

(2021) 02 DEL CK 0314

In the Delhi High Court

Case No : Civil Writ Petition No. 3450 Of 2020, Civil Miscellaneous Application
No. 12231 Of 2020

Dr. Upasana Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Dentist Act, 1948 — Section 3, 3(f)

Citation : (2021) 02 DEL CK 0314

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : Tanmaya Mehta, Rupal Luthra, Harish Vaidyanathan Shankar, Kinjal Shrivastava, Varun Kishore, Vinayak Mohanda, Namisha Jain, Aakansha Kaul, Manek Singh, G.D.Chawla

Final Decision : Allowed

Judgement

Vipin Sanghi, J

1. The background in which this petition has been preferred was noticed by us in our initial order dated 10.06.2020. We may extract the relevant

portion thereof which reads as under:-

“The submission of learned counsel for the petitioner is that respondent no. 3 has been nominated by respondent no. 1 as a Member of

the General Body of respondent no. 2/Dental Council of India under Section 3(f) of the Dentists Act, 1948. The said nomination is

challenged on the ground that respondent no. 3 was earlier serving respondent no. 2 in the capacity of Joint Secretary. He was charged of

very serious misconduct and was found guilty of the said charges by the Council after conduct of a major penalty proceeding under Rule

14 of CCS (CCA) Rules, 1965 and, consequently, he was removed from service by respondent no. 2. The said removal has been challenged

by respondent no. 3 before the Central Administrative Tribunal and its challenge is pending. No interim stay of the order of removal has

been granted by the Tribunal. Despite that being the position, respondent no. 1 evidently oblivious of the said past history of respondent no.

3 has nominated him to General Body of the respondent no. 2 Council.â??

2. By the same order, we had restrained the respondent no.3 from functioning as a member of the General Body of the respondent no.2/ Council.

Simultaneously we had also restrained the respondent no.2 from allowing the respondent no.3 from functioning in that capacity.

3. We may notice that respondent no.2 i.e. the Dental Council of India has supported the present petition and the opposition has come only from the

Union of India and the respondent no.3 himself.

4. Considering the fact that the Central Government had nominated the respondent no.3â?"who had been removed from service upon finding that he

had misconducted himself while functioning as the Joint Secretary of the same Council, this Court had required the respondents to produce the

relevant file containing the said nomination. The said record has been produced before us and having perused the same, we find that the Honâ??ble

Health Minister vide his undated note while continuing the nomination of Dr.Rajeev K Chugh for another term w.e.f. 11.06.2020, nominated two

persons including respondent no.3 as members of the Council against two anticipated vacancies. The relevant extract from the said file noting reads as

follows:-

â??O/o Minister of Health & Family Welfare

I have perused the file relating to nomination of 03 Members for a period of 05 years to the Dental Council of India as per Section 3 of the

Dentist Act, 1948 against the vacancies arising with effect from June 10, 2020 due to completion of term of existing Members.

2. I am of the view that Dr.Rajiv K Chugh be allowed to continue another term as nominated Member of the Dental Council of India with

effect from June 11, 2020. Further, the following person be nominated as Members of the Council against the remaining 02 anticipated

vacancies.

1) Col.Dr.Saroj Kumar Ojha (Retired)

2) Dr.Ashok Khandelwal.

3. The curriculum vitae of Col.Ojha and Dr.Khandelwal are placed on the file.â??

-signed-

(Dr.Harsh Vardhan)

HFMâ??

5. The aforesaid noting shows that the curriculum vitae of respondent no.3 as also of Dr.Ashok Khandelwal was placed before the Honâ??ble

Minister. A bare perusal of respondent no.3â??s curriculum vitae dated 19.12.2020 found on record shows that he had not disclosed the fact that

while functioning as the Joint Secretary of respondent no.2, he had been removed from service by respondent no.2 after a full-fledged major penalty

charge-sheet and inquiry, in which he was found guilty of misconduct.

6. The curriculum vitae of respondent no.3, which has been placed on record in the file produced before us reads as follows:-

â??CURRICULUM VITAE FOR DCI MEMBER BY GOI UNDER SECTION 3(f) of DENTIST ACT 1948

COLONEL Dr.S.K.Ojha (Retd.)

1. Born on 7 June 1960

2. Graduate from Dr. R Ahmed Dental College & Hospital Kolkata-1982

3. Postgraduate in Periodontology from Mumbai University-1990

4. Awarded Gold Medal for being Second in Final Professional BDS Exam-1981

5. Awarded Vice Chief of Army Commendation-2008

6. Commissioned in Armed Forces in 1983 and served in various Field formation like Poonch, Rajouri & Naushera Sector in Jammu and

took part in Operations at the Line of Control

7. Taken part in Military Exercises, OP Rakshak in Rajasthan Border in 1992

8. Senior Adviser in Periodontics in Indian Armed Forces

9. Professor of Periodontics at Armed Forces Medical College Pune 1998

10. Served as Director in Army Head Quarters, New Delhi 2006

11. Served as Officiating Secretary Dental Council of India 2010-2015

12. Past President Indian Dental Association West Delhi Branch 2019

13. Can speak Bhojpuri, Bengali, Nepali, Hindi and English

14. As a medical practitioner and an ex army personnel I have always stood by the idea of equal opportunities for all and working in

favour of the general betterment of the people which coincides with the idea of Vasudhaiv Kutumbam, an ideology which forms the basis of

the functioning of the Rashtriya Swayamsevak Sangh.

Date: 19 May 2020

Col Dr.Saroj Kumar Ojha

A 73, Krishna Residency

Plot 17, Sector 18A

Dwarka, New Delhi 78 â??

7. Thus, it is evident that the Honâ??ble Health Minister while nominating the respondent no.3 went only by the facts disclosed by the respondent

no.3 in his curriculum vitae, and was not aware of the fact that the respondent no.3 had actually been removed from service upon being found guilty of

misconduct by the Dental Council of India. The decision of the Honâ??ble Health Minister to nominate the respondent no.3 is, therefore, clearly

vitiated on account of non-application of mind to a relevant and pertinent aspect of the matter. Had the Honâ??ble Health Minister been aware of

the aforesaid relevant facts, he would have applied his mind and only thereupon taken a decision as to whether, or not, to nominate the respondent

no.3. In case, he were to still nominate respondent no.3, he would have had to record adequate reasons on the file to justify the nomination of

respondent no.3 despite the aforesaid adverse action taken against the respondent no.3 by the respondent/Council. Without good reason and proper

justification, the removal from service of respondent no.3 from the respondent/Council could not have been set at naught, and respondent no.3 could

not have been granted a back door entry into the respondent/Council again through the route of nomination. The power of the Honâ??ble Minister to

nominate members to the respondent/Council, like all other powers and authority exercised by a State functionary in his official capacity, must be

informed and imbued with reasons. There is no scope for arbitrary exercise of administrative authority.

8. The aforesaid decision can, therefore, not be sustained and is, accordingly, set

aside. The nomination of the respondent no.3 to the Dental Council of India is consequently quashed. The petition is allowed in the aforesaid terms, by leaving the parties to bear their respective costs.