

(2023) 04 CAT CK 0007

In the Central Administrative Tribunal

Case No : Original Application No. 2120 Of 2019

Manoj Kumar

APPELLANT

Vs

New Delhi Municipal Council Through Its Chairman Palika
Kendra, Sansad Marg, New Delhi & Ors

RESPONDENT

Date of Decision : 06-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 04 CAT CK 0007

Hon'ble Judges : Dr.Chhabilendra Roul, Member (A)

Bench : Single Bench

Advocate : Yogesh Pachauri, Vaibhav Agnihotri

Final Decision : Disposed Of

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present Original OA has been filed by the applicant against the order dated 8.2.2017 by the Respondent No.2 vide which the respondents have granted Technical Resignation to the applicant without lien and also circular dated 31.01.2018 by respondent organization, NDMC to justify such decision.

2. Brief facts of the case are that the present applicant joined as Clerical Assistant in the respondent organization i.e. New Delhi Municipal Corporation (henceforth, NDMC) on 13.7.2010. His services were confirmed w.e.f. 13.7.2011 and vide order dated 1.11.2011, the clerical assistants were re-designated as Junior Assistants. The applicant applied to the post of Librarian in Government of NCT, Delhi, Directorate of Education vide his application dated 7.12.2015 and the respondents issued NOC vide letter dated 9.12.2015. On being selected for the said post, the applicant applied for Technical resignation with lien on 27.01.2017(Annexure-A7). The respondent organization vide order dated 8.2.2017 accepted the applicants Technical Resignation but without lien. The applicant immediately submitted a representation addressed to the Chairman,

NDMC requesting to review /reconsideration of the technical resignation order and allowing him to retain the lien(Annexure-A8). The Applicant, after not getting any favourable response, moved to the National Commission for Scheduled Castes on 18.12.2017. The National Commission for Scheduled Castes vide order dated 27.11.2018 recommended that the Respondent organization would decide the matter in consultation of DOPT. Thereafter, the applicant has approached this Tribunal in the present OA seeking the following relief:-

(a) Quash the office order no. Vide no. SO(E)/570/SA-XII dated 08.02.2017 and Circular No. D-27/PA/Dir(P-1)/2018 dated 31.01.2018 issued by the respondents.

(b) Direct the respondent to grant technical resignation with lien of 2 years to the Applicant.

(c) Direct the respondents to allow the applicant to join the with NDMC adding the length of service already rendered;

(d) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. On admission of the OA notices were issued to the respondents and they have filed their counter affidavit to which the applicant has also filed his rejoinder to the same

4. The applicant in his OA and as substantiated by his counsel during arguments has pressed for the aforementioned relief on two main grounds:

(i) The Statutory Rules and guidelines, FRSR and CCS Rules are adopted by the NDMC. The Rule positions in respect of lien of government servants are applicable to the employees of NDMC too.

NDMC has adopted NDMC Regulations, 2016 which states that service conditions of the employees of NDMC shall be at par with that of Central government employees. The DOPT vide their letter dated 2.4.2019 has also advised the Chairman , NDMC in respect of the case of the Applicant to follow DOPT guidelines and it specifically drew attention of Para 3.4.1 of its OM No.28020/1/2010-Estt(c) dated 17.8.2016. Para 3.1.1 of the said OM states:-

"3.1.1. Lien is defined in FR9(13). It represents the right of a Government employee to hold a regular post, whether permanent or temporary, either immediately or on the termination of the period of absence. The benefit of having a lien in a post/service/cadre is enjoyed by all employees who are confirmed in the post /service/cadre of entry or who have been promoted to a higher post, declared as having completed the probation where it is prescribed. It is also available to those who have been promoted on regular basis to a higher post where no probation is prescribed under the rules, as the case may be."

And Para 3.4.1 States:

"3.4.1. A Government servant's lien on a post may in no circumstances be

terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless his lien is transferred, a Govern servant holding substantatively a permanent post retains lien on that post. It will not be correct to deny a Government servant lien to a post he was holding substantatively on the plea that he had not requested for retention of lien while submitting his Technical Resignation, or to relieve such a Government servant with a condition on that no lien will be retained.”

In view of these guidelines issued by DOPT, the applicant was entitled to retain his lien in Respondent Organization i.e., NDMC for two years from the date of acceptance of his technical resignation.

(ii) The second ground undertaken by the applicant and his counsel is that the Respondents could not discriminate the applicant as they have allowed retention of lien to similarly placed employees. In para 5 B of the OA, the applicant has cited the cases of 4 employees of NDMC who had been allowed to retain lien in NDMC while allowing their technical resignation. Hence, denying the same benefit to the applicant is violation of Articles 14 and 16 of the Constitution of India.

5. The counsel for the applicant cited the order of this Tribunal in OA No.3852 of 2012 in N.C. Arora vs GNCT Delhi &ors dt 30.10.2013 where in it was held that:-

“9... Keeping in view the facts that the NDMC is/was an Autonomous Organization and the service rendered to them is to be counted as qualifying service for pensioner benefits and further that the Public Grievances Commission had recommended that the applicant had got good grounds for her case and accordingly desired that the decision of the Department be reviewed and further that the case of Smt. Kamla Aggarwal is similar to the case of the applicant, in which case the necessary benefit for counting of her service rendered in the NDMC for pensioner purposes have been allowed, I do not see any reason why the respondents should take the position that the applicant cannot be allowed the benefit of her past service rendered in the NDMC for pensionary purposes. It needs to be borne in mind that the Delhi Administration has to show an example as a model employer, who are expected to follow the instructions of the Government on different subjects including the ones which are applicable in the instant case. It is a well established fact that the services rendered in Autonomous Organizations are to be treated as qualifying service and further that there has been a number of cases in this regard including that of Smt. Kamla Aggarwal, which need to followed by respondents.”

6. The counsel for the applicant stated that in the instant case, the lien is akin to providing benefit of past service as ordered by this tribunal in the aforementioned OA. In view of this, the order dated 8.2.2017 and the subsequent circular dated 31.1.2018 are bad in law and hence needs to be quashed.

7. The applicant has also filed MA for condonation of delay. The reason furnished by the applicant for the delay is that the applicant after not getting favourable

response from the respondents regarding review /modification of the technical resignation order dt 8.2.2017 approached the National commission for scheduled castes and the last order of the commission was dat 27.11.2018. The applicant has approached the Tribunal within the stipulated period thereafter.

8. The respondents in their counter affidavit as well as through the arguments by their counsel have averred that the present OA is hopelessly barred by limitation. The applicant has challenged the order dated 8.2.2017 and the OA has been filed on 20.2.2019, two years after the lapse of the said order. Though the applicant has mentioned the circularNo. D-27/PA /Dir.(P-1)/2018 dated 31.1.2018 in his relief clause , the OA does not challenge this circular in the grounds nor in the arguments by the counsel by the applicant nor in the rejoinder.

9. The matter regarding delay in filing the OA has already been adjudicated by this Tribunal vide order dated 19.7.2019 in respect of the MA for condonation of delay. The said interim order is accepted as the part of the present final order.

10. On merits, the counsel for the respondents has relied on the Memo No. 28011/1/2013-Estt(C) dated 23.12.2013 by DOPT which governs the procedure to be followed in case of employees of central government applying for posts within the central government, state governments , autonomous /Statutory bodies, CPSEs etc. Clause 4(e) of the said instructions states that:-

"4(e) Permanent Government servants on their being selected for appointment in an autonomous body/CPSE will be to resign before they are permitted to join the new organization. In their case no lien shall be retained and they will be governed by the orders issued ;by Department of Pensions & Pensioners Welfare regulating mobility of personnel between Central Govt. and Autonomous Bodies/ CPSEs"

11. The counsel for the respondent drew attention to clause 7 of the said memo which states:

" Applications of Central Government Servants in response to press advertisement for posts in Central Public Enterprises/ Autonomous Bodies may be forwarded with a clear understanding with the employee that in the event of their selection for the post applied for they will sever their connections with the Government before joining the Public Sector Undertakings/Autonomous Bodies. No lien shall be retained in such cases. The relieving order should indicate the period within which the official should join the Public Sector Undertaking / Autonomous Body. Normally this period should not be more than 15 days".

12. The counsel for respondents relied on the above circular and averred that the applicant has no case as the DOPT guidelines and the subsequent circular by the NDMC dated 30.1.2018 has categorically mentioned that there can be no lien in cases where the employee goes for employment outside NDMC.

13. I have gone through the records of the case thoroughly and heard the arguments carefully. The respondents relied on the DOPT OM dated 3.12.2013

and their own circular dated 31.1.2018, in denying lien in respect of technical resignation of the applicant. The internal circular of the respondent organization dated 31.1.2018 solely relies on the afore-mentioned DOPT OM dated 3.12.2013. However, the applicant and his counsel rely on DOPT OM dated 17.8.2016 and subsequent clarification furnished by DOPT vide their Memo no. 14011/ 38/2018-Delhi-II dated 2.3.2019 in respect of the applicant's case referred by the NDMC to DOPT wherein it has been stated that lien is maintained when an employee goes from Central Government to State government. DOP&T has drawn NDMC's attention to clause 3.4.1 of their OM dated 17.8 2016.

14. Question arises which OM is applicable in the instant case. As the subject headline of OM dated 17.8.2016 states "Technical Resignation & lien – Consolidated guidelines", these are the latest guidelines and reliance should be placed on this. If any contradictory provision is there in the previous guidelines, those shall become redundant. The 2013 guidelines are regarding "procedure to be adopted while forwarding of applications of Government servants to outside employment", whereas the 2016 guidelines contained the rights of employees for lien with respect to Technical Resignation. Hence, the 2016 Guidelines of DOPT will assume primacy over the 2013 guidelines as regards the right of employees to be granted lien.

15. The second important issue in the instant case is the applicability of Central Government Guidelines to NDMC and the interpretation regarding definition of Government to NDMC, a Municipal Council. The NDMC vide their Regulation in 2016 have adopted the resolution that the service conditions of the employees of NDMC shall be at par with that of central government employees. In view of this, the employment of its employees in GNCT of Delhi could be treated at par with an employee of Central Government. Hence, clauses 3,1.1 and 3,4.1 of the DOPT OM dated 17.8.2016 squarely cover the instant case and the applicant was entitled to get lien in respect of the technical resignation.

16. In view of the above, the following orders are passed:-

(i) The Order No. SO(E) 570/SA-XII dated 8.2.17 passed by the respondents is modified to include lien for two years from the date of acceptance of Technical Resignation of the applicant. The Respondents are directed to issue modified order accordingly.

(ii) The Circular No.D-27/PA/Dir.(P-1)/2018 dated 31.01.2018 by the respondents is quashed because it is contradictory to Om No. 280/1/2010-Estt-(C) dated. 17.8.2016.

17. In view of the above, the OA is disposed of in terms of the above directions. There shall be no order as to costs.

All pending MAs are also disposed of accordingly.