any civil post within the meaning of Article 311 of the Constitution of India.

6. Ld. Counsel for the applicant draws our attention to:

(i) Judgment dated 23.6.2011 in WPCT No. 351 of 2007 Debashish Debnath v. Union of India & others. and WPCT No. 93 of 2011 Goutam Kumar Sahoo v. Union of India & ors. wherein the Division Bench of the Hon'ble High Court had taken up the matter of maintainability of matters relating to Kendriya Vidyalaya Sangathan and Jawahar Navodaya Vidyalaya before the Tribunal. While deciding on the same, the Hon'ble High Court had relied on two decisions of the Hon'ble Apex Court being relevant therein:-

(a) 2002 Volume-V Supreme Court Cases Page-111 (Pradeep Kumar

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Biswas v. Indian Institute of Chemical Biology and others).

(b) 2002 Volume-IV Supreme Court Cases Page-145 (Kendriya Vidyalaya Sangathan & another - vs. Subhas Sharma).

The Hon'ble High Court while deciding on the maintainability before the Tribunal has stated as follows:-

" The above decisions squarely covered the issue and such decisions are binding upon us. In the case of Subhas Sharma (Supra), the Apex Court noted the fact that vide notification dated December 17, 1998 the Central Government clarified that the Kendriya Vidyalaya would be included in the notification as item No. 34 to come within the ambit of Central Administrative Tribunal. Such notification was admittedly not under challenge. Such notification was held to be valid by the Apex Court in the case of Subhas Sharma (Supra). Even if we accept Their Lordships' view that the decision in the case of Pradeep Kumar Biswas (Supra) would not be applicable (although we respectfully disagree) the decision in the case of Subhas Sharma (Supra) did not leave any scope for the High Court to consider such issue again as the issue was res-integra after the said decision in the case of Subhas Sharma (Supra) wherein the decision of the Central Government to include Kendriya Vidyalaya within the ambit of Central Administrative Tribunal was held to be valid. With deepest regard we leave for Their Lordships, we unhesitatingly observe that the issue was settled at the Apex Court Level in the case of Subhas Sharma (Supra). Hence, we need not refer it to a larger bench. We told that the Tribunal was within their right to entertain both the applications and the orders passed by the Tribunal could not be said to be nonest in the eye of law on such ground."

The Ld. Counsel for the applicant has also cited (2015) 5 SCC 333 in the matter of T.M. Sampath & others. V. Secretary, Ministry of Water Resources and others in which matters relating to the National Water Development Agency (which was established as a society in July 1982 and which was registered under the Societies Registration Act, 1860) had come up by Special Leave against orders passed by the Central Administrative Tribunal in O.A. No. 2037 of 2008.

7. Our attention is also drawn to DOPT's notification dated 22.4.2008 wherein the O.M. has laid down as follows:-

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MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES &
PENSIONS

(Department of Personnel & Training)

NOTIFICATION

New Delhi, the 22nd April, 2008

S.O. 906(E)- In exercise of powers conferred by sub-section(2) of Section 14 of the Administrative Tribunals Act, 1985 (13 of 1985), the Central Government hereby specifies the 1st day of May, 2008 as the date on and from which provisions of sub-section (3) of Section 14 of the said Act shall apply to the organisations mentioned below, being the societies and statutory organisations owned or controlled by the Government and makes the following amendments in the notification of the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) number G.S.R. 730(E), dated the 2nd May, 1986, namely:-

In the Schedule to the said notification after serial number 103 and the entries relating thereto, the following serial numbers and entries shall be added, namely:-

Sl. No.	Name of the Corporation/ society/ Other Authority	Status
104	Central Council for Research in Ayurveda and Siddha	Autonomous body constituted under Societies Registration Act under the Ministry of Health and Family Welfare.
105	Central Council for Research in Homoeopathy	Autonomous body under the Ministry of Health and Family welfare.
106	Central Council for Research in Yoga and Naturopathy	Autonomous body under the Ministry of Health and family Welfare.
107	Central Council for Research in Unani Medicine	Autonomous body under the Ministry of Health and Family Welfare.
108	Central Council of Indian Medicine	Autonomous body under the Ministry of Health and Family welfare.
109	Central Council Homoeopathy	Statutory body under the Ministry of Health and Family Welfare.
110	Rashtriya Ayurved Vidyapeeth	Autonomous body under the Ministry of Health and Family Welfare.
111	Morarji Desai National Institute of Yoga, New Delhi	Autonomous body under the Ministry of Health and Family Welfare.
112	National Institute of Naturopathy, Pune	Autonomous body under the Ministry of Health and Family Welfare.

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113	National Institute of Ayurveda, Jaipur	Autonomous body under the Ministry of Health and Family Welfare.
114	National Institute of Unani Medicine, Bangalore	Autonomous body under the Ministry of Health and Family Welfare.
115	National Institute of Homoeopathy, Kolkata	Autonomous body under the Ministry of Health and Family Welfare.

8. Hence, we are convinced that, given the ratio in WPCT No. 93 of 2011 and that the notification dated 22.4.2008 of the DOPT has not been subjected to any challenge in any judicial forum and that the respondents have not been able to prove before us that the said notification has been struck down by the Hon'ble Apex Court in any of its judicial pronouncements, and that the matter relating to Registered Societies have been adjudicated upon by the Hon'ble Apex Court arising from orders of the Central Administrative Tribunal, the notification dated 22.4.2008 of DOPT is not nonest.

9. Accordingly, we conclude that the said notification of DOPT dated 22.4.2008 holds good and the National Institute of Homoeopathy comes within the purview of adjudication by the Central Administrative Tribunal.

10. The matter be admitted and the O.A. be listed on 5.2.2018.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

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