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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8879/2017 & C.M. No. Nos.36303-36304/2017

V.K. MISHRA

..... Petitioner

Through: Mr.Shree Prakash Sinha, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr.Jaswinder Singh, Advocate for
UOI.

+ W.P.(C) 8881/2017 & C.M. No.36307/2017

V .K. MISHRA

..... Petitioner

Through: Mr.Shree Prakash Sinha, Advocate.

versus

CENTRAL COUNCIL OF INDIAN MEDICINE

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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11.10.2017

The petitioner has preferred the present writ petition to assail the order dated 25.04.2017 and 27.07.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in TA Nos.21/2013 and 23/2013 and the order passed in review being RA

W.P.(C) Nos.8879/2017 & 8881/2017

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No.155/2017 in TA No.21/2013. By the impugned order, the Tribunal has dismissed the aforesaid transfer applications as well as the review application preferred by the petitioner.

The petitioner had initially preferred the writ petitions before this Court being W.P.(C) No.6451/2004 and W.P.(C) No.16514/2006 which came to be transferred to the Tribunal and were consequently registered as TA No.21/2013 and 23/2013 respectively. In the first petition, the petitioner had sought the quashing of the Office Memorandum dated 06.04.2004 issued by the respondent No.2 i.e. the Central Council of Indian Medicine (CCIM) whereby the CCIM - in pursuance of the communication dated 01.10.2002 and 02.01.2004 of the Government of India, ordered that the post of Assistant Secretary (Registration), which has been upgraded in the pay scale of Rs.8,000-275-13,500/- (revised) stood restored to the post of Assistant Registrar (Registration) with normal replacement scale of Rs.6,500-200-10,500/- (revised) w.e.f. 01.01.1987. Resultantly, it was directed that the petitioner Assistant Registrar (Registration) would draw basic pay of Rs.10,300/- w.e.f. 01.04.2004. In this petition, the petitioner also sought a direction that the respondent Nos.1 and 2 namely, the Union of India and the CCIM should grant equal pay to the petitioner as granted to the officers holding similar post in the Medical Council of India and the Veterinary Council of India.

By the second writ petition, i.e. W.P.(C) No.16514/2006, the petitioner sought a mandamus directing the respondents to grant the 2nd upgradation of pay scale to the petitioner under the ACP Scheme.

There is no dispute about the fact that the petitioner was serving as Assistant Registrar (Registration) and drawing salary in the scale of Rs.2000-3500/- (later revised to Rs.6,500-200-10,500/-) w.e.f. 01.01.1987. The CCIM sought to pass a resolution re-designating the said post as Assistant Secretary (Registration) and upgrading the pay scale from Rs.2,000-3,500/- to Rs.2,200-4,000/- (later revised to Rs.8,000-275-13,500/-). Even before approval was granted by the Government to the said proposal, the CCIM implemented its proposal and, consequently, the petitioner was re-designated as Assistant Secretary (Registration) and granted the upgraded pay scale of Rs.2,200-4,200 (revised to Rs.8,000-275-13,500/-) w.e.f. 01.01.1987.

It appears that an audit objection was raised to the said upgradation and re-categorisation of the post as Assistant Secretary (Registration) in the year 1990 and the Government called upon the CCIM to restore the post of Assistant Registrar (Registration) in the normal replacement scale of Rs.6,500-200-10,500/-. The Government also called upon the CCIM to send its proposal independently in relation to the re-designation of the post and upgradation of the pay scale of Assistant Registrar (Registration). At that stage, the petitioner preferred the first of the aforesaid writ

petitions. The petitioner also gave his indemnity bond on 03.04.2009 undertaking to indemnify the Government that in case he does not succeed in the litigation initiated by him, he would reimburse the excess amount received by him. The petitioner enjoyed interim protection during pendency of the litigation, firstly, before this Court and thereafter before the Tribunal after the writ petitions were transferred to the Tribunal. Eventually, the Tribunal has dismissed the transfer applications by the impugned orders.

Learned counsel for the petitioner, while not disputing the position that the CCIM was obliged to obtain the sanction of the Government before implementing the proposal to re-designate the post of Assistant Registrar (Registration) as Assistant Secretary (Registration) and granting the upgraded pay scale of Rs.8,000-275-13,500/- (revised), submits that the Government has itself granted upgradation of the other 3 similar posts namely, Assistant Registrar (Ayurveda), Assistant Registrar (Unani) and Assistant Registrar (Administration) ex-post facto. However, no decision has been communicated in respect of the post of Assistant Registrar (Registration). He submits that while the matter was pending before the Tribunal, the Tribunal had also vide its order dated 13.08.2014 directed the Government to report instructions whether any final decision had been taken in the matter. However, no decision of the Government has been communicated till date.

The further submission of learned counsel for the petitioner is

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that the petitioner having retired in the year 2007, it would be very harsh to require the petitioner to reimburse the amount and that a final decision of the Government should firstly be obtained in respect of upgradation of the said post. He also submits that even otherwise, the petitioner is entitled to 2nd upgradation under the ACP Scheme with effect from 01.03.2003 and, therefore, a part of the amount paid to the petitioner as a consequence of upgradation may not even required to be reimbursed to the Government and, therefore, prays that the respondent should be asked to work out his ACP benefits before asking him to reimburse the payments received by him .

Having heard learned counsel for the petitioner and perused the record including the impugned order, we are not inclined to interfere with the impugned order. The manner, in which the CCIM proceeded to implement its proposal for upgrading the post of Assistant Registrar (Registration) as Assistant Secretary (Registration) and also upgrading the pay scale as taken note of hereinabove, is indeed shocking. There is no manner of doubt that the CCIM was obliged to obtain sanction of the Government under Section 12(d) of the Indian Medical Central Council Act, 1970 before implementing its proposal. It appears to us that the CCIM undertook a self-serving exercise, obviously with the involvement of its senior officers - which included the petitioner. Merely because the CCIM may have utilised its own funds for the purpose of paying the upgraded pay was no excuse for the CCIM to disregard the statutory position and implement its

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proposal without awaiting the Government's nod. The CCIM was dealing with public funds and could not have doled out amounts to its employees without proper authority.

The submission of the petitioner that no decision has been taken in respect of post of Assistant Registrar (Registration) - with regard to upgradation of the post and pay scale, cannot be used to the advantage of the petitioner. If no decision has been taken, it does not follow that the decision is assumed to be in favour of the petitioner. The correspondence placed on record clearly shows that the Government not only directed the CCIM to revert the upgraded post and pay scale, but also to make an inquiry and fix the responsibility of the persons responsible for such unauthorised conduct. The Government also contested the transfer applications before the Tribunal.

The submission of the petitioner that, first, a final decision should be taken by the Government regarding upgradation of the post and also his claim for grant of 2nd ACP benefit should be considered, before asking the petitioner to reimburse the amount, does not impress us. This is for the reason that to adopt such a course would tantamount to setting of a bad precedent. The petitioner - who has been a beneficiary of a clearly illegal conduct on the part of the CCIM, cannot be allowed to get away with it. Moreover, the petitioner had given his own indemnity bond as taken note of hereinabove.

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In view of the above, we find no merit in the writ petitions and the same are hereby dismissed.

The pending applications are also dismissed as infructuous.



VIPIN SANGHI, J



REKHA PALLI, J

OCTOBER 11, 2017
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