
(2019) 03 CAT CK 0085

In the Central Administrative Tribunal

Case No : Original Application No. 2265 Of 2014

Kapil Sharma

APPELLANT

Vs

New Delhi Municipal Corporation

RESPONDENT

Date of Decision : 12-03-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2019) 03 CAT CK 0085

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Pramod Kumar Sharma, Sriparna Chatterjee

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

"a. This Hon'ble Tribunal be pleased to set aside the office order dated 04.04.2013 and direct the Respondent to repatriate on the post of Electronic Mechanic Grade-II with all consequential benefits against the lien.

b. Be further pleased to allow the application with costs.

c. Be proper under to facts and circumstances of the case."

2. The applicant's grievance is against the order passed by respondent dated 4.4.2013 (Annexure A1) vide which his request for allowing him to rejoin in New Delhi Municipal Council (in short 'NDMC') after expiry of lien period has been rejected, as during the lien period, the applicant was allowed to rejoin in NDMC vide letter dated 25.11.2010 but neither he joined in NDMC nor requested for extension of lien in NDMC.

3. Brief relevant facts of the case are that the applicant joined the service with

respondent (NDMC) in 2004 on the post of Electronic Mechanic and later vide Office letter dated 6. 8.2008, he was confirmed on the same post w.e.f. 26. 8.2005.

3.1 In the year 2009, the applicant on being selected to the post of Junior Telecom Officer in BSNL tendered technical resignation with the request to retain lien, which request was acceded to by the respondent vide order dated 4.5.2009 on usual terms and contentions for retention of lien for two years in respondent's office and the applicant was directed either revert to NDMC within the period of two years or resign from the respondent's office at the end of the period of lien. Accordingly, the applicant was relieved w.e.f. 6.5.2009 vide relieving order dated 6.5.2009.

3.2 The applicant averred that he made a request vide his letter dated 26.8.2010, i.e., within the lien period, i.e., two years, for rejoining the same post. The applicant contended that he has not received any information/letter to rejoin the service against his lien or any reply against his above letter dated 26.8.2010.

3.3 Applicant further stated that on 25.10.2012, he has written another letter and requested again for repatriating on the post of Electronic Mechanic Grade-II against the lien period. When he has not received any response to the same, he has again written letters dated 18.2.2013 and 8.4.2013 making the same very request.

3.4 The applicant has also filed Application under RTI Act dated 16.4.2013 to find out the mode of dispatch, acknowledge and copy of letter dated 25.11.2010. According to the applicant, he was not provided a copy of letter dated 25.11.2010 but they replied to his aforesaid RTI application, vide reply dated 13.5.2013.

3.5 Being aggrieved by the aforesaid actions of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

4. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the applicant was informed by letter dated 25.11.2010 regarding to allow him to join NDMC during lien period and the said letter was sent to him through ordinary post vide No. 10045 dated 25. 11.2010. The applicant failed to join NDMC in response to the said letter. The action for request of his rejoining duty in NDMC was taken on record by the respondents and reply was given in accordance with law after taking the orders of the senior officers on the file in question.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Counsel for the applicant submitted that applicant has never received any letter dated 25.11.2010, which was purportedly issued by respondent on his request for rejoining the respondent's office. If the same was received by the

applicant, the applicant would have definitely joined the respondent's office but due to non-receipt of same, he was not in a position to join the respondent's office.

7. On the other hand, counsel for the respondents submitted that applicant was allowed to retain lien for a period of two years from 6.5.2009 to 5.5.2011 and he was specifically directed by the respondents vide Office Order dated 4.5.2009 that he should either revert to respondent's office within the period of two years or resign from the respondent's office at the end of the period of lien. She further submitted that as the applicant has made a request vide his application dated 26.8.2010 for rejoining the same post against the lien period, the same was acceded to by the competent authority and Posting Slip dated 25.11.2010 was issued by respondent's office and the said posting slip was dispatched to the applicant. Despite the orders of the respondent - NDMC, the applicant has neither deposited the leave salary and pension contribution nor joined his duty in NDMC. She further drew our attention that applicant made application dated 25.10.2012 stating that he had not received any reply in response to his previous application dated 26.8.2010 and again requested to repatriate to the post of Meter Repairer Grade-I, but he has not stated what compelled him not to make such a request before expiry of his lien period, i.e., 5.5.2011 and why he has made the said application only on 25.10.2012, i.e., much after expiry of two years lien period. She submitted that applicant's plea that posting slip dated 25.11.2010 had not been received by him is an afterthought plea which cannot be accepted by this Tribunal having regard to the conduct of the applicant in this matter.

8. We have heard learned counsel for the parties and have carefully perused the material placed on record. On direction of this Court, the respondent's counsel produced the relevant records of the case of the applicant, which we have also perused. We do not find any infirmity in the same. Admitted fact of the case is that applicant has himself stated that he has made a request in 2010 for returning back to respondent's office and the respondent's have also averred that the said request was acceded to by the respondent's office and accordingly posting slip dated 25.11.2010 was sent to the applicant by post. However, applicant deputed that he has not received said posting slip dated 25.11.2010. Even if it is presumed that he has not received the said posting slip dated 25.11.2010 then also he has not reminded the respondents before expiry of his lien period on 5.5.2011. If he has not received any such reply from the respondent's office, he ought to have reminded the respondent and sent a letter himself or through his present employer, BSNL, before expiry of two years of lien period,. That is not the case of the applicant. It is admitted fact that applicant has sent representation only on 25.10.2012, i.e., much after the expiry of lien period and thereafter in 2013. However, the applicant has not stated what he was doing from 27.8.2010 till 25.10.2012. It is pertinent to mention that while allowing the applicant to retain the lien, the respondent vide Office Order dated 4.5.2009 specifically mentioned that he should either revert to respondent's

office within the period of two years or resign from the respondent's office at the end of the period of lien. This matter has been considered upto the Chairperson, NDMC/respondent's office and with the approval of the Chairperson, the respondent has rejected the representation of the applicant, which the applicant is impugning in this OA. It is further relevant to mention here the decision of the Hon'ble Supreme Court in the case of Anil Bajaj v. Post Graduate Institute of Medical Education & Research,(2002) 2 SCC 240, in which the Apex Court held that :

"It is an admitted fact that the appellant did not come back till after 1998. It is also an admitted fact that his request for extension was rejected specifically in 1997. This being the position the principle of estoppel, apart from anything else, would clearly be applicable in a case like this. A person who gets an advantage, namely, of a sanction to go abroad on service on the condition that he will come back within two years and if he does not come back, his lien will automatically be regarded as being terminated he then cannot turn around and challenge the said condition on the basis of which sanction to go abroad was granted. Of course, if there is a dispute with regard to the question whether he had in fact come back within the stipulated period or an extension had been specifically granted an inquiry may be necessary but where the facts are not in dispute the inquiry would be an empty formality. In any case principle of estoppel would clearly apply and the High Court was right in dismissing the writ petition filed by the appellant wherein he had challenged his termination."

9. As regards applicability of FR 14-A(a), no doubt it provides that the lien of a government servant shall not be terminated, but the same is expressly subject to FR 13. It may be noted that as per Proviso ii to FR 13 a lien is liable to be terminated if the government servant on foreign service/deputation stays out beyond the maximum period granted to him of proceeding out. As per OM No.63/37/63-Est issued by the Government of India on 14.7.1967, vide Clause 2 thereof it has been provided:-

"2. In the case of permanent Government servants, their lien may be retained in the parent Department/Office for a period of two years. They should either revert to the parent Department/Office within that period or resign from the parent Department/Office at the end of that period. An undertaking to abide by these conditions may be taken from them at the time of forwarding the applications to other Departments/Offices."

Thus, the claim of the applicant, which is predicated under FR 14-A(a) is clearly misconceived, as it ignores the Proviso ii to FR 13 and the office memorandum dated 14.7.1967.

10. In view of the aforesaid facts and circumstances of the case and for the forgoing reasons, we do not find any illegality in the impugned order passed by the respondent and accordingly the present OA being devoid of merit is dismissed. There shall be no order as to costs.