

Brief of OA 2100/2014 about false allegations in MrsSunandaPushkar case

Abstracts from judgment OA 2100/2014 certified copy

17 page 38 .last paragraph

Thus, the decision having already been taken by the Governing Body on 16.1.2012 and 14.4.2012 to promote respondent no.3 to the grade of Professor w.e.f. 1.7.2009, it cannot be said that the postmortem/autopsy of the dead body of late SunandaPushkar, who died on 17.1.2014, has any nexus with the process of consideration of respondent no.3s case for promotion to the grade of Professor with effect from 1.7.2009, or 1.7.2011, by the Governing Body, which had started way back in January 2012. **Therefore, the malice attributed by the applicant to the then President and Director of AIIMS is baseless.** The email sent by ShriShashiTharoor, the then Union Minister, to Dr.RajivBhasin, on 26.1.2014 (Annexure RA/1), and the notice dated 2.6.2014 issued by Dr.Adarsh Kumar, Member Secretary, Medical Board, AIIMS (Annexure RA/2) **do not reveal anything to show that any pressure** was put on the applicant to submit a tailor-made autopsy report in SunandaPushkars case. In the above view of the matter, the decision in Smt. S.R.Venkataramans case (supra) is of no help to the case of the applicant.

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In view of the law laid down by the Honble Supreme Court in the above decisions, the applicant ought to have impleaded the then President and Director of AIIMS as party-respondents by name. In the Original Application, the applicant has not impleaded the then President and Director of AIIMS as party-respondents by name. On this ground alone, **the allegation of malice made by the applicant falls flat.**

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In the light of the above discussions, **we have no hesitation to hold that there was no ill will or vindictive motive of the Director and President of the Institute against the applicant in the matter of promotion** of respondent no.3 to the grade of Professor with effect from 1.7.2011, and that the Governing Body did not act wrongfully and without reasonable and probable cause while taking the said decision in the case of respondent no.3. **Therefore, the decision of the Governing Body and the order dated 7.6.2014 are not vitiated on account of any malice either in fact or in law.**

Brief of OA 2100/2014 in favour of promotion granted to Dr O P Murty

Abstracts from certified copy of judgment OA 2100/2014

23. Page 59 last paragraph

After **lapse of more than one and half a year** from the date of making reference to the Ministry, respondent no.1 placed the matter before the Governing Body, vide agenda item No.GB/151/2. All this goes to show that the functionaries of the AIIMS, who are at the helm of affairs, **have failed to act honestly in dealing with the matter of promotion of respondent no.3** and, on some pretext or the other, have attempted and even become successful in creating a stumbling block in the career progression of respondent no.3. (Prof RC Deka and MrVineetChaudhary at that time)

24. Page page 60 and page 61

The applicant has not challenged either the Central Governments order dated 9.8.2011, or the Governing Bodys decisions dated 16.1.2012 and 14.4.2012. The decisions of the Governing Body have been given effect to in respect of 35 faculty members. Respondent no.3 being similarly placed as those 35 faculty members, **the Governing Body and respondent no.1-Institute were bound to extend same treatment to respondent no.3.** But, being confronted with the situation that the unauthorized absence of respondent no.3 for the period from 16.5.2008 to 16.8.2009 was treated as dies non, the Governing Body, presumably by way of modification of its earlier decisions dated 16.1.2012 and 14.4.2012, decided to grant promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011. The views taken by the members of the Governing Body during all those meetings were **unanimous**. The applicant has not made any allegation of malice against all other members of the Governing Body, save and except the President and Director of AIIMS. The President and Director of AIIMS are two out of 11 members of the Governing Body. Thus, it has to be inferred that **nine out of 11 members** of the Governing Body, against whom there is no allegation of malice made by the applicant, after considering all the aspects of the matter, had taken the decision for promoting respondent no.3 to the grade of Professor with effect from 1.7.2011.

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Being aggrieved by the said action of the then Director, AIIMS, respondent no.3 moved the appropriate authorities. Thereafter, respondent no.3s case was further considered, and the Governing Body, presumably by way of modification of its earlier decisions dated 16.1.2012 and 14.4.2012, decided to grant promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011. The applicant has challenged this promotion of respondent no.3, inter alia, on the grounds that it results in his demotion without any rhyme or reason and without affording him an opportunity of being heard. This plea of the applicant is without any basis. **The applicant, having been promoted to the grade of Additional Professor with effect from 1.7.2008, did not put in four years of service as Additional Professor so as to be eligible to be considered for promotion to the grade of Professor with effect from 1.7.2011.** He was promoted to the grade of Professor with effect from 1.7.2012, i.e., only when he became eligible to be so promoted. Viewed from this angle, it cannot be said that promotion of

respondent no.3 results in demotion of the applicant. Under the rules, an employee can claim seniority in a grade to which he/she is appointed only with effect from the date of his appointment to the said grade. In the above view of the matter, we do not find any substance in the applicants plea of non-compliance with the principles of natural justice.

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In the absence of any rule or instruction issued either by the Institute or the Central Government laying down that the competent authority, while considering and deciding retrospective promotion of an employee, like respondent no.3, an opportunity of **hearing has to be given to another employee**, like the applicant, we are not inclined to accept the plea of the applicant that non-affording of such an opportunity to him vitiates the impugned decision of the Governing Body and consequential O.M. dated 7.6.2014 promoting respondent no.3 to the grade of Professor with effect from 1.7.2011.

38. page 74

In the preceding paragraphs of this order, we have already found that respondent was quite eligible to be appointed/ promoted to the grade of Professor at the relevant point of time. We have also rejected the applicants plea of malice in fact and in law. We have also rejected the applicants contentions about the ineligibility of respondent no.3 for being considered for promotion to the grade of Professor because of his dies non period, imposition of punishment of Censure, and violation of the provisions of the Assessment Promotion Scheme.

39. page74

As already found by us, the decision of the Governing Body, dated 12.5.2014, vide Agenda Item No.GB/152/1, and the impugned order dated 7.6.2014 are the **sequel of the (i)** minutes of the Standing Selection Committee meetings held in November-December 2010 and on 6.1.2012; (ii) the direction issued by the Central Government under Section 25 of the AIIMS Act, 1956; and (iii) the decisions of the Governing Body dated 16.1.2012 and 14.4.2012.

45.3 page78

A reading of the above quoted minutes of the meetings of the Governing Body makes it clear that the **Governing Body has taken all relevant factors into consideration and has assigned cogent, convincing and justifiable reasons in support of its decision** qua respondent no.3s promotion to the grade of Professor with effect from 1.7.2011. Considering the entire facts and circumstances of the case, we do not find any illegality to have been committed by the Governing Body thereby making its decision vulnerable. It is pertinent to mention here that the impugned decision of the Governing Body and the O.M. dated 7.6.2014 do not in any way affect the promotion of the applicant to the grade of Professor with effect from 1.7.2012. We, therefore, do not find any scope to interfere with the impugned O.M. dated 7.6.2014 at the instance of the applicant.

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.1641 OF 2014

New Delhi, this the 4th day of March, 2015

CORAM:

HONBLE SHRI ASHOK KUMAR, ADMINISTRATIVE MEMBER &

HONBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

Dr.Sudhir Kumar Gupta,

Professor & Head of Department,

Department of Forensic Medicine and Toxicology,

All India Institute of Medical Sciences (AIIMS),

Ansari Nagar, New Delhi 110049

And Resident of:

House no.438, Hawa Singh Block,

Asiad Village Complex, KhelGaon Road,

New Delhi 110049

Applicant

(Advocates for applicant: S/ShriR.R.Kumar, AjeshLuthra, &Amarendra
Kumar)

Vs.

1. All India Institute of Medical Sciences (AIIMS),

Ansari Nagar, New Delhi 110049

Through its President

2. Union of India,

Through Secretary,

Ministry of Health & Family Welfare,

NirmanBhawan,
New Delhi 110001

3. Dr.O.P.Murty,
Additional Professor,
Department of Forensic Medicine & Toxicology,
All India Institute of Medical Sciences,
Ansari Nagar,
New Delhi 110049
And Resident of;
F-402, Jagran Apartment, CGHS,

Sector 22, Dwarka, New Delhi

Respondents

Advocates for respondent no.1: S/ShriR.K.Gupta and M.K.Singh

Advocate for respondent no.2: Dr.ChaudharyShamsuddin Khan

Advocate for respondent no.3: ShriManjeet Singh Reen&Dr.Shiva Sharma

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ORDER

Raj Vir Sharma, Member(J):

In this Original Application filed by the applicant on 12.5.2014 under Section 19 of the Administrative Tribunals Act, 1985, he has prayed for the following reliefs:

- (a) Declare the Approval sought under Agenda Item No.GB/15/2 for the General Body meeting dated 12.05.2014 of AIIMS as illegal and arbitrary, and quash and set aside the same, and
- (b) Pass any order or further orders in the facts and circumstances of the present matter, and
- (c) Award costs to the Applicant.

2. Brief facts of the applicants case, as projected in the O.A., are as follows:

- (i) The applicant is a Gold Medalist of his MBBS batch. He joined service in the All India Institute of Medical Sciences (AIIMS) as a Senior Resident. Upon recommendation of the Standing Selection Committee (SSC) and with the approval of the Governing Body of the AIIMS, the applicant was promoted to the grade of Professor w.e.f. 1.7.2012, vide order dated 19.7.2013 (Annexure A/4). On 3.8.2013, he was appointed as Head of Department, Department of Forensic Medicine & Toxicology,

AIIMS, vide order dated 3.8.2013 (Annexure A/5). He is currently working as Professor & HOD, Department of Forensic Medicine & Toxicology in the AIIMS.

(ii) Respondent no.3 Dr.O.P.Murty joined as Assistant Professor and is currently working as Additional Professor, Department of Forensic Medicine and Toxicology, AIIMS. He was found guilty of levelling false allegations, fabricating false evidences, insubordination, impersonation, and misusing official position for personal gain, vide enquiry report dated 13.5.2000 (Annexure A/2).

(iii) Respondent no.3 became eligible for promotion from the grade of Additional Professor to Professor for the batch of 01.07.2007 as his First Chance under the Assessment Promotion Scheme (APS) for the faculty of AIIMS, but he was found unfit for such promotion by the Standing Selection Committee (SSC).

(iv) On 7.4.2008 respondent no.3 had left his assignment in Malaysia and unauthorizedly worked in Saudi Arabia. He had also remained absent from his duty from 16.5.2008 to 16.8.2009 without any authorization. The disciplinary authority imposed on him the penalty of Censure and directed that the period of his absence from 16.5.2008 to 16.8.2009 be treated as dies non, vide order dated 11.5.2011 (Annexure A/3).

(v) On 1.7.2009, respondent no.3 again became eligible for promotion from the grade of Additional Professor to the grade of Professor for the batch of 1.7.2009 as his Second Chance under the APS, but he was found unfit for promotion by the SSC.

(vi) The Governing Body, AIIMS, vide minutes of its meetings held on 16.1.2012 and 14.4.2012, as a one time relief, decided to promote in principle all the 39 faculty members who were not recommended for promotion by SSC. But respondent no.3 was not promoted and no promotion order was issued to him because of imposition of penalty of Censure on him. The President, AIIMS, directed an opinion to be obtained from the Department of Personnel & Training on the issue before considering respondent no.3s promotion.

(vii) Respondent no.3 became eligible for promotion from the grade of Additional Professor to Professor for the batch of 01.07.2012 as his Third/Final Chance under the APS. He did not appear for interview before SSC even after a specific request by the AIIMS.

(viii) On 7.8.2013, upon recommendation of the Ethics Committee of the Medical Council of India (Annexure A/6), the AIIMS imposed a further penalty of Censure on respondent no.3.

(x) In May 2014, the applicant came to know that a meeting of the Governing Body was to be held on 12.5.2014 to approve the proposal for promotion of respondent no.3 to the post of Professor with effect from 1.7.2009, vide Agenda Item No.GB/152/2 (Annexure A/8).

(xi) According to the applicant, the Agenda Item No.GB/152/2 ibid was prepared and approval was sought from the Governing Body with a view to illegally promote respondent no.3 and to purge the seniority of the applicant. Therefore, the applicant made representations dated 5.5.2014 and 8.5.2014 (Annexures A/9 and A/10), but to no avail. Hence, the applicant filed the present Original Application.

(xii) It is contended by the applicant that respondent no.3 is not qualified and worthy of promotion with effect from 1.7.2009. The penalty of censure disentitles him from any retrospective promotion. Any promotion of respondent no.3 with effect from 1.7.2009 will be illegal, arbitrary and de hors the rules and regulations. The effort to promote respondent no.3 from 1.7.2009 due to pressure from vested interests smacks of vendetta and is designed to wreck vengeance against the applicant who scrupulously adhered to the rule books in discharge of his duty as Professor & HOD and earned his position by sheer hard work and merit.

3. Resisting the claim made by the applicant, Respondent no.1-AIIMS has filed a counter reply wherein it is, inter alia, stated as follows:

(i) Respondent no.3 joined the AIIMS as an Assistant Professor in the year 1992 on regular basis whereas the applicant joined as Assistant Professor on ad hoc basis on 05.08.2000. Respondent no.3 was already Associate Professor at the time of joining of the applicant as Assistant Professor. Respondent no.3-Dr.O.P.Murty was working as Additional Professor of Forensic Medicine with effect from 1.7.2000. Respondent no.3 was permitted for a foreign assignment in Malaysia for a period of six months w.e.f. 16.11.2007 to 15.5.2009 as per his entitlement at that point of time under the guidelines. However, respondent no.3 left the said assignment in between and proceeded to Saudi Arabia unauthorizedly w.e.f. 7.4.2008. He continued working in Saudi Arabia up to 16.8.2009 ignoring communications from the AIIMS for reporting back to his duty. He joined back his duty in the AIIMS on 17.8.2009.

(ii) Respondent no.3 became eligible for promotion to the grade of Professor for the batch of 01.07.2007 as his first chance and for the batch of 01.07.2009 as his second chance under the APS. The SSC in its meetings held during November-December 2010 considered the candidatures of 251 faculty members (including Dr.O.P.Murty) for promotion to the next higher grade of Professor under the APS. Thirty-nine (39) faculty members (including respondent no.3-Dr.O.P.Murty) were not found fit for promotion by the SSC. The recommendations of the SSC were approved by the Governing Body (appointing authority) in its 145th meeting held on 1.3.2011.

(iii) A penalty of Censure was imposed on Respondent no.3, vide letter No.F.6-20/92-Estt.I dated 11.5.2011 as he was found responsible for negligence of duty and gross misconduct for his unauthorized absence and visit to Saudi Arabia from 16.5.2008 to 16.8.2009 which period was treated as dies non.

(iv) The Governing Body in its meeting held on 14.4.2012, vide a separate agenda item No.GB 147/2, while considering Action Taken Report on the minutes of the Governing Body meeting held on 16.1.2012, in respect of agenda item No.146/15, decided to promote those 39 faculty members to higher grades. However, promotion orders were issued to 35 faculty members, excluding respondent no.3-Dr.O.P.Murty and 3 others who had left the AIIMS by that time. The promotion letter to respondent no.3 was withheld because of imposition of penalty of Censure on him.

(v) The matter was sent to the Honble Union Minister of Health & Family Welfare & President, AIIMS. As per the instruction received from the Honble Ministers office, a reference was made to the Ministry of Health & Family Welfare to obtain clarification from the Department of Personnel & Training on the matter.

(vi) Respondent no.3 was called for appearing before the SSC for his promotion to the grade of Professor for the batch of 01.07.2012 and 01.07.2013 as his third and final chance during its meetings scheduled on 13.4.2013 and 26.2.2014. Respondent no.3, vide his letter dated 18.2.2014, claimed that he had already been promoted to the grade of Professor for the batch of 1.07.2009 in principle by the Governing Body as a part of group consisting of 39 faculty members.

(vii) The penalty of Censure was imposed upon respondent no.3 on 11.5.2011 whereas the Governing Body of the AIIMS considered his promotion in its meeting held on 12.5.2014, i.e., almost after lapse of 3 years.

(viii) The minor penalty of Censure cannot be considered as disentitlement for the career progress of respondent no.3.

4. A counter reply was filed by respondent no.2-Union of India on 27.8.2014 resisting the claim made by the applicant. It is stated by respondent no.2 that the matter regarding promotion of respondent no.3 under APS pertaining to APS of 2009 was referred to the Department of Personnel & Training to clarify as to whether respondent no.3 could be given promotion under the APS. Along with the counter reply, respondent no.2 has filed a copy of the note-sheet dated 8.8.2014 prepared by Shri S.K.Prasad, Under Secretary, Department of Personnel & Training, Establishment (D). In the said note-sheet, it is clarified that the DoP&Ts O.M. dated 10.4.1989 and O.M. dated 28.4.2014 prescribe that in assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as unfit for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over. It is also clarified that the period of dies non does not constitute break in service, but only the days treated as dies non are not counted as duty for any purpose.

5. Respondent no.3 filed a short counter reply on 26.5.2014, wherein it is, inter alia, stated as follows:

(i) The Original Application is not maintainable as being hit by Section 19 of the Administrative Tribunals Act, 1985. A proposal to hold a consultative meeting or a DPC is not an order. There is no cause of action accrued to the applicant for filing the Original Application.

(ii) The Medical Council of India has already directed to strike out the applicants name from Indian Medical Register because of his misconduct, vide order dated 26th March 2004 (Annexure R-3/1).

(iii) Respondent no.3 being the senior most faculty member had in the past acted as Head of the Department. The applicant joined as Assistant Professor on regular basis in 2003 whereas respondent no.3 joined as Assistant Professor in 1992.

(iv) The former HOD, Dr.T.D.Dogra, who has already superannuated, as well as respondent no.3 were constrained to make several official complaints against the applicant because of his patent dishonesty and lack of integrity.

- (v) Respondent no.3 has high merit, capability and professional credentials.
- (vi) The professional track record of the applicant after joining AIIMS is full of black marks.
- (vii) Respondent no.3, who then was an Additional Professor, was due for promotion as Professor w.e.f. 1.7.2007, but such promotion was denied to him for undisclosed reasons. Such promotion with effect from 1.7.2009 was again denied to him on the ground that a minor penalty of Censure had been imposed on him on 11.5.2011 although the said Censure could not have any effect prior to its imposition. Besides, Censure could not have come in the way of his promotion. To the same effect is the order treating the period of his unauthorized absence as dies non. For some unknown reasons, the case was referred to the Department of Personnel & Training although the Governing Body had given promotion to him with effect from 1.7.2009.
- (viii) Considering his representations made against his non-promotion with effect from 1.7.2007 and 1.7.2009, the AIIMS placed the matter before the Governing Body.

5.1 Respondent no.3 also filed a detailed counter reply on 30.6.2014 wherein he has more or less reiterated the same averments and contentions as in his short counter reply.

6. Refuting the statements made by respondent no.1- AIIMS in its counter reply, the applicant filed a rejoinder reply on 30.6.2014 wherein it is, inter alia, stated as follows:

(i) Respondent no.1-AIIMS has deliberately and hurriedly prepared and considered the impugned approval under Agenda Item No.GB/151/2 at the instance of its former President with mala fide intention to illegally punish the applicant for refusing to act unprofessionally in SunandaPushkar Autopsy matter. The applicant was asked to prepare tailor-made autopsy report giving clean chit irrespective of his professional conclusions after conducting autopsy of late SunandaPushkar, which he declined. Therefore, the then President of AIIMS, in connivance with the Director, AIIMS, decided to illegally purge the seniority of the applicant by illegally promoting respondent no.3 with retrospective effect so that pliable and obliged respondent no.3 could be appointed as HOD and thereafter a tailor-made report/opinion could be prepared in the said matter. Copy of e-mail dated 26.01.2014 from ShriShashiTharoor, husband of late SunandaPushkar influencing the Director, AIIMS for a tailor made autopsy report is filed by the applicant as Annexure RA/1. The applicant could not muster courage of openly placing the facts in black and white as the former President of AIIMS, ShriGulamNabi Azad was an immensely powerful politician and then the Health Minister, and husband of late SunandaPushkar was also a Minister and a powerful politician. Continuous pressure was being put on the applicant by calling for repeated meetings on the said autopsy matter by the Director, AIIMS. Copy of the AIIMS notice dated 2.6.2014 for meeting on SunandaPushkar Autopsy matter is filed as Annexure RA/2. Attempts were being made to somehow sideline the applicant from the headship of the Department by creating false premise. In pursuance thereof, the AIIMS, on alleged complaints, has issued Memorandum to the applicant for allegedly leaking the said autopsy report. When the applicant asked for a copy of the complaint, AIIMS refused to provide the same. Copies of the AIIMSMemo dated 14.6.2014 to the applicant as well as the applicants reply dated 17.6.2014 thereto are filed as Annexure - RA/3 and Annexure - RA/4 respectively.

(ii) Referring to a notice dated 6.6.2014 (Annexure RA/5) issued to the applicant by the Medical Council of India in the matter of a complaint of Dr.Norflok lodged in 2002 and his reply thereto dated 12.6.2014 (Annexure RA/6), the applicant has stated that the Delhi Medical Council had investigated the matter and closed the same on 7.6.2006 (Annexure RA/11), which was communicated to the Medical Council of India. The AIIMS was also informed of the said fact by the Medical Council of India, vide letter dated 8.9.2009 (Annexure RA/12). The applicant contends that at the behest of some vested interests who want his ouster as Head of Department or compel him to agree for reviewing the autopsy report in SunandaPuskars matter, the Medical Council of India has opened the closed issue.

(iii) According to the applicant, because of the aforementioned reasons and continuous political interference due to the illegal influence of former President, the AIIMS and the former Minister and husband of late SunandaPuskar, the representations made by him on 6.5.2014, 27.5.2014 and 6.6.2014 (Annexure RA/13, Annexure RA/14 and Annexure RA/15) have not been considered by the President, CVO and Director of the AIIMS.

(iv) Respondent no.1-AIIMS has issued the order dated 7.6.2014 (Annexure RA/16) illegally promoting the respondent no.3 to the grade of professor with effect from 1.7.2011.

(v) It is contended by the applicant that the biased and mala fide approach of AIIMS is writ large on the promotion order dated 7.6.2014. The Governing Body of AIIMS has only considered the first punishment of Censureimposed on respondent no.3, vide AIIMS order dated 11.5.2011 and ignored the second punishment of Censureimposed on respondent no.3, vide AIIMS order dated 7.8.2013. The Governing Body has also ignored the Memo dated 25.10.2013 (Annexure RA/17) issuing Warningto respondent no.3 for violating the rules of the AIIMS.

7. On 13.7.2014 and 18.7.2014 the applicant filed two rejoinder replies to respondent no.3s counter reply, wherein he has more or less reiterated the same averments as in his rejoinder reply to respondent no.1-AIIMSs counter reply.

8. We have carefully perused the pleadings and have heard the learned counsel appearing for the parties. We have also perused the written notes of submissions filed by the learned counsel appearing for the parties.

9. As respondent nos. 1 and 3 have vehemently objected to the maintainability of the Original Application, we would like to firstly consider the said objection as a preliminary issue.

10. In the Original Application filed on 12.5.2014, the applicant has virtually assailed and prayed for quashing the note on Agenda Item No.GB/151/2 (Annexure A/8) to be placed before the Governing Body in its meeting scheduled to be held on 12.5.2014. The said Agenda Item pertained to the case of respondent no.3-Dr.O.P.Murty, Additional Professor of Forensic Medicine, for promotion to the next higher grade of Professor under the Assessment Promotion Scheme. The entire note on Agenda Item No.GB/151/2 ibid is quoted below:

No.F.11-1/2011-Estt.I

NOTE FOR GOVERNING BODY

Item No.GB/151/2

TO CONSIDER THE CASE OF DR.O.P.MURTY, ADDITIONAL PROFESSOR OF FORENSIC MEDICINE REGARDING HIS PROMOTION TO THE NEXT HIGHER GRADE UNDER ASSESSMENT PROMOTION SCHEME IN THE LIGHT OF IMPOSITION OF PENALTY OF CENSURE

1. INTRODUCTION

1.1 Dr.O.P.Murty is working as Additional Professor of Forensic Medicine w.e.f. 01.07.2000. He became eligible for promotion to the grade of Professor for the batch of 01.07.2007 as his first chance under Assessment Promotion Scheme. He was, however, not found fit for promotion by the Standing Selection Committee.

1.2 He was permitted for a foreign assignment at Malaysia for a period of six months w.e.f. 16.11.2007 to 15.05.2008 as per his entitlement at that point of time under the guidelines. However, he left the said assignment in between and proceeded to Saudi Arabia unauthorizedly w.e.f. 07.04.2008. He continued working at Saudi Arabia unauthorizedly for a period up to 16.08.2009 ignoring communications from the AIIMS for reporting back to his duty. He joined back his duty in the Institute on 17.08.2009. Thus, he remained absent unauthorizedly w.e.f. 16.-05.2008 to 16.08.2009.

1.3 As such, Dr.O.P.Murty was found responsible for negligence of duty and gross misconduct and having acted in a manner unbecoming of an Institute employee, thereby contravening Rule 3(1) of the CCS (Conduct) Rules, 1964 and accordingly vide office letter No.F.6-20/92-Estt.I dated 11.05.2011, a penalty of Censure was imposed on him under Rule 15 of the CCS (CCA) Rules, 1965 read with Regulation 33(2) of the AIIMS Regulations 1999 (as amended) for his unauthorized absence as well as his unauthorized visit to Saudi Arabia from 16.05.2008 to 16.08.2009 and the said period of his unauthorized absence was treated as dies non.

1.4 A request of Dr.O.P.Murty to revoke the penalty of Censure imposed on him by the Institute was placed before the Governing Body in its meeting held on 22.10.2012. The Governing Body, however, rejected his request.

1.5 The Medical Council of India (MCI) also recommended for imposition of penalty of Censure on Dr.O.P.Murty for misrepresenting himself as a Professor of Forensic Medicine. Accordingly, a proposal to initiate minor penalty proceedings against Dr.O.P.Murty in the light of the recommendations of MCI was placed before the Governing Body in its meeting held on 19.07.2013. The Governing Body after discussion accepted the recommendations of MCI and accordingly the penalty of Censure was imposed on Dr.O.P.Murty vide Order No.F.6-20/92-Estt.I dated 07.08.2013.

1.6 Dr.O.P.Murty again became eligible to be considered for promotion to the grade of Professor for the batch of 01.07.2009 as his second chance under APS. The Standing Selection Committee in its meetings held during Nov-Dec, 2010 considered candidates of 251 faculty members (including Dr.O.P.Murty) for promotion to next higher grades under APS. However, 39 faculty members (including Dr.O.P.Murty) were not found fit for promotion by the Standing Selection Committee. The recommendations of the Standing Selection Committee were approved by the Governing Body (Appointing Authority) in its 145th meeting held on 01.03.2011.

1.7 The faculty members, who were not found fit for promotion under APS to the next respective higher grades by the Standing Selection Committee represented to various quarters including President, AIIMS and Ministry of Health & Family Welfare. Thereafter, the Ministry of Health and Family Welfare vide their letter No.V.16020/15/2011-ME-I(Pt.) dated the 9th August, 2011 issued a direction under Section 25 of AIIMS Act that the similar method may be adopted by the Standing Selection Committee as done in past and the findings of the review may be placed before the Governing Body for a final decision.

1.8 Accordingly, a meeting of the Standing Selection Committee was convened on 6th January, 2012 to review the cases of those faculty members who were not found fit for promotion under APS. The Committee (SSC) reiterated its earlier decision on the fitness or otherwise contained in the minutes/recommendations of the SSC, held in 2010. The minutes of the Standing Selection Committee meeting held on 6th January, 2012 were placed before the Governing Body in its 146th meeting held on 16th January, 2012 vide Item No.GB-146/15 and considering all the aspects, the G.B. decided as under:

The Governing Body also decided that since this was the last batch under old APS Guidelines, these people should be promoted to their next higher grade from the date their batchmate were promoted, and the same should not be quoted as precedence for further reference.

1.9 However, the Governing Body in its 147th meeting held on 14.04.2012 vide Item no.GB-147/1, while ratifying the minutes of the 146th meeting of the Governing Body again discussed the issue at length and decided as under:

There was considerable discussion on the issue of promoting 39 faculty members, who had not been recommended for promotion by the Standing Selection Committee. It was pointed out that this would set a bad precedent and would send a wrong signal that promotions in the Institute could be obtained on considerations other than merit. At the same time, it was felt that in view of the significant shortage of doctors at faculty level and the long years of service rendered by the faculty in question, it would be appropriate to promote them by taking a lenient view. Considering all these aspects, the Governing Body by consensus decided in principle to promote all the 39 faculty to their respective higher grades. It was categorically stipulated that this decision was in no way a reflection on the Standing Selection Committee and that this will be a onetime relief measure not to be quoted as precedent. The matter was accordingly resolved.

1.10 The Governing body in its aforesaid meeting held on 14.04.2012 vide a separate agenda item No.GB-147/2 while considering Action Taken Report on the minutes of the Governing Body meeting held on 16.01.2012, in respect of agenda item No.146/15 decided to promote those 39 faculty members to higher grades.

1.11 In view of the aforesaid decision of the Governing Body, promotion letters to 35 faculty members (excluding Dr.O.P.Murty & other 03 faculty members who had left the Institute by that time) were issued. However, the promotion letter to Dr.O.P.Murty was not issued on the grounds as enumerated at the foregoing paras that he has been imposed the penalty of Censure.

1.12 Further, on a note thereby apprising the status of 04 faculty members who were not issued promotion orders including that of Dr.O.P.Murty was sent to the Honble Union Minister of Health & Family Welfare & President, AIIMS, it was instructed from the office of the President, AIIMS that before the case is put up to President, AIIMS, the opinion from DoP&T be taken and accordingly a reference was made to the ministry of Health & FW vide this office letter dated 25.10.2012 requesting to obtain clarifications on the matter from DoP&T. Since nothing was heard from the ministry on the matter, a reminder was sent to the Ministry on 21.12.2012. However, on various queries raised by the Ministry from time to time in the matter, replies were forwarded to the Ministry. The reply from the ministry is, however, awaited and the matter is still pending.

2. ADMINISTRATIVE COMMENTS

2.1 Pending the clarifications from the Ministry of Health and Family Welfare on the subject matter, Dr.O.P.Murty was called for appearing before the Standing Selection Committee during its meeting held on 13.04.2013 for his promotion to the grade of Professor for the next batch of 01.07.2012 as his third and final chance. However, he did not appear for interview even after a specific request made vide O.M.No.F.6-20/92-Estt.I dated 12.04.2013 and his candidature was not considered accordingly.

2.2 Dr.O.P.Murty was again called for appearing before the Selection Committee for his promotion to the grade of Professor for the batch of 01.07.2013 as his third and final chance during its meeting scheduled on 26.02.2014 as per the existing APS guidelines. He vide his letter dated 18.02.2014 (copy enclosed), however, represented by stating that since he has already been promoted to the grade of Professor for the batch of 01.07.2009 in principle by Governing Body as a part of group consisting 39 faculty members and there is nothing adverse against him in GB decision, invitations thereafter cannot be equated as a last chance to his disadvantage. He has further stated that in case of the worst and adverse outcome of the case from Ministry/DoPT, his eligibility for promotion to Professor grade should have been considered after adjusting dies non period till pending final outcome.

2.3 Since clarifications sought by the Institute regarding promotion of Dr.O.P.Murty, Additional Professor of Forensic Medicine to the next higher grade of Professor under Assessment Promotion Scheme, have not so far been received from the Ministry of Health and Family Welfare in spite of various correspondences/reminders, the competent authority has decided to place the matter before the Governing Body for consideration and orders as the Governing Body is the Appointing Authority for faculty posts in accordance with Item No.19(ii) of Schedule-I of the AIIMS Regulations, 1999 (as amended). It may, however, be mentioned that Dr.O.P.Murty belongs to reserved category of Scheduled Caste.

2.4 It may be relevant to mention that Department of Personnel & Training (DoPT) vide its letter no.22011/4/2007-Estt.(D) dated 28th April, 2014 has issued guidelines on treatment of effect of penalties on promotion role of Departmental Promotion Committee. Para 7(g) of the aforesaid letter provides as under:

7(g) In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer

should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as unfit for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over (Para 13 of DoPT OM dated 10.4.89).

A copy of the aforesaid letter issued by the DoPT is enclosed for ready reference.

3. APPROVAL SOUGHT

3.1 Keeping in view the fact that the Governing Body in its 147th meeting decided to promote 39 faculty members including Dr.O.P.Murty but he could not be promoted for the reasons enumerated at foregoing paragraphs and also the clarifications requested from DoPT through Ministry of Health & Family Welfare have not been received, the matter regarding grant of promotion to Dr.O.P.Murty, Additional Professor of Forensic Medicine to the next higher grade of Professor w.e.f. 01.07.2009 under Assessment Promotion Scheme is placed before the Governing Body for kind consideration and decision as the minor penalty of censure has no currency beyond the date of its imposition.

11. Section 19 of the Administrative Tribunals Act, 1985, reads thus:

19. Applications to Tribunals (1) Subject to the other provisions of this Act a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation - For the purposes of this sub-section, order means an order made

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government ; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

12. Thus, it is to be seen as to whether the impugned note on Agenda Item No.GB/151/2 can be said to be an order within the meaning of Section 19 of the Administrative Tribunals Act, 1985. By the said note on Agenda Item No.GB/151/2, the matter regarding promotion of respondent No.3-Dr.O.P.Murty, Additional Professor of Forensic Medicine to the next higher grade of Professor with effect from 1.7.2009 under the APS was placed before the Governing Body for consideration and decision as the minor penalty of Censure had no currency beyond the date of its imposition. In his O.A. and rejoinder replies, save and except the statements made by the applicant about his own service career and some blameworthy conduct of respondent no.3, most of the averments contained therein are nothing but replica of the contents of the impugned note on Agenda Item No.GB/151/2.

13. A reading of the impugned note on Agenda Item No.GB/151/2 makes it clear that nothing adverse against the applicant has been whispered therein. The impugned note on Agenda Item No.GB/151/2 only depicts the chronology of events leading to consideration of the case of respondent no.3 by the Governing Body for promotion to the grade of Professor.

14. The authorities, who are conferred with the power under the rules and regulations to consider such matter, are free to consider and take decision in the matter. To entertain an Original Application under Section 19 of the Administrative Tribunals Act, 1985 against any proposal will not only stall the decision making process but also impinge upon the freedom of the departmental authorities to take appropriate decision in the matter. It is trite law that Courts/Tribunals are not invested with the power, authority and jurisdiction to sit in appeal over the decisions taken by the departmental authorities. Courts and Tribunals, in exercise of power of judicial review, can only examine whether the decision taken by the departmental authorities is vitiated on account of any legal flaw in the decision making process thus warranting their interference. Courts/Tribunals can interfere with the decision of the departmental authorities, if it is found that the authorities have failed to take all relevant factors into consideration, or have taken irrelevant factors into consideration while making the decision; and that the conclusion arrived at by the authorities is perverse, or irrational, or in contravention of a statute. In the instant case, the concerned authorities are yet to take a decision on the impugned note on Agenda Item No.GB/151/2.

15. In the above view of the matter, the impugned note on Agenda Item No.GB/151/2 cannot be held to be an order, and the applicant cannot be held to be a person aggrieved within the meaning of Section 19 of the Administrative Tribunals Act, 1985. Therefore, the applicant is not entitled to maintain the present Original Application before the Tribunal.

16. During pendency of the present O.A., the Governing Body has already taken a decision on the impugned Agenda Item No. GB/151/2 approving promotion of respondent no.3 to the grade of Professor with effect from 1.7.2011, instead of 1.7.2009 as proposed in the note. Accordingly, O.M. dated 7.6.2014 has been issued promoting respondent no.3 to the said higher grade with effect from 1.7.2011. Challenging the said promotion of respondent no.3, vide O.M. dated 7.6.2014, the applicant has filed another O.A.No.2100 of 2014. Though the said O.A.No.2100 of 2014 was heard analogously with the present O.A.No.1641 of 2014, yet considering the scope and ambit of both the said O.A., we propose to decide the same by two separate orders. Accordingly, we

propose to decide O.A.No.2100 of 2014 by passing a separate order which is also pronounced today in open Court along with the order in OA No.1641 of 2014.

17. In the light of the above discussions, we hold that the Original Application No.1641 of 2014 filed by the applicant is liable to be rejected as being not maintainable. Accordingly, O.A. No.1641 of 2014 is rejected. The interim orders automatically stand vacated. No order as to costs.

(RAJ VIR SHARMA)

(ASHOK KUMAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

AN

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.NO.2100 OF 2014

New Delhi, this the 4th day of March, 2015

CORAM:

HONBLE SHRI ASHOK KUMAR, ADMINISTRATIVE MEMBER

&

HONBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

Dr.Sudhir Kumar Gupta, aged about 50,

Son of Sh. K.N.Gupta, Group A,

Professor & Head of Department,

Department of Forensic Medicine and Toxicology,

All India Institute of Medical Sciences (AIIMS),

Ansari Nagar, New Delhi 110049

And Resident of:

House no.438, Hawa Singh Block,

Asiad Village Complex, KhelGaon Road,

New Delhi 110049

Applicant

(Advocates for applicant: S/ShriAmarendra Saran (Senior Advocate), R.R.Kumar, AjeshLuthra)

Vs.

1. All India Institute of Medical Sciences (AIIMS),
Ansari Nagar, New Delhi 110049
Through its President

2. Union of India,
Through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi 110001

3. Dr.O.P.Murty,
Additional Professor,
Department of Forensic Medicine & Toxicology,
All India Institute of Medical Sciences,
Ansari Nagar,
New Delhi 110049
And Resident of;
F-402, Jagran Apartment, CGHS,
Sector 22, Dwarka, New Delhi

Respondents

Advocates for respondent no.1: S/Shri R.K.Gupta and M.K.Singh

Advocate for respondent no.2: Dr.Chaudhary Shamsuddin Khan

Advocate for respondent no.3: Shri Manjeet Singh Reen & Dr. Shiva Sharma

ORDER

Raj Vir Sharma, Member(J):

Applicant-Dr.S.K.Gupta was promoted to the grade of Professor, Department of Forensic Medicine & Toxicology, AIIMS, with effect from 1.7.2012, vide order dated 19.7.2013. In this Original Application filed by him on 23.6.2014 under Section 19 of the Administrative Tribunals Act, 1985, he has prayed for quashing and setting aside the O.M. dated 7.6.2014 (Annexure A), whereby respondent no.3-Dr.O.P.Murty has been promoted to the grade of Professor, Department of Forensic Medicine & Toxicology, AIIMS, with effect from 1.7.2011.

2. Brief facts of the applicants case, as projected in the O.A., are as follows:

(i) The applicant is a Gold Medalist of his MBBS batch. He joined service in the All India Institute of Medical Sciences (AIIMS) as a Senior Resident. Upon recommendation of the Standing Selection Committee (SSC) and with the approval of the Governing Body of the AIIMS, the applicant was promoted to the grade of Professor w.e.f. 1.7.2012, vide order dated 19.7.2013 (Annexure A/4). On 3.8.2013, he was appointed as Head of Department, Department of Forensic Medicine & Toxicology, AIIMS, vide order dated 3.8.2013 (Annexure A/5). He is currently working as Professor & HOD, Department of Forensic Medicine & Toxicology in the AIIMS.

(ii) Respondent no.3-Dr.O.P.Murty joined as Assistant Professor and is currently working as Additional Professor, Department of Forensic Medicine and Toxicology, AIIMS. He was found guilty of levelling false allegations, fabricating false evidences, insubordination, impersonation, and misusing official position for personal gain, vide enquiry report dated 13.5.2000 (Annexure A/2).

(iii) Respondent no.3 became eligible for promotion from the grade of Additional Professor to the grade of Professor for the batch of 01.07.2007 as his First Chance under the Assessment Promotion Scheme (APS) for the faculty of AIIMS, but he was found unfit for such promotion by the Standing Selection Committee (SSC).

(iv) On 7.4.2008 respondent no.3 had left his assignment in Malaysia and unauthorizedly worked in Saudi Arabia. He had also remained absent from his duty from 16.5.2008 to 16.8.2009 without any authorization. The disciplinary authority imposed on him the penalty of Censure and directed that the period of his absence from 16.5.2008 to 16.8.2009 be treated as dies non, vide order dated 11.5.2011 (Annexure A/3).

(v) Respondent no.3 again became eligible for promotion from the grade of Additional Professor to the grade of Professor for the batch of 1.7.2009 as his Second Chance under the APS, but he was found unfit for promotion by the SSC.

(vi) The Governing Body, AIIMS, vide minutes of its meetings held on 16.1.2012 and 14.4.2012, as a one time relief, decided to promote in principle all the 39 faculty members who were not recommended for promotion by SSC. But respondent no.3 was not promoted, and no promotion order was issued to him because of imposition of penalty of Censure on him. The President, AIIMS, directed an opinion to be obtained from the Department of Personnel & Training on the issue before considering respondent no.3's promotion to the grade of Professor.

(vii) Respondent no.3 became eligible for promotion from the grade of Additional Professor to the grade of Professor for the batch of 01.07.2012 as his Third/Final Chance under the APS. He did not appear for interview before SSC even after a specific request by the AIIMS.

(viii) On 7.8.2013, upon recommendation of the Ethics Committee of the Medical Council of India (Annexure A/6), the AIIMS imposed a further penalty of Censure on respondent no.3.

(x) In May 2014, the applicant came to know that a meeting of the Governing Body was to be held on 12.5.2014 to approve the proposal for promotion of respondent no.3 to the grade of Professor with effect from 1.7.2009, vide Agenda Item No.GB/152/2 (Annexure A/8).

(xi) According to the applicant, the Agenda Item No.GB/152/2 ibid was prepared and approval was sought from the Governing Body with a view to illegally promote respondent no.3 and to purge the seniority of the applicant in the grade of Professor. Therefore, the applicant made representations dated 5.5.2014 and 8.5.2014 (Annexure A/9 and Annexure A/10), but to no avail. Hence, the applicant filed Original Application No.1641 of 2014.

(xii) During pendency of the said O.A.No. 1641 of 2014, on the basis of the decision of the Governing Body on Agenda Item No.GB/151/2, respondent no.1 issued O.M. dated 7.6.2014 (Annexure A) promoting respondent no.3 to the grade of Professor with effect from 1.7.2011.

(xiii) It is, inter alia, contended by the applicant that due to his honesty, integrity and upright professional approach, he has been targeted by the vested interest who are bent upon throwing him out as Head of Department of Forensic Medicine & Toxicology for having their own way. In pursuance thereof, a Memorandum dated 14.6.2014 (Annexure A/23) was issued by respondent no.1 to him for allegedly leaking the postmortem report of a high profile case by holding press conference. The General Body of AIIMS has no power to illegally and arbitrarily supersede the SSC and promote an unworthy candidate, like respondent no.3, by ignoring the blameworthy factors against him, more so in the absence of recommendation by the SSC.

3. Resisting the claim made by the applicant, Respondent no.1-AIIMS has filed a counter reply wherein it is, inter alia, stated as follows:

(i) The O.A. as filed by the applicant is not maintainable.

(ii) Respondent no.3 joined the AIIMS as an Assistant Professor in the year 1992 on regular basis whereas the applicant joined as Assistant Professor on ad hoc basis on 05.08.2000. Respondent no.3 was already Associate Professor at the time of joining of the applicant as Assistant Professor. Respondent no.3-Dr.O.P.Murty was working as Additional Professor of Forensic Medicine with effect from 1.7.2000. Respondent no.3 was permitted for a foreign assignment in Malaysia for a period of six months w.e.f. 16.11.2007 to 15.5.2009 as per his entitlement at that point of time under the

guidelines. However, respondent no.3 left the said assignment in between and proceeded to Saudi Arabia unauthorizedly w.e.f. 7.4.2008. He continued to work in Saudi Arabia up to 16.8.2009 ignoring communications from the AIIMS for reporting back to his duty. He joined back his duty in the AIIMS on 17.8.2009.

(ii) Respondent no.3 became eligible for promotion to the grade of Professor for the batch of 01.07.2007 as his first chance and for the batch of 01.07.2009 as his second chance under the APS. The SSC in its meetings held during November-December 2010 considered the candidatures of 251 faculty members including respondent no.3-Dr.O.P.Murty for promotion to the next higher grades under the APS. Thirty-nine (39) faculty members including respondent no.1-Dr.O.P.Murty were not found fit for promotion by the SSC. The recommendations of the SSC were approved by the Governing Body (appointing authority) in its 145th meeting held on 1.3.2011.

(iii) A penalty of Censure was imposed on Respondent no.3, vide letter No.F.6-20/92-Estt.I dated 11.5.2011 as he was found responsible for negligence of duty and gross misconduct for his unauthorized absence and visit to Saudi Arabia from 16.5.2008 to 16.8.2009 which period was treated as dies non.

(iv) The Governing Body in its meeting held on 14.4.2012, vide a separate Agenda Item No.GB 147/2, while considering Action Taken Report on the minutes of its meeting held on 16.1.2012, in respect of agenda item No.146/15, decided to promote those 39 faculty members to higher grades. However, promotion orders were issued to 35 faculty members, excluding respondent no.3-Dr.O.P.Murty and 3 others who had left the AIIMS by that time. The promotion order in favour of respondent no.3 was withheld because of imposition of penalty of Censure on him.

(v) The matter was submitted to the Union Minister of Health & Family Welfare & President, AIIMS. As per the instruction received from the Honble Ministers office, a reference was made to the Ministry of Health & Family Welfare to obtain clarification from the Department of Personnel & Training in the matter.

(vi) Respondent no.3 was called for appearing before the SSC for his promotion to the grade of Professor for the batches of 01.07.2012 and 01.07.2013 as his third and final chance during its meetings scheduled on 13.4.2013 and 26.2.2014. Respondent no.3, vide his letter dated 18.2.2014, claimed that he had already been promoted to the grade of Professor for the batch of 1.07.2009 in principle by the Governing Body as a part of group consisting of 39 faculty members.

(vii) The matter regarding grant of promotion to respondent no.3 with all facts was placed before the Governing Body vide item No.GB-151/2 during its meeting held on 12.5.2014. The Governing Body decided to grant promotion to respondent no.3-Dr.O.P.Murty to the grade of Professor from 1st July 2011, i.e., immediately after the conclusion of the disciplinary proceedings, vide minutes of the Governing Body meeting dated 12.5.2014 (Annexure R/1).

(viii) The minor penalty of Censure cannot be considered as disentitlement for the career progress of respondent no.3.

4. No counter reply has been filed by respondent no.2-Union of India.

5. Resisting the claim of the applicant, Respondent no.3 has filed a counter reply, wherein it is, inter alia, stated as follows:

(i) The Governing Body of respondent no.1-AIIMS is fully empowered to take necessary and appropriate decisions in relation to its employees. Referring to Regulation 12(5) of the AIIMS Regulations, 1999, respondent no.3 has stated that the Standing Selection Committee is an advisory committee. The recommendations of the SSC are not mandatory. The SSC is a recommendatory body, and the recommendations made by it are subject to approval by the appointing authority. The Governing Body is the final appointing authority. There are certain occasions when, for valid reasons, the appointing authority may find it necessary to disagree with the recommendations of the SSC. While promoting respondent no.3, vide O.M. dated 7.6.2014, respondent no.1 clearly spelled out its policy as regards seniority with reference to the situation of respondent no.3.

(ii) The applicant's allegation of bias on the part of respondent no.1 in promoting respondent no.3 with the ulterior motive of illegally superseding the applicant falls flat in view of the fact that the promotion process was not specific to respondent no.3, but involved as many as 39 faculty members. The Governing Body took the decision to promote the said 39 faculty members in its meetings held on 16.1.2012 and 14.4.2012, which was much before the appointment of the applicant as HOD, vide letter dated 3.8.2013 issued by respondent no.1. The matter was willfully delayed by the then Director Dr.R.C.Deka and there was no need to make a reference to the DoP&T for any clarification in the case of respondent no.3.

(iii) The applicant has raised irrelevant issues by referring to the unfortunate death of Mrs.SunandaPushkar and linking her death and autopsy to the decision taken by the Governing Body. The process of promotion of respondent no.3 had started much before the death of Mrs.SunandaPushkar.

(iv) The conduct and working of the applicant are highly unsatisfactory and even objectionable as reflected in his various ACRs since 2005 onwards by the then HOD and Professor T.D.Dogra who had worked as his supervisory officer from 1995 to 2012. In paragraph 10 of the counter reply, respondent no.3 has quoted the adverse remarks contained in the ACR of the applicant for the year 2010.

(v) Respondent no.3 being the senior most faculty member had in the past acted as Head of the Department. The applicant joined as Assistant Professor on regular basis in 2003 whereas respondent no.3 joined as Assistant Professor in 1992.

(vi) The former HOD, Dr.T.D.Dogra, who has already superannuated, as well as respondent no.3 were constrained to make several official complaints against the applicant because of his patent dishonesty and lack of integrity.

(vii) Respondent no.3 has high merit, capability and professional credentials.

(viii) The professional track record of the applicant after joining AIIMS is full of black marks.

(ix) Respondent no.3, who then was an Additional Professor, was due for promotion as Professor w.e.f. 1.7.2007, but such promotion was denied to him for undisclosed reasons. Such promotion with effect from 1.7.2009 was again denied to him on the ground that a minor penalty of

Censure was imposed on him on 11.5.2011, although the said penalty of Censure could not have any effect prior to its imposition. Besides, Censure could not have come in the way of his promotion. To the same effect is the order treating the period of his unauthorized absence as dies non. For some unknown reasons, the case was referred to the Department of Personnel & Training, although the Governing Body had granted promotion to him with effect from 1.7.2009.

(x) Respondent no.3 has been promoted to the grade of Professor with effect from 1.7.2011 as per rules. The issue of supersession as raised by the applicant is irrelevant. The issue of supersession has not yet arisen and the application is premature to that extent. The issue of supersession can arise only when respondent no.1 prepares and notifies a revised seniority list. No such revised seniority list has so far been issued.

(xi) The 39 faculty members, including respondent no.3, who were earlier not found fit for promotion, were later decided to be promoted in terms of the Governing Body's decisions dated 16.1.2012 and 14.4.2012. All others were promoted, but respondent no.3 was not issued the promotion order on the false/baseless ground that the penalty of Censure had been imposed on him. The said penalty was imposed only on 11.5.2011, much after the due date of promotion, namely, 1.7.2009. There is no rule or law that a penalty of Censure can operate retrospectively.

(xii) Respondent no.3 cannot be denied his promotion as per law merely because this does not suit the applicant. It is the duty of respondent nos. 1 and 2 to promote employees as per rules, and they have merely carried out their duty. The applicant has no locus standi to challenge the same. The applicant is mistaken in treating the promotion of respondent no.3 as punishment to himself. The applicant has many black holes in his career but somehow earned promotions to higher grades up to the level of Professor by manipulation due to his political clout and influence.

6. Refuting the statements made by respondent no.1- AIIMS in its counter reply, the applicant has filed a rejoinder reply wherein, besides reiterating more or less same averments as in the O.A., he has, inter alia, stated that Respondent no.1-AIIMS has deliberately and hurriedly prepared the note under Agenda Item No.GB/151/2 at the instance of its former President with mala fide intention to illegally punish the applicant for refusing to act unprofessionally in SunandaPushkar's autopsy matter. The applicant was told to prepare an autopsy report giving clean chit irrespective of his professional conclusions after conducting autopsy over the dead body of late SunandaPushkar, which he declined. Therefore, the then President of AIIMS, decided to illegally purge the seniority of the applicant by illegally promoting respondent no.3 with retrospective effect. The impugned promotion of respondent no.3 is a follow-up and consequential action of illegal agenda impugned in O.A.No.1641 of 2014. Respondent no.1-AIIMS has issued the impugned order dated 7.6.2014 illegally promoting respondent no.3 as Professor with retrospective effect from 1.7.2011 by deliberately omitting to consider the blameworthy factors against him.

7. In his rejoinder reply to respondent no.3's counter reply, the applicant, while refuting the stand taken by respondent no.3, has more or less reiterated the same averments as in his rejoinder reply to respondent no.1-AIIMS's counter reply.

8. We have carefully perused the pleadings and have heard the learned counsel appearing for the parties. We have also perused the written notes of submissions filed by the learned counsel appearing for the parties.

9. ShriAmarendraSharan, learned Senior Advocate, arguing the case on behalf of the applicant, submitted that in the present O.A. the applicant is assailing the promotion order dated 7.6.2014 issued by respondent no.1-AIIMS, whereby respondent no.3 was illegally appointed as Professor with retrospective effect from 01.07.2011, which in turn has adversely affected the seniority of the applicant who was promoted to the grade of Professor w.e.f. 1.7.2012 after he was found fit for promotion by the Standing Selection Committee and was appointed as Head of the Department, Forensic Medicine & Toxicology, AIIMS, on 3.8.2013. It was also submitted by the learned Senior Counsel that as per the Revised Assessment Promotion Scheme, an Additional Professor with four years of service is eligible for appointment to the grade of Professor subject to clearance of the prescribed selection process. The Standing Selection Committee had found Respondent no.3 unfit for such promotion for the batch of 1.7.2007. As the respondent no.3 had worked unauthorizedly in Saudi Arabia and remained absent from duty without obtaining permission from the competent authority, disciplinary enquiry was initiated against him and the penalty of Censure was imposed, vide order dated 11.5.2011, and it was also decided that the period of his unauthorized absence from 16.5.2008 to 16.8.2009 shall be treated as dies non. However, respondent no.3 again appeared for promotion as Professor of the batch of 1.7.2009, although he was ineligible to be called for interview because under the AIIMS Assessment Promotion Scheme, a minimum period of two years is required from unfit year (2007 in this case) to become eligible in 2009 interview year and the dies non period cannot be counted for any purpose including promotion. The Standing Selection Committee again found respondent no.3 unfit for promotion. Although the Governing Body granted promotion to 39 faculty members who were found unfit for promotion by the Standing Selection Committee for the batch of 1.7.2009, respondent no.3 was not promoted as he was undergoing the penalty of Censure and the request made by respondent no.3 for revocation of the penalty of Censure was rejected by the Governing Body in its meeting held on 22.10.2012. Thereafter, on the basis of the recommendation of the Medical Council of India, the Governing Body again imposed the penalty of Censure on respondent no.3 on 7.8.2013. Further, respondent no.3 also did not appear before the Standing Selection Committee for consideration of his case for promotion to the grade of Professor in the batches of 1.7.2012 and 1.7.2013. In the meanwhile, on 17.1.2014 Smt. SunandaPushkar died under mysterious circumstances, and the applicant as the Chairperson of the Medical Board which was entrusted with the task of conducting the postmortem of the body of the deceased. Between March 2014 and May 2014, the applicant was pressurized to give report of natural death which was contrary to the objective findings. The applicant refused to succumb to such pressure, and in order to obviate any interference, he got the entire postmortem proceedings video graphed. In order to remove the applicant as HOD, Forensic Medicine & Toxicology, AIIMS, so that a new Medical Board might be reconstituted to give a favourable opinion with respect to the death of Mrs. SunandaPushkar, on 12.5.2014 the Governing Body in its Extraordinary GBM, in colourable exercise of power, decided to promote respondent no.3 as Professor w.e.f. 1.7.2011 on the basis of earlier amnesty scheme without amending the statutory rules and also without considering that in 2011 no selection took place in AIIMS. The representations submitted by the applicant to the competent authority were not at all considered.

9.1 In the above factual matrix, the learned Senior Counsel submitted that in the absence of recommendation/selection by the Standing Selection Committee under the Assessment Promotion Scheme, which is mandatory, respondent no.3 was ineligible to be promoted and the Governing Body ought not to have promoted respondent no.3 to the grade of Professor. In support

of his contention, the learned Senior Counsel relied on the decision of the Honble Delhi High Court in *S.M.Bose v. AIIMS &ors*, (1992) 26 DRJ 544, and the decisions of the Honble Supreme Court in *R.Prabha Devi and others v. Government of India*, 1988 (2) SCC 233; and *Sh.Kumar Padma Prasad v. Union of India & others*, (1992) 2 SCC 428.

9.2 It was also submitted by the learned Senior Counsel that the resolutions passed by the Governing Body in the case of respondent no.3, which are inconsistent with statutory rules, are non est. In support of this contention, the learned Senior Counsel has placed reliance on the decisions of the Honble Supreme Court in *Dr.S.K.Kacker v. AIIMS*, (1996) 10 SCC 734; and *State of U.P. v. NeerajAwasthi and others*, 2006(1) SCC 667.

9.3 It was also submitted that although respondent no.3 was found unfit by the Standing Selection Committee for promotion in batches of 1.7.2007 and 1.7.2009, and he did not appear before the Standing Selection Committee for being considered for promotion in the batches of 1.7.2012 and 1.7.2013 and was also not covered under the Amnesty Scheme, the Governing Body illegally gave him benefit of promotion under the Amnesty Scheme, more so when his dies non period is not counted for any purpose as per the DoP&Ts clarification vide O.M. dated 8.8.2014.

9.4 It was further submitted by the learned Senior Counsel that the decision having been taken by the Governing Body without taking into consideration all relevant factors and in contravention of the statutory rules, the order issued by respondent no.1-AIIMS on 7.6.2014, whereby respondent has been illegally promoted with effect from 1.7.2011, is non est. In support of his submission, the learned Senior Counsel placed reliance on the decision of the Honble Supreme Court in *Om Kumar and others v. Union of India*, (2001) 2 SCC 386.

9.5 It was also submitted by the learned Senior Counsel that the minutes of the Governing Body meeting dated 12.5.2014 having not been approved/finalized till date, has no legal sanctity and, therefore, the impugned O.M. dated 7.6.2014 is illegal and liable to be interfered with.

9.6 It was also submitted by the learned Senior Counsel that the President and the Director of AIIMS, against whom allegations of mala fide and colourable exercise of power have been averred, have not specifically denied the said averments. Therefore, the impugned order dated 7.6.2014 is a manifestation of malice in law as a conscious violation of rules was done intentionally without just reason or excuse, which was detrimental to the career progression of the applicant. In support of this submission, reliance has been placed by the learned Senior Counsel on the decision of the Honble Supreme Court in *Smt. S.R.Venkataraman v. Union of India and another*, (1979)2 SCC 491.

9.7 It was also submitted by the learned Senior Counsel that retrospective promotion has been granted to respondent no.3, despite the fact that on the date of the meeting of the Governing Body, second punishment of Censure was entered into the Service Book of the applicant and therefore, respondent no.3 could not have been promoted. In support of this submission, reliance has been placed on the decision of the Honble Supreme Court in *Union of India, etc., etc. v. K.V.Jankiraman, etc., etc.*, (1991) 4 SCC 109; *Union of India and others v. A.N.Mohanan*, (2007) 5 SCC 425; and *State of T.N. v. ThiruK.S.Murgesan & others*, (1995) 3 SCC 273; as well as the decisions of the Tribunal in *Y.Nagireddy v. The Union of India and others*, MANU/CA/0499/2009 (Hyderabad Bench); and *V.D.Sirkumar v. Union of India*, MANU/CA/0654/2009 (Ernakulam Bench).

9.8 It was also submitted by the learned Senior Counsel that as per the convention in all the Departments of AIIMS, only the senior most Professor is appointed as Head of the Department. By the impugned order dated 7.6.2014, respondent no.3 has been promoted to the grade of Professor with effect from 1.7.2011. The impugned order of promotion of respondent no.3 is detrimental to the career progression of the applicant inasmuch as he will not only lose his seniority in the grade of Professor but also lose his appointment as Head of the Department, Forensic Medicine & Toxicology, AIIMS, in which event the applicant would be ineligible to be selected for the post of Director, AIIMS. Thus, the impugned order and the action of the Governing Body, AIIMS, in that respect, are illegal inasmuch as it results in illegal demotion of the applicant without any rhyme or reason and without affording him an opportunity of being heard in gross violation of the principle of natural justice and fair-play, whereas respondent no.3 will stand rewarded illegally, despite continuous disciplinary actions and punishments by AIIMS, due to colourable exercise of power/discretion by the Governing Body of AIIMS.

10. Per contra, ShriR.K.Gupta, the learned counsel appearing for respondent no.1-AIIMS submitted that the O.A. as filed by the applicant is not maintainable, as being hit by Section 20(1) of the Administrative Tribunals Act, 1985. Tribunals/Courts should not interfere with the decision of the Governing Body, i.e., the Appointing Authority. As per Regulation 12(5) of the AIIMS Regulations, the Standing Selection Committee is an Advisory Committee. Thus, the Governing Body of AIIMS has right to alter, vary, change, rescind and annul the decision of the Standing Selection Committee. The first Censure was issued on 11.5.2011, and the second Censure was issued to respondent no.3 on 7.8.2013. The promotion case of respondent no.3 was to be considered in accordance with the DoP&Ts O.M. dated 28.4.2014. Though the applicant has made allegation of mala fide/malice against the Director and President of AIIMS, yet he has not made them party-respondents by name in the present O.A. In support of the above submissions, the learned counsel has placed reliance on the decision of the Tribunal in Raj Kumar & others v. Delhi Transport Corporation, OA No.857 of 2013, decided on 27.3.2014; and the decisions of the Honble Supreme Court in Dalpat& others v. Dr.B.S.Mahajan and others, (1990) 1 SCC 305; Durga Devi and another v. State of H.P. &ors, (1997) 4 SCC 575; Union of India v. S.K.Goel& others, (2007) 14 SCC 641; State of Punjab v. ChamanLalGoyal, (1995)2 SCC 570; and I.K.Mishra v. Union of India, Civil Appeal No.3137 of 1986, decided on 11.7.1997.

11. ShriManjeet Singh Reen, learned counsel appearing for respondent no.3-Dr.O.P.Murty submitted that the process for promotion of respondent no.3 had started way back in 2012, much before the untimely and unfortunate death of Mrs.SunandaPushkar who died in January 2014. Therefore, the alleged purpose of promoting respondent no.3, as projected by the applicant, is just a Cock and Bull story and intended to side-step the real issue for obvious reasons. Respondent no.3 has produced documentary evidence to show that the applicant himself is a person who lacks integrity and is not worthy of holding the post he is presently holding. The case of promotion of respondent no.3 was not an isolated or individual matter but was a consequence of a policy decision taken by respondent no.1 in respect of as many as 39 faculty members including respondent no.3. While taking such decision and turning down the recommendations of the Standing Selection Committee, the Governing Body of AIIMS has given good, strong and cogent reasons. The Governing Body cannot act blindly on recommendations of the Standing Selection Committee which is an Advisory Committee in terms of Regulation 12(5) of the AIIMS Regulations, 1999. The Governing Body is the Appointing Authority and has power to revise, alter, modify and may even reject the

recommendations of the Standing Selection Committee. The then Director, in clear violation of the decision of the Governing Body promoting respondent no.3 to the grade of Professor w.e.f. 1.7.2009, did not issue promotion order qua respondent no.3. Thus, promotion to respondent no.3 was denied in an arbitrary and whimsical manner with effect from 1.1.2007 and 1.7.2009 without assigning any reason. While considering respondent no.3 for promotion to the grade of Professor in the batches of 1.7.2007 and 1.7.2009, the Standing Selection Committee adopted the method of writing as Fit and Unfit in a format. This is the most arbitrary way of judging the merits, or otherwise, of the candidates. Respondent no.3 had made many representations in this regard much prior to the death of Mrs. SunandaPushkar. In essence, granting promotion to respondent no.3 is legal and rightful decision of the Governing Body. The rule of audialterampartem cannot be invoked if importing it would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency of taking action so demands. The AIIMS has powers under the Act of the Parliament to devise its own ways, and the guidelines of the DoP&T are only advisory in nature. The Censure dated 11.5.2011 was in the form of a minor penalty and had no currency beyond the date of its imposition. The Censuredated 7.8.2013 was not operative on 1.7.2011 with effect from which date respondent no.3 was promoted to the post of Professor. Respondent no.3 joined as Assistant Professor on regular basis in 1992, while the applicant joined as Assistant Professor on 5.8.2000 on ad hoc basis and on 4.6.2003 on regular basis. The applicant got the benefit of inclusion of ad hoc period of his service and got promotion up to the level of Professor with effect from 1.7.2012, otherwise he would have become eligible for promotion to the grade of Professor only in 2018. There was no malice in granting promotion to respondent no.3. The decision was unanimously taken by all the members of the Governing Body. It was not an individual decision. Rather it was a group decision without any demur from any member. Therefore, no motive or malice can be attributed against the Governing Body or any member thereof. Respondent no.3 had given representations to include his matter as an Agenda Item to be considered by the Governing Body, as the then Director of the AIIMS was not complying with the order of the Governing Body. Since respondent no.3 had already been granted promotion by the Governing Body, there was no point in his appearing before the Standing Selection Committee for consideration of his case for promotion to the grade of Professor in the batches of 1.7.2012 and 1.7.2013. In support of his contentions, the learned counsel relied on the decisions of the Honble Supreme Court in R.S.Dass v. Union of India and others, AIR 1987 SC 593; Chairman, Board of Mining Examination v. Ramjee, (1977) 2 SCR 904; Meneka Gandhi v. Union of India, (1978) 2 SCR 621; Union of India v. Mohan LalCapoor& others, (1974) 1 SCR 797; M.V.Thimmaiah v. UPSC, (2008) 2 SCC 119; and DalpatAbasahebSolunke v. Dr.B.S.Mahajan& others, (1990) 1 SCC 305.

12. On 3.11.2014, the applicant filed before the Tribunal a chart showing his service particulars and that of respondent no.3. Before proceeding further, we deem it just and proper to reproduce the same as follows:

APPLICANT

RESPONDNT NO.3

Assistant Professor

5.8.2000 on ad hoc basis

1992 on regular basis

4.6.2003 on regular basis

Associate Professor

1.7.2005

1.7.1996

Additional Professor

1.7.2008

1.7.2000

Professor

1.7.2012 vide G.B. order dated 19.7.2013

1.7.2011 vide G.B. order dated 12.5.2014

13. From the pleadings and contentions of the parties, the following issues arise for consideration:

- (1) Whether the Original Application, as filed by the applicant, is maintainable;
- (2) Whether the impugned O.M. dated 7.6.2014, whereby respondent no.3 has been promoted to the grade of Professor w.e.f. 1.7.2011, is vitiated on account of any malice either in fact or in law;
- (3) Whether the decision of the Governing Body and the O.M. dated 7.6.2014, whereby respondent no.3 has been promoted to the grade of Professor w.e.f. 1.7.2011, result in demotion of the applicant without any rhyme or reason and without affording him an opportunity of being heard;
- (4) Whether the decision of the Governing Body and the O.M. dated 7.6.2014, whereby respondent no.3 has been promoted to the grade of Professor w.e.f. 1.7.2011, call for any interference by the Tribunal; and
- (5) Whether the O.M. dated 7.6.2014 has been issued promoting respondent no.3 to the grade of Professor with effect from 1.7.2011 is nonest for want of approval of the Governing Bodys minutes dated 12.5.2014, qua respondent no.3, by any other authority.

Issue No.1:

14. By the impugned O.M. dated 7.6.2014 respondent no.3 has been promoted to the grade of Professor with effect from 1.7.2011. It is the grievance of the applicant that he was promoted to the grade of Professor with effect from 1.7.2012, vide order dated 19.7.2013, and that on account of such retrospective promotion of respondent no.3, he would lose his seniority in the grade of Professor and also his position as Head of the Department, Forensic Medicine & Toxicology, AIIMS. Admittedly, respondent no.3 was senior to the applicant in the grades of Assistant Professor, Associate Professor, and Additional Professor, and because of non-promotion of respondent no.3 to the level of Professor with effect from 1.7.2007 and/or 1.7.2009, the applicant, who was promoted to the grade of Professor with effect from 1.7.2012, vide order dated 19.7.2013, is making a grievance about his seniority in the grade of Professor. After issuance of the impugned O.M. dated 7.6.2014, Respondent no.1-AIIMS has neither revised the revised seniority list of Professors, nor has it issued any order withdrawing the appointment of the applicant as Head of the Department of Forensic Medicine & Toxicology, AIIMS. It is also the plea of the applicant that respondent no.3 has been illegally promoted to the grade of Professor with effect from 1.7.2011 to purge his seniority.

15. Regulation 33 of the AIIMS Regulations, 1999, reads thus:

33. Conduct, discipline and penalties:- (1) The Central Civil Services (Conduct) Rules, 1964, shall apply to the employees of the Institute.

(2) Part IV (Suspension), Part V (Penalties & Disciplinary Authorities), Part VI (Procedure for imposing penalties), Part VII (Appeals) and Part VIII (Review) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, shall apply to the employees of the institute:

Provided that for the purpose of this regulation:

(a) Group A, Group B, Group C and D post in the Institute shall correspond to the Central Civil Services Group A, Group B, Group C and Group D post respectively.

(b) The Appointing Authority, the Disciplinary Authority for the penalties that may be imposed and the Appellate Authority for the various posts in the Institute shall be as prescribed in Schedule II.

(c) In respect of Central or State Government servants borrowed by the Institute, the provisions respectively of rules 20 and 21 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall apply and the Institute shall exercise the functions of the Central or State Government, as the case may be, for the purpose of these rules.

(d) No consultation with the Union Public Service Commission shall be necessary in any case.

15.1 Rule 23(iv)(a) of the CCS (CCA) Rules, 1965, inter alia, stipulates that appeal lies against an order which denies or varies to an employees disadvantage his pay, allowances, pension or other conditions of service as regulated by rules.

15.2 Schedule II to the AIIMS Regulations, 1999, vide sl.no.1 Group A Posts (ii) Other posts, inter alia, prescribes that Governing Body is the Appointing Authority, and Institute is the Appellate Authority.

15.3 As per Regulation 5 of the AIIMS Regulations, 1999, the Governing Body consists of the following eleven members, namely:-

- (a) President of the Institute - Chairman
- (b) Director General of Health Services - Ex officio Member
- (c) Representative of the Ministry of Finance-Member
- (d) Director, All India Institute of Medical Sciences-Member

(e) One member elected by the members of the Institute from amongst the three members of the Parliament elected to the Institute.

(f) Six members to be elected by the members of the Institute from amongst themselves.

15.4 Under Section 3(2) of the AIIMS Act, 1956 (Act No.25 of 1956), the All India Institute of Medical Sciences is a body corporate. Under Section 4 of the Act 25 of 1956, the Institute consists of the following members:

(a) The Vice-Chancellor of the Delhi University, ex officio;

(b) The Director General of Health Services, Government of India, ex officio;

(c) The Director of the Institute, ex officio;

(d) Two representatives of the Central Government, to be nominated by the Government, one from the Ministry of Finance and one from the Ministry of Education;

(e) Five persons of whom one shall be a non-medical scientist, representing the Indian Science Congress Association, to be nominated by the Central Government;

(f) Four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules; and

(g) Three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

15.5 Under sub-sections (1) and (5) of Section 10 of the AIIMS Act, 1956, the Governing Body and Standing Committees are constituted by the Institute.

15.6 If at all the impugned O.M. dated 7.6.2014, which has been issued on the basis of the decision of the Governing Body, i.e., the Appointing Authority, promoting respondent no.3 to the grade of Professor with effect from 1.7.2011, varied to the applicants disadvantage his seniority in the grade of Professor, the applicant ought to have preferred an appeal to the Institute, i.e., the Appellate Authority, for redressal of his grievance, if any; the seniority being one of his conditions of service.

15.7 Thus, it has to be seen as to whether the applicant preferred any such appeal, or representation, to the competent authority for redressal of his grievance arising out of the

impugned order dated 7.6.2014. On a perusal of the records, we find that the applicant has not preferred any appeal, or representation, to the Institute against the impugned order dated 7.6.2014.

15.8 Section 20 of the Administrative Tribunals Act, 1985 reads thus:

20. Applications not to be admitted unless other remedies exhausted.-

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section(1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made had expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

15.9 As the applicant has failed to prefer an appeal, or representation, to the Institute, for redressal of his grievance, if any, arising out of the impugned order dated 7.6.2014, we hold that the applicant had not availed of the remedy available to him under the relevant service rules and, therefore, the present O.A. filed by him is not maintainable, as being hit by Section 20(1) of the Administrative Tribunals Act, 1985. Accordingly, issue no.1 is decided against the applicant.

Issue No.2:

16. It is the case of the applicant that as Head of the Department, Forensic Medicine & Toxicology, AIIMS, he was the Chairperson of the Medical Board which was entrusted with the task of conducting the postmortem of the dead body of Smt. Sunanda Pushkar. Between March 2014 and May 2014, he was pressurized to give report of natural death which was contrary to the objective findings. As he refused to succumb to such pressure, the then Director and President of AIIMS, decided to illegally purge the seniority of the applicant by illegally promoting respondent no.3 to the grade of Professor with retrospective effect. Therefore, according to the applicant, the impugned order of promotion of respondent no.3 is actuated by malice. Our attention was invited to the decision of the Honble Supreme Court in Smt. S.R.Venkataramans case (supra).

16.1 In Smt. S.R.Venkataramans case (supra), the appellant, a Central Government officer, was retired prematurely from service under Rule 56(j)(i) on her attaining the age of 50 years in public interest. The Honble High Court dismissed her writ petition in limine, and in the appeal before the Honble Supreme Court, she made an allegation of malice against her by one of her superiors under whom she served for a very short period and got an adverse report. She also contended that the Government did not apply its mind to her service record and, in the facts and circumstances of the case, the power under Rule 56(j)(i) was not exercised for the furtherance of public interest, and that the order of premature retirement was based on extraneous considerations. Allowing the appeal, the Honble Supreme Court held thus:

5. We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V.D.Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is, however, quite different. Viscount Haldane described it as follows in *Shearer v. Shields*, (1914) AC 808:

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently.

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

17. The applicant and respondents have referred to the note on Agenda Item No. GB/151/2 placed before the Governing Body for considering the case of respondent no.3- Dr.O.P.Murty for promotion to the grade of Professor and have not disputed the contents thereof on material aspects. On a perusal of the note on Agenda Item No.GB/151/2, we find that the case of respondent no.3 was considered for promotion to the grade of Professor for the batch of 1.7.2009 as his second chance under the Assessment Promotion Scheme. The Standing Selection Committee in its meetings held during Nov-Dec, 2010 considered candidatures of 251 faculty members including respondent no.3-Dr.O.P.Murty for promotion to the next higher grades under APS. However, 39 faculty members including respondent no.3-Dr.O.P.Murty were not found fit for promotion by the Standing Selection Committee. The recommendations of the Standing Selection Committee were approved by the Governing Body (Appointing Authority) in its 145th meeting held on 01.03.2011. The faculty members, who were not found fit for promotion under APS to the next respective higher grades by the Standing Selection Committee, represented to various quarters including President, AIIMS and Ministry of Health & Family Welfare. Thereafter, the Ministry of Health and Family Welfare, vide their letter No.V.16020/15/2011-ME-I(Pt.), dated the 9th August, 2011, issued a direction under Section 25 of AIIMS Act,1956, that similar method might be adopted by the Standing Selection Committee as done in the past and that the findings of the review might be placed before the Governing Body for a final decision. Accordingly, a meeting of the Standing

Selection Committee was convened on 6th January, 2012 to review the cases of those 39 faculty members who were not found fit for promotion under APS. The Standing Selection Committee reiterated its earlier decision as taken in 2010. The minutes of the Standing Selection Committee meeting held on 6th January, 2012 was placed before the Governing Body in its 146th meeting held on 16th January, 2012 vide Item No. GB-146/15, and considering all the aspects, the Governing Body decided as under:

The Governing Body also decided that since this was the last batch under old APS Guidelines, these people should be promoted to their next higher grade from the date their batch-mate were promoted, and the same should not be quoted as precedence for future reference.

However, the Governing Body, in its 147th meeting held on 14.04.2012, vide Item no. GB-147/1, while ratifying its minutes of the 146th meeting, again discussed the issue at length and decided as under:

There was considerable discussion on the issue of promoting 39 faculty members, who had not been recommended for promotion by the Standing Selection Committee. It was pointed out that this would set a bad precedent and would send a wrong signal that promotions in the Institute could be obtained on considerations other than merit. At the same time, it was felt that in view of the significant shortage of doctors at faculty level and the long years of service rendered by the faculty in question, it would be appropriate to promote them by taking a lenient view. Considering all these aspects, the Governing Body by consensus decided in principle to promote all the 39 faculty to their respective higher grades. It was categorically stipulated that this decision was in no way a reflection on the Standing Selection Committee and that this will be a onetime relief measure not to be quoted as precedent. The matter was accordingly resolved.

From the above, it is clear that the Governing Body, in its meetings held on 16.1.2012 and 14.4.2012, decided to promote those 39 faculty members, including respondent no.3, to higher grades with effect from 1.7.2009. In compliance with the aforesaid decisions of the Governing Body, promotion orders were, however, issued to 35 faculty members excluding respondent no.3-Dr.O.P.Murty and 3 other faculty members. The promotion order to respondent no.3-Dr.O.P.Murty was not issued on the ground that he was imposed with the penalty of Censure on 11.5.2011. Further, on a note apprising the status of the aforesaid four faculty members, including respondent no.3-Dr.O.P.Murty, who were not issued promotion orders, was sent to the Union Minister of Health & Family Welfare and President, AIIMS. It was, however, instructed by the office of the President, AIIMS, that before the case is put up to President, AIIMS, the opinion from DoP&T be taken. Accordingly, a reference was made to the Ministry of Health & FW, vide letter dated 25.10.2012, requesting it to obtain clarification from DoP&T in the matter. Since nothing was heard from the Ministry of Health & FW in the matter, a reminder was sent to the Ministry on 21.12.2012. Thus, the decision having already been taken by the Governing Body on 16.1.2012 and 14.4.2012 to promote respondent no.3 to the grade of Professor w.e.f. 1.7.2009, it cannot be said that the postmortem/autopsy of the dead body of late Sunanda Pushkar, who died on 17.1.2014, has any nexus with the process of consideration of respondent no.3s case for promotion to the grade of Professor with effect from 1.7.2009, or

1.7.2011, by the Governing Body, which had started way back in January 2012. Therefore, the malice attributed by the applicant to the then President and Director of AIIMS is baseless. The email sent by ShriShashiTharoor, the then Union Minister, to Dr.RajivBhasin, on 26.1.2014 (Annexure RA/1), and the notice dated 2.6.2014 issued by Dr.Adarsh Kumar, Member Secretary, Medical Board, AIIMS (Annexure RA/2) do not reveal anything to show that any pressure was put on the applicant to submit a tailor-made autopsy report in SunandaPushkars case. In the above view of the matter, the decision in Smt. S.R.Venkataramans case (supra) is of no help to the case of the applicant.

18. In ChamanLalGoyals case (supra), the Honble Supreme Court held thus:

Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person eo nomine so as to enable him to answer the charge against him, the charge of mala fides cannot be sustained. It is significant to notice that the respondent has not attributed any mala fides to the Inspector General of Prisons who made his report dated January 9, 1987. In this report, the Inspector General of Prisons had found the respondent responsible for the incident - relevant portions extracted hereinbefore - and recommended his suspension pending enquiry.

18.1 In I.K.Mishras case (supra), the Honble Supreme Court held thus:

..It may be noticed that the record before us does not show that ShriManazureMuastafaSiddiqui was party to the suit. In fact he was not impleaded by name in the suit. Further, the allegations against Shri Siddiqui were totally vague. No inference of mala fide could be drawn from such allegations. In the absence of allegation of mala fides the order compulsorily retiring the applicant cannot be held to be mala fide order.

18.2 In view of the law laid down by the Honble Supreme Court in the above decisions, the applicant ought to have impleaded the then President and Director of AIIMS as party-respondents by name. In the Original Application, the applicant has not impleaded the then President and Director of AIIMS as party-respondents by name. On this ground alone, the allegation of malice made by the applicant falls flat.

19. Respondent no.3 was promoted to the grade of Additional Professor with effect from 1.7.2000. In paragraph 1 (iii) of the Assessment Promotion Scheme (Annexure P/27), it has been laid down that Additional Professors with four years of service will be eligible for appointment to the post of Professor subject to clearance of the prescribed selection process. Laying emphasis on the phrase subject to clearance of the prescribed selection process, the learned Senior Counsel for the applicant submitted that respondent no.3 was ineligible to be appointed and/or promoted to the grade of Professor as he had not been recommended by the Standing Selection Committee. We do not find substantial force in the submission of the learned Senior Counsel for the applicant. The phrase subject to clearance of the prescribed selection process connotes not only recommendation of the Standing Selection Committee, but also approval, or otherwise, of the recommendation of the Standing Selection Committee by the Governing Body, i.e., the Appointing Authority, and any other or further decision taken either by the Governing Body, or by the Institute, or by the Central

Government if warranted in the facts and circumstances of a given case. If the proposition as advanced by the learned Senior Counsel is accepted, the Standing Selection Committee shall be deemed to have been conferred with unbridled and absolute power, which amounts to excessive delegation. The Standing Selection Committee is exercising the power and functions as delegated to it by the Institute. It is trite law that every delegate is subject to the control of the principal, and exercise of delegated power can always be directed and cancelled by the principal. Therefore, the primary control of the Institute, or, for that matter, the Central Government, in the matter of selection is always there. Thus, the selection process as prescribed in the Assessment Promotion Scheme can only be said to be complete only after the decision is taken by the Governing Body, i.e., Appointing Authority, and/or the Institute and/or the Central Government, as the case may be. Under Regulation 12(5) of the AIIMS Regulations, 1999, all Standing Committees shall be advisory committees. The Standing Selection Committee is one of such Standing Committees constituted by the Institute under Section 10(5) of the AIIMS Act, 1956, as referred to hereinbefore. Thus, the recommendation of Standing Selection Committee is advisory in nature and is always subject to approval by the Governing Body, i.e., the Appointing Authority, which is conferred with the power to appoint.

20. As regards the contention of the applicant that as punishment of Censure had been imposed on respondent no.3 and the period of his unauthorized absence from 16.5.2008 to 16.8.2009 was treated as dies non, respondent no.3 was ineligible to be promoted to the grade of Professor. Admittedly, first punishment of Censure was imposed on respondent no.3, vide order dated 11.5.2011, and the second punishment of Censure was imposed on respondent no.3, vide order dated 7.8.2013. In the present case, the applicants challenge is to the promotion of respondent no.3 to the grade of Professor with effect from 1.7.2011. Therefore, the second punishment imposed on respondent no.3, vide order dated 7.8.2013, becomes insignificant. It is, thus, to be seen as to whether the first punishment of Censure imposed on respondent no.3, vide order dated 11.5.2011, is a bar for consideration of the case of respondent no.3 for promotion to the grade of Professor. In this connection, the learned Senior Counsel for the applicant invited our attention to the decisions of the Honble Supreme Court in *Union of India, etc., etc. v. K.V.Jankiraman, etc., etc.*, (1991) 4 SCC 109; *Union of India and others v. A.N.Mohanan*, (2007) 5 SCC 425; and *State of Tamil Nadu v. Thiru.K.S.Murgesan*, (1995) 3 SCC 273, and the decisions of the Tribunal in *Y.Nagireddy v. The Union of India and others*, MANU/CA/0499/2009; and *V.D.Sisirkumar v. Union of India*, MANU/CA/0654/2009.

20.1 In *K.V.Jankiramans case (supra)*, the Honble Supreme Court held thus:

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which

he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

To this extent we set aside the conclusion of the Tribunal on the said point.

20.2 In A.N.Mohanans case (supra), departmental enquiry was started against the respondent on 3.8.1999. The DPC made the selection on 1.11.1999. Since the enquiry was pending against the respondent, sealed cover procedure was adopted. On 13.9.2001 the penalty of censure was awarded. Promotion was granted to the respondent on 26.11.2001. However, he claimed that promotion should have been given to him with effect from 1.11.1999. He moved the Tribunal seeking for such direction. The Tribunal held that penalty of censure is not a bar for promotion and though the sealed cover procedure was adopted, the sealed cover should have been opened and the recommendation of DPC should have been given effect to by giving the respondent promotional benefit with effect from 1.11.1999. The order of the Tribunal was challenged before the Honble High Court. The Honble High Court noted that awarding of penalty of censure would not affect the promotion of the respondent and the department was not right in contending that the awarding of penalty (censure) would stand in the way of promotion. Referring to paragraphs 3 and 3.1 of the DoP&Ts O.M. dated 14.9.1992 and following the decision in K.V.Jankiramanscase(supra), the Honble Supreme Court held thus:

9. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Rule 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

10. Having regard to the penalty imposed on him, undisputedly the respondent has been given promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside.

20.3 In ThiruK.S.Murgesans case (supra), the question that arose for consideration was whether non-consideration of the respondents promotion for the year 1983-84 was in accordance with law. The Tribunal found that punishment of stoppage of three increments having been imposed, the promotion could not be withheld on that account which otherwise amounts to double jeopardyoffending Article 21 of the Constitution and that, therefore, it was arbitrary exercise of power violating Article 14 read with Article 16 of the Constitution. Allowing the appeal preferred by the State of Tamil Nadu, the Honble Supreme Court held thus:

7. It would thus be clear that when promotion is under consideration, the previous record forms basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with 16 of the Constitution.

20.4 In Y.Nagireddys case (supra), punishment of Censure was imposed on the applicant, vide order dated 6.8.2002. Referring to paragraphs 3.1 and 3.2 of the DoP&Ts O.M. dated 14.9.1992 and relying on the decision of the Honble Supreme Court in A.N.Mohanscase(supra), the Tribunal held that there was nothing wrong in the decision of the respondents in rejecting the case of the applicant for grant of promotion with retrospective effect from the date of promotion of his junior.

20.5 In V.D.Sisirkumars case (supra), the applicants case was that he was entitled for promotion as Deputy Commissioner of Income Tax with retrospective effect from 1.1.2006, i.e., the date from which his juniors were promoted to the post, rather than from 13.4.2006, i.e., the date on which the DPC met and recommended his case for promotion because the disciplinary proceedings initiated against him ended up only with minor penalty of Censure. Referring to paragraphs 3 and 3.1 of the DoP&Ts O.M. dated 14.9.1992 and relying on the decision of the Honble Supreme Court in K.V.Jankiramans case (supra), the Tribunal held thus:

6. In our considered view, the aforesaid judgment of the Apex Court squarely applies in this case also. As censure is a blameworthy factor in the service career of a Government servant one who has been censured cannot be equated with another who is without any blemish and both of them cannot be granted promotion from the same due dates. The respondents have, therefore, promoted him with effecting from 13.4.2006, i.e., the next date on which he was imposed with penalty of censure. We, therefore, do not find any merit in this O.A. Accordingly, the same is dismissed. There shall be no order as to costs.

20.6 The facts and circumstances of the cases cited above are different from those of the case at hand. Respondent no.3 had been imposed with the penalty of Censure, vide order dated 11.5.2011, whereas the Governing Body promoted him to the grade of Professor with effect from

1.7.2011, i.e., after the date of imposition of the penalty of Censure. The Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, keeping in mind its various decisions, including the decision contained in the O.M. dated 14.9.1992 (referred to by the Honble Supreme Court and Tribunal in the decisions cited above) and also the principles laid down by the Honble Supreme Court in A.K.Narulas case (AIR 2007 SC 2296), K.V.Jankiramans case (supra), and in Union of India and another v. S.K.Goel& others, Appeal (Civil) 689/2007-SLP (C) 2410/2007, have issued O.M. dated 28.4.2014(Annexure A/13). In paragraph 7(g) of the O.M. dated 28.4.2014, the following guideline has been laid down:

(g) In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as unfit for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over (Para 13 of DoPT OM dated 10.4.89).

In none of the decisions cited by the learned Senior Counsel for the applicant, it has been held that if penalty of Censure had been imposed on an employee before or after the intended date of promotion of such employee, he would be ineligible and debarred from being considered by the competent authority for promotion after the date of imposition of Censure. In terms of paragraph 13 of the DoP&Ts O.M. dated 10.4.1989 (paragraph 7(g) of the O.M. dated 28.4.2014), the DPC can assess the suitability of the officer on whom a penalty has been imposed and, while doing so, will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. Therefore, it is not correct to say that respondent no.3 was ineligible and disentitled to be considered for promotion to the grade of Professor with effect from 1.7.2011 because of imposition of penalty of Censure on him, vide order dated 11.5.2011. The currency of the penalty of Censure imposed on respondent no.3 was over on the day following the date of the order, i.e., 11.5.2011. In V.D.Sisirkumars case (supra), the Ernakulam Bench of the Tribunal upheld the decision of the respondent-Department in giving promotion to the applicant with effect from the date following the date of imposition of penalty of Censure. Though there is no quarrel over the proposition that the penalty of Censure is a blameworthy factor, yet it cannot be said that an employee, who is visited with such penalty, will be ineligible and debarred from being considered for promotion after the date of imposition of the penalty of Censure.

21. The other contention of the applicant is that the unauthorized absence of respondent no.3 for the period from 16.5.2008 to 16.8.2009 having been treated as dies non, the said period was not to be counted for the purpose of his promotion. Here, we would like to observe that the applicant has misconstrued the term dies non. In service terms, dies non means a day, which cannot be treated as duty for any purpose. It does not constitute break in service. But the period treated as dies non does not qualify as service for pensionary benefits or increments. If it is assumed that the said dies non period from 16.5.2008 to 16.8.2009 is liable to be excluded from the service of respondent no.3 as Additional Professor, he cannot be said to be ineligible to be

considered for promotion to the grade of Professor because he had been appointed as Additional Professor with effect from 1.7.2000. Therefore, respondent no.3 is entitled to reckon his continuous service, and consideration of his case by the Governing Body for promotion to the grade of Professor with effect from 1.7.2011 cannot be said to be illegal.

22. The next contention of the applicant is that as the Standing Selection Committee had found respondent no.3 unfit for promotion to the grade of Professor in the batches of 1.7.2007 and 1.7.2009, and as respondent no.3 did not appear before the Standing Selection Committee for assessment of his suitability for promotion in the batches of 1.7.2012 and 1.7.2013, the decision of the Governing Body promoting respondent no.3 to the grade of Professor with effect from 1.7.2011 is actuated by malice in law and, thus, vitiated. In support of this contention, our attention was invited to the decisions of the Honble Supreme Court in R.PrabhaDevis case (supra), Sh.Kumar Padma Prasads case (supra), and the decision of the Honble High Court of Delhi in S.M.Boses case (supra).

22.1 In R.PrabhaDevis case (supra), the appellants along with one Rajiv Kalsi made four applications under Section 19 of the Administrative Tribunals Act, 1985, challenging the vires of proviso to sub rule (2) of the Central Secretariat Rules, 1962, as amended by Notification No.5/8/80-CS.I dated December 29, 1984 prescribing eight years of approved service as Section Officer as condition of eligibility for being considered for promotion to Grade I post in CSS. The Tribunal dismissed the applications by a common judgment holding, inter alia, that neither the amendment of February 1978 nor the amendment of December 1984 made in the proviso to sub-rule (2) of Rule 12 of the CCS Rules, 1962 is discriminatory, or arbitrary, or unreasonable, so as to be declared ultra vires Articles 14 and 16 of the Constitution. Dismissing the appeals preferred against the Tribunals decision, the Honble Supreme Court held thus:

15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section officers as well as the promotee Section officers. The submission that a senior Section officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post.

The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Articles 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

It has also been observed:

"In any event, the appropriate Rule making Authority is the best judge in this regard. The Rule making Authority is certainly competent to amend the Rule and extend the period from 6 years to 8 years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the Rule making Authority; the Tribunal cannot sit in judgment over the opinion of the Rule making Authority. No Court or Tribunal can substitute its own view in a matter such as this. Such a Rule framed by a competent Authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution."

We do not find any infirmity in the above findings arrived at by the Tribunal.

22.2 In Sh.Kumar Padma Prasads case (supra), the Honble Supreme Court held thus:

It is for the first time in the post-independent era that this Court is seized of a situation where it has to perform the painful duty of determining the eligibility of a person who has been appointed a Judge of High Court by the President of India and who is awaiting to enter upon his office. We looked into the official record and permitted learned counsel for the parties to examine the same. We are at a loss to understand as to how the bio-data of Srivastava escaped the scrutiny of the authorities during the process of consultation under Article 217(1) of the Constitution of India. A cursory look at the bio-data would have disclosed that Srivastava was not qualified for appointment as a Judge of the High Court on the admitted facts which have been on the official files all the time. Needless to say that the independence, efficiency and integrity of the judiciary can only be maintained by selecting the best persons in accordance with the procedure provided under the Constitution. These objectives enshrined under the Constitution of India cannot be achieved unless the functionaries accountable for making appointments act with meticulous care and utmost responsibility.

22.3 In S.M.Boses case (supra), the petitioner prayed for a writ of mandamus for quashing the appointment of respondent no.3 as Professor in the Department of Surgery, and for appointing the petitioner to the post, in conformity with the recommendations made by the Selection Committee, in pursuance of advertisement no.3/91 published by the All India Institute of Medical Sciences, New Delhi. In 1991, the Institute invited applications from Indian citizens for appointment to a number of posts in various Departments, including one post of Professor for Surgery. The Selection Committee, after considering the performance of the candidates, their qualifications, experience and record and also the opinion of the experts, unanimously recommended the petitioner and Dr.N.M.Gupta and placed them at No.1 and No.2 respectively on the list of selected candidates for appointment. The Honble High Court held thus:

19. The basic power to make all appointments vests in the Institute. The exercise of this power and the authority to discharge the related functions are given by the Institute to different bodies. Group A posts, including that of a Professor, are selection posts. Appointment to such posts is made on the basis of public advertisement. Advertisement of the post, screening of applications, interview, assessment of merit, and selection of eligible candidates are various parts of the process of appointment. Different functions relating to the whole process of appointment, are distributed to different authorities. The Selection Committee and the Governing Body are two such authorities, constituted by the Institute, from among its members, for the purposes of discharging different functions of the Institute under Section 10 of the Act. The Governing Body has been given the power to make appointments. In that sense, it is the appointing authority. Undoubtedly, the Governing Body has to apply its own independent mind for the proper exercise of its power. But, the role of interviewing and selecting the best out of the available and eligible candidates for appointment, has been entrusted by the Institute to the Selection Committee.

20. Ordinarily, the power to decide whether to make or not to make any appointment, notwithstanding the availability of a vacant post, vests in the appointing authority. No candidate, even if selected, can claim a right to be appointed. He can raise no grievance if the appointing authority decides not to fill up the vacancy. But, the position will be different where the vacancy is to be filled up. In such a case, where the task of interviewing candidates and making selection is entrusted to an independent body, appointment should be made on the basis of recommendations made by the selection committee, which means in the order of merit of candidates arranged by the selection committee. This, however, does not mean that the appointing authority is bound by the recommendations, nor that it may ignore the recommendations and act on its own sweet will. If the appointing authority wants to agree with the recommendations, there would be no difficulty. But if it wants to disagree with the recommendations, it must give reasons for disagreement. The appointing authority may legitimately not agree with the recommendations, for instance, where it may find some illegality, bias or mala fides, vitiating the recommendation made by the selection committee. It will also be open to the appointing authority not to agree where it finds that the selected candidate suffers from some inherent disqualification, or even where appointment of a particular candidate may not be in public interest for good reasons, viz., bad conduct or character. Should the appointing authority disagree with the recommendations made by the selection committee, it must have good, strong and cogent reasons for doing so. In any event, on a challenge in Court, for whatever the appointing authority may do, it is bound to disclose the reasons to justify its decision. These principles are clearly discernible from decisions of the Supreme Court in *Jatinder Kumar and others v. State of Punjab and others*, *NeelimaShangla v. State of Haryana and others*, 1986(3) SLR 389, *Neelima Misra v. HarinderKaurPaintal and others*, *Shankarsan Dash v. Union of India and others*, 1991 SC 1616.

21. In the present case, in view of the clear-cut statutory provisions, the parameters of the powers and functions performed by the appointing authority, and the selection committee are very much more sharply defined. We have three authorities under the Act; (i) Selection Committee, which is a Standing Committee, (ii) Governing Body, which is the appointing authority, and (iii) the Institute. The supreme body is the Institute, established and incorporated under Section 3. It consists of the members named in Section 4 of the Act. A bare perusal of Section 10, shows that the Governing Body and the various Standing Committees are constituted by the Institute, and each of these authorities consists exclusively of members of the Institute. The Governing Body, apart from

being the executive committee, by virtue of Regulation 6, exercises such powers and discharges such functions as are laid down in the Regulations made by the Institute. It has no inherent powers of its own. A Standing Committee also may be constituted by the Institute, for exercising any power or discharging any function that the Institute thinks fit. Thus, it is clear that the Governing Body, as also a Standing Committee, is constituted by the Institute, and it is authorized to exercise such powers and discharge such functions as the Institute may confer. The Institute may constitute various Standing Committees and ad hoc committees for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them. All Standing Committees, as provided by Regulation 12(5), shall be advisory committees. Such committees, it is obvious, are recommendatory bodies. They are required to give report to and advise the Institute. Viewing these very provisions in negative terms, for the sake of placing greater emphasis on the obvious conclusion, it may be said that the Governing Body itself, as also the Selection Committee, derives its authority from the Institute, and, in the sense, it is supreme. The Selection Committee is not subordinate to the Governing Body. The exercise of its powers and performance of its functions are not subject to the supervision and control of the Governing Body. The Governing Body has no authority to refer to it for inquiring into or reporting or advising upon any matter. The Selection Committee is not answerable to the Governing Body for anything, the Governing Body has no right, power or authority to interfere, by way of review or in any other way, with the exercise of powers and discharge of functions of the Institute by Selection Committee. Since the Governing Body as also the Selection Committee consist exclusively of members of the Institute, one cannot be said to be higher or lower than the other in status. Likewise, since each exercises such powers and discharges such functions of the Institute as are conferred or imposed upon it by the Institute, one cannot be regarded as less or more powerful or less or more important. The powers and functions of these two bodies are complimentary and are equally important. The power and function to judge relative merits of competing candidates, and selecting the most suitable candidate for appointment to the post, is imposed by the Institute on the Selection Committee alone, and not upon the Governing Body. The Governing Body had no power or authority, on the first occasion, without good and valid reasons to refer the matter back to the selection committee for reconsideration, and in any event, to override the recommendation made by the selection committee, and, instead, to appoint respondent No.3, as it did finally. Even otherwise, the Governing Body was in no position to properly assess and determine merit of any candidate, what to say of comparative merit of all the candidates, as the Governing Body did not have the benefit of itself interviewing the candidates. If at all the Governing Body did not agree with the recommendation made by the Selection Committee, it should have stated its reasons for disagreement and referred the matter to the higher authority, namely, the Institute for decision. In that event, of course, the Institute could have examined whether the recommendation of the Selection Committee should be accepted or not. If any opinion way by of disagreement had been recorded by the Government on that recommendation, the Institute also could be called upon to considerate and then decide with regard to appointment of a particular person in the light of the recommendation and opinion of the two authorities. The Governing Body was not right in assuming that it had the unfettered right to approve, disapprove or modify any recommendation of the various Standing Committees, and that it has the sole authority of taking decision on these recommendations. Obviously, in arrogating to itself supreme authority, the Governing Body did not properly appreciate the intent and purpose of the relevant provisions of the Act and the Regulations.

22. A similar controversy in respect of appointment to a post of Assistant Professor, Department of Cardiology, in the Post Graduate Institute of Medical Education and Research, Chandigarh, had arisen in almost similar circumstances in the Punjab & Haryana High Court in the case of Dr. Harinder K. Bali v. Union of India and others. N.K. Sodhi, J., by a judgment dated 4th of December 1992, set aside the appointment of respondent No. 4, and directed PGI Chandigarh to appoint the petitioner, in accordance with the recommendations of the Selection Committee in that case. The provisions made in the Post Graduate Institute of Medical Education and Research Chandigarh Act, 1966 and the Rules and Regulations by which PGI, Chandigarh, is established and governed, are pari material to the statutory provisions applicable to the Institute in New Delhi. The learned Judge, after discussing the general principles in the light of relevant statutory provisions, came to the conclusion that if the appointing authority had good reasons, it could refuse to accept the recommendations of the Selection Committee but if it decided to fill up the post, it was bound by the recommendations of the Selection Committee in respect of merit of the candidates. In support of this conclusion, the learned Judge has discussed the matter from the point of view of seniority also. With reference to the provision made in Regulation 34 regarding seniority, he has observed as follows:

There is yet another aspect of the matter. Regulation 34 quoted above makes it clear that while making appointments, the seniority of the employees in each category has to be determined by the order of merit in which they were selected for appointment and those selected on earlier occasions have to rank senior to those who were selected later. Not only this, in the case of members recruited by direct appointment, the order of merit determined by the Selection Committee cannot be disturbed in fixing the seniority. For instance, if A and B are recommended for appointment by the Selection Committee in this order of merit, it would not be open to the appointing authority while accepting the recommendations to make B senior to A. If this is so, how can the appointing authority travel beyond the list of names recommended by the Selection Committee and appoint a person not even recommended for appointment. To test the argument of Shri Garg (counsel for respondents) that the power of appointment is absolute and that the appointing authority could appoint anyone according to its sweet-will. One may notice another example. If A and B are recommended for appointment for two posts in this order of merit, then if the argument of Shri Garg is to be accepted, the appointing authority can appoint B and C and ignore A altogether. In that eventuality, how will the seniority of B and C be determined when C has not been recommended by the Selection Committee. In my opinion, the appointing authority cannot appoint C who was not recommended.

We are in full agreement with the reasoning and opinion of N.K. Sodhi, J. and, in view of similar provision made in Regulation 26 (supra), we can do no better than respectfully adopt the same here.

23. In view of the above discussion, we find that the Governing Body of the Institute is the appointing authority; but it did not have the right to overrule, upset, or set aside the selection and recommendations, made by the Selection Committee. If it did not agree with the recommendations, it should have stated the reasons for disagreement and referred the matter for final decision to the higher authority, namely, the Institute. Even otherwise, the impugned decision of the Governing Body is bad. The reason given by the Governing Body for not accepting the recommendations of the Selection Committee, on the first occasion, was that the Experts did not properly appreciate the candidature of respondent No. 3, and that the Institute required a Professor for Renal Transplant Surgery. This appears to be mere pretence to somehow wriggle out of the recommendations made by the Selection Committee. Apart from the validity of this plea already discussed above, it may be

noted that initially this criticism was restricted to the improper appreciation of the so-called factual position only by the external Experts. It did not apply to the members of the Selection Committee, who were all members of the Institute, and were well conversant with all the facts. Although the minutes of the meeting of the Governing Body purport to pin the fault only on the Experts, yet, in the counter affidavit, it is extended to the members of the Selection Committee, on the mere ipse dixit of the Director. Be that as it may, for the second time, when the Selection Committee met for reconsideration of the matter, the minutes of the meeting show that the members of the Selection Committee examined everything afresh, without the assistance of the experts, and they unanimously reiterated the earlier recommendations, but the recommendations, so made and reiterated by the Selection Committee, were simply set aside. What was wrong with the recommendations made by the Selection Committee for the second time? No reasons whatsoever for rejecting the recommendation made this time are discernible from the minutes of the meeting of the Governing Body held on 6th of July 1992. The minutes record merely the assertion of supremacy by the Governing Body, and the cryptic decision to appoint respondent no.3. Perhaps, on the basis of the self-assumed supremacy, the Governing Body felt that it was not obliged to give any reasons, and that it had the absolute and ultimate authority to do what it liked.

23. At the cost of repetition, we would like to mention here that the Governing Body, in its 146th meeting held on 16.1.2012 (vide item No.GB-146/15) and 147th meeting held on 14.4.2012 (vide item No. GB-147/1), had taken the decision to promote 39 faculty members, including respondent no.3, to the next higher grade with effect from 1.7.2009. While promotion orders were issued to 35 faculty members in compliance with the decision of the Governing Body, promotion orders were not issued to 4 faculty members, including respondent no.3. In the note on Agenda Item No.GB/152/1, it was stated that promotion order to respondent no.3 was not issued because of imposition of penalty of Censure on him. But the fact remains that the first penalty of Censure had been imposed on respondent no.3 only on 11.5.2011, vide order dated 11.5.2011. When the matter regarding promotion of respondent no.3 with effect from 1.7.2009 was again placed before it, the Governing Body, after considering all relevant factors available on record, modified its earlier decision and decided to grant promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011. Thus, it is clear that the decision of the Governing Body promoting respondent no.3 to the grade of Professor with effect from 1.7.2011 is the sequel of the Central Government's direction dated 9.8.2011 issued under Section 25 of the AIIMS Act, the proceedings of the Standing Selection Committee, and the decisions taken by the Governing Body in January and April 2012. Thus, it cannot be said that the Governing Body took the decision in the case of respondent no.3 by ignoring the provisions of the Assessment Promotion Scheme. It is rather found that the Standing Selection Committee, while reviewing the cases of 39 faculty members, including respondent no.3, in compliance with the direction dated 8.9.2011 issued by the Central Government under Section 25 of the AIIMS Act, failed to keep in mind the true import of the said direction of the Central Government. In this connection, we feel it necessary to refer to the provisions of Section 25 and 26 of the AIIMS Act, 1956. Section 25 ibid stipulates that the Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of the Act. Section 26 ibid stipulates that if in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under the Act, any dispute arises between the Institute and the Central Government, the decision of the Central Government on such dispute shall be final. It can, thus, be inferred that the decision of the Central Government is binding on the Institute and

also on the Standing Selection Committee and the Governing Body which are constituted by the Institute. Another feature noticed by us in this case is that in order to get rid of the situation, respondent no.1, vide letter dated 25.10.2012, referred the matter to the Ministry of Health & Family Welfare to obtain clarification from the Department of Personnel & Training in the matter of promotion of respondent no.3 to the grade of Professor with effect from 1.7.2009. Thereafter, there was no response either from the Ministry of Health & Family Welfare or from the Department of Personnel & Training. After lapse of more than one and half a year from the date of making reference to the Ministry, respondent no.1 placed the matter before the Governing Body, vide agenda item No.GB/151/2. All this goes to show that the functionaries of the AIIMS, who are at the helm of affairs, have failed to act honestly in dealing with the matter of promotion of respondent no.3 and, on some pretext or the other, have attempted and even become successful in creating a stumbling block in the career progression of respondent no.3.

24. As already narrated hereinbefore, the Standing Selection Committee, in its meetings held during November-December 2010, had considered 251 faculty members including respondent no.3 for promotion to next higher grades under the Assessment Promotion Scheme. While recommending all others, the Standing Selection Committee had found 39 faculty members including respondent no.3 unfit for such promotion. The Governing Body, in its meeting held on 1.3.2011, had also approved the said proceedings/recommendations of the Standing Selection Committee. On the matter being agitated by the said 39 faculty members including respondent no.3, the Central Government, vide letter dated 9.8.2011, had issued direction under Section 25 of the AIIMS Act, 1956 to the Standing Selection Committee and the Governing Body to review their decisions in respect of the said 39 faculty members including respondent no.3-Dr.O.P.Murty. Though the Standing Selection Committee had reiterated its decision, yet the Governing Body, in its meeting held on 16.1.2012, while disapproving the said decision of the Standing Selection Committee, decided that the said 39 faculty members should be promoted to the next higher grade from the dates with effect from which their batch-mates were promoted. The Governing Body, in its meeting held on 14.4.2012, had again discussed the issue and reiterated their decision. The said decisions of the Governing Body were implemented by respondent no.1-Institute in issuing promotion orders to 35 out of 39 faculty members. The promotion order was not issued to respondent no.3 because of imposition of penalty of Censure on him, vide order dated 11.5.2011, which, as has been already found, has no bearing on the issuance of the order in favour of respondent no.3 promoting him to the grade of Professor w.e.f. 1.7.2011. The applicant has not challenged either the Central Governments order dated 9.8.2011, or the Governing Bodys decisions dated 16.1.2012 and 14.4.2012. The decisions of the Governing Body have been given effect to in respect of 35 faculty members. Respondent no.3 being similarly placed as those 35 faculty members, the Governing Body and respondent no.1-Institute were bound to extend same treatment to respondent no.3. But, being confronted with the situation that the unauthorized absence of respondent no.3 for the period from 16.5.2008 to 16.8.2009 was treated as dies non, the Governing Body, presumably by way of modification of its earlier decisions dated 16.1.2012 and 14.4.2012, decided to grant promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011. The views taken by the members of the Governing Body during all those meetings were unanimous. The applicant has not made any allegation of malice against all other members of the Governing Body, save and except the President and Director of AIIMS. The President and Director of AIIMS are two out of 11 members of the Governing Body. Thus, it has to be inferred that nine out of 11 members of the

Governing Body, against whom there is no allegation of malice made by the applicant, after considering all the aspects of the matter, had taken the decision for promoting respondent no.3 to the grade of Professor with effect from 1.7.2011.

25. It is also the contention of the applicant that the Governing Body granted promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011 under the old Amnesty Scheme which was not in force at the relevant point of time. Besides, respondent no.3 was not covered by the said Amnesty Scheme. Therefore, according to the applicant, the decisions of the Governing Body and the O.M. dated 7.6.2014 granting promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011 under the Amnesty Scheme are non est. In support of this contention, the applicant has filed the copy of letter dated 27.6.2014 (Annexure P/1 to the applicants rejoinder to respondent no.1-AIIMSs counter reply) issued by the CPIO (Faculty Cell), AIIMS. Our attention was also invited to the decision of the Honble Supreme Court in Dr.S.K.Kackers case (supra) and NeerajAwasthiscase(supra).

25.1 In Dr.S.K.Kackers case (supra), while the appellant was working as Professor & HOD of ENT Department in the respondent-AIIMS, an advertisement had come to be made on 29.6.1990 for appointment to the post of Director of the AIIMS on regular basis. He had applied for and had been selected and appointed as Director of AIIMS. He had assumed the office on 11.10.1990 for a period of five years. His tenure came to an end on 15.10.1995. The question that emerged for consideration was whether on expiry of five years tenure as Director, he would be entitled to go back as a Professor & HOD of ENT Department till he attained his superannuation on 31.7.1998. In the writ petition, the Honble High Court rejected his claim holding that on appointment as Director, he ceased to be a Professor and he could not revert to the ENT Department. Dismissing the appeal preferred by the appellant against the decision of the Honble High Court, it was held by the Honble Supreme Court as follows:

12. ShriJaitley placed strong reliance on the resolutions passed by the Governing Council permitting the appellant to continue as Professor and Head of the Department and approval thereof by the Institute Body. That was also reflected in the counter affidavit filed by the Union of India indicating that his superannuation as Professor is on 31.7.1998. That would mean that he was allowed to continue as Professor and that, therefore, he is entitled to revert as Professor & Head of the Department. It is true that such resolutions came to be passed. The question, however, is whether such resolutions have statutory basis? They are by their very nature administrative resolutions passed by the authorities. When, admittedly, Dr.Kacker is a permanent government servant governed by the Fundamental Rules, he cannot hold two substantive posts at the same time, namely, the post of Professor & Head of the Department and also the post of Director. In view of the findings recorded hereinbefore, the appellant lost his lien in the post of Professor and Head of the ENT Department on his substantive appointment to the post of Director. Therefore, such resolutions which are inconsistent with the statutory rules have no role to play nor do they have any legal efficacy. The administrative instructions would only supplant the yawning gaps in the statutes but cannot supplant the law. The resolution is, therefore, a self-serving one without legal back-up.

25.2 In NeerajAwasthiscase(supra), the Honble Supreme Court held thus:

33. The Board is a 'State' within the meaning of Article 12 of the Constitution of India. It was constituted in terms of the provisions of the said Act. The powers and functions of the Board as also the State in terms of the provisions of the statute having been delineated, they must act strictly in terms thereof. It is a statutory authority. Its powers, duties and functions are governed by the statute. It is responsible for constitution of the Market Committees for the purpose of overseeing that the agriculturists while selling their agricultural produce receive the just price therefor. It not only regulates sale and purchase of the agricultural produce but also controls the markets where such agricultural produces are bought and sold. The Board is entitled to levy market fee and recover the same from the buyers and sellers through Market Committees. Indisputably, Market Committees and the Board have power to appoint officers and servants. Although, the power of the Board in this respect is not circumscribed, that of the Market Committees is. Market Committees can appoint only such number of secretaries and other officers as may be necessary for efficient discharge of its functions. Terms and conditions of such services are to be provided by it. Section 19 of the Act, however, imposes further restriction on the power of the Market

Committee by limiting the annual expenditure made in this regard not exceeding 10% of the total annual receipt of the Committee.

34. The appointments for different classes of employees are to be made by the Board and the officers, as the case may be, in terms of the provisions of the regulations.

35. Both the Services Regulations and the Establishment Regulations, as noticed hereinbefore, are applicable respectively to the employees of the Board as also the Market Committees. The said regulations provide for detailed procedure for appointment and the terms and conditions therefor. No appointment, thus, can be made in violation of the provisions of statute and statutory rules.

36. Submission of the learned counsel appearing on behalf of the employees is that the procedures prescribed by reason of the Regulations are applicable to the regular employees. It is so. The question which, however, falls for consideration is as to whether any appointment can be made de hors the provisions of the Act and the rules. Our attention has been drawn to the definition of 'employee' which does not include persons employed on daily wages, work charged and/ or part-time basis. If the expression "employee" does not bring within its fold any person employed on daily wages, work charged or on part-time basis, the same would mean that the persons so appointed would not be the employees within the meaning of the said regulation. It would, therefore, not be correct to contend that the Market Committee or the Board have the jurisdiction to appoint anybody on daily wages, work charged or on part-time basis de hors the rules. The power to make appointments by the committee or the board whether contained in Section 23 or Section 26-F of the Act are statutory in nature. In absence of any provisions conferred upon them to appoint any employee de hors the provisions of Sections 23 and 26-F and the regulations framed thereunder, indisputably would mean that such appointments are de'hors the Act and the rules. The Rules also provide that any appointment made by the Committee under Sub-section (1) of Section 23 shall be intimated within 30 days of such appointment to the Director or to such other officer as may be authorised by the Director in this behalf. It implies that although the Market Committee may have power to make appointments, such appointments can be made in relation to the posts created therefor by the Board wherefor requisite intimation has to be given to the Director or the officer authorised in this behalf. We may assume that for meeting the exigencies of situations it may be

possible for the Committee or the Board to appoint a person on ad hoc basis. Such ad hoc employees, however, being not employee within the meaning of the provisions of the Act and the Regulations, a legal relationship between the employer and the employee would not come into being. As no legal relationship of employer and employee comes into being, evidently, such persons do not derive any status. They a fortiori derive no legal right to continue in service subject, of course, to the compliance of the

provisions of any other Act or the rules conferring certain benefits to them. [See State of M.P. and Another v. DharamBir (1998) 6 SCC 165]

37. Sections 23 and 26-F of the Act categorically mandate that all appointments must be made in terms of the provisions of the regulations. The terms and conditions of such services are also required to be prescribed by the regulations, the logical corollary whereof would be that permanent status is required to be given to a person who is not otherwise an employee of the Board or the Market committee, as the case may be. It is required to be done in terms of the regulation only.

38. The Board is entitled to take a decision which is within its powers and functions delineated by the Act. A decision by way of resolution or otherwise cannot be taken by the Board which is beyond the scope and purview of the Act and the regulations framed thereunder.

39. The Board, therefore, was bound to make a regulation if it intended to put the respondents on its rolls. The High Court, as noticed hereinbefore, however, was of the opinion that it was not necessary so to do. For the reasons aforementioned, we do not agree.

25.3 The letter dated 27.6.2014 (Annexure P/1 to the applicants rejoinder to respondent no.1-AIIMSs counter reply) issued by the CPIO (Faculty Cell), AIIMS, giving certain information to the applicant under the RTI Act, to which reference has been made by the applicant in support of his plea, nowhere states respondent no.3 to have been promoted under the Amnesty Scheme. With regard to the information asked for by the applicant, vide sl.no.5:Copy of applicable rules under which governing body can give amnesty promotion to faculty found unfit by standing selection committee, it has been replied by the CPIO that No such rules is available. However, Governing Body is appointing authority in respect of faculty posts. This reply furnished by the CPIO rather goes to show that there is no such rule or amnesty scheme. On a perusal of the relevant minutes of the Standing Selection Committee and the minutes of the Governing Body as well the O.M. dated 7.6.2014, we do not find any mention therein about Amnesty Scheme, far less about promotion of respondent no.3 to the grade of Professor under the Amnesty Scheme. In the O.M. dated 7.6.2014 itself, it has been clearly mentioned that respondent no.3 has been promoted to the grade of Professor with effect from 1st July 2011 under the Assessment Promotion Scheme. In the above view of the matter, the decisions in Dr.S.K.Kackers case (supra) and NeerajAwasthis case (supra) are of no help to the case of the applicant.

26. In the light of the above discussions, we have no hesitation to hold that there was no ill will or vindictive motive of the Director and President of the Institute against the applicant in the matter of promotion of respondent no.3 to the grade of Professor with effect from 1.7.2011, and that the Governing Body did not act wrongfully and without reasonable and probable cause while taking the said decision in the case of respondent no.3. Therefore, the decision of the Governing Body and the order dated 7.6.2014 are not vitiated on account of any malice either in fact or in law.

27. Accordingly, issue no.2 is decided against the applicant.

Issue No.3:

28. The promotion of the applicant to the grade of Professor with effect from 1.7.2012, or his seniority in the grade of Professor with effect from 1.7.2012, is not disturbed as a consequence of the impugned order dated 7.6.2014, whereby respondent no.3 has been promoted to the grade of Professor with effect from 1.7.2011. As regards the applicants plea of seniority in the grade of Professor vis-à-vis respondent no.3, admittedly the applicant was junior to respondent no.3 at the levels of Assistant Professor, Associate Professor, and Additional Professor. It is also found that the Governing Body had taken decision on 16.1.2012 and 14.4.2012 granting promotion to respondent no.3 to the grade of Professor with effect from 1.7.2009, along with 38 other faculty members. It is also found that the applicant was promoted to the grade of Professor with effect from 1.7.2012, vide order dated 19.7.2013 (Annexure A/4). Had the said decision of the Governing Body taken on 16.1.2012 and 14.4.2012 been implemented in letter and spirit by issuance of the promotion order by the then Director, AIIMS, in favour of respondent no.3, the claim as now raised by the applicant would have no legs to stand inasmuch as the applicant, who was promoted to the grade of Additional Professor with effect from 1.7.2008, was not eligible to be considered for promotion to the grade of Professor with effect from 1.7.2009 or 1.7.2011. But the then Director, AIIMS, did not issue the promotion order in favour of respondent no.3 in compliance with the Governing Bodys decision taken on 16.1.2012 and 14.4.2012 because of imposition of punishment of Censure on respondent, vide order dated 11.5.2011. Being aggrieved by the said action of the then Director, AIIMS, respondent no.3 moved the appropriate authorities. Thereafter, respondent no.3s case was further considered, and the Governing Body, presumably by way of modification of its earlier decisions dated 16.1.2012 and 14.4.2012, decided to grant promotion to respondent no.3 to the grade of Professor with effect from 1.7.2011. The applicant has challenged this promotion of respondent no.3, inter alia, on the grounds that it results in his demotion without any rhyme or reason and without affording him an opportunity of being heard. This plea of the applicant is without any basis. The applicant, having been promoted to the grade of Additional Professor with effect from 1.7.2008, did not put in four years of service as Additional Professor so as to be eligible to be considered for promotion to the grade of Professor with effect from 1.7.2011. He was promoted to the grade of Professor with effect from 1.7.2012, i.e., only when he became eligible to be so promoted. Viewed from this angle, it cannot be said that promotion of respondent no.3 results in demotion of the applicant. Under the rules, an employee can claim seniority in a grade to which he/she is appointed only with effect from the date of his appointment to the said grade. In the above view of the matter, we do not find any substance in the applicants plea of non-compliance with the principles of natural justice.

29. The other plea of the applicant is that because of respondent no.3s promotion to the grade of Professor with effect from 1.7.2011, he would lose his position as Head of Department, Forensic Medicine & Toxicology, AIIMS, inasmuch as the senior most Professor of a Department has to be appointed as Head of the Department. In support of this contention, the learned Senior Counsel for the applicant invited our attention to the decision of the Tribunal in Dr.A.K.Rai, Consultant v. Union of India and others, OA No.1621 of 2007, decided on 12.12.2007, wherein it was held as follows:

17. Counsel for the respondents next contended that it is the discretion of Medical Superintendent to designate anyone as HOD and no one can claim to be the HOD as a matter of right. It is right that there is no such post as HOD and HOD is designated to have smooth functioning of the department but discretion also has to be exercised in a just and fair manner. Discretion does not mean one can act as per whims and fancies and adopt pick and choose policy. If it is allowed, it would give arbitrary powers to the Medical Superintendent. Arbitrariness is the antithesis for fair play. At this juncture, it would be relevant to quote from the judgment of Honble Supreme Court in the case of Union of India vs. Kuldeep Singh, reported in 2004 (2) SCC 590. In this judgment discretion has been dealt with very beautifully and it has been explained that even discretion has to be used in a just and fair manner. The word discretion standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself⁵. In this backdrop, let us examine the act of respondents. Can it be said that the decision is based on any rationale or logic or any justified reason. We find none, therefore, in other words discretion has been exercised in an arbitrary manner, which cannot be countenanced in law.

18. It goes without saying that if juniors are made HOD without any justification, it would cause unnecessary heart burning to the senior/seniors and would further vitiate the atmosphere. Probably that is why, in all other hospitals also, the practice being followed is that the senior most person from the discipline is made HOD unless of course there are valid reasons to be expressed in writing as to why junior should be made the HOD.

30. Regulation 11 of the AIIMS Regulations, 1999, reads thus:

11. Powers and duties of the Director: The Director shall be the Head of Department in terms of Supplementary Rules 2 (1) and shall exercise the powers of Head of Department and discharge the duties mentioned below, namely:

(a) He shall be in charge of the administration of the Institute. He shall allocate duties to the officers and employees of the Institute and shall exercise such supervision and executive control as may be necessary subject to the rules and these regulations.

(b) He shall also exercise the powers specified in Schedule I to these regulations.

(c) He shall also have powers to delegate any of his powers to the officers on the administrative side subject to such limitations as may be imposed by the Governing Body.

31. Admittedly, there is no post of Head of Department in the AIIMS. As fairly submitted by the learned counsel for the parties, the Director, who is the Head of Department of the Institute, delegates any of his powers and functions to a Professor of the Department and declare the said Professor in a particular discipline as Head of Department. Such declaration and/or appointment of such a Professor does not entitle him to get any pay and allowances or benefits in any other form. The applicant, being the senior most Professor of the Department of Forensic Medicine & Toxicology, by virtue of his appointment as Professor with effect from 1.7.2012, was admittedly declared and/or appointed as Head of Department of the said discipline with effect from 3.8.2013 to exercise the powers and functions as originally vested in the Director, AIIMS, although Regulation 11(4) does not mandate that the Director shall have powers to delegate any of his powers to the senior most Professor who has to function as Head of Department of the particular Department of the AIIMS. There is no provision in the AIIMS Regulations, 1999, entitling a Professor of any Department of AIIMS to claim to be appointed and/or declared as Head of Department. If a Professor, who was appointed as Head of Department, is divested of the delegated powers and functions of Head of Department for any administrative reason or on the ground of his seniority as such Professor being lowered down, it would not in any way affect any of his conditions of service regulated by rules and, thus, he cannot be said to have a grievance arising therefrom. The applicant has also not produced before us any material in support of his contention that as per rules, a Professor holding the position of Head of Department of any discipline is eligible for being considered for selection and appointment to the post of Director, AIIMS. Thus, the applicants plea that withdrawal of position of Head of Department, Forensic Medicine & Toxicology, from him, as a consequence of respondent no.3s promotion would be detrimental to his career progression being unsubstantiated is untenable.

32. The question that arose before the Tribunal in Dr.A.K.Rais case (supra) does not emerge in the instant case. In the present case, the applicant has been appointed as Professor w.e.f. 1.7.2012 whereas respondent no.3 has been appointed as Professor w.e.f. 1.7.2011. The applicant has urged the question of his losing his position as Head of Department, Forensic Medicine & Toxicology, AIIMS, as one of his grounds for challenging the promotion of respondent no.3 as Professor w.e.f. 1.7.2011. Therefore, the decision of the Tribunal in Dr.A.K.Rais case (supra) is of no help to the case of the applicant.

33. In Ramjees case (supra), the Honble Supreme Court held that natural justice is no unruly horse, no lurking land mine, nor a judicial cure all and that unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating.

34. In Smt.MenekaGandhiscase(supra), the Honble Supreme Court observed thus:

The audialterampartem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audialterampartem rule would, by the experiential test, be excluded, if importing the

right to be heard has the effect of paralyzing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands.

35. In the absence of any rule or instruction issued either by the Institute or the Central Government laying down that the competent authority, while considering and deciding retrospective promotion of an employee, like respondent no.3, an opportunity of hearing has to be given to another employee, like the applicant, we are not inclined to accept the plea of the applicant that non-affording of such an opportunity to him vitiates the impugned decision of the Governing Body and consequential O.M. dated 7.6.2014 promoting respondent no.3 to the grade of Professor with effect from 1.7.2011.

36. It is pertinent to mention here that neither the decision of the Governing Body nor the impugned order dated 7.6.2014 stipulates that respondent no.3, consequent upon his appointment/promotion to the grade of Professor with effect from 1.7.2011, will be declared and/or appointed as Head of Department, Forensic Medicine & Toxicology, AIIMS. No order has also been issued by the competent authority declaring and/or appointing respondent no.3 as Head of Department, Forensic Medicine & Toxicology, AIIMS.

37. Accordingly, issue no.3 is decided against the applicant.

Issue No.4:

38. In the preceding paragraphs of this order, we have already found that respondent was quite eligible to be appointed/ promoted to the grade of Professor at the relevant point of time. We have also rejected the applicants plea of malice in fact and in law. We have also rejected the applicants contentions about the ineligibility of respondent no.3 for being considered for promotion to the grade of Professor because of his dies non period, imposition of punishment of Censure, and violation of the provisions of the Assessment Promotion Scheme.

39. As already found by us, the decision of the Governing Body, dated 12.5.2014, vide Agenda Item No.GB/152/1, and the impugned order dated 7.6.2014 are the sequel of the (i) minutes of the Standing Selection Committee meetings held in November-December 2010 and on 6.1.2012; (ii) the direction issued by the Central Government under Section 25 of the AIIMS Act, 1956; and (iii) the decisions of the Governing Body dated 16.1.2012 and 14.4.2012.

40. In M.V.Thimmaiahs case (supra), the Honble Supreme Court observed thus:

But we may at the very outset observe that the court while considering the proceedings of the Selection Committee does not sit in a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed..We fail to understand how the Tribunal can sit as an appellate authority to call for the personal records and constitute the selection committee to undertake the exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the selection committee is not subject to the appeal either before the Tribunal or before the courts.

41. In DalpatAbasahebSolunkes case (supra), the Honble Supreme Court proclaimed as follows:

.It is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the candidates

42. While answering issue no.2, we have already rejected the plea of malice raised by the applicant and have also held that on the facts and in the circumstances of the case, the Governing Body cannot be held to have taken the decision by ignoring the provisions laid down in the Assessment Promotion Scheme. Thus, the only remaining aspect to be considered is whether the Governing Body, while differing from the views taken by the Standing Selection Committee in its minutes of the meeting held on January 6, 2012, has recorded reasons in support of its decision to promote the 39 faculty members including respondent no.3 and in support of its decision promoting respondent no.3 to the grade of Professor with effect from 1.7.2011.

43. It is the contention of the applicant that the Governing Body, while taking the decision promoting respondent no.3 to the grade of Professor with effect from 1.7.2011, has not taken all relevant factors into consideration and, therefore, the minutes of the Governing Body dated 12.5.2014 is vitiated. In support of this contention, our attention was invited to the decision of the Honble Supreme Court in Om Kumars case (supra).

44. In Om Kumars case (supra), the matter arose out of an order of the Honble Supreme Court, dated 4.5.2000, proposing to reopen the quantum of punishments imposed in departmental enquiries on certain officers of the DDA who were connected with the land of DDA allotted to M/s Skipper Construction Co. It was proposed to consider imposition of higher degree of punishments in view of the role of these officers in the said matter. In paragraph 1 of the judgment, it was held that that after directions were given and punishments were imposed, the Honble Supreme Court had no occasion to examine whether the right punishments were awarded to the officers in accordance with well known principles of law, or whether the punishments required any upward revision. The Honble Supreme Court, in paragraph 67 of the judgment, held that where an administrative action is challenged as arbitrary under Article 14, the question will be whether the administrative order is rational or reasonable and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and would only have to see whether the administrator has done well in his primary role, whether he has acted illegally, or has omitted relevant factors from consideration, or has taken irrelevant factors into consideration, or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary.

45. The Governing Body, in its 146th meeting held on 16.1.2012, while deciding to promote the 39 faculty members, including respondent no.3, took the following view:

The Governing Body also decided that since this was the last batch under old APS Guidelines, these people should be promoted to their next higher grade from the date their batch-mate were promoted, and the same should not be quoted as precedence for future reference.

45.1 The Governing Body in its 147th meeting held on 14.4.2012, while ratifying its minutes of the 146th meeting (supra), again discussed the issue at length and decided as under:

There was considerable discussion on the issue of promoting 39 faculty members, who had not been recommended for promotion by the Standing Selection Committee. It was pointed out that this would set a bad precedent and would send a wrong signal that promotions in the Institute could be obtained on considerations other than merit. At the same time, it was felt that in view of the significant shortage of doctors at faculty level and the long years of service rendered by the faculty in question, it would be appropriate to promote them by taking a lenient view. Considering all these aspects, the Governing Body by consensus decided in principle to promote all the 39 faculty to their respective higher grades. It was categorically stipulated that this decision was in no way a reflection on the Standing Selection Committee and that this will be a onetime relief measure not to be quoted as precedent. The matter was accordingly resolved.

45.2 So far as Item No.GB-151/2 is concerned, the minutes of the meeting of the Governing Body held on 12.5.2014 reads thus:

Governing Body took note of the fact that Dr.O.P.Murty, Addl.Prof. of Forensic Medicine, was among 39 faculty members whose promotion was approved by the Governing Body in its 146th meeting held on 16th January, 2013. Governing Body also noted that the minor penalty of Censure was imposed on Dr.O.P.Murty with the approval of G.B. by an order No.F.6-20/92-Estt.I dated 11.05.2011, under Rule 15 of the CCS (CCA) Rules, 1965 read with Regulation 33(2) of the AIIMS Regulations 1999 (as amended) for his unauthorized absence as well as his unauthorized visit to Saudi Arabia from 16.5.2008 to 16.08.2009 and the said period of his unauthorized absence was treated as Dies-non. Therefore, the promotion was not given to Dr.Murty, and matter was referred to the Ministry. No decision had been received from Ministry. Meanwhile, DoPT issued comprehensive instructions on 28th April 2014 on how penalties imposed on employees should be treated in the context of their promotion. Considering all the facts of the case and in view of guidelines/clarifications given to the said Office Memo No.22011/4/2007-Estt.(D) dated 28/04/14 of DoPT, Governing Body decided to grant promotion to Dr.O.P.Murty to the grade of Professor from 1st July 2011, i.e., immediately after the conclusion of the disciplinary proceedings.

45.3 A reading of the above quoted minutes of the meetings of the Governing Body makes it clear that the Governing Body has taken all relevant factors into consideration and has assigned cogent, convincing and justifiable reasons in support of its decision qua respondent no.3s promotion to the grade of Professor with effect from 1.7.2011. Considering the entire facts and circumstances of the case, we do not find any illegality to have been committed by the Governing Body thereby making its decision vulnerable. It is pertinent to mention here that the impugned decision of the Governing Body and the O.M. dated 7.6.2014 do not in any way affect the promotion of the applicant to the grade of Professor with effect from 1.7.2012. We, therefore, do not find any scope to interfere with the impugned O.M. dated 7.6.2014 at the instance of the applicant.

46. Accordingly, issue no.4 is decided against the applicant.

Issue No.5:

47. It is the case of the applicant that the minutes of the meeting of the Governing Body held on 12.5.2014 has not been finalized/ approved and therefore, it has no legal sanctity, and the impugned O.M. dated 7.6.2014 issued on the basis of the minutes dated 12.5.2014 is non est. In this connection, he has referred to the minutes of the Governing Body on Item No.GB/151/3. We have

gone through the entire minutes of the meeting of the Governing Body held on 12.5.2014. The Governing Body, vide the said minutes, considered Item No.GB-151/1, Item No.GB-151/2, Item No.GB-151/3, Item No.GB-151/4, Item No.GB-151/5, Item No.GB-151/6, Item No.GB-151/7, and Item No.GB-151/8 separately. While Item No.151/2 relates to the case of respondent no.3- Dr.O.P.Murty, which is the subject-matter of litigation in the present O.A., Item No.151/3 relates to approval of recommendations of the Standing Selection Committee meetings held in various phases during February to May, 2014 pertaining to some other matters. In the minutes concerning Item No.151/2, there is no mention that it is required to be finalized and/or approved. In the minutes in respect of Item No.151/3, the following has been mentioned:

It was also decided by the Governing Body that appointment letters be issued pending finalization of minutes of 151st Extra-ordinary GB Meeting but only after the 16th May 2014.

On the above basis, it is the contention of the applicant that as no such caveat was attached to Item No.GB-151/2, it shows that the intention of the Governing Body was not to give effect to the minutes on Item No.GB-151/2 till the time the same has been approved. This contention of the applicant is fallacious. In the absence of the so called caveat being attached to Item No.GB-151/2, it would be preposterous to import the same into the minutes pertaining to Item No.GB-151/2 thus and thereby making the said minutes redundant. Save and except taking such a bald plea, the applicant has failed to place before us any rule/regulation or instructions issued by the Institute and/or the Central Government that the minutes of the Governing Body are required to be approved and/or finalized in the manner as pointed out by the applicant. Accordingly, issue no.5 is decided against the applicant.

48. In view of our above findings, we hold that the Original Application, besides being not maintainable, is devoid of merit and liable to be dismissed. Accordingly, the Original Application is dismissed. No order as to costs.

(RAJ VIR SHARMA)

(ASHOK KUMAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

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

+ W.P.(C) 3033/2015

DR. SUDHIR KUMAR GUPTA Petitioner

Through: Mr.A.Sharan, Sr. Advocates with
Mr.Amit Kumar, Mr.Somesh Jha,
Mr.Ankit Rajgarhia and Ms.Sarita
Panda, Advocates.

versus

**ALL INDIA INSTITUTE OF MEDICAL SCIENCES (AIIMS) &
ORS.**

..... Respondents

Through: Mr.R.K.Gupta and Mr.M.K.Singh,
Advocates for R-1/AIIMS.
Mr.Abhishek Choudhary, Advocate
for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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25.03.2015

Caveat Nos.293-294/2015

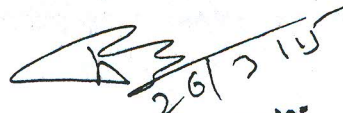
Since counsel for the caveators/respondents has entered appearance,
the caveats stand discharged.

Caveat petitions stand disposed of accordingly.

C.M.Nos.5423-5424/2015 (Exemption)

Allowed, subject to all just exceptions.

Applications stand disposed of.


26/3/15
Court Master
High Court of Delhi
New Delhi

W.P.(C) 3033/2015 and C.M.No.5422/2015

By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the judgment and order dated 04.03.2015 passed by the learned Central Administrative Tribunal in O.A.No.2100/2014.

Issue notice to the respondents to show cause as to why rule Nisi be not issued. Mr.R.K.Gupta, Advocate accepts notice on behalf of respondent No.1/AIIMS. Mr.Abhishek Choudhary, Advocate accepts notice on behalf of respondent No.2/UOI.

Mr.A.Sharan, learned senior counsel appearing for the petitioner submits that the petitioner was appointed as Head of the Department of Forensic Medicine and Toxicology in AIIMS since the year 2013, taking into consideration his seniority on the post of Professor (Forensic Medicine and Toxicology) and presently he is continuing in the said position. He further submits that there is a serious apprehension that in the light of the decision given by the learned CAT which is now under challenge, the respondent No.1/AIIMS may take a decision to replace the petitioner either by appointing respondent No.3 or any other candidate.

Without expressing any opinion on the contentions raised by the



Court Master
High Court of Delhi
New Delhi

petitioner, we direct the respondent No.1/AIIMS to take leave of this Court in the event of any contemplation at their end to replace the petitioner from the post of HoD.

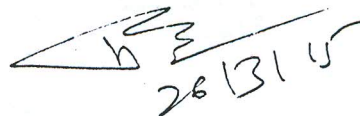
Re-notify on 23.07.2015. Brief synopsis of written submissions along with supporting judgments, if any, be filed by counsel for the parties before the next date of hearing with advance copy thereof to the opposite counsel.

Copy of this order be given *dasti* under the signatures of the Court Master, as prayed.

KAILASH GAMBHIR, J

I.S.MEHTA, J

MARCH 25, 2015
'dc'

A handwritten signature in black ink, appearing to be 'I.S. Mehta', with the date '26/3/15' written below it.

**Court Master
High Court of Delhi
New Delhi**