

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/728/2013
M.A./100/2159/2018

New Delhi, this the 14th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Ms. Kiran,
W/o Shri Ashok Khanna
R/o 106/112, Rajouri Extn.,
New Delhi-110027

....Applicant

(Through Shri N.L. Bareja, Advocate)

Versus

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
4. Shri B.K. Basavaraju,
Aged about 56 years,
S/o Shri B.K. Ramappa,
R/o D-2/24, Ist Floor, Janak Puri,
New Delhi

... Respondents

(Through Shri U. Srivastava, for respondents 1 and 3
Shri M.K. Bhardwaj, for respondent 4)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

We are hearing this OA for the second time after it is remanded by the Delhi High Court.

2. The applicant herein was working as Junior Stenographer in the Central Council of Indian Medicine (CCIM) – third respondent herein. A DPC constituted by the third respondent met on 28.06.2011 and recommended candidates for promotion to the post of Assistant Registrar (Registration) (AR (Regn.)), Office Superintendent (OS), UDC and Daftary. The name of the applicant was recommended for the post of Office Superintendent. Consequential order of promotion was also issued to her.

3. Through order dated 22.02.2013, the third respondent informed the applicant that the Executive Committee, in its 176th meeting held 22.02.2013 considered the matter pertaining to the promotions effected on the recommendations of the DPC held on 28.06.2011, as additional agenda item no.14, and it was decided that promotion to the post of AR (Regn) and OS is null and void, with immediate effect. As a result, the applicant was reverted to the post of Junior Stenographer. This OA is filed challenging the order dated 22.02.2013.

4. The applicant contends that promotions were effected on the basis of draft Recruitment Rules (RRs) and that there was no illegality in her promotion. It is stated that the respondents were under the obligation to issue notice to her and then take further steps in case they wanted to take any steps. She contends that the second respondent, who was a member of the DPC that met on 28.06.2011, became the President of the third respondent and soon thereafter, he reopened the entire issue with a malafide intention. It is stated that the proceedings are vitiated on account of malafides and absence of any legal and factual basis.

5. On behalf of respondents 1 and 3, separate counter affidavits are filed. It is stated that promotion to the posts of AR (Regn.), OS, UDC and Daftary were effected at a time when the rules were not yet amended and on finding this ambiguity, an inquiry committee was constituted, which went into the recommendations made by the DPC held on 28.06.2011. It is also stated that the post of OS was not in the feeder category of the draft rules or even under the 2004 rules. Allegation as to some role said to have been played by the applicant, is also made.

6. M.A.2514/2014 was filed by one Shri B.K. Basavaraju with the prayer to be impleaded as 4th respondent to the OA. According to him, the promotions effected on the basis of the

recommendations of the DPC held on 28.06.2011 were totally unsustainable in the eye of law.

7. The OA was heard at length on 15.03.2017. It was observed that the view taken by the 3rd respondent as to the legality of the promotions is contrary to law and cannot be sustained, having regard to the stand taken by them in OA 95/2012 filed by the 4th respondent herein. As regards MA 2514/2013 filed by the 4th respondent for impleadment as a party respondent, reference was made to the orders of several dates when the OA and MA were listed before the Bench and observing that the 4th respondent did not pursue, it was dismissed. The OA was allowed mainly on the ground that the order dated 22.02.2013 is violative of the principles of natural justice.

8. The 4th respondent filed W.P. No.6982/2017 before the Hon'ble High Court. Through order dated 18.01.2018, the High Court took a view that the 4th respondent was a proper and necessary party and he ought to have been impleaded while deciding the OA. The applicant filed SLP no.25824/2018 before the Hon'ble Supreme Court. The same was dismissed on 10.08.2018 by observing that the 4th respondent is neither a proper nor necessary party, but there would not be any failure of justice on account of his being impleaded as a party. Direction was issued for early disposal of the OA. Thus, we took up the OA for hearing.

9. Extensive arguments are advanced by Shri N.L. Bareja, learned counsel for the applicant, Shri U. Srivastava, learned counsel for respondents 1 and 3 and Shri M.K. Bhardwaj, learned counsel for respondent 4.

10. CCIM is an organization, directly under the control of Union of India, Ministry of Health and Family Welfare. The organization has its own establishment and hierarchy of officers. It is stated that the RRs of 2004 were being followed for making appointments and promotions. The record discloses that draft rules were framed in 2011 and they were awaiting the approval of the government. Pending such approval, certain promotions were taken up. The minutes of the DPC held on 28.06.2011 read as under:

“To fill up the vacant posts, the meeting of DPC was held on 28.6.2011 at New Delhi. The following were present:

1.	Vaidya Raghunandan Sharma, President, CCIM	Chairman
2.	Dr. Jayaprakash Narayan, Vice-President (Ayurveda)	Member
3.	Prof. Hakim Syed Khaleefathullah, Vice-President (Unani)	Member
4.	Dr. V Stanley Jones, Vice-President (Siddha)	Member
5.	Dr. PK Jain, Member, EC	Member
6.	Dr. VP Tyagi, Member, EC	Member

Departmental Promotion Committee after considering all the details and facts including CRs and fitness, decided to promote the following employees to post and pay scale sanctioned by Government of India (revised time to time) as mentioned against them with immediate effect.

S.No.	Name of Employee	Promoted post
1.	Shri Rajesh Jain, Accountant	Asstt. Registrar (Registration)
2.	Ms. Kiran, Jr. Stenographer	Office Superintendent
3.	Shri Nihal Miyan	UDC

4.	Shri Dharam Vir	Daftary
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Meeting concluded with a vote of thanks to the chair.”

The name of the applicant was recommended for promotion to the post of OS and accepting the same, office order was issued.

11. There is some controversy as to the very content of the draft rules of 2011. However, we do not intend to address the same. If the minutes of the DPC held on 28.06.2011 and consequential orders suffered from any illegality or infirmity, it was always open to take corrective steps. Notice was required to be issued, to the affected parties.

12. After the applicant was promoted to the post of OS, the 4th respondent filed OA 95/2012. The applicant was also made a party. The said OA was disposed of directing the respondent-CCIM to reconstitute the DPC. However, in RA, the order passed in the OA was set aside. We are informed that OA 95/2012 was ultimately dismissed.

13. The 3rd respondent, filed counter affidavit in OA 95/2012, supporting the selection process and promotion of the applicant herein. It was stated that the promotions on the basis of draft rules had to be made to ensure that the posts do not lapse. However, a totally different stand is taken

in the present OA. Here again, we do not propose to address that issue, in detail.

14. Once the promotion of the applicant was on the basis of validly constituted DPC, any order setting aside the promotion is required to be issued only after following the principles of natural justice. The plea that the applicant may not have any plausible explanation in the event of notice being issued, cannot be accepted. Reference in this context may be made to the judgment of the Hon'ble Supreme Court in **Olga Tellis Vs. Bombay Municipal Corpn.**, (1985) 3 SCC 545. Neither the impugned order nor the resolution of the Executive Committee which led to the same, speak of any opportunity being given to the applicant. It is a decision, taken in violation of principles of natural justice. The same cannot be sustained in law.

15. On behalf of 4th respondent, it is stated that an inquiry committee was set up to examine the issue pertaining to legality of the DPC held on 28.06.2011 and on basis of its recommendations, the promotion of AR (Regn.) and OS was declared to be null and void. However, it is interesting to note that the so called inquiry was held one month after the impugned order was passed. It only reflects the level of arbitrariness.

16. Therefore, we allow the OA and set aside the impugned order. It is, however, left open to the 3rd respondent to take appropriate steps in accordance with law, if the promotion of the applicant was defective in any manner. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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